

**NOMINATION OF E. SEQUOYAH SIMERMEYER TO  
BE CHAIRMAN OF THE NATIONAL INDIAN  
GAMING COMMISSION, U.S. DEPARTMENT OF  
THE INTERIOR**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE**

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

—————  
JULY 24, 2019  
—————

Printed for the use of the Committee on Indian Affairs



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# CONTENTS

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Hearing held on July 24, 2019 .....	Page 1
Statement of Senator Barrasso .....	31
Statement of Senator Cortez Masto .....	32
Statement of Senator Hoeven .....	1
Statement of Senator Tester .....	29
Statement of Senator Udall .....	2

## WITNESSES

Simermeyer, E. Sequoyah, Nominated to be Chairman of the National Indian Gaming Commission .....	3
Prepared statement .....	5

## APPENDIX

Letters of support submitted for the record .....	41-47
Response to written questions submitted to E. Sequoyah Simermeyer by:	
Hon. Catherine Cortez Masto .....	47
Hon. Tom Udall .....	48



**NOMINATION OF E. SEQUOYAH SIMERMEYER  
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INDIAN GAMING COMMISSION, U.S.  
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**WEDNESDAY, JULY 24, 2019**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:37 p.m. in room 628, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN HOEVEN,  
U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. Good afternoon. We will now call this nomination hearing to order.

Indian gaming has been an economic benefit for Indian Country. According to the Congressional Research Service, since 1996, approximately \$565 billion has been generated in revenue for gaming tribes. Indian gaming creates jobs, which is a catalyst for economic development and supplements essential tribal government services.

In 1998, the Indian Gaming Regulatory Act, also known as IGRA, established the National Indian Gaming Commission as an independent regulatory agency within the Department of the Interior. The National Indian Gaming Commission is responsible for regulating Class II Indian gaming and overseeing Class III gaming. It is comprised of three members: the chairman and two associate commissioners. The chair is nominated by the President and confirmed by the Senate. Associate commissioners are appointed by the Secretary of the Interior.

According to the most current data available from the National Indian Gaming Commission in 2017, Indian gaming gross revenues topped \$32.4 billion. The National Indian Gaming Commission oversees 512 gaming facilities operated by 246 Indian Tribes located in 29 States.

The Commission needs to be appropriately staffed, including having a confirmed chairman, so that it may fulfill its duties and responsibilities as outlined by the Indian Gaming Regulatory Act. On June 26th, 2019, President Trump announced E. Sequoyah Simermeyer as his nominee for chairman of the National Indian Gaming Commission. Mr. Simermeyer is a member of the Coharie

Indian Tribe of North Carolina and currently serves as Associate Commissioner at the National Indian Gaming Commission.

He received his bachelor's degree from Dartmouth College, and I commend you on that. I suppose maybe if it had been New Mexico State, that would have been even better but Dartmouth was a good pick.

[Laughter.]

The CHAIRMAN. He received his master's degree from Vermont Law School and his juris doctorate from Cornell Law School. We are willing to overlook that, Cornell. That is great too. You know I am kidding.

Mr. Simermeyer has held a number of government, cultural, and legal positions. While working at the Department of the Interior, he served as a detailee for the Senate Committee on Indian Affairs, working for my current staff director, Mike Andrews. Mr. Simermeyer has received letters of support from several tribes which have been included for the record.

I look forward to hearing from Mr. Simermeyer about his vision for leading the NIGC, and to have this panel favorably report Mr. Simermeyer's nomination in due order.

Welcome. We look forward to your testimony but before turning to that, I would like to ask Vice Chairman Udall for his opening comments.

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Mr. Chairman, for holding this nomination hearing today.

Congratulations to you, Mr. Simermeyer, on being nominated to serve as the chairman of the Indian Gaming Commission. Your background and experience as a public servant is commendable for your work at the Department of the Interior to your work on this Committee, and now your current position with the commission.

I have no doubt that your family is very proud of your nomination. It is an important one. The chair of the NIGC has a number of statutory powers that are critical to the regulation of Indian gaming: the power to approve tribal Class II and Class III gaming ordinances or resolutions; the power to impose fines and order the temporary closure of gaming facilities; and the power to approve management contracts.

That is why I am particularly interested in learning today about your policy views on Indian gaming, how you see the role of the NIGC chair and the direction you would take the agency if confirmed. Now, perhaps more than ever, it is imperative that leaders at independent Federal agencies, like the NIGC, are able to do their jobs free from undue political influence, free from nepotism, and free from corrupting outside influences.

The Indian Gaming Regulatory Act, in particular, established the NIGC as an independent Federal regulatory authority for gaming on Indian lands. The chair must be willing to be a fierce advocate for tribes and to fight to maintain NIGC's independence. So I am also interested today to learn more about your plans, if confirmed, to ensure and maintain the integrity of the agency you serve.

Finally, if confirmed as chair, it will be critical that you acknowledge that the NIGC's primary stakeholders are Indian tribes. I am hopeful that during today's hearing and in the days and weeks that follow, you will be able to give this Committee sufficient assurances that you are willing to share a clear policy vision for the agency, fight to maintain its independence, and ensure that tribes' best interests are in the forefront of your decision-making.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Do other members have opening statements they wish to make? All right, with that, we will proceed.

We will begin by swearing the witness. Mr. Simermeyer, please rise and raise your right hand.

Do you solemnly affirm that the testimony you shall give today shall be the truth, the whole truth and nothing but the truth, under the penalty of perjury?

Mr. SIMERMEYER. I do.

The CHAIRMAN. Thank you. You can be seated.

I want to remind the nominee that your full written testimony will be made a part of the official record.

With that, welcome. You can proceed with your opening statement.

**STATEMENT OF E. SEQUOYAH SIMERMEYER, NOMINATED TO BE CHAIRMAN OF THE NATIONAL INDIAN GAMING COMMISSION**

Mr. SIMERMEYER. Good afternoon, Chairman Hoeven, Vice Chairman Udall, members of the Committee. Thank you for this opportunity to discuss my interest and willingness to serve as the chairman of the National Indian Gaming Commission.

My wife, children, brother, sister, and parents are with me today. My family has given me a strong sense of my culture and my Christian faith. They inspire me every day to appreciate the value of serving others.

My parents, Ed and Lillian Simermeyer, have given me a strong connection with my family, including those that live throughout my Coharie Tribes homelands in eastern North Carolina in Harnett County and my family on my mother's side, who live throughout northern New Mexico and Colorado's San Luis Valley.

My wife, Genevieve Simermeyer, is from the Osage Tribe of northeastern Oklahoma. We are proud to be raising our two daughters, Adeline and Analicia, and our newborn son, Philip, with the same appreciation for spiritual values and cultural traditions that we have both been blessed to know.

I am also grateful for my brother, John Simermeyer, and my sister, Portia Simermeyer, who are here today as well. My brother, James, his wife, Susie, and their four-week old son, Sam, couldn't be here today but are supporting me with their prayers, and I appreciate that. Thank you for allowing me the chance to introduce my family.

The CHAIRMAN. Is that possibly them over here?

Mr. SIMERMEYER. It is, yes.

The CHAIRMAN. Go ahead and introduce them all, so we can nail down who is who.

Mr. SIMERMEYER. I appreciate that. They are my father, Ed and my wife, Genevieve.

The CHAIRMAN. He is a big guy too, isn't he?

Mr. SIMERMEYER. He is a big guy. He is a good guy. We have our son, Philip, who is eight weeks old; our oldest daughter, Adeline; our younger daughter, Analicia; my sister, Portia; and my mother, Lillian.

The CHAIRMAN. Who is the guy on the end there?

Mr. SIMERMEYER. That is my brother, John.

The CHAIRMAN. I would ask security to keep a close eye on him. [Laughter.]

The CHAIRMAN. It is great to have you all here. Thanks for being here.

Mr. SIMERMEYER. Thank you, Mr. Chairman and Vice Chairman Udall, for the chance to introduce them. I appreciate that.

When blessed with opportunities to serve others, I have strived to be ready and well prepared. My academic pursuits and professional endeavors have focused on public service, especially in service to Native people.

I learned the value of teamwork, persistence and discipline through athletics and my experiences have also proven to me the value of inter-tribal collaboration. I have been part of the traditional spirit of collaboration this Committee is known for, and that has historically benefited American Indian, Alaska Native, and Native Hawaiian people. I have subscribed to the same collaborative spirit in my work at the National Indian Gaming Commission.

Any National Indian Gaming Commission chairman must carry out the Indian Gaming Regulatory Act as enacted by Congress. Doing so supports the Commission's role in meeting the Indian Gaming Regulatory Act's policy objectives and thereby helps to improve lives in tribal communities.

Since beginning my term in 2015, it has been important to me that I work closely with tribal regulatory bodies and tribal leadership. Collaboration with tribes helps the National Indian Gaming Commission in their decision-making to account for tribes' regulatory expertise.

I also have advocated for the National Indian Gaming Commission's decision-making processes to be diplomatic. Our decisions are diplomatic when we respect tribes' inherent authority to develop relationships with other governments. This authority is an invaluable tool every government uses to articulate and realize its vision for the people it serves.

Finally, I have worked collaboratively with my colleagues on the Commission to follow the comprehensive structure that lawmakers established under the Indian Gaming Regulatory Act. For more than 30 years, lawmakers' deliberations with tribes' input and effort have given shape to the unprecedented opportunity for Indian Country success that is made possible by tribal gaming.

The tribal gaming industry represents an American success story and demonstrates the tribal governments' ability to govern well. For many tribal communities and their neighbors, the industry represents the lifeblood necessary for community operations, robust engagement with tribal members and neighboring jurisdictions, and job opportunities for tribal and non-tribal members alike. It is



an essential part of many tribal governments' modern regulatory systems, and Indian gaming is an anchor point for many tribes' effective intergovernmental relationships with other tribes, with States and our Federal partners.

If confirmed, there are four areas I believe the National Indian Gaming Commission has the opportunity to emphasize as it builds on its ongoing work, its existing strategic plan and the hard work of the many thousands of frontline tribal regulators in Indian Country. My written testimony discusses emphasis areas, and I am happy to discuss those more today. Those areas are integrity, preparedness, accountability, and outreach.

In closing, Indian Country's advancement toward regaining greater self-sufficiency through gaming has been to everyone's benefit. Gaming operations, regulated under the Indian Gaming Regulatory Act, make a growing contribution to a strong national economy and as an intergovernmental partner with tribes, and as a Federal regulatory authority. The NIGC has the opportunity both to protect each tribe's investment in pursuit of economic success through gaming and to help promote strong tribal regulatory systems. This is an opportunity made clear in the Indian Gaming Regulatory Act's mandate.

If given the honor of serving as the National Indian Gaming Commission's chairman, I will work every day to preserve this opportunity by leading the agency's efforts to ensure tribal assets are protected and sound industry regulation and oversight are promoted.

Thank you for your time today. I am happy to answer any questions you might have.

[The prepared statement and biographical information of Mr. Simermeyer follow:]

PREPARED STATEMENT OF E. SEQUOYAH SIMERMAYER, NOMINATED TO BE CHAIRMAN  
OF THE NATIONAL INDIAN GAMING COMMISSION

Chairman Hoeven, Vice Chairman Udall, Members of the Committee, thank you for providing me this opportunity to discuss my interest and willingness to serve as Chairman of the National Indian Gaming Commission. I am humbled and honored that the President has nominated me to serve. If confirmed, I intend to diligently work to maintain the President's confidence, your support, and the trust of the tribal gaming industry and general public to the best of my abilities.

My wife, children, brother, and parents are with me today. My parents, Ed and Lillian Simermeyer, have given me a strong sense of cultural identity and my faith. They have given me a connection with my father's maternal Brewington family in my Coharie Tribe's traditional homelands in eastern North Carolina; as well as my Vigil and Romero family on my mother's side, who live today and have lived for many generations in northern New Mexico. They have instilled in me my invaluable Christian faith and an appreciation for the value of serving others. My wife, Genevieve Simermeyer, is a remarkable person and a member of the Osage Tribe from northeastern Oklahoma. My wife and I are proud to be raising our two daughters, Adeline and Analicia, and our new born son, Philip, with the same appreciation for spiritual values and cultural traditions that we have been blessed to know. And I am grateful for my brother, John Simermeyer, who is here today. My sister, Portia Simermeyer, and my brother, James, his wife, Susie, and their new born son, Sam, could not be here today but are supporting me with their prayers. Thank you for allowing me the chance to introduce my family. They inspire and support me in countless ways.

When blessed with opportunities to serve others, I have strived to be ready and well prepared. My academic pursuits and professional endeavors have focused on public service especially in service to Native people. I have learned the value of teamwork, persistence and discipline through athletics, including my life-long in-

volvement in the sport of lacrosse. My experience has also proven to me the value of inter-tribal collaboration. I have been part of the traditional spirit of collaboration this Committee is known for and that has historically benefited American Indian, Alaska Native, and Native Hawaiian peoples. And, I have subscribed to the same collaborative spirit in my work at the National Indian Gaming Commission.

Essential to meeting a National Indian Gaming Commission Chairman's responsibility is his or her role in carrying out the Indian Gaming Regulatory Act. As a current member of the National Indian Gaming Commission, I have been honored to support the Commission's role in meeting the Indian Gaming Regulatory Act's policy objectives and thereby helping to improve lives in tribal communities.

Since beginning my term in 2015, it has been important to me that I work closely with tribal regulatory bodies and tribal leadership so that any National Indian Gaming Commission decision accounts for tribes' regulatory expertise. The tribal regulators spend every day in the facilities they regulate and their knowledge and experience is a great resource to the Commission. I also have advocated for the National Indian Gaming Commission's decisionmaking processes to be diplomatic and to respect tribes' inherent authority to develop relationships with other governments. This authority is an invaluable tool every government uses to articulate and realize its vision for the people it serves. Finally, I have worked collaboratively with my colleagues on the Commission to follow the comprehensive structure that lawmakers established under the Indian Gaming Regulatory Act. For more than thirty years, lawmakers' deliberations with tribes' input and effort have given shape to the unprecedented opportunity for success in Indian country made possible by tribal gaming.

The tribal gaming industry represents an American success story and demonstrates the depth of tribal governments' ability to serve their people. Indian gaming's gross gaming revenue in Fiscal Year 2017 generated over 32 billion dollars. For many tribal communities and their neighbors, the industry represents the lifeblood necessary for community operations, robust engagement with tribal members and neighboring jurisdictions, and job opportunities for tribal and non-tribal members alike. It is an essential part of many tribal governments' modern regulatory systems. And, Indian gaming is an anchor point for many tribes' effective intergovernmental relationships with other tribes, the states and federal partners.

If given the opportunity to help lead the National Indian Gaming Commission as its chairman, I will work with my colleagues on the Commission, with tribal governments, with leadership across all regulatory bodies involved in the Indian gaming industry, and with other industry stakeholders. I will also make it a priority for the National Indian Gaming Commission to support Congress' work and legislation as enacted with regard to the Indian Gaming Regulatory Act and other laws applicable to the National Indian Gaming Commission's work. Through this collaboration and support for lawmakers' direction, the National Indian Gaming Commission will help perpetuate Indian gaming's continued success through sound regulation and oversight.

There are four areas the National Indian Gaming Commission has the opportunity to emphasize as it builds on its ongoing planning efforts, including its strategic plan. Those emphasis areas are integrity, preparedness, accountability, and outreach.

#### **Integrity**

Protecting tribal assets and the reputation of the gaming industry from which those assets derive is what the National Indian Gaming Commissions' dedicated staff do every day. Since being appointed to the Commission, I often see the unsung expertise of the NIGC's strong and dedicated workforce. In partnership with the regulatory community, with public policy makers, and with the gaming industry; the NIGC team works to help cultivate a strong regulatory environment at the over 240 tribes with over 500 gaming operations on Indian land in 29 States.

