

Findings

Expanding Indian Gambling

Could Harrah's Casino Become N.C.'s Atlantic City?

By Tim Hesler



North Carolina's largest private tourist attraction was opened by the Eastern Band of Cherokee Indians in 1997. Harrah's Cherokee Casino now draws over 3.3 million visitors a year¹ and reportedly takes in more than \$150 million in profits on an annual basis, according to *The Herald-Sun*.²

Despite the fact that North Carolina has never passed legislation to legalize major cash-prize gambling, the casino has established itself as a dominant player in the statewide tourism industry by offering a variety of games in forms otherwise prohibited throughout the State.³ In 2000, the Tribe's gambling privileges were significantly expanded by former Governor Jim Hunt. Consistent with the \$18.6 billion tribal casino industry,⁴ Harrah's has continued to see robust growth.⁵

Recently, leaders of the Eastern Band of Cherokee Indians have proposed to amend their tribal-state compact with North Carolina. This latest amendment would once again expand the parameters of gambling allowed by the compact. The purpose of this paper is to examine the current framework of the tribal-state compact, analyze currently proposed changes, and evaluate the potential effects of the requested expansion.

Foundation of Indian Gambling

In 1988, the U.S. Congress passed the Indian Gaming Regulatory Act ("IGRA"; "the Act") in response to two federal cases that had opened gambling privileges to Indian tribes without providing clear limitations on those privileges. The *Seminole v. Butterworth* case validated tribal bingo operations,⁶ while the *California v. Cabazon* ruling held that once a state legalized a particular form of gambling,

tribes within that state could operate such gambling on trust lands free of state interference.⁷ In response to concerns raised by the *Seminole* and *Cabazon* decisions, the IGRA was expressly designed to provide a statutory basis for the operation and regulation of gambling by Indian tribes across the country for the purposes of assuring the fair and honest conduct of gambling operators and players alike and promoting economic development, self-sufficiency, and strong tribal governments.⁸

This latest amendment would once again expand the parameters of gambling allowed by the compact.

The IGRA classifies all types of gambling into three categories.⁹ Class I gaming is limited to social games with minimal prize values and traditional Indian games associated with tribal ceremonies or celebrations.¹⁰ The Act gives exclusive jurisdiction over Class I gaming on Indian lands to the Indian tribes which possess those lands.¹¹ Class II gaming includes bingo and similar card games not otherwise prohibited by state law, but excludes all banking card games, electronic and electromechanical facsimiles of any games of chance, and all slot machines.¹² Class II gaming is also under the jurisdiction of the tribes, but is subject to additional gaming regulation, net revenue allocation requirements, annual outside audits, and various other provisions.¹³

Class III gaming—allowed only to Indian tribes with full federal recognition¹⁴ on Indian lands¹⁵—is simply defined as "all forms of gaming that are not Class I gaming or Class II gaming."¹⁶

It is primarily Class III gaming which is conducted in casinos. Of the three classes, Class III gaming also has the most stringent constraints. According to the IGRA, such activities on Indian lands are lawful only if those activities are:

1. Authorized by an ordinance or resolution that is:
 - (a) adopted by the Indian tribe having relevant jurisdiction,
 - (b) in conformity with the Class II regulatory requirements, and
 - (c) approved by the Chairman of the National Indian Gaming Commission;
2. Located in a State that permits such gaming for any purpose by any person, organization, or entity; and
3. Conducted in accordance with an eligible Tribal-State Compact.¹⁷

Current Status of Compact

As originally framed in 1994, the compact between the Eastern Band of Cherokee Indians and the State of North Carolina gave the Tribe license to conduct raffles, operate video games, and apply to the State for authorization to conduct additional forms of Class III gaming.¹⁸ Initially, Governor Hunt was an outspoken critic of gambling.¹⁹ However, faced with the threat of a federal lawsuit by tribal leaders based upon then-untested interpretations of the Act,²⁰ Governor Hunt apparently felt compelled to sign the original compact.²¹ In 1995, however, the Governor's general counsel sent a letter to former Chief Jonathan "Ed" Taylor requesting that the Cherokees "cease and desist" their gambling operations consequent to their implementation of what the Governor felt to be illegal machines.²² Chief Taylor refused to cease operation of the machines in question, and, despite a short standoff, the Tribe's gambling operations continued unfettered.²³

