

# United States Senate

WASHINGTON, DC 20510-4305

June 28, 2007

The Honorable Dirk Kempthorne  
Secretary of the Interior  
Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Dear Secretary Kempthorne:

Many Texans, including myself, have been closely monitoring the recent actions by the Department of Interior's Bureau of Indian Affairs (BIA) to move forward with the Kickapoo Traditional Tribe of Texas' application to operate Class III gaming in our State, under the Indian Gaming Regulatory Act (IRGA). In particular, I have reviewed the May 24, 2007 correspondence from the acting Principal Deputy Assistant Secretary—Indian Affairs which concludes that the Department will soon approve casino-style games in Texas operated by the Kickapoo Tribe. As you may know, the issue of tribal gaming has been a topic among State lawmakers, albeit for Tribes ineligible under the provisions of IGRA.

It is disconcerting that the Class III Gaming Procedures developed by BIA significantly minimize a State's ability to prevent a Tribe's application from moving forward, even if it is contrary to State law. Many times over the years, Texans have spoken on whether to allow casino-style gaming. The answer has always been clear—casinos are not wanted in Texas. Accordingly, I am concerned with BIA's recent assessment regarding this matter.

In particular, the procedures established under Title 25, Part 291, Code of Federal Regulations, seem to afford the BIA the authority to approve such applications with only a short comment period and notification requirement for the affected State—without providing an appeals process through any Courts for relief. It would be beneficial to have your agency explain the administration of these regulations, and how a State's ability to enforce its own gaming laws is protected under the current scheme of the Secretarial Procedures.

In addition, I propose amending the Secretarial Procedures in Part 291 in order to give States a voice in the approval process similar to that given Tribes in § 291.13. At your convenience, I would like to discuss two alternative amendments to the Secretarial Procedures:

- (1) Provide the States a 90 day approval (or disapproval) period for the final gaming procedures issued by you, just as you gave the Tribes that authority in § 291.13. That would preserve the legislative intent recognized in the *Seminole Tribe v.*

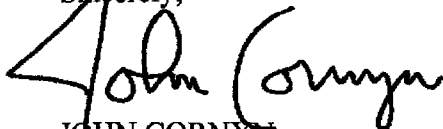
*Florida*, 517 U.S. 44 (1996) opinion that IGRA “extends to the States a power withheld from them by the Constitution.” *supra* at 58.

- (2) Allow the States’ Attorneys General the right to define the scope of gaming permitted in their States and to make that interpretation of State law your final decision under § 291.8, with right of appeal by the Tribe to the local Federal District Court under the Administrative Procedures Act, if the Tribe is dissatisfied with the legal conclusions of the State’s Attorney General.
- (3) Or, you could appoint a mediator similar to the procedure in § 291.10, and allow both the States and the Tribes to submit proposals on scope of gaming and provide in your Secretarial Procedures for either side to appeal an adverse decision by the mediator to the local Federal District Court under the Administrative Procedures Act. That would be closest to the original IGRA remedy addressed in the *Seminole Tribe* opinion.

I respectfully ask that you place the § 291(b)(2) informal conference with the Kickapoo Tribe on hold until you can respond to this request.

Thank you for attention to this important issue. I look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "John Cornyn". The signature is written in a cursive, flowing style with a large initial "J".

JOHN CORNYN  
United States Senator