If given the opportunity to serve as the NIGC chairman, I intend to explore the opportunity to broaden partnerships in the regulatory and law enforcement community; to invest in tools that will help ensure tribes' capacity to assess risk and thereby mitigate threats to an operation, its customers, and the tribal members that rely on gaming resources; and to promote a compliance strategy that uses proven training and technical assistance and does not hesitate to bring well-articulated, timely, and defensible enforcement actions in order to help safe guard the industry's reputation for sound regulation.

#### **Preparedness**

The National Indian Gaming Commission is uniquely positioned to assist tribes to protect against threats and to take advantage of opportunities for economic suc-

cess. These threats and opportunities vary among tribes and can be unique to different parts of Indian country. By facilitating partnerships and by promoting knowledge about best practices, the NIGC supports tribes' efforts to effectively prepare their operations and regulatory bodies for the future.

If given the opportunity to serve as Chairman, I intend to work with tribes at both the tribal level and national level to assist tribes in leveraging their regulatory bodies' risk assessment skills and subject matter expertise to help tribal policy makers to prioritize challenges that may exist to the continuity of a tribe's gaming operations and its emergency preparedness in areas such as environment, health, and public safety. I would explore the opportunity to develop partnerships among sister federal agencies to help inform local level discussions in these areas. I also would work in coordination with my colleagues to identify best practices and emerging trends to ensure support for tribal economic development, self-sufficiency, and the integrity of tribal gaming.

#### **Accountability**

When lawmakers established the National Indian Gaming Commission, the Indian Gaming Regulatory Act expected that sound governance practices at the federal level would assist the Indian gaming industry's growth. Through its planning and reporting tools, the National Indian Gaming Commission has the opportunity to promote the federal operations' ability to engage with and maintain the trust of the tribal governments and the regulatory communities the National Indian Gaming Commission works in partnership with and serves.

If given the opportunity to serve as Chairman, I intend to work with my fellow commissioners to identify opportunities to develop more public facing platforms to encourage predictability and transparency in NIGC's recurring processes. It is my hope that this engagement will promote accountability, generate more robust Commission planning, and encourage predictability in the Commission's policy development and thereby minimize any unintended impacts of NIGC policy on the tribal gaming industry. Efforts to promote NIGC's accountability will save resources, forecast policy formation, grow a strong federal team, and support tribes' cultivation of a ready industry workforce.

#### **Outreach**

The National Indian Gaming Commission is a federal body with independent investigative powers and civil enforcement authority over gaming on Indian land. It has a unique body of national expertise and insight into tribal gaming's impact on tribal economies, industry innovation, and tribal governments' regulatory capacities. The National Indian Gaming Commission's authority and expertise provides it with the opportunity to engage in outreach and education efforts at the national level that will promote industry integrity. Furthermore, its solemn responsibility as a federal entity obliges the National Indian Gaming Commission to develop policy informed by government-to-government consultation with tribes.

If given the opportunity to serve as Chairman, I would work with my colleagues to build on the Commission's outreach efforts and ensure that the Commission's commitment to consultation with tribal governments is efficient and effective. The National Indian Gaming Commission has the opportunity to provide more regular outreach that will educate the public about the comprehensive regulatory system that oversees tribal gaming, and can identify research and data that will help focus national or local level discussions that take up issues related to the regulation of tribal gaming. Finally, we have the opportunity to make consultation more cost effective and accessible for tribal leadership. By taking a fresh look at technology and planning tools, the Commission can innovate and maintain a commitment to diplomatic intergovernmental relationships.

Indian country's advancement toward regaining greater self-sufficiency through gaming has been to everyone's benefit. Gaming operations regulated under the Indian Gaming Regulatory Act make a growing contribution to a strong national economy. As a federal regulatory authority and an inter-governmental partner with tribes, the NIGC has the opportunity both to protect each tribe's investments in the pursuit of economic success through gaming and to help promote strong tribal regulatory systems. This is an opportunity made clear in the Indian Gaming Regulatory Act's mandate. If given the honor of serving as the National Indian Gaming Commission's Chairman, I will work every day to preserve this opportunity by leading the agency's efforts to ensure tribal assets are protected and sound industry regulation and oversight are promoted.

Thank you for your time today. I am happy to answer any questions you may have.

**A. BIOGRAPHICAL INFORMATION**

1. **Name:** (Include any former names or nicknames used.)  
Edward Sequoyah Simermeyer
2. **Position to which nominated:**  
Chairman of the National Indian Gaming Commission
3. **Date of nomination:**  
June 26, 2019
4. **Address:** (List current place of residence and office addresses.)  
Information not released to the public.
5. **Date and place of birth:**  
Information not released to the public.
6. **Marital status:** (Include maiden name of wife or husband's name.)  
Married to Genevieve M. (Jacobs) Simermeyer
7. **Names and ages of children:** (Include stepchildren and children from previous marriages.)  
Adeline G. Simermeyer, age 9  
Anastacia M. Simermeyer, age 6  
Philip F. Simermeyer, age two months
8. **Education:** (List secondary and higher education institutions, dates attended, degree received, and date degree granted.)  
  
Dartmouth College, attended from September 1993 until June 1997, received a bachelor's degree in June 1997.  
  
Vermont Law School, attended from August 1997 to August 1998, received a master's degree in August 1998.  
  
Cornell Law School, attended from August 2001 to June 2004, received a juris doctor in June 2004.
9. **Employment record:** (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment, including any military service.)  
  
National Indian Gaming Commission – Washington, DC  
*Commissioner* November 2015 to present  
*Director of the Office of Self-Regulation* June 2016 to present  
  
U.S. Senate Committee on Indian Affairs – Washington, DC  
*Detailed* September 2014 to November 2015  
  
U.S. Department of the Interior – Washington, DC  
*Deputy Chief of Staff to the Assistant Secretary-Indian Affairs* January 2013 to November 2015  
*Acting Director of the Office of Facilities, Safety and Property Management* February 2014 to May 2014  
*Counselor to the Assistant Secretary-Indian Affairs* August 2007 to January 2013  
  
American University – Washington, DC  
*Instructor* various summer terms beginning May 2007 to July 2015

- National Congress of American Indians – Washington, DC**  
*Fellowship Recipient and Government Affairs Staff*  
 August 2003 to May 2007
- Superior Court of the District of Columbia, Chambers of the Honorable Arthur L. Burack – Washington, DC**  
*Judicial Extern* September 2003 to December 2003
- Hobbs, Straus, Dean & Walker, LLP – Washington, DC**  
*Law Clerk* June 2003 to October 2003
- American Indian Law Center – Albuquerque, NM**  
*Teaching Assistant* May 2002 to August 2002
- Akwé:kon Residence Hall at Cornell University – Ithaca, NY**  
*Director of Akwé:kon Residence Hall* August 1998 to May 2001
- Johns Hopkins School of Public Health, Center For American Indian and Alaska Native Health – Baltimore, MD**  
*Research Consultant* June 1997 to August 1997

10. **Government experience:** (List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments, other than those listed above.)

None.

11. **Business relationships:** (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.)

None.

12. **Memberships:** (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations.)

- *New Mexico State Bar, Active*
- *Southern Lacrosse Officials Organization, Former Referee*
- *Harford County Baltimore County Board of Officials, Former Referee*
- *First Presbyterian Church of Howard County, Former Elder, Former Member of Nominating Committee*
- *Native American Law Students Association, Vermont Law School Chapter, Former Member*
- *Native American Law Students Association, Cornell Law School Chapter, Former Member*
- *National Native American Law Students Association, Former Regional Representative, Former President*
- *Cornell Law School Moot Court Board, Former Editor*
- *Washington D.C. Native American Bar Association, Former Board Member*
- *American Indian Science and Engineering Society, Cornell University Chapter, Former Advisor*
- *American Indian Science and Engineering Society, Dartmouth College Chapter, Former Board Member*
- *Native Americans at Dartmouth, Former Member, Former President*

**13. Political affiliations and activities:**

- (a) List all offices with a political party that you have held or any public office for which you have been a candidate.

None.

- (b) List all memberships, offices held in, and services rendered to all political parties or election committees during the last 10 years.

None.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past 10 years.

None.

**14. Honors and awards:** (List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.)

- *Oklahoma Indian Gaming Association Achievement Award*, "for lifetime achievement as a champion in the cause of Oklahoma Indian gaming", 2017
- *Native American Bar Association -DC Chapter*, Nominee for the "excellence in government service" award, 2014
- *National Center for American Indian Enterprise Development*, Forty Under 40 Native Americans for a "commitment to making a difference in Indian Country", 2011
- *Vermont Law School First Nations Fellowship*, 1997 and 1998
- *Post-Secondary Financial Support*, need and merit based financial assistance and educational loans from and for:
  - o Dartmouth College
  - o Vermont Law School, and
  - o Cornell Law School
- *Living Stipend from American Indian Law Center* to attend the Pre-Law Summer Institute conducted at the University of New Mexico School of Law, 2001

**15. Published writings:** (List the titles, publishers, and dates of books, articles, reports, editorials or other published materials, which you have written.) Supply two copies of all published material to the Committee.

None.

16. **Speeches:** Provide the Committee with two copies, and any transcript of recording, if available, of any formal speeches you have delivered during the last 5 years on topics relevant to the position for which you have been nominated. Formal speeches include, but not limited to widely-attended public addresses, commencement speeches, and conference lectures. Please include the date, place and organization where they were delivered.

Since starting my term as Associate Commissioner for the National Indian Gaming Commission (NIGC, Agency or Commission) in November 2015, I have (A.) led Agency consultation sessions with tribes that were transcribed and posted to the Agency's website; (B.) given speeches, presented as a panelist, and spoken at NIGC press events; and (C.) addressed tribal councils in their official chambers. I do not normally use written scripts for my public speeches and panel presentations nor are they usually transcribed.

A. *Tribal Consultation Sessions* – Transcripts for transcribed sessions are posted on the NIGC website and hyperlinked below.

- Telephonic Session, February 4, 2016
- Tulsa, OK, March 23, 2017
- Tulsa, OK, March 24, 2017
- Scottsdale, AZ, April 5, 2017
- San Diego, CA, April 12, 2017
- San Diego, CA April 13, 2017
- Billings, MT, April 20, 2017
- Biloxi, MS, May 4, 2017
- Portland, OR, May 25, 2017
- Telephonic Session, July 13, 2017
- Ogjala, SD, January 23, 2018
- Portland, OR, January 25, 2018
- Lawton, OK, January 29, 2018
- Valley Center, CA, February 8, 2018
- Washington, DC February 15, 2018
- Milwaukee, WI, February 21, 2018

B. *Speeches, Press Conferences, and Panel Presentations:*

- Hollywood, FL, Nov. 2015 - Address and introductory remarks made to the National Indian Gaming Association's mid-year meeting
- Seattle, WA, Dec. 2015 - Panel presentation on developments and policy initiatives at the Northwest Gaming Law Conference

- Orlando, FL, Jan. 2016 - Panel presentation on the Indian Gaming Regulatory Act and the impact on state-federal relations made at the National Council on Legislators from Gaming States' mid-year meeting
- Chandler, AZ, Feb. 2016 - Address on NIGC's structure and new technologies made at the Tribal Government E-Commerce Conference
- Phoenix, AZ, Mar. 2016 - Panel presentation entitled "The Politics of iGaming: When Will Real Money iGaming Come to Indian Country?" made at the National Indian Gaming Association's annual conference
- Tulalip, WA, Mar. 2016 - Remarks on NIGC priorities made to the National Tribal Gaming Commissioners / Regulators conference
- San Francisco, CA, Apr. 2016 - Panel presentation on new technologies in gaming made to the Global iGaming Summit and Expo
- Oklahoma City, OK, Jun. 2016 - Panel presentation on initiatives at the 29th Annual Oklahoma Sovereignty Symposium
- Albuquerque, NM, Jun. 2016 - Introductory comments made to tribal regulators from southwestern tribes at the NIGC regional training session
- Indio, CA, Jul. 2016 - NIGC press conference on fiscal year 2015 gross gaming revenue for tribal gaming operations video available at <https://www.youtube.com/watch?v=1HfITy9LpvmA>
- Las Vegas, NV, Sept. 2016 - Address on self-regulation policy and the U.S. Supreme Court's 1987 decision in *California v. Cabazon Band of Mission Indians* followed by a panel presentation on NIGC consultation updates made to the UNLV Gaming Law Conference: Regulating Land Based Casinos
- Niagara Falls, NY, Sept. 2016 - Panel presentation on updates to the expiration of class II gaming device policy made at the National Indian Gaming Association's mid-year meeting
- Niagara Falls, NY, Sept. 2016 - Panel presentation update on NIGC consultations, self-regulation outreach, and civil fine assessment updates made to the National Tribal Gaming Commissioners / Regulators conference
- Las Vegas, NV, Sept. 2016 - Panel presentation entitled "Money Matters: AML, Title 31 and KYC in Indian Country" which included comments on the NIGC's role in anti-money laundering regulatory practices made during the Global Gaming Exposition
- Washington, DC, Jul. 2017 - NIGC press conference on fiscal year 2016 gross gaming revenue for tribal gaming operations - video available at [https://www.youtube.com/watch?v=0jP\\_jm0C4s](https://www.youtube.com/watch?v=0jP_jm0C4s)
- Phoenix, AZ, Sept. 2017 - Presentation on the NIGC appeal process made at the National Indian Gaming Association's mid-year meeting
- Miami, FL, Jan. 2018 - Panel presentation on the impact of technology changes on tribal-state compacts and regulatory implementation made at the National Council on Legislators from Gaming States' mid-year meeting
- Valley Center, CA, Feb. 2018 - Panel presentation on cooperation among State, Federal, and Tribal regulatory agencies made to the Annual Western Indian Gaming Conference
- Las Vegas, NV, Mar. 2018 - Panel presentation on shaping technology standards in the present and preparing for the future made to the GLI North American Regulators Roundtable



- New Orleans, LA, Apr. 2018 - Panel discussion on management contracts, audit requirements and definitions of management and sole proprietary interest made at the Native American Finance Officers Association
- New Town, ND, May 2018 - Introductory comments to tribal regulators from Midwest and Great Plains tribes made at the NIGC regional training session
- Austin, TX, Jan. 2018 - Panel presentation on NIGC updates and changes in gaming technology made to the North American Gaming Regulators Association's annual training and education conference
- Washington, DC, Jun. 2018 - NIGC press conference on fiscal year 2017 gross gaming revenue for tribal gaming operations - video available at <https://www.youtube.com/watch?v=qwalIDjzKKs&feature=youtu.be>
- Washington, DC, Oct. 2018 - NIGC public event to discuss the 30th Anniversary of the Indian Gaming Regulatory Act's passage - video not yet available on NIGC's website, [www.nigc.gov](http://www.nigc.gov)
- New Orleans, LA, Jan. 2019 - Panel remarks overviewing Indian gaming regulation made to at the National Council on Legislators from Gaming States' mid-year meeting
- Benton Harbor, MI, Mar. 2019 - Congratulatory remarks and presentation made to the Pokagon Band of Potawatomi for the Band's successful self-regulation petition
- San Diego, CA, Apr. 2019 - Remarks on sports betting in Indian country made at a regulators' roundtable discussion during the National Indian Gaming Association annual meeting
- San Diego, CA, Apr. 2019 - Panel remarks on the Indian Gaming Regulatory Act's self-regulation provisions made at the National Indian Gaming Association annual meeting

*C. Tribal Council Presentations* - The following presentations to tribal leaders were recorded and/or broadcast

- Wewoka, OK, Feb. 2016 - Co-presentation to the Seminole Nation of Oklahoma's general council responding to the Tribe's request to waive fine assessments associated with an existing settlement agreement between the NIGC and the Tribe held at the Tribe's legislative chambers
- Lakeside, CA, Dec. 2017 - Co-presentation to the Barona Band of Mission Indians' tribal council and gaming commission at the tribal Commission's hearing room in order to grant the Tribe a certificate of self-regulation
- New Town, ND, May 2018 - Introductory comments to the Mandan, Hidatsa, and Arikara Nation's tribal council made at the Council's chambers
- New Buffalo, MI, Sept. 2018 - Comments to the Pokagon Band of Potawatomi's leadership during its General Council meeting regarding the Band's petition for a certificate of self-regulation

**17. Selection:**

- (a) Do you know why you were selected for the position to which you have been nominated by the President?