Governor Hunt later signed two

amendments to the compact. The first, signed in May 1996, resulted in modest changes, including an approximately two-year extension of the compact.²⁴ In November 2000, shortly before leaving office, Governor Hunt conceded to a second amendment with the Cherokees. Key among 24 revisions and additions to the compact were: (1) the raising of the maximum raffle prize value from \$5,000 cash or \$25,000 merchandise value to \$50,000 cash or merchandise value and unlimited prizes for some video games; (2) the introduction of cash advances as an acceptable form of customer funds; (3) the elimination of all square footage restrictions on gambling space in the casino; and (4) the extension of the compact from seven to 30 years.²⁵

Given the vigor with which casinos monitor the pulse of the payout system, the significant increases in prize amounts hardly seem calculated at putting more money in customers' pockets. Rather, the increases appear to be targeted at drawing more cash from customers through the lure of bigger payout dreams. Additionally, the introduction of cash advances allows the casino to procure more money from customers "on tilt"—those who are chasing unexpected losses—by affording those customers a means of exceeding their pre-planned spending limits. Elimination of gambling space restrictions allows for unprecedented expansion of the casino, limited only by the terrain upon which the casino stands and the extent to which the Tribe opts to invest in further construction.

Finally, the 2000 amendment's extension of the compact for 30 years offered two more advantages for the Tribe. First, it gave assurance to would-be lenders that long-term financing sought by the Tribe would be secured by long-term operations. The extension also yielded a point of leverage for the Eastern Band in that a 30-year compact essentially guaranteed that those privileges granted by the amendment would not be rebuffed for three decades. During this time, however, tribal leaders have the option to initiate negotiations to chip away at the remaining limitations set by the compact. Indeed, within just a few years, tribal leaders contacted Governor Easley on multiple occasions requesting that he re-open negotiations.²⁶

In 2002, Governor Easley signed a "4(B) agreement"²⁷ with the Tribe that slightly expanded the scope of available games. The agreement authorized the operation of electronic raffles and bingo

games.²⁸ The agreement received minimal publicity and did not significantly expand the Tribe's privileges.

Recent Negotiations

Since 2002, there have been no amendments or agreements to alter the compact. However, the Eastern Band of Cherokees' leadership has continued to push to further expand the Tribe's gambling privileges. In the spring of 2003, tribal leaders approached Governor Easley with a new proposal.²⁹ That proposed 4(B) agreement would have allowed the Tribe to "conduct the games that are enumerated at N.C.G.S. 14-306.1(c) *in any available format.*"³⁰

The referenced statute allows for any kind of video playing card game as well as several other types of video games. The insertion into the proposed agreement of the phrase "in any available format," however, would extend to the Tribe the authority to conduct "Las Vegas-style" live (rather than exclusively video) games such as poker and other card games. The addition of these forms of gambling would likely draw new clientele to the casino and would arguably put it on par with several larger casinos on the East Coast.

As an apparent enticement to the state's acceptance of the proposal, tribal leaders pledged to give \$5,000,000 annually to the State for purposes of regional advancement. The money was to be allocated to funds for education, technological modernization, sanitation services, and "business incubation and research" in western North Carolina.³¹

Although the Governor took no formal action on the 2003 request, he was again contacted by Principal Chief Michell Hicks in February 2005, shortly after his re-election and re-inauguration.³² Two months later, Governor Easley sent a letter acknowledging receipt of Chief Hicks' request and asking for more specificity as to the proposed amendment.³³

The Tribe responded with a newly drafted amendment that would be the most significant revision yet. Accompanying the amendment proposal was another proposed 4(B) agreement similar to the 2003 offer. The proposal again sought to allow for the operation of statutorily authorized video games "in any available format," allowing the play of live poker and other games.³⁴ However, the new proposal excluded the incentive to the state of a tribal pledge of funding for regional advancement.

In addition to the expansion of Class III games in the proposed 4(B) agreement, some of the most prominent changes included in the proposed amendment are: (1)

removal of the one-casino limit in favor of an unlimited number of casino facilities; (2) the elimination of all video game prize limits; (3) the introduction of full-fledged credit extensions to "high-value customers"; (4) a lowering of the minimum casino employment age from 21 to 18; and (5) the replacement of a 30-year expiration date with a phrase committing to the agreement "in perpetuity, or until otherwise mutually agreed by the parties."³⁵

The simultaneous removal of all restrictions on number of casinos and video game prizes would continue the whittling away of remaining limitations. In particular, the elimination of a one-gaming-facility constraint would wrest from the State the power to curtail the number of casinos operated by the Tribe and would serve to open the door for more complete dependence of the region upon gambling for its economic development. Additionally, if the Tribe sought to establish off-reservation casinos, as has been a controversial pursuit of tribes in several other states, such a change could bring gambling to major cities throughout North Carolina.