As a current Commissioner with the NIGC, I have a proven understanding of the Commission's role in protecting the integrity of tribal gaming operations and the positive economic success of those operations for tribal communities and their neighbors. I have first-hand experience in understanding the federal agency's workforce, its partnerships with our regulatory colleagues, and industry stakeholders' relationships. Finally, I appreciate that good-governance practices at the federal agency level including a collaborative spirit among the Commissioners, support for the federal workforce, and a commitment to tribal consultation are important to supporting the government-to-government relationship between the United States and tribal governments.

(b) What in your background or employment experience do you believe affirmatively qualifies you for this particular appointment?

My professional experience demonstrates my ability to understand the federal regulator's role in achieving policy objectives relevant to gaming in Indian country, cultivating agency relationships, promoting good governance practices, and ensuring sound federal workforce management. My personal experience as an American Indian shapes my appreciation for the importance of government-to-government relationships that help a tribal government to realize its vision for the success of its members.

*Understanding the federal regulator's role in achieving policy objectives relevant to gaming in Indian country.*

The Indian Gaming Regulatory Act's (IGRA) objectives include tribes' economic growth and governmental self-sufficiency through thoughtful federal policies to protect and grow the Indian gaming industry's integrity. I have a proven commitment to understanding how federal policy can positively impact the quality of life for Native communities, best empower tribal economic development, grow governmental capacity, and manage tribal resources in gaming and non-gaming areas alike.

IGRA created a regulatory scheme through which the most efficient method of regulating is through relationships with valued stakeholders and in some cases partnerships between jurisdictions. I have built on my past experience to help grow strong governmental relationships in Indian country, relationships among federal agencies involved in the tribal gaming industry as well as industry partners and advocacy organizations.

*Promoting good governance practices at the federal agency level.*

NIGC's leadership is responsible for the sound operation of the federal agency. My past experiences provide me with an understanding of how the Agency can efficiently and effectively meet its mission. As a current member of the Commission, I have first-hand experience with these responsibilities and am familiar with the Agency's administrative objectives based on its current and last strategic plan.

*Ensuring sound federal workforce management.*

My working relationship with the Agency's employees provides me with an understanding of how to lead the organization's staff in a way that will prepare the Agency to meet its mission now and in the future.

*Understanding the importance of tribal gaming to the success of tribal communities' future.*

Every tribal community is unique in how it uses the important economic opportunity that gaming presents. My personal experience as a Native American from the Coharie Tribe in North Carolina helps inform my understanding that each tribal community has a unique history, government, and set of challenges and opportunities. Although my community does not engage in gaming, I am aware that successfully managing and regulating a resource with the tremendous potential to change lives provides an invaluable opportunity.

**B. FUTURE EMPLOYMENT RELATIONSHIPS.**

1. Will you sever all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate?

Not Applicable.

2. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, please explain.

No.

3. Do you have any plans, commitments, or agreements after completing government service to resume employment, affiliation, or practice with your previous employer, business firm, association, or organization?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

**C. POTENTIAL CONFLICTS OF INTEREST**

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers.

None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None.

3. Describe any business relationship, dealing, or financial transaction that you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy, regardless if you were a registered lobbyist.

None.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements.)

Not Applicable.

6. Please provide written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

JUNE 28, 2019

Scott A. de la Vega,  
Designated Agency Ethics Official and Director, Departmental Ethics Office,  
U.S. Department of the Interior,  
Washington, DC.

Dear Mr. de la Vega:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Chairman, National Indian Gaming Commission, U.S. Department of the Interior.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Upon confirmation, I will resign from my position with Southern Lacrosse Officials Association. For a period of one year after my resignation from this entity, I will not participate personally and substantially in any particular matter involving specific parties in which I know that entity is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). I may accept payment of referee fees earned prior to my confirmation, but the amount of any such fees will be fixed before I assume the duties of the position of Chairman of the National Indian Gaming Commission. Until I receive these payments, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the ability or willingness of the Southern Lacrosse Officials Association to pay the referee fees, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

My spouse is the sole proprietor of her museum education related projects and education material development consulting firm. She has not formed a legal entity for this purpose. I will not participate personally and substantially in any particular

matter involving specific parties in which I know a client of my spouse is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I understand that, pursuant to 25 U.S.C. § 2704(b)(5)(B), if I am confirmed as Chairman of the National Indian Gaming Commission, I may not hold a financial interest in, or management responsibility for, any gaming activity. I also understand that, pursuant to 25 U.S.C. § 2704(b)(5)(C), I may not hold a financial interest in, or have management responsibility for, any management contract approved pursuant to 25 U.S.C. § 2711.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Chairman, National Indian Gaming Commission in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

EDWARD SEQUOYAH SIMERMAYER

#### **D. LEGAL MATTERS**

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain.

No.

2. Have you ever been a subject of an investigation, or investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county, or municipal law, regulation, or ordinance, other than for a minor traffic offense? If so, please explain.

No.

3. Have you or any entity, partnership or other association, whether incorporated or unincorporated, of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

No.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? If so, please explain.

No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination.

None.

**E. RELATIONSHIP WITH COMMITTEE**

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees?  
Yes.
2. Will you ensure that your department/agency responds to all congressional inquiries from members of Congress in a timely manner?  
Yes.
3. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures?  
Yes.
4. Will you cooperate in providing to the committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee in a timely manner?  
Yes.
5. Please explain how, if confirmed, you will review regulations issued by your department/agency, and work closely with Congress, to ensure that such regulations comply with the spirit of the laws passed by Congress.

*Ensure legal sufficiency of all decisions.* If confirmed, I will ensure that NIGC's approach to regulations and guidance comply with the spirit of the law by working with Department of Justice and NIGC's Office of General Counsel so that all staff are aware of requirements related to administrative decision making such as the Administrative Procedures Act, IGRA's provisions for promulgating regulations, and any relevant case law.

*Follow IGRA's purpose.* If confirmed, I will continue to emphasize the importance of IGRA's policy objectives in how NIGC implements its regulations and executes its responsibilities under IGRA.

*Prioritize Congressional outreach.* If confirmed, I will prioritize filling staff positions and support the Agency staff positions charged with Congressional and intergovernmental outreach in order to identify opportunities for regular information sharing and maintain a responsive point of contact for all Congressional matters.

6. Are you willing to appear and testify before any duly constituted committee upon request of the Congress on such occasions as reasonably requested to do so?  
Yes.

## F. GENERAL QUALIFICATIONS AND VIEWS

1. How does your previous professional experiences and education qualify you for the position for which you have been nominated?

*My professional and educational experience helped shape my commitment to policy matters relevant to tribal governance and public service. My experience also provides leadership and executive experience required to lead a federal agency. Finally, my over three years of experience as a member of the National Indian Gaming Commission has given me direct knowledge of the strategic planning efforts, Agency structure, relationships, and on-going activities at the NIGC.*

*Proven NIGC experience.* I have served as a member of National Indian Gaming Commission since 2015. During that time I have exercised the statutorily defined authorities of a Commissioner under IGRA and seen first-hand the execution of statutory duties unique to the Chairman.

*Proven public service experience.* As a federal employee for over eleven years including my role as the Deputy Chief of Staff to the Department of the Interior's Assistant Secretary for Indian Affairs, I have an appreciation for the importance of a strong Federal workforce, accountability in program planning, and sound approaches to federal management. This management and planning experience help me to appreciate the resources available to and responsibilities of the Chairman's position.

*Experience with diplomatic Indian policy formation.* My career-long experience in working with tribal government officials and communities on a diversity of issues and my experience as a Native person shapes my appreciation for the unique needs and opportunities for policy to improve lives in each tribal community and informs my diplomatic approach to any outreach or decision making with the potential to impact a tribe's sovereign authority to govern its land and its people.

*Personal understanding of Federal policy's impact on Native people.* My academic background along with my personal experience as a Native American has informed my understanding of the diversity of issue areas and events that shape each tribal community's goals for its members.

*Appreciation for sound public policy practices.* My graduate course work focusing on public policy has helped me to appreciate administrative law and policy formation concepts that are important to transparent and defensible public policy decision making. Through my experience as a law school extern in a District of Columbia judge's chambers and a member of my law school's moot court board, I have an appreciation for the important role that a federal agency must play in matters such as developing a record of its decision making processes, engaging interested parties, and accounting for the uncertainty and cost that litigation could potentially have on a federal decision making processes.

*Experience with diverse topics in Federal Indian policy.* My professional experience has included a focus on Federal Indian policy matters in the administrative and legislative branches. My experience has underscored the diversity of needs unique to each tribe, the importance of outreach and collaboration through government-to-government consultation and coordination with tribes, and the federal government's responsibilities as a trustee. In addition, my work has exposed me to the

importance of investment in public resources, economic development, and support for each tribal government's respective capacity to lead.

If given the opportunity to serve as Chairman, my educational and professional background will inform my approach to the economic development, governance, and gaming policy areas that are relevant to NIGC's work.

2. Why do you wish to serve in the position for which you have been nominated?

I have had a career-long professional and a life-long personal commitment to improving the quality of life in tribal communities. IGRA's policy objectives include the operation of gaming by tribes as a means to promote tribal economic development, self-sufficiency, and strong tribal governments. Over the last thirty years, tribal gaming has been more than a reliable source of revenue to support tribal programs and services. It has promoted economic growth in non-gaming areas, strengthened tribes' regulatory capacity, and enhanced tribes' inter-governmental relationships. If given the opportunity to serve as Chairman of the NIGC, I would be able to continue my support for NIGC's work to protect one of the most successful and effective tools for improving the quality of life in our Nation's tribal communities. I would be grateful professionally and personally as a Native person if given this opportunity to help serve the American people by supporting and promoting gaming's success in Indian country.

3. What goals have you established for your first two years in this position, if confirmed?

*Complete and share with Indian country a robust Agency assessment.* Assess NIGC's abilities in the following areas: responsiveness to regional needs; support for enhancing Tribal Gaming Regulatory Authorities' regulatory capacity; predictability of the Agency's planning processes; the Agency's ability to ensure continuity of programs, staffing and coordination with sister agencies; and the Agency's progress on successful achievement of strategic goals and administration reforms.

*Institutionalize Agency partnerships.* Formalize and recommit to the working relationships between NIGC and its partners to promote industry integrity through compliance.

*Modernize recurring practices.* Implement administrative practices in areas such as consultation and budget development that will increase NIGC's efficiency, reduce cost to tribes, and promote transparency.

4. What skills do you believe you may be lacking which may be necessary to successfully carry out this position? What steps can be taken to obtain those skills?

As a current Commissioner, I have seen the importance of maintaining and keeping abreast of developments in industry practices and new technology. Emerging industry trends is a base of knowledge that any Chairman must work to maintain while serving on the Commission. This skill helps to anticipate threats to the integrity of gaming operations and reduce unnecessary burdens on the industry's success. The gaming industry's success is fueled by the industry's innovation. These innovations expect that NIGC's guidance will maintain standards for industry integrity and at the same time not force unwanted technology or promote outdated and burdensome approaches.



Since serving as a Commissioner, I have worked hard to keep up to date with these innovations through outreach at the local level and with industry stakeholders, and by seeking the expertise of subject matter experts within the Agency's staff. However, there will undoubtedly be instances where I do not have the latest information on the gaming industry. To fill this knowledge gap, if given the opportunity to lead NIGC's staff by serving as Chairman, I would like to build upon existing outreach by increasing NIGC's presence at the regional levels, among industry stakeholders, and with sister federal agencies; enhance our workforce's expertise through increased training and skill development among NIGC staff, and identify metrics that would help NIGC assess the relevance of its guidance and regulatory requirements and thereby prioritize areas where NIGC needs to update its knowledge base.

5. Please discuss your philosophical views on the role of government. Include a discussion of when you believe the government should involve itself in the private sector, when society's problems should be left to the private sector, and what standards should be used to determine when a government program is no longer necessary.

The role of the government is to improve the lives of the people it serves. Federal policy toward tribal governments will best meet the government's obligations when it empowers tribes and provides appropriate support so that there is as little intrusion as possible on each tribe's inherent authority to govern its land and its people. Tribal governments are best suited and most accountable for how their inter-governmental relationships with other tribes, the states, and the federal government will make their peoples' vision for their community a reality.

Government's involvement in the private sector must not infringe on competitive innovations that do not threaten the integrity of an industry or present a risk to the public's safety. A policy making process that is public, proactive, and clear will support public policy development that helps ensure government decision making results that do not place too high a burden on the public sector. In addition, government's degree of involvement must be defined by legislation, which is created by legislators who are the government officials most directly accountable to the public they serve and to the legislation whose interpretation by government officials is subject to judicial review. For that reason, government programs with a mission that conflicts with the objectives and needs articulated by the public should guide a legislator's determination that a government program is no longer necessary.

6. Describe the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated.

*Mission.* The NIGC's mission is to meet the public's expectations for good governance practices and sound management of a regulatory commission; support tribal revenue generation from gaming by protecting tribal assets through the promotion of tribal economic development, self-sufficiency and strong tribal governments; maintenance of the integrity of the Indian gaming industry; and protection of tribes' role as the primary beneficiaries of their gaming activity.

*Major Programs.* The full Commission receives and hears appeals on enforcement actions as well as the Chairman's denial of management contract agreements and tribal ordinances. It sets fee and

fingerprint rates and approves an annual budget for the Agency's operation; and adopts regulations as deemed appropriate by IGRA with appropriate government-to-government consultation and the use of formal and informal hearings. In addition, the Agency's major programs include the work of four divisions (finance, technology, compliance, and public affairs) with staff expertise in law enforcement, finance, accounting, and gaming industry operations.

*Major Operational Objectives:* NIGC's major operational objectives include setting a stable and balanced fee rate that will provide adequate support for industry regulation without hindering tribes' access to revenue from gaming operations. Identifying and providing for technological needs within NIGC that will allow for more efficient and effective operation and position NIGC to regulate changes in the industry. Developing policy that will strengthen the regulatory capacity of all tribes with special attention to operations located in rural areas and aspects of the industry that may threaten tribes' sole proprietary interest in their operations.

7. What do you believe to be the top three challenges facing the department/agency and why?

The Agency has the opportunity to increase its focus on modernization, local outreach, and public deliberation and planning.

*Modernization.* NIGC requires modernization of its operational systems, its regulatory guidance, and its support for Agency staff. The gaming industry is driven by innovations in how the regulated community competes. As NIGC reacts to changes in the industry it must provide interpretations of its policy, bolster its expertise, and equip itself with the technological and operational tools that address new demands on the Agency. Without updating, NIGC risks inefficiency and can bring uncertainty to the regulated community.

*Local Outreach.* NIGC must provide more efficient and effective outreach at the local level. NIGC is uniquely responsible for making accessible national level resources, partnerships and regulatory guidance for tribal operators, regulators, and policy makers. To be effective and efficient in how it meets this challenge, the Agency must assess and improve how it invests in partnerships that strengthen collaboration with federal law makers and other federal agencies.

*Public Deliberation and Planning.* NIGC has the opportunity to develop more public facing deliberation and planning processes. As tribal gaming grows, the potential grows for NIGC policy interpretations to have unintended consequences that will hurt the public's trust in the Agency and hinder effective regulation. NIGC needs to seek collaboration and greater input led by tribes on the timing and scope of its work as it plans for its budget development, regulatory updates, and key changes in Agency operation.

8. In reference to question number six, what factors in your opinion have kept the department/agency from achieving its missions over the past several years?

Although NIGC works to account for key risk factors, there are considerations that can adversely impact the Agency's ability to effectively meet its missions.

*Implementation of regulatory reforms.* NIGC has needed to invest in and plan for the execution of significant regulatory reforms promulgated in the past.

*Stable systems for metrics.* NIGC has needed more defined and consistent metrics to account for the different approaches the Agency has taken to its operations with changes in the staffing and application of its regulatory priorities.

*Indian country's diversity.* NIGC's day-to-day work and long term planning has needed to account for the complexity and broad range of differences across Indian Country's economic, geographic, and governmental makeup.

*Industry change.* NIGC has needed to maintain its understanding of the rapid evolution and on-going competition that exists in the gaming, technology, and financial services industries.

9. Who are the stakeholders in the work of this department/agency?

Tribal communities who rely on and benefit from tribal gaming's revenue, the American public who expect sound governance practices from the federal agencies that serve them, and industry partners and neighboring jurisdictions who contribute to the economic and regulatory success of the tribal gaming industry.

10. What is the proper relationship between the position to which you have been nominated, and the stakeholders identified in question number nine?

The proper relationship between the NIGC Chairman and tribal communities includes both formal and informal consultation. With regard to all stakeholders listed above, the proper relationship also includes open discourse, transparent actions, and relationship building.

11. The Chief Financial Officers Act requires all government departments and agencies to develop sound financial management practices.

(a) What do you believe are your responsibilities, if confirmed, to ensure that your department/agency has proper management and accounting controls?

If confirmed, I would:

- meet the Chairman's responsibilities to ensure that the Agency through its Division Director for Finance coordinates with the Office of Management and Budget and with the Department of the Interior to share and coordinate Agency information.
- support management and accounting controls by implementing and making public all operating procedures used by NIGC's staff.
- make a concerted effort for all members of Commission to have robust financial and program performance information necessary for informed decision making related to the

creation of an Agency budget and the establishment of the annual fee rates assessed on tribes' gross gaming revenue and used to fund the Agency's operations.

(b) What experience do you have in managing a large organization?

I have experience in supporting the operation of the Assistant Secretary for Indian Affairs as a Deputy Chief of Staff to the office. While in that capacity I served four months as the acting director of the Assistant Secretary for Indian Affairs' Office of Facility Safety and Property Management under the Deputy Assistant Secretary for Management. In these roles I have gained experience in federal staffing and supervisory responsibilities, the implementation of management initiatives across a national organization, the preparation of an office's work during the transition of new leadership, and the role of management in supporting policy objectives and leadership priorities.

As a current member of the National Indian Gaming Commission I have had responsibilities related to the Agency's management for over three years. My existing role in review and approval of the Agency's annual budget and the promulgation of Agency-wide regulations has significant management implications. In addition, the Chairman has appointed me to serve as the Director of the Office of Self-Regulation. This office is charged with the administration of petitions that come before the Commission for a certificate of self-regulation.

Finally, I have had a leadership role as a Commissioner in Agency-wide planning and on-the-ground interactions with Agency's stakeholders and staff. My experience in that capacity has given me familiarity with the operational demands, planning objectives, and stakeholder expectations related to effective agency management since I began my term as Commissioner in 2015.

12. The Government Performance and Results Act requires all government departments and agencies to identify measurable performance goals and to report to Congress on their success in achieving these goals.

(a) What benefits, if any, do you see in identifying performance goals and reporting on progress in achieving these goals?

Meeting its obligations under the Government Performance and Results Act for goal setting and reporting improves NIGC's programs' transparency and accountability in the eyes of the American people, maintains NIGC's integrity with the public at large, and ensures NIGC meets the expectations of good governance practices and the policy objectives defined under IGRA. It brings predictability by requiring NIGC to develop a well-reasoned and strategic approach to its future activities. And it prioritizes NIGC's responsibility for sound fiscal practices.

(b) What steps should Congress consider taking when a department/agency fails to achieve its performance goals? Should these steps include the elimination, privatization, downsizing, or consolidation of departments and/or programs?

Congress should exercise its oversight authority in response to an agency's failure to meet published performance goals. Its oversight authority should be used to assess the agency's goals and to identify what resource needs or challenges led to the failure so that lawmakers might address poor performance through their law making authority.

- (c) What performance goals do you believe should be applicable to your personal performance, if confirmed?

The Commission's Chairman has individual authority subject to IGRA's stated policy purposes to issue temporary closure orders, levy fines, approve or disapprove tribal ordinances and management contracts, and appoint and supervise staff. If given the opportunity to serve as Chairman, my personal performance in effectively and efficiently meeting these individual responsibilities should be related to the goals I am expected to achieve. In addition, the application of the performance goals identified in the Agency's strategic plan to all Agency staff's performance and the timely publication of the Agency's strategic plan are responsibilities that fall to the Chairman as one of three Commission members.

13. Please describe your philosophy of supervisor/employee relationships. Generally, what supervisory model do you follow? Have any employee complaints been brought against you?

A supervisor/employee relationship should be governed by a mutual accountability to uphold the organization's goals. In my supervisory experience, I have followed a collaborative and team-based approach to achieving this accountability. I have not had and am not aware of any employee complaints brought against me.

14. Describe your working relationship, if any, with the Congress. Does your professional experience include working with committees of Congress? If yes, please explain:

If given the opportunity to serve as Chairman, my responsibility would be to have a proactive, bipartisan and open relationship with members of Congress and their staff.

I have had professional experience working for a Senate committee. I served as detailee from the Department of the Interior to U.S. Senate Committee on Indian Affairs Republican staff during the 114th and 115th Congresses. I had the privilege of experiencing first-hand the collaborative spirit in the Indian Affairs Committee; understanding the policy analysis and processes for the development of law in the Committee; developing relationships with members' personal and district offices; collaborating with administration offices, Senate research resources, and other committees. If given the opportunity to serve as Chairman, I would bring my professional experience with and spirit of this Committee to the position.

15. Please explain what you believe to be the proper relationship between yourself, if confirmed, and the Inspector General of your department/agency.

If given the opportunity to serve as a Chairman and in my existing role as an Associate Commissioner, I have a responsibility to support the work of the Inspector General and to

communicate that all NIGC staff share in a responsibility to support the Inspector General's work. In addition, NIGC has a responsibility to take seriously and consider the Inspector General's recommendations and expertise. Finally, NIGC has a responsibility to engage the Inspector General if concerns arise in its operations.

16. In the areas under the department/agency's jurisdiction to which you have been nominated, what legislative action(s) should Congress consider as priorities? Please state your personal views.

Past Commissions have identified legislative objectives relevant to the Agency's operation that, if Congress desired, would provide for more effective Agency operation by updating IGRA. Topics that past Commissions have considered include the composition of a Commission quorum, the ability for the Agency to bring actions against non-tribal entities or persons affiliated with Indian gaming, and the role of the Commission as the lead federal Agency to ensure a comprehensive federal regulatory role and evolving contemporary gaming practices such as internet gaming. I agree with past Commissions that if Congress were to deem it appropriate to update IGRA with clarifications in these areas, these updates would assist the Agency in the administration of IGRA's regulatory scheme and policy objectives.

17. Within your area of control, will you pledge to develop and implement a system that allocates discretionary spending in an open manner through a set of fair and objective established criteria? If yes, please explain what steps you intend to take and a time frame for their implementation. If not, please explain why.

Yes, if given the opportunity to serve as Chairman, I would pledge to continue the Agency's efforts to refine its budget process in three ways that would improve how the Agency accounts for discretionary spending. First, I would continue to advocate among the full Commission for a public budget process that uses tribal consultation and formal regional meetings. Second, I would put in place the software systems for the Agency's finance division to produce detailed budget reconciliation for the full Commission's review on a regular basis. Third, I would seek to implement metrics to be used for anticipating significant investments that could improve budget planning and reduce the need for discretionary spending in areas such as regional office space, technology equipment, and staffing needs for short term and recurring project workloads.

## G. FINANCIAL DATA

Information not released to the public.

The CHAIRMAN. Thank you.

We will begin with five-minute rounds of questioning. In your response to the Committee, you mentioned that gaming modernization is a challenge the Commission is facing. The gaming industry is always finding innovative ways to expand the market.

First, as chairman, how would you ensure that the Commission is on top of this fast-changing world in gaming? You mentioned in your testimony the importance of being transparent. How do you make sure that you are transparent and accountable? How do you stay up with the changes and then make sure you are transparent and accountable in the decisions you make regarding it?

Mr. SIMERMEYER. Thank you, Chairman Hoeven. Thank you for the chance to meet earlier to talk a bit about my background and my interest in the position.

As you noted, the tribal gaming industry is a fast moving, evolving industry. It is important in the NIGC's role as regulators that we stay abreast of those changes. One of the opportunities we have to build on existing efforts that the Commission has taken on is to look at staffing, look at promoting best practices that exist in the industry and in the regulatory community, and helping to maintain partnerships across the regulatory community.

You also mentioned the importance of looking at how to bring transparency and accountability. I noted in my written testimony

that one of the opportunities for emphasis is looking at administrative accountability and transparency as it relates to that, and opportunities that exist, and that the Commission has already invested in that can be continue to be built on are opportunities for public facing bodies to help in our deliberation process, working with tribes through consultation in that process, making that a more robust opportunity. And looking at opportunities to deliberate on our decision-making both before the decision-making and then after decision-making is made available, too.

The CHAIRMAN. Earlier this year, the Supreme Court struck down the Professional and Amateur Sports Protection Act. That is the Act that bans States from regulating and taxing sports betting. What is your vision on Indian tribes engaging in sports betting?

Mr. SIMERMEYER. The Indian Gaming Regulatory Act did not prohibit sports betting in Indian Country. It did not limit it in any way. So Indian Country has been engaging in sports betting since before the Supreme Court's decision. Since after that time, more tribes are looking at the opportunity to look at sports betting.

While the NIGC does not have a role in tribal policymakers' deliberations about that, if it is the best choice for their community, or whether or not it is permissible under their existing arrangements with the State governments as a Class III form of gaming.

The National Indian Gaming Commission does play a role in issuing management contracts, if tribes choose to pursue partners, or in modifying ordinances that might exist if that is where the tribe wants to go. If confirmed, I think it would be important for the Commission to make sure that we are timely and responsive and not be a barrier, if that is the direction that tribes want to move.

The CHAIRMAN. If confirmed, what are your top three priorities?

Mr. SIMERMEYER. If confirmed, early on it would be important to, I think, address any matters that require the chairman's decision. As you know, as enacted, the Indian Gaming Regulatory Act provides certain authorities that can only be exercised by a chair. It would be important, if confirmed, to make sure there are no backlogs or pending matters that need to be addressed. That would be one important priority early on.

It would also be important early on to work with the National Indian Gaming Commission staff. We have a number of great front-line folks in the field. It is important that we are walking in lock-step in terms of our interpretations and support and making sure of a uniform approach to our organization.

It would also be very important to reach out to tribes early on to look at the possibilities for any measures that can be taken to help improve administrative accountability. As I mentioned in my testimony, it is an opportunity that I think exists and can be built on, the existing efforts we are doing. But it would require consultation and coordination with tribes to get the best input to avoid any unintended consequences.

The CHAIRMAN. Thank you.

Vice Chairman Udall.

Senator UDALL. [Presiding] Thank you, Chairman Hoeven.

Mr. Simermeyer, as you know, IGRA is a statute designed to strike a delicate balance between tribal sovereignty, State interest in gaming and the Federal Government's role in Indian Affairs.

The Tenth Circuit struck a blow to this balance when the court invalidated Interior Secretarial Procedures. Previously, if a State determined that it did not want to negotiate a tribal-State compact and decided to shield itself from a lawsuit through its sovereign immunity, tribes couldn't rely on Interior to issue procedures enabling Class III gaming to proceed. Mr. Simermeyer, do you agree with the Tenth Circuit's decision in Pojoaque?

Mr. SIMERMEYER. Thank you, Vice Chairman Udall, for the question. I think it is an opportunity to talk a little bit more about background and your interests and my interests.

The role of the National Indian Gaming Commission, as enacted, IGRA sets forth the opportunity for procedures. I believe it has been a successful tool as tribes have used it in the past.

The role on the formation of Secretarial Procedures and approval of those is not a role that the National Indian Gaming Commission plays. We are involved as the Federal regulatory body that focuses on ensuring that tribal assets are protected.

If in that process of developing Secretarial Procedures, as it moves in that process, there is a role for the National Indian Gaming Commission to play in enforcing Secretarial Procedures, that is a role that I think, if confirmed, I would do what I could to help promote that to make sure that where there is a partner, and if that is the decision that is made, that we go forward as a partner in that.

Senator UDALL. You did not specifically say whether you agree or not with the Tenth Circuit's decision in Pojoaque. Do you have a yes or no on that? Do you agree with that decision?

Mr. SIMERMEYER. Vice Chairman, with regard to the Secretarial Procedures component of it, the role of the National Indian Gaming Commission isn't to develop formation of Secretarial Procedures. As enacted, IGRA requires the Commission to play a role in the enforcement of the framework of the Indian Gaming Regulatory Act as set forward, in commonly existing litigation matters. But in circumstances where there is an enforcement matter, I recognize and appreciate there are difficult decisions the Indian Gaming Regulatory Act would require for the chairman to look at that.

Senator UDALL. So without Secretarial Procedures, if States decide to not negotiate and there are no Secretarial Procedures, then the tribes are stuck basically, since Interior can't issue Secretarial Procedures for tribes and States within the Tenth Circuit. The Circuits are split on this.

My State of New Mexico is in the Tenth Circuit. What can Indian tribes do to ensure that Class III gaming operations are stood up or may continue? They may have ones that have entered into compacts, then the compacts lapse, and then there are negotiations between the State. But if the State stiff-arms them, what is the National Indian Gaming Commission going to do about that? What is your position on that?

Mr. SIMERMEYER. Mr. Vice Chairman, I understand and appreciate the challenge that presents. As I mentioned in my opening statement, in the decision-making we do, I think it is important to



honor and respect the role that tribes have in entering into inter-governmental relationships and negotiating those processes.

In those particular instances, we are not involved in the formation of Secretarial Procedures and wouldn't want to interject or speculate on that. But in that capacity, we would have to help enforce Secretarial Procedures, if that is required, as they are formed, then that is a role that I think, if confirmed, I would support the NIGC using our resources to do.

Senator UDALL. Senator Tester?

**STATEMENT OF HON. JON TESTER,  
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Ranking Member, Udall.

I thank you for being here today and thank you for your willingness to be considered for this job as Commissioner of the National Indian Gaming Commission.

You have been in this position for three months, correct, in the acting position?

Mr. SIMERMEYER. No, sir. There is presently not a chair of the National Indian Gaming Commission.

Senator TESTER. What is your current position?

Mr. SIMERMEYER. I am serving as an Associate Commissioner on the three-member Commission. My appointment began in November 2015.

Senator TESTER. You were Director of the Office of Self-Regulation, correct?

Mr. SIMERMEYER. Correct. The Office of Self-Regulation, the chairman designates the Director for the Office of Self-Regulation within the agency.

Senator TESTER. The chairman of NIGC does?

Mr. SIMERMEYER. The chairman of the National Indian Gaming Commission.