Allowing loans, or "credit extensions," would further encourage individuals to spend well beyond their means in irrational moments of unexpected losses. This would bring in more profits for the casino, but could also produce an increased number of problem and pathological gamblers. The effects of problem gambling are often vastly understated and should be weighed very seriously in considering this aspect of the proposed amendment.

Lowering the minimum employment age from 21 to 18 would increase the pool of low wage workers. Additionally, lowering the age restrictions would give individuals who are arguably within the most fertile age range for gambling addiction an opportunity to acquire a taste for casino gambling, thus assisting in the development of even more problem and pathological gamblers.

The insertion of a perpetual clause in place of a 30-year compact expiration date would also yield leverage to tribal leaders in favor of gambling operations. The clause is couched in phrasing that allows only for mutual agreements to modify the compact. Thus, no changes to gambling privileges could ever be made unless the Tribe agreed to them. Future modifications would likely be one-sided. If history serves as any reliable indicator, it is probable that the Tribe will seek to further expand its privileges, but not to diminish them in any fashion.

Extra-Tribal Ramifications

The practical effects of any gambling expansion may actually extend beyond just the privileges granted to the Cherokee tribe. The Lumbee tribe, based in Pembroke, North Carolina, is in the process of seeking full federal recognition from the U.S. Congress. If such recognition is awarded, the Lumbees will have the same tribal-state standing as the Cherokees. It would prove very difficult, if not impossible, for the State to deny the Lumbees a compact with the same privileges as those extended to the Cherokees. Therefore, the State should be cautious not to lightly grant to one tribe any privilege that it is not prepared to grant to additional tribes.

Legislative Power

The implications of compact expansion are particularly troubling since the North Carolina General Assembly essentially signed all of its compact-negotiating authority over to the Governor in 2001. At the time of the 1994 compact and the 1996 and 2000 amendments, there was not much discussion regarding the Governor's authority to execute a compact on behalf of the State. While the IGRA was phrased in terms of negotiations and agreements to be conducted and formed with "the State,"³⁶ nowhere did the Act specify which branch of government or which specific officers were permitted to act on behalf of the State.³⁷

The issue has since been addressed by several state supreme courts. The consensus has been that it is the legislature, rather than the governor, that holds the power to enter tribal-state compacts.³⁸ Perhaps the most influential decision was the 2003 ruling of the New York Court of Appeals that, because New York's state constitution "vests the Senate and the Assembly with the legislative power of the State [and] vests the executive power in the Governor ... these 'separate grants of power ...' imply that each branch is to exercise power within a given sphere of authority."³⁹ The court stated that that separation "requires that the Legislature make the critical policy decisions."⁴⁰ Citing provisions in the IGRA for compacts to address licensing, taxation, and criminal and civil jurisdiction, the court stated that compacts addressing any such issues "necessarily make fundamental policy choices that epitomize 'legislative power.'"⁴¹ In a brief summary of persuasive cases from other jurisdictions, the court pointed out that, "unsurprisingly, every state high court to consider the issue has concluded that the state executive lacks the power unilater-

ally to negotiate and execute tribal gaming compacts under IGRA."⁴²

Just as in New York, North Carolina's constitution states that "the legislative power of the State shall be vested in the General Assembly."⁴³ Furthermore, the Constitution also explicitly sets forth that "the legislative, executive, and supreme judicial powers of the State government shall be *forever separate and distinct* from each other."⁴⁴

In recognition of the potential concerns regarding authority to negotiate compacts, some North Carolina legislators attempted to pass this politically sensitive issue exclusively to the Governor in 2001. A provision surfaced on multiple occasions, which purported to transfer to the Gover-

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nor all authority "to negotiate and enter into Class III Tribal-State gaming compacts, and amendments thereto, on behalf of the State."⁴⁵ Furthermore, the provision specified a retroactive effective date of August 1, 1994,⁴⁶ in an effort to legitimize the original compact and amendments signed by former Governor Hunt.