Senator TESTER. Okay.

Mr. SIMERMEYER. The purpose and role of that director is when a tribe petitions for a certificate of self-regulation, the director convenes staff from the various divisions to work on that decision.

Senator TESTER. The Chairman or you talked about the number of gaming operations that are out there in Indian Country. It is pretty significant. Can you tell me how many are self-regulated?

Mr. SIMERMEYER. Self-regulated, there are six tribes that are currently self-regulated.

Senator TESTER. Six tribes?

Mr. SIMERMEYER. Six tribes, yes. Self-regulation is a provision that was enacted, as IGRA was enacted, self-regulation was an early provision. It really represents one of the strong principles of self-determination in the legislation.

Senator TESTER. That is cool. Does anybody have any oversight over the self-regulated tribes?

Mr. SIMERMEYER. Yes.

Senator TESTER. Self-regulated aside, how often do you guys visit facilities?

Mr. SIMERMEYER. As members of the Commission?

Senator TESTER. As a commission. I assume it is your job to regulate them, right, or do you depend upon the States to do that?

Mr. SIMERMEYER. No, sir. The primary regulators of tribal gaming are the tribal regulatory bodies on the ground.

Senator TESTER. Which work through you?

Mr. SIMERMEYER. No. The tribal regulators on the groundwork through the tribal governments themselves. As enacted, the National Indian Gaming Act recognizes the tribes' capacity to do that.

Senator TESTER. I am not trying to pin you down. I am trying to flesh this out for my own goodwill. The tribal regulators on the ground do the regulation. What do you do?

Mr. SIMERMEYER. The National Indian Gaming Commission's role as an agency helps to ensure sound regulation.

Senator TESTER. Do you give workshops to those Native regulators, the tribal regulators? How do you ensure that?

Mr. SIMERMEYER. We ensure it by working with tribal regulatory bodies. As enacted, IGRA directs us to participate in training and technical assistance, and we work closely with them. We also, a commission, we also have the authority to hear on appeals of the full commission, on matters of enforcement.

Senator TESTER. I live pretty close to Rocky Boy Indian Reservation. You may or may not be familiar with it. It is a way away from your neck of the woods. I assume they have their own tribal regulators.

Mr. SIMERMEYER. I can't comment on the specifics of that, of the tribe, right now, Senator.

Senator TESTER. Okay. How many people work in your shop?

Mr. SIMERMEYER. There is 115 staff at the National Indian Gaming Commission currently, 131 when fully staffed.

Senator TESTER. How are you funded?

Mr. SIMERMEYER. We are funded by fees that are collected. As enacted, IGRA set up a system for fee collection. Fees from tribes are what fund our operation.

Senator TESTER. You are self-funded. I assume it is a percentage of the net or a percentage of the gross for each operation. How does it work?

Mr. SIMERMEYER. Yes, net gaming revenue. In general, tribes that are below a certain annual revenue do not pay fees.

Senator TESTER. Can you tell me what that benchmark is for below?

Mr. SIMERMEYER. I believe it is \$1.5 million.

Senator TESTER. Below \$1.5 million of gross revenue?

Mr. SIMERMEYER. Yes.

Senator TESTER. If they are below that, they don't have to pay any fees?

Mr. SIMERMEYER. I believe so.

Senator TESTER. That is good. Thank you. You seem to know your job or your potential job. I want to thank you for your interest and look forward to working with you as we move forward.

Thank you.

Mr. SIMERMEYER. Thank you, Senator.

Senator UDALL. Senator Barrasso.

**STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Thank you very much, Senator Udall.

Mr. Simermeyer, congratulations again on your nomination. We had a chance to visit earlier today.

For folks that don't know, when I served as chairman of the Committee, you were working for the Department of the Interior. For a little over a year, you were detailed to my staff here on the Committee.

I really appreciated the good work and the thoughtful approach that you brought to the many issues affecting Indian Country. I am so pleased to see you here today as we review the nomination. I look forward to hearing more of the successes of the Commission under your leadership.

One of the things we talked about this morning, and perhaps I could ask you to elaborate a little bit for the other members of the Committee and for the people in attendance, what we just talked about, there are always changes in technology, emerging threats to the industry, specifically with security. Could you expound a little bit on some of the things we discussed this morning as you look to the future with technology and security threats, especially in this internet age and all of the things that are happening?

Mr. SIMERMEYER. Thank you, Senator Barrasso, for the question. Thank you for taking time to meet with me and for the opportunity I had to work with the staff. I appreciate that.

Technology has been in recent years at the National Indian Gaming Commission an important priority and area emphasis that, if confirmed, I would want to continue to build on that. As noted in my testimony, preparedness is an area where we can work with tribes to identify best practices and to identify opportunities we have to ensure that tribal assets are protected.

The number and diversity of operations in Indian Country is great. The important role that the National Indian Gaming Commission can play is to identify those opportunities to work with tribes, to assess risks, and to see what is appropriate for them.

As enacted, under IGRA's requirement for us to provide training, one of the opportunities that we have is to provide IT vulnerability assessments to the tribes. That has been one of the success stories over the recent years of the Compliance and Technology Division within the agency.

Senator BARRASSO. That is one of the things we talked about in terms of the IT vulnerability. People may think, well, I may not be able to go to Las Vegas and try some attack, some level of perceived vulnerability, and you shared with me that there were cases where people have tried that and have actually gotten caught with Indian gaming as well.

So it sounds like you are right on task for vulnerability. I don't know if you want to share any of the examples. Maybe you can't do that. But it was very interesting to know that with the new technology, with cell phone technology, people are always trying to find ways to manipulate the system.

Mr. SIMERMEYER. Yes. The opportunity exists for the National Indian Gaming Commission to continue the role in outreach that

we do, to help educate the public about the sound regulatory oversight that takes place in Indian Country gaming.

It is a real success story. Tribes, as the frontline regulators, are extremely invested in how they approach and secure their assets. We have a role to support there as well.

Senator BARRASSO. Thank you.

Thank you, Senator Udall.

Senator UDALL. Thank you, Senator Barrasso.

Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,  
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you, I appreciate that, Ranking Member Udall.

Mr. Simermeyer, it is good to see you again. Thank you for visiting with me earlier. I so appreciate that.

Mr. SIMERMEYER. Thank you.

Senator CORTEZ MASTO. Let me jump back to, just so I have a better understanding of sports betting, what I understood you to say is that *Murphy v. NCAA* didn't really have an impact as it pertains to sports betting for Indian gaming. Is that correct?

Mr. SIMERMEYER. No, I intended to say, and thank you, Senator, for taking the time to meet with me as well. I appreciate that.

No, the point I was trying to make, and thanks for the opportunity to clarify it, is that the Indian Gaming Regulatory Act does not prohibit types of gaming. The National Indian Gaming Commission has worked with tribes. One tribe in southern Nevada has had successful sports betting since before that decision.

Since that decision, other tribes now, in other parts of the Country, that were impacted differently by the law, are considering sports betting. The role of the National Indian Gaming Commission, I believe, should be that if tribes are working at pursuing that opportunity within the bounds of IGRA as a Class III form of gaming, and it is permissible under their compact arrangement, that we as the National Gaming Commission does not stand in the way of decisions we may have to make with regard to management contract partnerships or with ordinance modifications. That is the work we have been doing to keep up to speed as more jurisdictions look at this issue.

Senator CORTEZ MASTO. Thank you. I appreciate that.

To what extent would you, as the commission, regulate sports gaming on tribal land?

Mr. SIMERMEYER. Sports betting on tribal land would generally be a Class III operation. So it would be regulated in that way under IGRA. There are internal controls we have as guidance. We wouldn't enforce those.

Senator CORTEZ MASTO. You wouldn't enforce?

Mr. SIMERMEYER. We would not enforce the Class III. Our enforcement authority extends to violations of tribal ordinances, violations of our regulations, and violations of the Indian Gaming Regulatory Act. But the tribes and States would negotiate the compact relationship. That would, through a tribal ordinance, govern what oversight there would be.

Senator CORTEZ MASTO. For the sports betting?

Mr. SIMERMEYER. For the sports betting, and if we have enforcement authority through violations of any of those, that is the role we would play.

Senator CORTEZ MASTO. Correct me if I am wrong. You have no criminal law enforcement authority, correct? You have just civil enforcement authority?

Mr. SIMERMEYER. Civil enforcement authority, yes.

Senator CORTEZ MASTO. To what extent, then, does the Commission then monitor the management contracts or partnerships with companies that may be in violation of State or Federal law as it pertains to tribal gaming? What is your interpretation of the authority and role in enforcing the integrity in combating the bad actors? What role do you play?

Mr. SIMERMEYER. Thank you, Senator, for that question.

As enacted, the Indian Gaming Regulatory Act requires the National Indian Gaming Commission to refer any actionable information on criminal matters to law enforcement agencies. That is a that role we take seriously. If confirmed, I would do my part to continue that role and the requirements in that regard.

If a tribe enters into a management contract agreement with a partner, the chairman takes on the responsibility of reviewing the suitability of the partner as well as a financial background review, ensuring that tribes remain the primary beneficiaries of the gaming revenues, and making sure that the management contract meets the fiduciary duty to ensure the tribe's best interests are kept in mind as laid out in the Indian Gaming Regulatory Act.

Senator CORTEZ MASTO. To your knowledge, has there ever been a temporary closure of a gaming facility on Indian land for substantial violations of IGRA?

Mr. SIMERMEYER. Yes.

Senator CORTEZ MASTO. Has it occurred while you have been there?

Mr. SIMERMEYER. Temporary closure orders are raised by the chairman. I believe there has been a recent one last year by the chairman as part of a settlement agreement. But the full Commission reviews closure orders. Only the full Commission, on appeal of a temporary closure order, can make the closure order permanent.

Senator CORTEZ MASTO. Thank you. I notice my time is up. Thank you very much. Congratulations on your nomination.

Mr. SIMERMEYER. Thank you, Senator.

Senator UDALL. Thank you, Senator.

I would like to get a little more specific. You talked about modernization a little bit with the Chairman. What you mentioned under modernization is staffing, better practices and partnerships with the industry. What are you talking about specifically with regard to modernization for staffing?

Mr. SIMERMEYER. Thanks, Senator Udall. Specifically, one of the initiatives the National Indian Gaming Commission has been operating under for the past few years is our commitment to stay ahead of the technology curve. I think that has been a real success story in making sure that we have the right staff and that staff is properly trained in matters related to that topic of technology.

There is the opportunity as well to look at working with tribes to make sure we are providing the kinds of resources through our

training and technical assistance and where we need to add additional resources, to be sure we can do that as a commission and identify those opportunities.

Senator UDALL. How about with best practices in industry? What are you going to modernize there?

Mr. SIMERMEYER. As mentioned before, the industry is always evolving and changing. That is what IGRA contemplated. In any role where we may play in a decision, it is important that we are kept abreast of what the industry trends are going towards, so that whether it is issuing an advisory opinion on a game or whether it is looking at the comprehensiveness of our management controls, it is important for us to remain abreast of how the industry might be changing.

Senator UDALL. I would like your assurances that your view of modernization does not include staff reductions, movement of personnel within NIGC or otherwise embarking on a substantial reorganization without consulting with Congress or tribes first.

Mr. SIMERMEYER. Absolutely, Senator. That wasn't intended by that. Absolutely not. Consultation would be a very important part early on if there are any administrative measures we take to engage with tribes to make sure this is not going to have unintended consequences and it is not going to cause complications for the industry that tribes regulate.

Senator UDALL. NIGC plays an important role in determining whether proposed gaming is categorized as Class II or Class III. NIGC is frequently called upon to make this determination since Class II gaming can be conducted without a tribal-State compact.

Mr. Simermeyer, do you have experience in making this determination as an Associate Commissioner? If so, please provide an example.

Mr. SIMERMEYER. Thank you, Vice Chairman. The gaming classification opinions are typically provided by the Office of General Counsel. It is a valuable tool that helps the industry and helps tribal regulators, helps tribes to be able to move forward with their own plans for their operations. As the Associate Commissioner, it has not been my role to issue an opinion, a game classification opinion. Generally, though, as enacted, in IGRA and through our regulations, the game classification standards were laid out and even modified by case law.

Senator UDALL. So I would expect as chairman then, you would work carefully with the counsel in trying to understand previous opinions and what their position has been and then work to make sure that in the future, you properly supervise them.

Mr. SIMERMEYER. Absolutely. The Office of General Counsel's advisory opinions have provided a really comprehensive body of guidance that the industry and tribes have relied upon. Any decision-making process, first and foremost, must be legally sufficient. That guidance comes from our Office of General Counsel.

Senator UDALL. Following up, because you haven't had experience doing that, if confirmed as chair, how would you go about making this determination, what interests would you weigh, and what would your decision-making process look like?

Mr. SIMERMEYER. Thank you, Senator. If confirmed, it would be important that the action would be, first and foremost as I men-

tioned, legally defensible and in line with our regulations and the law. With regard to the enforcement actions in general, it is important that we act fairly, and that an enforcement action, if it is brought, that it represents a clear articulation of the policy and the law and does not have any unintended consequences beyond that.

Senator UDALL. We are in the middle of a vote. I believe the chairman is on the way back. Senator Cortez Masto, if you wanted to continue questioning, I am going to go vote and then come back after that and ask additional questions.

Senator CORTEZ MASTO. I do have a couple questions.

I think when we met you were familiar with the work Senator Murkowski and I have done both on trafficking and the crisis of missing and murdered Native American and indigenous women.

Let me ask you this. One of NIGC's goals or a mission for the NIGC under the Indian Gaming Regulatory Act is to ensure public safety. How will the Commission assist tribal facilities and tribes in taking proactive steps to combat and address human trafficking within the facilities?

Mr. SIMERMEYER. Thank you, Senator. That was an excellent discussion. I appreciated talking about it and having the chance to tell the story of the role we can play.

As we talked about before, the Commission doesn't have criminal law enforcement authority. However, we do have, as IGRA was enacted, the ability and responsibility to use training to carry out the regulatory system that IGRA has in place, including protection of the health and public safety of the operations. To that end, I think there is a good story to tell about the work the Commission has been doing over the last few years. If confirmed, I would support and want to continue doing that as well.

Particularly under the leadership of the current vice chair, there has been an effort to look at opportunities to train to bring about some of the excellent corporate responsibility measures and best practices that exist in the industry, and to partner that with the regulatory framework that exists between tribes and other jurisdictions in the gaming operations.

I think that is an opportunity to bring together, whether it is the tribal regulatory community and the criminal law enforcement community, to look at targeted issues like human trafficking, where we can, promote those best practices and we can be available to help tribes and tribal policymakers as they look at how they can address that issue at the local level in their community.

Senator CORTEZ MASTO. Thank you. I would invite you and your commission, to the extent you can, to participate. Not only do we have Savanna's Act but also the Not Invisible Act. The goal is to try to bring some of the Federal agencies together to really focus on this particular issue.

I think it would be helpful if you are so willing or the Commission is willing to participate in how we address this issue on tribal land and working with our law enforcement, working with folks to really bring attention to this, identify it and then figure out how we provide the necessary support, and then in conjunction working with the training for tribal law enforcement and Federal law enforcement as well. I think there is definitely a role that the Commission can help us with some of the operators on tribal land.

Mr. SIMERMEYER. Thank you, Senator.

Senator CORTEZ MASTO. Thank you. I have to go vote, so I think we are going to do a brief recess. I understand the chairman is on his way back. We will have a brief recess right now.

Thank you.

[Recess.]

The CHAIRMAN. [Presiding.] We will reconvene our hearing.

We apologize. We are having votes so we have to work around that. Thanks for your patience. I have a couple more questions and I think the vice chairman also has a few more questions for you before we wrap up.