The provision was inserted into four different bills. On each of the first three occasions, the "Cherokee Compact" provision was removed by a different committee or set of conferees.⁴⁷ The fourth insertion was added to the conference report of an "end of session catch all bill," which was literally presented to members on the House floor just before adjournment.⁴⁸ The relevant "Cherokee Compact" provision was obscured as a three-paragraph section within a larger 17-page bill headed with the phrase, "An Act to Make Technical Corrections to the Appropriations Act of 2001 and for Other Purposes."⁴⁹ The Cherokee Compact provision apparently fell within those nondescript "Other Purposes."

Despite the intent behind the legislation to vest all compact-negotiating authority in the Governor, the General Assembly cannot abdicate its constitutionally mandated role to another entity. Therefore, the legality of the Cherokee Compact provision remains in question. This issue has not yet been resolved by any North Carolina court, but based upon decisions

of courts in other states and the similarity of their constitutions to North Carolina's, those questions appear quite legitimate.

Good Faith Negotiations

The IGRA contains a requirement that the State "negotiate ... in good faith to enter into [a tribal-state] compact."⁵⁰ The Act furthermore attempts to grant federal courts jurisdiction over claims of failure to negotiate in good faith.⁵¹ However, the Act offers no substantive definition of good faith negotiation. Moreover, nothing in the IGRA requires a state to renew negotiations to expand an existing compact. For some time, the good faith negotiation clause was a stumbling block for state officials and a point of leverage for tribes seeking generous compacts.

A measure of clarity on this front was provided by the U.S. Supreme Court in its 1996 decision in *Seminole v. Florida*.⁵² In that case, the Seminole tribe had filed suit against Florida's Governor for his refusal to even *enter* negotiations towards a compact. After the Governor filed for dismissal, two lower courts took differing views, paving the way for the U.S. Supreme Court to author its own decision. The Supreme Court held that "notwithstanding Congress' clear intent to abrogate the States' sovereign immunity, the Indian Commerce Clause does not grant Congress that power, and therefore §2710(d)(7) [of the IGRA] cannot grant jurisdiction over a State that does not consent to be sued."⁵³

The *Seminole* decision alleviated the concerns of many states by essentially eliminating altogether the legal cause of action for failure to negotiate in good faith. If Florida could not be sued for refusing to conduct *any* negotiations, neither would it seem that another state would be held responsible simply for not accepting what it viewed as the unreasonable offers of local tribes.⁵⁴

Furthermore, the compact already in place in North Carolina meets even a rigid construction of the good faith requirement. The original compact was in accord with all minimal requirements of the IGRA. The compact did not infringe on any of the rights given by the IGRA to Indian tribes, and it gave more than adequate Class III gambling license to the Cherokees. Two subsequent amendments to the original compact have only expanded those privileges. Refusing to negotiate further concessions of state control would not be cause for suit; the requirement to negotiate in good faith has already been met—not once, but three times.

Economic Perspective

Despite the claims of representatives of the gambling industry and several tribal leaders that expansion of state-approved gambling operations would be socially and economically beneficial,⁵⁵ the experiences of communities and a variety of studies have offered consistent rebuttals to those claims. Recent articles have cited the \$150-plus million in annual profits by Harrah's Cherokee Casino.⁵⁶ However, that profit is necessarily derived from consumers, many of whom would otherwise have spent their money in ways that contribute to more direct economic growth. In order for gambling operations to succeed, they must present to customers a convincing façade of big winnings while simultaneously raking corporate profits from the reality of those customers' consistent financial losses. As evidence of one of the fiscal consequences to gambling communities, a recent study by Creighton professors of law and economics demonstrated a direct long-term correlation between casino presence and individual bankruptcies.⁵⁷

From the perspective of the government, there are a number of negative tax consequences. The fact that Indian casino revenues are not subject to corporate taxation allows millions of dollars of casino income to go untaxed each year. Additionally, that money also represents millions of dollars of untaxed *expenditures* by consumers (i.e., loss of sales tax on what would otherwise be the purchase of consumer goods). The only suggested offset to the tax deficiency has been the \$5,000,000 of incentive money originally offered by the Tribe as part of the 2003 proposal. However, those funds were noticeably absent from the 2005 proposal.

It is important for the State to guard against both the appearance of corruption and the yielding of its sovereign authority to another entity. Thus, it should avoid exchanging liberal gambling policies for a cut of the profits afforded by those policies. Other states with tribal gambling have been lured into signing compacts or compact amendments in exchange for a share of casino profits.⁵⁸ If such an arrangement were created in North Carolina, the state would likely feel pressured to maintain the agreement in order to preserve the revenue stream, even if it found that expanded gambling were having harmful effects on the state. At the least, a thorny dilemma would arise from such a finding.

Additionally, it should be noted that although corporate political contributions

are banned in North Carolina, the North Carolina State Board of Elections has determined that tribes with full federal recognition are not considered corporations and are therefore permitted to make such contributions.⁵⁹ In fact, in the 2001-02 election cycle alone, the Eastern Band of Cherokees made over \$250,000 in political contributions.⁶⁰ This allows the Tribe to wield significant political influence not available to other economic entities throughout the state.

Social Perspective

Casino presence also sows the seeds of future social consequences. According to a recent national study entitled "Casinos, Crime, and Community Costs,"⁶¹ the presence of casinos increases rates of burglary, larceny, auto theft, robbery, aggravated as-

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sault, and rape.⁶² Although the study noted that crime rates in casino counties may, due to increases in low-wage employment and increased police staff, initially be even slightly lower than in non-casino counties, the study also concluded that, within a three to five year period from the opening of a casino, crime rates will inevitably be higher in those counties with casinos.⁶³ Several factors were cited in the study as likely reasons for the disparity.

First, casinos in highly populated regions gradually drain the local economy by redirecting purchases away from other businesses. Second, casinos increase the "crime payoff" because they attract easy targets for criminals in the form of out-of-town customers carrying large sums of cash. Also, casinos assist in the production of problem and pathological gamblers. Pathological gamblers in particular often resort to crime to fund their compulsions. Finally, the study concluded that casinos may tend to attract visitors who are more likely to commit crimes. It was noted that this is not common to other tourist attractions. For example, national parks, Disney World, and Mall of America accommodate more annual visitors than Las Vegas but experience only a fraction of the proportional crime rate.⁶⁴

The current proposed compact amendment certainly aligns with these factors. Allowing gambling "in all available formats" would attract gambling enthusiasts and problem gamblers to North Carolina. Those gamblers would bring their money, to be sure; but they would also arguably constitute a riskier clientele. Adding more casinos would further exacerbate such problems. If the Tribe were able—as some tribes have done—to establish casinos in areas that are not currently reservation lands (i.e., in more populated regions of the state), it would drain those local economies.

Higher prize payouts would concentrate overall winnings more heavily upon a few "lucky" customers. This would, in turn, further increase the "crime payoff." Extension of credit would allow those who can least afford gambling to have another means of perpetuating their addictions and increasing personal debt. Such credit practices will entice problem and pathological gamblers, a group of visitors that is statistically more likely to commit crimes. Lowering the minimum employment age from 21 to 18 would also contribute to the exposure and development of young problem and pathological gamblers. Finally, a perpetual compact would assure gamblers that the casino would be in place for as long as it could turn a profit.

Problem and pathological gambling also takes its toll on families in ways that are difficult to capture in statistical terms. Nonetheless, statistics are telling to an extent. The National Gambling Impact Study Commission, in its report to Congress, concluded that children of compulsive gamblers are prone to suffer abuse and neglect.⁶⁵ The National Research Council found that between one quarter and one half of spouses of compulsive gamblers have been abused.⁶⁶ Additionally, the lifetime divorce rate for pathological gamblers is two to three times higher than for non-gamblers.⁶⁷

Other studies have confirmed the damage attributable to casinos. Bob Miller, president of The Truth About Gambling Foundation stated that "For each job created from a casino, you have eight to ten pathological and problem gamblers created."⁶⁸ The report of the National Gambling Impact Study Commission found that "Children of compulsive gamblers are more likely to engage in delinquent behaviors such as smoking, drinking, and using drugs, and have an increased risk of developing problem or pathological gambling themselves."⁶⁹

Such figures are rarely accounted for in any sort of casino cost-benefit analysis. Granted, it is difficult to quantify the familial detriments of compulsive gambling. How can a price tag be placed on a broken home? Surely, though, that should not mean that those detriments are not given very serious consideration.