Does NIGC have the capacity to ensure the integrity of Indian gaming?

Mr. SIMERMEYER. Thank you, Mr. Chairman.

With regard to our capacity, as enacted, and regarding our capacity in terms of resources, as enacted it provides the necessary tools to set a fee rate that is used to fund NIGC operations. We work as a commission to make sure that process assesses the need that exists and to work to try to make sure we have sufficient resources available within the commission to do its oversight responsibility.

An important part of that and an important investment in that is both in the technology resources we have and also in the staffing and expertise resources. If confirmed, and if necessary to assess that, that would be a responsibility I would continue to take seriously.

The CHAIRMAN. As Director of the Office of Self Governance, can you speak about some of the successes tribes have had in self-regulating Class II gaming?

Mr. SIMERMEYER. Self-regulation is a great success story, I think, within the Indian Gaming Regulatory Act's formation. As enacted, it provides tribes with the opportunity to petition the Commission, it empowers the Commission to present certificates of self-regulation to tribes, and reduces what would otherwise be the tribe, by issuing a certificate, deems as redundant regulatory oversight of the Class II operation the tribe performs.

There have been a small number of tribes over the years that have pursued this. It is a decision for each tribe if it is appropriate for them but I think in the past two years, one of the successes we have had is we have been able to bring it to different parts of Indian Country as they consider if it is an appropriate decision for them. Most recently in southern California and the Midwest, two tribes successfully petitioned for certificates of self-regulation.

The CHAIRMAN. In the past, NIGC has had a significantly high carryover in the budget. How do you plan to spend those funds or are you looking at a refund to tribes that pay into the NIGC?

Mr. SIMERMEYER. Past commissions, I think, have looked at the issue of whether or not carryover funds can be returned to tribes. I think there is legal guidance that doesn't make that possible, I believe.

One of the ways the current commission has looked at addressing that issue is to strive to make reductions in the fee rate or keeping the fee rate at a level that allows the surplus to be spent down. If confirmed, I think there is an opportunity I mentioned in the



outreach and accountability emphasis areas where we could look at ways to engage on that budget consideration process.

The CHAIRMAN. At this point, I am going to have to go vote but I will turn the meeting over to the Vice Chairman for his questions. Then I think you can adjourn at that point. Thanks for being here today.

Mr. SIMERMEYER. Thanks, Mr. Chairman.

Senator UDALL. [Presiding.] Thank you.

Mr. Simermeyer, thank you for your patience with all the voting and running around and everything.

In 2017, gross gaming revenue was up 4 percent at \$32.4 billion, yet the current fees paid by tribal gaming operations are the lowest adopted amount since 2010. Mr. Simermeyer, with the growth of sports betting, increased risk from cyber security threats, and the growing need for enforcement funding, does NIGC have sufficient resources to keep up with these growing demands?

Mr. SIMERMEYER. Thank you, Vice Chair. As enacted, the IGRA provides the proper tools for the Commission to be able to adjust fee rates as necessary. If confirmed, I would work with other members of the Commission and identify ways that we can be thoughtful about making sure that we are preserving the resources we have, maintaining adequate and appropriate carryover for each year, so that we can fund operations in the quarterly system that we receive funds, and also to make sure, first and foremost, that we are providing the resources and oversight to make sure that, as the Federal regulators of tribal gaming, we are doing our job.

Senator UDALL. So if you saw an increased risk from cyber security threats, for example, would you be willing to increase the fee to get the resources needed to tackle those threats?

Mr. SIMERMEYER. I can't speculate on what the future budget processes might look like. But if confirmed, I will definitely work with all the members of the Commission to gather as much information as possible from as many resources as we can to make sure we are making thoughtful investments.

In my testimony, I mentioned the importance of outreach and the importance of administrative accountability. I think there are opportunities to emphasize that in how we think about our fee rate, in how we develop our budget process, and how we work with tribes and support consultation.

Senator UDALL. Mr. Simermeyer, during your time as Associate Commissioner, the Commission considered a case involving whether certain lands were eligible for gaming as restored lands by the Ponca Tribe. The Commission issued two final decisions and orders on the subject, one in 2017 and another in 2019, siding with the tribe. The neighboring States opposed the Commission's decisions.

You did not sign onto to either of the Commission's decisions. It leaves me wondering, did you oppose the decision, and if you did, why did not you file a dissent?

Mr. SIMERMEYER. Thank you, Vice Chairman, for the chance to talk generally about the decision-making process for the Commission. I can't speak to specifics about a matter that might be in litigation, but if it is helpful, I will try to talk about the process.

As a matter of course, how the Commission has historically recorded its decisions, they are in the form of a notation document.

That is the decision of record. That is the final agency action for the Commission. Any letters or outreach subsequent to that, those are explanations of the decision.

I outlined early on the importance I believed in any decision-making process that the Commission takes on to follow the intent as IGRA was enacted, to look to expertise, to our staff particularly and the regulatory community, and to be diplomatic in our decision-making, recognizing tribes' inherent authority to enter into inter-governmental relationships.

In instances where I have not voted, I have always documented my rationale for that in the notation document that goes with it. I think that is an important responsibility for any commissioner. The group dynamic within any commission, I think it is important, too, that once there is final agency action, that is the action of the commission. The final agency action is only one decision. It is an important group dynamic with the many decisions that we make to walk in one step and not try to undermine implementation of the decision.

Senator UDALL. The notation document, is it public?

Mr. SIMERMEYER. It is part of the administrative record in the litigation. I think it is available to the public. I talked in my opening testimony about the opportunity that I believe exists to improve transparency through administrative accountability. I think that in working with other commissioners, if confirmed, that would be a great opportunity to look at both the deliberation processes before decisions are made and making decisions accessible to the public.

But with regard to when a decision is made with a specific impact on a tribe, we have always made it a point to outreach and make sure that we communicate and roll out a decision with those that are impacted by it. That was done in that case as well. I appreciated the opportunity to share that with the tribe, my position on that.

Senator UDALL. Can you share this notation document with us, since it is public?

Mr. SIMERMEYER. I believe I can. I would like to try to confer with the general counsel's office, because the matter is related to litigation. But I can commit, that if confirmed, to work with the other commissioners to try to make sure that accessibility is an important part of how we move forward. But I will have to qualify that, like I said, I would like to try to confer to make sure that is possible because it is related to ongoing litigation right now.

Senator UDALL. The questions I asked though had more to do with what happened in the past rather than ongoing or future litigation on this issue, which was, so you did file a dissent in this notation and it is out there in public?

Mr. SIMERMEYER. Well, I voted against the decision to issue the opinion. So that is the decision that is final for the agency action as I understand it in terms of what has been the common practice. So I am trying to follow the common practice. I documented my thoughts on it, but there is only one final agency action. That action is in litigation right now. So I would like to confer about that, to have the opportunity to kind of explain it, I think can be helpful, but with regard to that specific matter.

Senator UDALL. I think I talked with you about this yesterday. My concern is when you have a regulator and you make a ruling, you are impacting all your stakeholders out there, very important to tell them why you acted the way you did. I understand there is a different role as Associate Commissioner but when you are the chairman, I would hope you would take a broader view of transparency.

If Associate Commissioners decide to go in another direction, have them state the reasons, so that the public understands the three members, why they came down the way they did and what their reasoning, was so they can anticipate in the future so that tribes and others can anticipate where the commission is headed. That is a key part.

The transparency is important but also the certainty in terms of the tribal interest, knowing where we are going to come down. So I hope you will be out front on that. As chairman, this is a new role requiring you to go on the record and state specifically your position in some of these tough decisions.

What role do the States play in the regulation of Class II Indian gaming?

Mr. SIMERMEYER. What role do they play?

Senator UDALL. Yes.

Mr. SIMERMEYER. Thank you. And I might say briefly, I appreciate your comment, appreciate the conversation about that and understand your concern about that, and agree, as I have mentioned about the importance of that, sound decision-making, making it legally defensible and define scope, that is helpful.

With regard to States' role in Class II gaming oversight, as it is enacted, IGRA gives States no regulatory authority over tribal gaming. The only way that a State can really apply its general civil law under the Indian Gaming Regulatory Act is through a compact. Although IGRA gave States the right to negotiate tribal-State compacts, it did not give States any more authority without tribes' consent in that negotiation process. I think that is how IGRA is enacted.

If confirmed, I think that, again, the integrity of the industry depends on the framework of IGRA being upheld.

Senator UDALL. Going back to the Pojoaque decision out of the Tenth Circuit, and there are split decisions, when you become chairman, I think it is important that you weigh in on where these two circuits have come down. You are the one in the center of what is happening.

It just seems to me, from my experience over the years I was a State attorney general, I worked for eight years with IGRA and the enforcement of IGRA and the compacting process and everything, here we have a Tenth Circuit decision for a number of States in the Tenth Circuit where, if States become very resistant, there is no avenue for the tribe. I think it is important for the Commission to take some kind of position on that and enunciate what you think ought to be happening here, because we are going to have different interpretations from different circuits.

We all hope that the Supreme Court would take this up and resolve it. I would hope they would resolve it on the side of allowing Secretarial Procedures to go forward, because I think that is a good

safety valve from everything. If they can't agree, and there isn't good faith, then there is a safety valve there for tribes to be able to get their compacts approved.

With that, let me thank you again. Thank you to your family for being so patient.

I am just going to close out here, no more questions for you. Thank you to the nominee who has provided his time and testimony. I would ask members if they have any questions for the record for Mr. Simermeyer to please submit them by the end of this week so the nominee can respond in due order. I will then work with my colleagues on the Committee to schedule a vote.

I am going to work with the Chairman to schedule a vote and perhaps move you to the Senate Floor as quickly as possible.

If there is no other business before the Committee, this hearing is adjourned.

[Whereupon, at 4:02 p.m., the Committee was adjourned.]

## A P P E N D I X

WILTON RANCHERIA TRIBE  
*July 23, 2019*

Hon. John Hoeven,  
Chairman;  
Hon. Tom Udall,  
Vice Chairman,  
Senate Committee on Indian Affairs,  
Washington, DC.

Dear Senator Hoeven and Senator Udall:

On behalf of the Wilton Rancheria Tribe in California, I am reaching out to you today in support of Sequoyah Simermeyer's nomination as Chair for the National Indian Gaming Commission (NIGC). Mr. Simermeyer's extensive work with the Senate Committee on Indian Affairs (SCIA), Department of Interior, and his leadership experience as an NIGC Associate Commissioner makes him well suited to be NIGC Chair.

Through his many years of experience working on priority issues facing Indian country, Mr. Simermeyer brings an in-depth understanding and practical knowledge of Indian gaming regulation issues. Furthermore, his support of tribal self-determination and his understanding of the importance of tribal economic development is very important to Wilton Rancheria. We look forward to working with Mr. Simermeyer in his role as NIGC Chair.

Thank you for your time in this matter. Your service on SCIA is greatly appreciated.

Sincerely,

RAYMOND C. HITCHCOCK,  
*Tribal Chairman.*

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QUAPAW NATION  
*July 23, 2019*

Hon. John Hoeven,  
Chairman;  
Hon. Tom Udall,  
Vice Chairman,  
Senate Committee on Indian Affairs,  
Washington, DC.

Dear Senator Hoeven and Senator Udall:

On behalf of the Quapaw Nation (Nation), I am writing in support of E. Sequoyah Simermeyer to be Chairman of the National Indian Gaming Commission (NIGC). Indian gaming has blossomed in the last 20 years to include more than 500 licensed gaming establishments in 29 states. Gross revenues from these establishments have grown to more than \$30 billion and, as you know; many Indian tribes rely on these revenues to provide government services to their members.

The Nation has developed and is now conducting successful gaming operations on its lands in far northeast Oklahoma, and we use our gaming revenues to provide health care, food and nutrition programs to the elderly and local communities, and other basic services that make our people healthy and safe.

While most regulatory authority under the Indian Gaming Regulatory Act rests with tribes and in the case of class III gaming with tribes and states pursuant to gaming compacts, the NIGC nevertheless fulfills its valuable statutory role through seven regional offices and some 115 full-time employees.

Mr. Simermeyer has considerable experience working with tribal governments in his past role as counsel to the National Congress of American Indians, as well as counsel and deputy chief of staff to the Assistant Secretary—Indian Affairs, and

counsel to the Senate Committee on Indian Affairs. His current role as Commissioner and Director of Self-Regulation for the NIGC puts him in good stead to assume the leadership of the commission.

I know and have worked with Mr. Simermeyer and can recommend him to you without hesitation or qualification, and know that once confirmed will provide the leadership the NIGC must have.

Sincerely,

JOHN L. BERREY,  
*Chairman.*

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CHOCTAW NATION OF OKLAHOMA  
*Durant, OK, July 30, 2019*

Hon. John Hoeven,  
Chairman,  
Senate Committee on Indian Affairs,  
Washington, DC.

RE: LETTER OF SUPPORT FOR SEQUOYAH SIMERMAYER TO SERVE AS CHAIRMAN  
OF THE NATIONAL INDIAN GAMING COMMISSION

Dear Mr. Chairman:

On behalf of the Choctaw Nation of Oklahoma, I wholeheartedly offer this letter of support for the nomination of Sequoyah Simermeyer to be the next Chairman of the National Indian Gaming Commission. We have worked with Mr. Simermeyer over the years in his various responsibilities. Mr. Simermeyer has shown a personal commitment to Indian Country and to the interests of Native American tribes engaged in the conduct of governmental gaming; therefore, the Choctaw Nation urges the Committee to report favorably on his nomination and to work actively to secure his early confirmation by the full Senate.

Sincerely,

GARY BATTON  
*Chief*

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MILLE LACS BAND OF OJIBWE  
*July 30, 2019*

Hon. John Hoeven,  
Chairman,  
Hon. Tom Udall,  
Vice Chairman,  
Senate Committee on Indian Affairs,  
Washington, DC.

Dear Mr. Chairman and Vice Chairman:

I write to express the support of the Mille Lacs Band of Ojibwe for the nomination of Sequoyah Simermeyer to be the next Chairman of the National Indian Gaming Commission. We know Mr. Simermeyer and his able service in various capacities over the years. He has demonstrated a commitment to the interests of Indian tribes engaged in the conduct of governmental gaming. That is why we urge the Committee to report favorably on his nomination and to work actively to secure his early confirmation by the full Senate.

Sincerely,

MELANIE BENJAMIN  
*Chief Executive*

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SHAKOPEE MDEWAKANTON SIOUX COMMUNITY  
*Prior Lake, MN, July 30, 2019*

Hon. John Hoeven,  
Chairman,  
Senate Committee on Indian Affairs,  
Washington, DC.

I write to express the support of the Business Council of the Shakopee Mdewakanton Sioux Community for the nomination of Sequoyah Simermeyer to be the next Chairman of the National Indian Gaming Commission. Mr. Simermeyer has demonstrated a commitment to the interests of Indian tribes engaged in the

conduct of governmental gaming. We urge the Committee to move quickly to report favorably on his nomination, and work actively to secure his confirmation by the full Senate.

Sincerely,

KEITH B. ANDERSON,  
*Vice Chairman, Business Council*

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THE CHICKASAW NATION, OFFICE OF THE GOVERNOR  
*Ada, OK, July 25, 2019*

Hon. John Hoeven,  
Chairman;  
Hon. Tom Udall,  
Vice Chairman,  
Senate Committee on Indian Affairs,  
Washington, DC.

Chairman Hoeven and Vice Chairman Udall:

I am writing to express my support for Sequoyah Simermeyer, and to respectfully request that the Senate Committee on Indian Affairs approve his nomination to serve as Chairman of the National Indian Gaming Commission (NIGC).