A Unique Situation

It cannot be disputed that Harrah's Cherokee Casino has afforded some economic benefits to tribal members and the local community. However, this has certainly not come without community costs along the way. In 2001, for instance, Haywood County Sheriff R. Tom Alexander sent a letter to former Senator Bob Carpenter reporting on the effects which Sheriff Alexander attributed to casino presence. That report stated, in relevant part:

*"Since the opening of Harrah's Casino in Cherokee, North Carolina, the traffic flow through Haywood County has increased ... there is an astronomical overflow between the hours of 11 p.m. and 3 a.m., with non-stop gas drive-offs, drunk drivers, speeders and people who just can't get back home from the casino. ... Our crime rate has gone up at least 25 percent. ... Based on our stats, I feel that the closeness of the Harrah's Casino to Haywood County has certainly changed the lives of many reputable people in Haywood County, and destroyed many families."*⁷⁰

The Sheriff's office has indicated that many of the effects described by Sheriff Alexander have since substantially subsided.⁷¹ However, the experience of Haywood County serves as a reminder of the effects that many casinos have been shown to yield. Those latent social consequences also occur independent of economic trends. Regardless of how much money a casino is bringing in, it cannot prevent gambling addiction and the destruction of individuals and families alike.

Furthermore, establishment of additional casinos—either by the Eastern Band of Cherokees or by the Lumbee tribe in the event that it obtains full federal recognition—in other parts of the state would be hard pressed to offer even the same economic boost as Harrah's Cherokee Casino. Whereas the Cherokee community previously had relatively no local economy, most other regions would suffer from what many analysts have called the cannibalizing effect of casinos on local small businesses.

In 1996, Tom Mahoney, the Tribe's independent auditor, acknowledged the sufficiency of gambling revenues from the games then allowed (before the 2000 amendment's expansion). He said, "As long as they fund the endowment the way it's intended, over the next 10 to 15 years they will have created a substantial war chest."⁷² Mahoney even went so far as to say that "if gaming were to die at that point, they wouldn't have to come back to the federal government trough."⁷³ However, nearly 10 years later, rather than acknowledging the sufficiency of its burgeoning "war chest" of millions in annual profits, the Tribe's leaders are asserting the vital importance of adding to existing gambling privileges. Either Mahoney's prediction was starkly inaccurate or the necessity of gambling expansion is being overstated.

Status Pending

Because there has been so much controversy about Indian gambling and conflicting claims as to the long-term effects of local casinos, one possibility that has been widely discussed and introduced on some levels is that of a state or federal moratorium on gambling expansion—something the National Gambling Impact Study Commission recommended after studying gambling in the United States for two years.⁷⁴ U.S. Representative Frank Wolf (R – VA) sent a letter to President George W. Bush in June 2005 requesting that he "issue an executive order placing a two-year moratorium on the opening of any more tribal casinos until Congress can thoroughly review the Indian Gaming Regulatory Act."⁷⁵

Central to the review process referred to by Representative Wolf is the work of Senate Indian Affairs Committee Chairman John McCain (R – AZ), who has recently held a number of oversight hearings on Indian gambling. Senator McCain referred to the precarious balance of benefits to certain tribal members and damage to local communities as "a dilemma we face," saying that "it's time we reviewed a 17-year-old piece of legislation and ... make whatever necessary changes."⁷⁶

One state-level resolution that could recapture a balance of power would be a repeal by the General Assembly of the Governor's exclusive authority to enter into tribal-state compacts on behalf of the State. Given the decisions of other courts that tribal-state compacts entail policy-laden legislative decisions, the General Assembly should retain some (if not ex-

clusive) power over compacts. Thus, an appropriate measure might be the requirement of legislative approval, either prior or subsequent to the Governor's signing of any compact or amendment to a compact, before the agreement could be considered authorized by the State.

Parties on both sides of the gambling issue agree that changes need to be made, either to the IGRA, to relevant state law, and/or to existing tribal-state compacts. The parties simply disagree on which direction and form those changes should take. Consequently, it is difficult to predict when and how the IGRA might be modified.

Conclusion

Since the passing of the Indian Gaming Regulatory Act 17 years ago, gambling operations have significantly expanded in several states. Unfortunately, many of those states have experienced the multitude of repercussions that follow from casino establishment and expansion. Studies have demonstrated the detrimental results to which those gambling operations are inevitably linked.

The evidence against immediate expansion of Indian gambling abounds. There is much confusion as to the past and uncertainty as to the near future of Indian gambling law. It would seem ill-advised to press further into the fog by expanding tribal privileges which may soon be subject to significant revision. Yet casino operators continue to drive for increased license to conduct more gambling in more places.

Those who would limit gambling are not seeking to deprive American Indians of common rights, as was the case at regrettable times in this nation's history, but rather to avoid extending special privileges to a minority at considerable expense to society at large. In this context, as in most any legal battle, it is easier to preserve ground than it is to reclaim it. The current clash over gambling expansion is perhaps the most pivotal to date. The outcome may heavily influence the future economic and societal structure, and it will certainly reflect upon the character of North Carolina.

Tim Hesler worked with the North Carolina Family Policy Council as a legal intern from the Alliance Defense Fund's Blackstone Fellowship during the Summer of 2005.

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Endnotes

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2. "Cherokees Seek Changes in Gambling Compact with N.C." *The Herald Sun*. April 28, 2005. See also: Ostendorff, Jon. "Easley Puts Gambling Laws on Table." *Asheville Citizen-Times*. April 28, 2005. See also: Bolton, Kerra. "Cherokee Builds Hand for Gambling Growth." *Asheville Citizen-Times*. 06/22/2005.
3. The casino's gambling and cash prize structure is legal through a tribal-state compact signed by former Governor Hunt. The compact has been amended twice and has never been given contemporaneous legislative approval.
4. National Indian Gaming Commission. "An Analysis of the Economic Impact of Indian Gaming in 2004. 2005. Pg. 2. Figure based upon gross revenues.
5. Op. cit. "Cherokees Seek Changes in Gambling Compact with N.C."
6. *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310, 316 (1981). Cert. denied, 455 U.S. 1020 (1983).
7. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 220-22. (1987).
8. 25 U.S.C. § 2702.
9. 25 U.S.C. § 2703.
10. 25 U.S.C. § 2703 (6).
11. 25 U.S.C. § 2710 (a).
12. 25 U.S.C. § 2703 (7).
13. 25 U.S.C. § 2710.
14. 25 U.S.C. § 2703 (5).
15. 25 U.S.C. § 2710 (d) (1).
16. 25 U.S.C. § 2703 (8).
17. 25 U.S.C. § 2710 (d) (1). The requirements governing such Tribal-State Compacts are detailed in 25 U.S.C. § 2710 (d) (3).
18. The Eastern Band of Cherokee Indians – State of North Carolina Gambling Compact. August 11, 1994. § 4.
19. "Good Luck for the Cherokees." *Raleigh News and Observer*. August 15, 1994. pg. A8.
20. Noland, Terrance. "Indian Poker." *Business North Carolina*. March 1996. pg. 26.
21. Op. cit. "Good Luck for the Cherokees."
22. Op. cit. "Indian Poker."
23. Ibid.
24. Amendment to Tribal-State Compact Between the Eastern Band of Cherokee Indians and the State of North Carolina. Third Amendment. May 28, 1996. Compare with Section 13 (A) of the original compact.
25. Second Amendment to Tribal-State Compact Between the Eastern Band of Cherokee Indians and the State of North Carolina. November 14, 2000.
26. The Tribe contacted Governor Easley in 2003 with a proposed agreement and has sent him at least two letters in 2005 requesting negotiations.
27. Section 4(B) of the original compact addresses application by the Tribe to conduct forms of Class III games which were not originally permitted; negotiations of "4(B) agreements" may be conducted independent of negotiations of other amendments.
28. Agreement and Authorization under Section 4(B) of the Tribal-State Compact Between the Eastern Band of Cherokee Indians and the State of North Carolina. July 8, 2002.
29. Letter from Principal Chief Michell Hicks to Governor Michael Easley. Dated February 3, 2005.
30. Draft of "Agreement and Authorization Under Section 4(B) of the Tribal-State Compact Between the Eastern Band of Cherokee Indians and the State of North Carolina." Dated April 2003. Italics added for emphasis.
31. Ibid.
32. Op. cit. Letter from Principal Chief Michell Hicks to Governor Michael Easley.
33. Letter from Governor Michael Easley to Principal Chief Michell Hicks. Dated April 25, 2005.
34. Draft of "Agreement and Authorization Under Section 4(B) of the Tribal-State Compact Between the Eastern Band of Cherokee Indians and the State of North Carolina." Dated 2005.