Mr. Simermeyer has broad experience in tribal issues, and he is well-qualified to serve as NIGC Chairman. He has ably served on the NIGC since 2015 as Associate Commissioner and Director of Self-Regulation. In these roles he has worked with federal, state, and tribal bodies on national gaming regulatory policy and compliance, as well as self-regulation petitions. Prior to joining the commission, Mr. Simermeyer successfully undertook jobs in both the executive and legislative branches in positions of increasing substantive and managerial responsibility. These roles included service as Counselor and Deputy Chief of Staff to the Department of the Interior's Assistant Secretary for Indian Affairs and as Counsel on the Senate Committee on Indian Affairs.

The NIGC plays an important and integral role in the long-term success of tribal self-governance and self-regulation of gaming under the Indian Gaming Regulatory Act. The commission has jurisdiction over 512 licensed gaming establishments operated by 246 Indian tribes in 29 states.

According to the Department of the Interior, in fiscal year 2017, tribal gross gaming revenues were approximately \$32.4 billion. The NIGC currently has roughly 114 full-time employees in seven regional offices with an annual budget of \$25 million in fiscal year 2019. The NIGC budget is funded through fees paid by tribal gaming operations.

Many of the powers of the commission spelled out under IGRA and subsequent regulations flow through the office of the Chairman. As such, a Senate-confirmed Chairman is essential to the ability of the NIGC to function effectively. The position has been vacant since May 15th. The committee's expeditious approval of Mr. Simermeyer's nomination would be helpful in ensuring prompt consideration by the full Senate.

Your steadfast focus on the needs of Indian Country and continued willingness to advance legislation that benefits our communities is greatly appreciated. Thank you for your consideration.

Sincerely,

BILL ANOATUBBY,  
*Governor, Chickasaw Nation*

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CACHIJ DEHE BAND OF WINTON INDIANS, COLUSA INDIAN COMMUNITY  
*July 19, 2019*

Hon. John Hoeven,  
Chairman;  
Hon. Tom Udall,  
Vice Chairman,  
Senate Committee on Indian Affairs,  
Washington, DC.

Chairman Hoeven and Vice Chairman Udall:

On behalf of the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community, I write to express support for the confirmation of E. Sequoyah Simermeyer as the next Chair of the National Indian Gaming Commission (NIGC). Over years

of public service, Mr. Simermeyer has demonstrated great integrity and has been a champion for tribal sovereignty. Swift confirmation of Mr. Simermeyer will enable the NIGC to seamlessly continue its mission to support responsible tribal gaming operations.

E. Sequoyah Simermeyer is a member of the state recognized Coharie Tribe in North Carolina, and has served on the NIGC as Associate Commissioner since 2015. Prior to joining the Commission, Mr. Simermeyer served both in the Senate Indian Affairs Committee, as well as in the Department of the Interior, giving him a comprehensive understanding of both the Legislative and Executive branches.

Mr. Simermeyer has consistently demonstrated himself to be a thoughtful defender of tribal sovereignty and proponent of responsible tribal gaming. He has made himself available to tribal leaders upon request, and understands the unique relationship between tribal governments and the U.S. government. We believe that he will be an effective leader for the NIGC.

We urge the Committee to work swiftly to confirm Mr. Simermeyer. Thank you for your consideration, and we look forward to continuing to work with you and the Committee on this and other important issues.

Sincerely,

HAZEL LONGMIRE,  
*Vice Chairwoman.*

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GILA RIVER INDIAN COMMUNITY  
*July 23, 2019*

Hon. John Hoeven,  
Chairman;  
Hon. Tom Udall,  
Vice Chairman,  
Senate Committee on Indian Affairs,  
Washington, DC.

RE: SUPPORT FOR E. SEQUOYAH SIMERMAYER TO SERVE AS CHAIR OF THE  
NATIONAL INDIAN GAMING COMMISSION

Chairman Hoeven and Vice Chairman Udall:

I write on behalf of the Gila River Indian Community (Community) in support of the nomination of E. Sequoyah Simermeyer to serve as Chair of the National Indian Gaming Commission (NIGC). Mr. Simermeyer is highly qualified to serve as Chair and the Community believes his leadership will further the NIGC's goals in regulating and supporting tribal government gaming through a fair and balanced approach.

Mr. Simermeyer is well respected and possesses significant credibility across Indian Country. This respect stems from the relationships he built and the work he conducted as both an Indian law and policy advocate and as a federal official. Since his appointment to the NIGC in 2015, Mr. Simermeyer has leveraged both his experience working for the National Congress of American Indians, the largest tribal organization in the country and advising the Assistant Secretary for Indian Affairs in the U.S. Department of the Interior to uphold the Indian Gaming Regulatory Act (IGRA) in an equitable and careful manner.

The Community supports Mr. Simermeyer because of his proven ability to respect the sovereignty of tribal governments while enforcing and upholding the intent of IGRA. He understands the regulatory and jurisdictional complexities of tribal government gaming. At the same time, he has served as a leader on important gaming issues by tackling head on difficult conversations with tribal and non-tribal officials and upholding the federal government's responsibility to meaningfully consult with tribal nations in order to fully promote tribal economic development, self-sufficiency, and strong tribal governments.

For these reasons, the Community urges the Committee on Indian Affairs to support and the full Senate to confirm Mr. Simermeyer to serve as Chair of the NIGC as expeditiously as possible.

Sincerely,

STEPHEN ROE LEWIS,  
*Governor.*

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YOCHA DEHE WINTUN NATION  
*July 16, 2019*

Hon. John Hoeven,



Chairman;  
 Hon. Tom Udall,  
 Vice Chairman,  
 Senate Committee on Indian Affairs,  
 Washington, DC.

RE: NOMINATION OF E. SEQUOYAH SIMERMAYER FOR CHAIRMAN OF THE  
 NATIONAL INDIAN GAMING COMMISSION

Chairman Hoeven and Vice Chairman Udall:

I write on behalf of the Yocha Dehe Wintun Nation, a federally recognized Indian tribe in Brooks, California, to express our support for the nomination of E. Sequoyah Simermeyer for Chairman of the National Indian Gaming Commission (NIGC).

The NIGC plays an important role in the implementation of federal law related to tribal gaming, particularly the Indian Gaming Regulatory Act, 25 USC section 2701, et seq., which was enacted to support and promote tribal economic development, self-sufficiency and strong tribal governments through the operation of gaming on Indian lands. The NIGC regulates tribal Class II and, in limited instances, Class III gaming operations throughout the United States.

As a tribe that operates a gaming facility in California, it is especially important to us that a nominee to the NIGC exhibit a working knowledge of federal Indian law and policy related to gaming and have significant experience engaging with Indian tribes.

We believe E. Sequoyah Simermeyer has the necessary experience, training, and expertise to excel as the NIGC's Chairman. His work as an Associate Commissioner on the NIGC has given him unique insight into the inner workings of the Commission and ability to immediately assume and excel in the responsibilities and role of the Chairman. Additionally, he has significant experience in federal Indian law and policy from his work as a staffer on the Senate Committee on Indian Affairs and in the Office of the Assistant Secretary—Indian Affairs at the Department of the Interior.

E. Sequoyah Simermeyer is truly an exceptional candidate, his past experiences have prepared him well for this role and his expertise will be invaluable. We fully support his nomination for Chairman of the NIGC.

*Wile bo,*

ANTHONY ROBERTS,  
*Tribal Chairman*

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SAN MANUEL BAND OF MISSION INDIANS  
*July 22, 2019*

Hon. John Hoeven,  
 Chairman;  
 Hon. Tom Udall,  
 Vice Chairman,  
 Senate Committee on Indian Affairs,  
 Washington, DC.

RE: SUPPORT FOR E. SEQUOYAH SIMERMAYER TO SERVE AS CHAIR OF THE  
 NATIONAL INDIAN GAMING COMMISSION

Chairman Hoeven and Vice Chairman Udall:

The San Manuel Band of Mission Indians is pleased to support the nomination of E. Sequoyah Simermeyer to serve as Chairman of the National Indian Gaming Commission (NIGC). We hope that you will consider our support and the reasons for it as you evaluate Mr. Simermeyer's nomination.

San Manuel has interacted with Mr. Simermeyer in different capacities over the past decade. As you know, he served as policy advisor at the National Congress of American Indians then spent time with the Senate Committee on Indian Affairs before going to work for the Assistant Secretary for Indian Affairs in the U.S. Department of the Interior. In 2015, he was appointed to the NIGC where he has served since. Mr. Simermeyer gained significant respect and credibility across Indian Country through his work with tribal governments as an advocate and as a federal official.

Because Mr. Simermeyer has spent time advising the largest tribal organization in the country and advising the highest ranking federal official responsible for Indian affairs, he has obtained a unique understanding and perspective on the federal government's relationship and responsibilities to tribal governments. During his tenure at the NIGC, Mr. Simermeyer has successfully upheld the letter and intent

of the Indian Gaming Regulatory Act (IGRA) while being a leader on important issues facing tribal government gaming. His in-depth background in Indian law and policy made him instrumental in his role as an NIGC Commissioner because of his ability to respect the sovereignty of tribal governments while understanding the regulatory and jurisdictional complexities of tribal government gaming.

When Mr. Simermeyer was appointed to the NIGC in 2015, he sought to strengthen the dialogue and relationships with all relevant gaming stakeholders in order to ensure regulatory compliance and the integrity of tribal government gaming. We have found Mr. Simermeyer to be diligent, deliberate, and fair. He does not shy away from having dialogue with tribal officials, even regarding tough topics, and understands the federal government's responsibility to consult with tribes. San Manuel believes that Mr. Simermeyer has contributed significantly to achieving goals of the NIGC and implementation of the IGRA. We look forward to continued progress at the NIGC under his leadership as Chairman.

Because of his experience, wealth of knowledge regarding tribal issues, and balanced approach to tribal government gaming, San Manuel believes Mr. Simermeyer is uniquely qualified to serve as Chairman of the NIGC. We urge you to support his nomination. We also hope that the Committee and Senate will confirm Mr. Simermeyer's nomination as quickly as possible in order to ensure the position is not vacant for very long.

Sincerely,

LYNN R. VALBUENA,  
*Chairwoman*

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PECHANGA INDIAN RESERVATION TEMECULA BAND OF LUISEÑO MISSION  
INDIANS  
*Temecula, CA, July 18, 2019*

Hon. John Hoeven,  
Chairman;  
Hon. Tom Udall,  
Vice Chairman,  
Senate Committee on Indian Affairs,  
Washington, DC.

RE: NOMINATION OF E. SEQUOYAH SIMERMAYER FOR CHAIRMAN OF THE  
NATIONAL INDIAN GAMING COMMISSION

Dear Chairman Hoeven and Vice Chairman Udall:

I write on behalf of the Pechanga Band of Luiseño Indians, a federally recognized Indian tribe in Temecula, California, to express our support for the nomination of E. Sequoyah Simermeyer for Chairman of the National Indian Gaming Commission (NIGC).

The NIGC plays an important role in the implementation of federal law related to tribal gaming, particularly the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.*, which was enacted to support and promote tribal economic development, self-sufficiency and strong tribal governments through the operation of gaming on Indian lands.

We believe Mr. Simermeyer has the necessary experience, training, and expertise to serve as the NIGC's Chairman. His work as Associate Commissioner with the NIGC has given him unique insight into the inner workings of the Commission and ability to immediately assume the responsibilities and role of the Chairman. Additionally, he has significant experience in federal Indian law and policy from his work as a staffer on the Senate Committee on Indian Affairs and in the Office of the Assistant Secretary—Indian Affairs at the Department of the Interior.

Sincerely,

MARK MACARRO,  
*Tribal Chairman*

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PASCUA YAQUI TRIBE  
*July 21, 2019*

Hon. John Hoeven,  
Chairman;  
Hon. Tom Udall,  
Vice Chairman,  
Senate Committee on Indian Affairs,  
Washington, DC.

RE: NOMINATION OF E. SEQUOYAH SIMERMAYER FOR CHAIRMAN OF THE  
NATIONAL INDIAN GAMING COMMISSION

Dear Senator Hoeven and Senator Udall:

As Chairman of the Pascua Yaqui Tribe in Arizona, it is my privilege to extend our support for the nomination of Sequoyah Simermeyer's for the position of Chair for the National Indian Gaming Commission (NIGC). His longstanding work with the Senate Committee on Indian Affairs (SCIA), Department of the Interior, and his leadership experience as an NIGC Associate Commissioner makes his nomination a natural progression for his advocacy and work to continue benefitting Indian Country.

Mr. Simermeyer's support of tribal self-determination and his advocacy for the Nation-to-Nation relationship between the United States Government and Native Americans is an essential component to tribal economic development. Mr. Simermeyer brings an in-depth understanding and practical knowledge of Indian gaming regulation issues; we look forward to working with him in his role as NIGC Chair.

Thank you for your service on SCIA and for your attention to this matter.

Sincerely,

ROBERT VALENCIA,  
*Chairman*

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
TO E. SEQUOYAH SIMERMAYER

**Federal Regulator's Role In Achieving Policy Objectives**

*Question 1.* Mr. Simermeyer, you state that your professional experience has demonstrated your ability to understand the federal regulator's role in achieving policy objectives relevant to gaming in Indian Country. However, there is very little in your Committee questionnaire responses, public statements, or writings while at NIGC that shed any light on your policy objectives. If confirmed, what are your policy objectives moving forward for the agency in an ever more connected world?

*Answer.* As enacted, IGRA provides that the NIGC's efforts focus on the regulation of tribal gaming and the protection of tribal assets derived from gaming operations as a means to promote IGRA's policy objectives. Wherever gaming occurs on Indian land, it is the NIGC's role to regulate operations and protect tribal assets even as the industry may become more connected.

IGRA's policy objectives include the operation of gaming by tribes as a means to promote tribal economic development, self-sufficiency, and strong tribal governments. To that end, if confirmed, I will emphasize opportunities to promote integrity, preparedness, accountability, and outreach in actions the NIGC takes that further develops NIGC policy where allowed by IGRA. As a matter of practice, the NIGC has not sought to insert itself in how tribes decide to pursue economic success in a more connected industry. IGRA does provide a role for the NIGC to ensure that as industry evolves a strong regulatory framework remains in place.

In an ever more connected world, the NIGC has an opportunity to focus on both the Commission's own and tribal regulatory bodies' preparedness. The NIGC must anticipate the industry's direction by maintaining relationships with fellow regulators and an awareness of innovations that cause industry to be more connected, promote best practices in the use of and investment in technology to support sound regulation, and provide timely, clear and focused compliance efforts. An emphasis on preparedness includes the Commission's planning for the use of technology to monitor the industry and protect sensitive data as well as transparent deliberation of the Commission's standards for gaming operations' use of technology in light of an ever more connected world.

**Missing and Murdered Indigenous Women**

*Question 2.* In September 2017, the Commission responded to a letter from some members of this committee to discuss the efforts of NIGC in engaging and exploring all opportunities to address the crisis of missing and murdered Native American Women, and domestic violence. If confirmed, what are your specific policy goals and plans to combat this crisis?

*Answer.* IGRA envisions that the NIGC will ensure standards are in place for the public health and safety of tribal gaming operations. If confirmed, I would seek out training and partnership opportunities to encourage tribal policy makers to assess local level risk in this area, ensure NIGC criminal referrals are made in a timely and effective manner, and explore opportunities in the tribal licensing process to

help prevent future crimes. Through outreach to the public and the tribal gaming community, tribal gaming can leverage its strong regulatory structure and the leading corporate responsibility practices of the industry's operations to encourage awareness about this important issue.

*Question 2a.* If confirmed, how will the Commission assist tribal gaming facilities and tribes in taking proactive steps to combat and address human trafficking and domestic violence?