35. Draft of "Amended and Restated Tribal-State Compact Between the Eastern Band of Cherokee Indians and the State of North Carolina." Dated March 9, 2005.
36. 25 U.S.C. § 2710 (d) (3).
37. 25 U.S.C. § 2701 et seq.
38. *Saratoga v. Pataki*, 798 N.E.2d 1047, 1061 (N.Y. 2003).
39. Ibid. Pg. 1059.
40. Ibid.
41. Ibid. Pg. 1060.
42. Ibid. Pg. 1061.
43. North Carolina State Constitution, Article II, Section 1.
44. North Carolina State Constitution, Article I, Section 6. Italics added for emphasis.
45. North Carolina Session Law 2001-513 § 29 (a).
46. Ibid. § 29 (c).
47. North Carolina Family Policy Council. "Now You See It—Now You Don't—Cherokee Gambling Approved." *Family Policy Facts*. December 7, 2001.
48. Ibid.
49. North Carolina Session Law 2001-513.
50. 25 U.S.C. 2710 (d) (3) (A).
51. 25 U.S.C. § 2710 (d) (7) (A).
52. *Seminole Tribe of Florida v. Florida et al.*, 517 U.S. 44 (1996).
53. Ibid. Pg. 47.
54. However, if either (a) the State consented to being sued or (b) the United States brought suit on behalf of the Indian tribe against the State on the basis of the IGRA, a tribe might be able to prevail. Nonetheless, the former circumstance would be at the control of the State, and the latter has not occurred thus far.
55. Op. cit. "Indian Poker." Pgs. 20-30. See also: Johnson, Becky. "At the Helm: New GM of Harrah's Cherokee Casino Shares his Thoughts on the Local Gaming Industry." *The Smoky Mountain News*. June 15, 2005.
56. Op. cit. "Cherokees Seek Changes in Gambling Compact with N.C."
57. Goss, Ernie and Morse, Edward A. "The Impact of Casino Gambling On Individual Bankruptcy Rates from 1990 to 2002." April 2005. Pg. 2.
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59. North Carolina State Board of Elections. Order "In the Matter of the Eastern Band of Cherokee Indians." July 13, 2002.
60. The Associated Press. "Indian Tribes Contributed at Least \$7 Million to Federal Candidates . . ." March 18, 2003. Available online: <http://www.citizensalliance.org/Major%20Issues/Campaign%20Finance%20and%20Tribal%20Influence/Top%20Tribal%20Contributors.htm>
61. Grinols, Earl L. and David B. Mustard. "Casinos, Crime, and Community Costs." April 2005.
62. Ibid. Pgs. 5, 29-30. Additionally, the study found a higher rate of murder in those counties with casinos; however, the variation in murder rate was not of sufficient degree for the authors to directly attribute this increase to the casinos.
63. Ibid. Pg. 5.
64. Ibid. Pgs. 7-10.
65. National Gambling Impact Study Commission (NGISC). Final Report. June 1999. Pg. 7-28.
66. National Research Council. "Pathological Gambling: A Critical Review." April 1, 1999. Pg. 5-2.
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68. Jordahl, Steve. "Gambling Expansion on Downslide." *Family News In Focus*. June 30, 2005.
69. Op. cit. NGISC. Pg. 4-13.
70. Facsimile report from R. Tom Alexander, Haywood County Sheriff, to North Carolina Senator Bob Carpenter. Dated February 8, 2001.
71. Telephone/email correspondence with the Haywood County Sheriff's Office. July 15-18, 2005.
72. Op. cit. "Indian Poker." Pg. 23.
73. Ibid.
74. Op. cit. NGISC. Pgs. 1-7.
75. Letter from Representative Frank Wolf to President George Bush. Dated June 23, 2005.
76. "McCain Calls for IGRA Review, Revisions." *Casino Magazine*. May 21, 2005. Available online: www.gamblingmagazine.com/managearticle.asp?c=300&a=14406

Organized in 1992, the North Carolina Family Policy Council is a nonpartisan, nonprofit, research and education organization. Our goal is to serve as a voice for families and traditional family values in the public policy arena. We are supported solely by private contributions which are tax deductible as provided by law. Our mailing address is P.O. Box 20607, Raleigh, NC 27619. Phone: (919) 807-0800. Fax: (919) 807-0900. Findings is a publication of the North Carolina Family Policy Council which is intended to communicate research findings and perspectives on public policy issues that affect the family. Nothing written here should be construed as necessarily reflecting the views of the North Carolina Family Policy Council or as an attempt to aid or hinder the passage of any bill before Congress or the North Carolina General Assembly. Printed August 2005.