Answer. The NIGC has a statutory obligation to refer violations of federal, state, and tribal statutes to the appropriate law enforcement agency. We understand the importance and value of educating our employees on how to recognize human trafficking not only so that they are able to determine when a referral needs to be made, but also if and when there is a threat to the public health and safety. Moreover, we also understand the importance of educating tribal regulators and gaming operators across the country to be able to recognize the signs of trafficking so that it can be prevented at all levels of the gaming operation. Through the leadership and efforts of Vice-Chair Kathryn Isom-Clause, the NIGC has been fully engaged in raising awareness amongst NIGC staff and the tribal gaming industry about the signs of human trafficking. If confirmed as Chairman of the NIGC, I would continue and build upon the work in which the Commission is already engaged.

#### **Human Trafficking And Domestic Violence**

*Question 3.* NIGC has the statutory obligation to refer criminal matters to law enforcement agencies, and according to the 2017 letter, "will implement intra-agency training to educate NIGC staff on the signs of human trafficking and domestic violence." As an Associate Commissioner, can you please provide an update on that training?

Answer. The NIGC has provided human trafficking training in all of our regional training conferences for 2017 and 2018. Additionally, in cooperation with other agencies and experts, the NIGC has held the following training to educate on the signs of human trafficking:

- February 13, 2018—National Slavery and Human Trafficking Guest Speaker spoke to NIGC staff at NIGC headquarters in Washington, D.C. and was live-streamed to all other NIGC Regions;
- July 31, 2018—Human Trafficking Training at NIGC headquarters in Washington, D.C. and live-streamed to all other NIGC Regions; and
- May 29, 2019—Human Trafficking Webinar (FBI) at NIGC headquarters in Washington, D.C. and was live-streamed to all other NIGC Regions and Tribal operators and regulators.

In conjunction with the National Center for Missing and Exploited Children, the NIGC has scheduled another webinar for the first week of September 2019 that will educate NIGC staff and tribal gaming regulators and operators on human trafficking and domestic violence.

If confirmed, I will take seriously the NIGC's commitment to educating NIGC staff and industry stakeholders on how to recognize, and respond to human trafficking and domestic violence.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
E. SEQUOYAH SIMERMAYER

#### **Financial Disclosures**

*Question 1.* During the hearing, you testified that your wife is a member of the Osage Nation. a. Does your spouse receive any royalties or mineral proceeds as a headright owner? If so, please update your Committee questionnaire to reflect these assets.

Answer. No.

*Question 1a.* Are your children also enrolled as members of the Osage Nation?

Answer. My daughters are enrolled members of the Osage Nation. My son is not yet enrolled, but is eligible for enrollment.

*Question 1b.* Are your children currently headright owners, or are they eligible to become headright owners or receive headright royalties?

Answer. No.

#### **Ethics**

*Question 2.* The Osage Nation operates several gaming facilities that are regulated under IGRA, and are thus subject to the National Indian Gaming Commis-

sion's regulatory purview. As such, if confirmed as Chair of the Commission, a potential for a conflict of interest exists if you were asked to weigh in on any regulatory or adjudicative matters regarding gaming facilities owned by the Osage Nation. However, your ethics agreement does not include any discussion or consideration of this issue. As an Associate Commissioner, are you currently recused from involvement in regulatory or adjudicative matters related to Osage Nation's gaming facilities?

Answer. No. There have been no Osage Nation matters before the National Indian Gaming Commission (NIGC). If a matter arose, I would continue to seek guidance from federal ethics officials.

*Question 2a.* As part of the ethics agreement associated with your nomination to serve as Chair of the Commission, did you discuss this potential conflict of interest with the Office of Government Ethics or your designated agency ethics official?

Answer. Yes. I requested U.S. Department of the Interior (Interior) ethics officials to make an ethics determination on whether my wife and children's membership in the Osage Nation would create a potential conflict of interest if I were confirmed as the Chairman of the NIGC.

*Question 2a(i).* If so, please provide the rationale used to determine whether or not your wife's tribal enrollment poses a conflict of interest for your nomination as Chair of the Commission.

Answer. I informed Interior ethics officials that my wife and children are members of the Osage Nation, but do not receive a per capita distribution from the tribe. Neither my wife, nor my wife's family members, participate in Indian gaming and do not have any personal financial interests in the Osage Nation's gaming industry or gaming activities.

It is my understanding that Interior ethics officials determined that, because my wife and children did not have a personal financial interest in the Osage Nation, the family's mere membership in the tribe did not pose a financial conflict of interest, per 18 U.S.C. § 208. In addition, it is my understanding that Interior ethics officials determined that I did not have a "covered relationship" with the Osage Nation, as defined by 5 C.F.R. § 2635.502(b)(1), which would trigger certain recusal obligations under the Standards of Ethical Conduct for Employees of the Executive Branch impartiality regulations. I intend to seek ethics guidance if I determine that the circumstances would cause a reasonable person with knowledge of the relevant facts to question my impartiality, per § 2635.502(a)(2). Finally, it is my understanding that Interior ethics officials determined that Interior's supplemental ethics regulations do not otherwise address tribal enrollment as creating the potential for a conflict of interest.

It is my understanding that Interior ethics officials consulted with the Office of Government Ethics and the NIGC's Office of General Counsel when making this determination.

*Question 2a(ii).* If not, please confirm that you will seek Office of Government Ethics or your designated agency ethics official's opinion on whether your wife's enrollment as a member of the Osage Nation will require you to recuse yourself from any regulatory and adjudicative matters regarding Osage Nation gaming facilities for the entirety of your term as Chair of the Commission.

Answer. If a matter arose, I would continue to seek guidance from federal ethics officials.

### **Commission Composition**

*Question 3.* The Indian Gaming Regulatory Act (IGRA) states, "Not more than two members of the Commission shall be of the same political party" (25 U.S.C. 2704(b)(3)). For purposes of IGRA Section 2704(b)(3), please state your party affiliation.

Answer. I am a registered Republican.

*Question 4.* The IGRA also states, "At least two members of the Commission shall be enrolled members of any Indian tribe" (25 U.S.C. 2704(b)(3)). The Act defines "Indian tribe" as "any Indian tribe, band, nation, or other organized group or community of Indians which is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and is recognized as possessing powers of self-government" (25 U.S.C. 2703(5)). To your knowledge, has the Commission sought guidance from its Office of General Counsel, the Department of the Interior, or any other federal entity regarding the interpretation of this provision of the law? Specifically, whether the definition of "Indian tribe" under the Act is limited to federally recognized Indian tribes or is inclusive of state recognized tribes. If so, please provide an approximate date

on which the Commission issued this request and a summary of the guidance provided by the Department on the issue.

Answer. According to a summary by the NIGC General Counsel, the NIGC, Interior, and the United States Department of Justice (DOJ) have taken the position that “Indian tribe” as used in IGRA, is limited to federally recognized Indian tribes. Most recently, this question was addressed when the Franks Landing Indian Community submitted a gaming ordinance to the NIGC for the Chairman’s approval. The Chairman and the NIGC Office of General Counsel were aware that the Community’s status as an “Indian tribe” pursuant to IGRA was at issue when they submitted the ordinance. Given the mandate of NIGC regulations, which direct that the NIGC defer to the Interior Secretary for purposes of determining whether an entity qualifies as an Indian tribe under IGRA, on December 11, 2014, the NIGC referred the matter to the Secretary of the Interior for her determination.

On March 6, 2015, the NIGC Chairman received the Assistant Secretary—Indian Affairs’ and the Office of the Solicitor’s opinion and determination that “Indian Tribe” as used in IGRA means a federally recognized Tribe, and that Franks Landing did not qualify as such. For future questions, the Assistant Secretary recommended the NIGC consult the list of federally recognized tribes published annually by Interior. Accordingly, the Chairman sent a letter to Franks Landing refusing to review the ordinance on the grounds that “Indian Tribe” as defined in IGRA and NIGC regulations, was limited to federally recognized tribes. The Franks Landing Indian Community sued the NIGC and Interior over the Chair’s refusal to accept the ordinance and the determination that the Community is not an “Indian tribe” as defined in IGRA. DOJ defended both decisions, arguing, in relevant part, that IGRA’s definition of “Indian tribe” requires federal recognition. Both the United States District Court for the Western District of Washington and the 9th Circuit Court of Appeals ruled in the United States’ favor in the litigation.

#### **Tribal-State Compacts**

*Question 5.* At the hearing, I asked why you did not sign two final decisions issued during your tenure as an Associate Commissioner. You stated that you filed a notation document outlining your rationale for voting against both decisions to issue an opinion on the matter. You further stated that the Commission’s full notation document is a part of the administrative record available for the case. You then committed that you would confer with the Commission’s Office of General Counsel regarding scope of access to this file and, if able, you would provide a copy of the document for the record. Please provide a copy of the notation document(s) reflecting your rationale for voting against the decisions. If, upon advice from the Commission’s Office of General Counsel, you are unable to provide said document(s), please provide a summary of the rationale used by the Office to determine that the document(s) cannot be shared.

Answer. Please see following documents:

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**NATIONAL INDIAN GAMING COMMISSION**


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**ACTION:**

Issuance of "Amendment to Final Decision and Order" affirming Commission's December 31, 2007 conclusion that land held in trust on behalf of the Ponca Tribe of Nebraska known as the Carter Lake parcel is restored lands for a restored tribe.

- I/We approve the decision
- I/We disapprove the decision
- I/We want my dissent shown on the outgoing document
- I/We do not want my dissent shown on the outgoing document
- I/We am/are not participating
- I/We desire to withdraw my vote until \_\_\_\_\_
- I/We desire to have this item placed on the agenda for a formal meeting of the Commission
- Noted.

**Comments:**

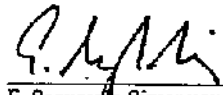
I respectfully disagree with my colleagues' decision to affirm and amend an earlier Commission's December 31, 2007, decision.<sup>1</sup> Specifically, I cannot join my colleagues in finding that the Ponca Tribe of Nebraska ("Tribe") repudiated its agreement with the State of Iowa ("State").<sup>2</sup>

<sup>1</sup> The Court's remand instructs the Commission to reconsider the gaming eligibility of the Tribe's Carter Lake parcel under the Indian Gaming Regulatory Act's restored lands exception. Included in the reconsideration, the Court instructed the Commission to consider matters related to the agreement between Iowa and the Tribe's outside counsel, concerning the process by which the Tribe would initiate gaming on the parcel. *Nebraska v. U.S. Dep't of Interior*, 625 F.3d at 508 (8<sup>th</sup> Cir. 2010); Nebraska, No. 1-08-cv-6-CRW-CFB.

<sup>2</sup> In conformity with past Commission decisions, my views are noted in my notation document. It is part of the administrative record for the Commission decision and reflects considerations that led to my vote.

The Tribe does not analyze the standard used by the Commission's decision to find that the circumstances surrounding the Tribe's actions were reasonable and thus constituted repudiation by the Tribe of the agreement.<sup>3</sup> The Commission could allow for an additional opportunity for the parties to explain how circumstances after the 2002 notice to take the land into trust supports or does not support a conclusion that the Tribe repudiated its agreement with the State.

The Commission's decision finds that the Tribe repudiated its agreement based on actions that took place after the Tribe executed a deed conveying the Carter Lake parcel to the United States and the federal government completed the trust acquisition on February 2003. The Commission's decision relies on Tribal resolutions, letters to the NIGC, the lack of a tribunal's reliance on the agreement, and the State's failure to bring suit against the Department of the Interior.<sup>4</sup> In contrast, the State asserts that the Tribe's resolutions only demonstrate that the 2006 Tribal Council was not aware of what a former Tribal Council knew with regard to the public notice.<sup>5</sup> In addition, the State asserts in its consolidated briefing that it is not asking the NIGC to enforce the agreement because "[b]oth parties gave full performance under the contract by late 2002."<sup>6</sup> Finally, the State notes that it would not be possible for the State to compel any continuing aspect of performance by the Tribe after the land was taken into trust.<sup>7</sup>

  
 E. Sequoyia Simermeyer  
 Associate Commissioner

11/13/17  
 Date

<sup>3</sup> The Tribe's analysis of the *Pueblo of Santo Domingo v. the United States* responds to the State's assertions that an agreement existed. See Tribe's Response Brief at 10-12 (August 20, 2012) (discussing the limits of an attorney's authority to bind a tribal government and distinguishing settlement agreements from stipulations). On the topic of repudiation, the Commission's decision states that the Tribe did not, nor was it asked, to brief the argument around the theory of institutional ratification which may have included whether the Tribe's actions constituted a timely repudiation. See Commission decision at page 23.

<sup>4</sup> See Commission decision at page 29.

<sup>5</sup> See Consolidated Brief of the States and City in response to the NIGC's May 21, 2012 Briefing Order at 6-7 (July 20, 2012).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*



NOTATION NO. 04-19NATIONAL INDIAN GAMING COMMISSION**ACTION:**

On March 26, 2019, the U.S. District Court for the Southern District of Iowa remanded our November 13, 2017 Decision Amendment that confirmed our approval of the Ponca Tribe of Nebraska's site-specific gaming ordinance. The court directed us to reconsider our restored lands analysis, including the 2002 Agreement and the Corrected Notice as factual circumstances of the trust acquisition. We have done so, and that decision is before us.

I/We approve the decision

I/We disapprove the decision

I/We want my dissent shown on the outgoing document

I/We do not want my dissent shown on the outgoing document

I/We am/are not participating

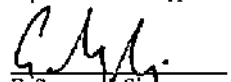
I/We desire to withhold my vote until \_\_\_\_\_

I/We desire to have this item placed on the agenda for a formal meeting of the Commission

Noted.

**Comments:** My basis for not joining the November 13, 2017, Amended Final Order shapes my view of the Commission's analysis in this decision. This Commission decision includes conclusions from the Amended Final Order's estoppel analysis as relevant factual circumstances. Specifically, this decision relies on the Amended Final Order's determination that the Ponca Tribe acquiesced to the 2002 Agreement and relies on a subsequent repudiation as a basis for this decision's analysis.

I respectfully do not join this Commission decision because of my position that the Commission should ensure a more fully developed record to support a conclusion that the Tribe repudiated the 2002 Agreement.

  
 E. Sequoyah Simermeyer  
 Commissioner

4/30/19  
 Date

*Question 6.* One of the NIGC Chair's statutory duties is to approve class III tribal gaming ordinances or resolutions that conform to Tribal-State compacts. Growing evidence suggests some States are slow-walking negotiations over Tribal-State compacts, in part due to the 10th Circuit opinion in *Pojoaque v. New Mexico*. In light of these developments, if confirmed, how would you fully exercise your duties under IGRA to assist in promoting tribal economic development, self-sufficiency, and strong tribal governments?

Answer. If confirmed, I will take seriously and fully exercise my duty to further IGRA's purposes. The Act imposes a number of duties on the Chairman that help fulfill this obligation, including not only ordinance approvals, but also determining the suitability of proposed management contractors, ensuring tribes maintain the sole proprietary interest in their gaming operations, and ensuring that net gaming revenues are used to benefit the Tribe as a whole, rather than select individuals. I will continue to fulfill these important obligations.

*Question 7.* Under your leadership, how would the NIGC work with Tribes to ensure that States negotiate in good faith to allow sports betting under existing gaming compacts, especially with States that have already authorized sports betting at commercial gaming facilities?

*Answer.* IGRA requires a state to negotiate in good faith when it receives a request from a tribe to enter into a compact and that such compact may include gaming activity permitted in that state for any purpose by any person, organization or entity. As enacted, IGRA provides that the Secretary of the Interior, not the NIGC Chairman, is tasked by IGRA to review and approve Class III gaming compacts. In the event the Secretary pursues Class III gaming procedures, and if confirmed, I will continue to make NIGC available to serve any necessary and appropriate regulatory role.

