GAMING LAW REVIEW AND ECONOMICS
Volume 14, Number 6, 2010

DOI: 10.1089/glre.2010.14610

The Obama Administration's "Path Forward on Indian Gaming Policy" and What it Signals for "Off-Reservation" Gaming

Kathryn R.L. Rand, and Steven Andrew Light

EARLIER THIS SUMMER, the U.S. Department of the Interior released a June 18, 2010 memorandum from Interior Secretary Ken Salazar to Assistant Secretary for Indian Affairs Larry Echo Hawk detailing the Department's approach to Indian gaming.[1] Though the Secretary's memorandum addressed decision making on pending applications for Indian gaming on newly acquired trust lands, it revealed much about the Obama administration's approach to tribal gaming generally. Indeed, the accompanying press release touted the memorandum as the Interior Department's "Path Forward on Indian Gaming Policy."

In this essay, we provide some background on the Obama administration's Indian gaming policy, summarize the Salazar memorandum, and offer our take on what the memorandum signals for the future of Indian gaming—and particularly, for "off-reservation" gaming.

BACKGROUND

A formal announcement of the Obama administration's policy on Indian gaming has been long awaited. The outgoing Bush administration had, by most accounts, a spotty record at best on tribal gaming issues. Then-Assistant Secretary Carl Artman's January 2008 memorandum establishing the "commutable distance" standard for off-reservation land-into-trust applications,[2] continued efforts to establish

Kathryn R.L. Rand is dean and Floyd B. Sperry professor at the University of North Dakota School of Law. Steven Andrew Light is associate provost and professor of political science and public administration at the University of North Dakota. Together, they are co-directors of the Institute for the Study of Tribal Gaming Law and Policy at the University of North Dakota. Rand and Light also write the *Indian Gaming Now* blog, at <indiangaming-now.com>. They can be contacted through the *Indian Gaming Now* Web site. Special thanks to Carissa Green at the University of North Dakota and the external reviewers of this manuscript.

[1] Memorandum from Ken Salazar, Secretary, U.S. Department of the Interior, to Assistant Secretary–Indian Affairs, Decisions on Indian Gaming Applications (June 18, 2010) [hereinafter Salazar memorandum]. The Interior Department's June 28, 2010 press release, Interior Details Path Forward on Indian Gaming Policy, along with an embedded link to a pdf of the Salazar memorandum, is available at <http://www.doi.gov/news/pressreleases/Interior-Details-Path-Forward-on-Indian-Gaming-Policy.cfm> (last visited July 5, 2010).

[2] Memorandum from Carl Artman, Assistant Secretary—Indian Affairs, U.S. Department of the Interior, to Bureau of Indian Affairs Regional Directors and to the Office of Indian Gaming, Guidance on Taking Off-reservation Land into Trust for Gaming Purposes (Jan. 3, 2008) [hereinafter Artman memorandum], *available at* <http://www.bia.gov/idc/groups/public/documents/text/idc-001896.pdf> (last visited July 7, 2010). The Artman memorandum established substantive "guidelines"—if not a dispositive standard—for gaming on newly acquired lands. The memorandum called for greater scrutiny of the anticipated benefits of the land acquisition, created a threshold of "commutable distance from the reservation," and articulated a "general principle" that "the farther the [gaming facility] is from the reservation, the greater the potential for significant negative economic consequences on reservation life." *Id.* at 3. The memorandum's "commutable distance" threshold was widely criticized not only for its subjectivity, ill-fit with IGRA's policy goals, and detrimental economic impacts on tribes, but for its questionable legality under tenets of administrative law. Quite simply, federal administrative agencies can only enact legislative or substantive rules through the procedures established by the Administrative Procedure Act, which mandates opportunities for notice and comment by affected parties. *See* 5 U.S.C. § 553(b). If the "guidance" memo had a substantive impact, it was tantamount to a rule. While the memo was rarely invoked, at least after its introduction, its practical effect seemed highly significant. For a discussion and critique of the Artman memorandum, see Kathryn R.L. Rand, Alan P. Meister, and Steven Andrew Light, *Questionable Federal "Guidance" on Off-Reservation Indian Gaming: Legal and Economic Issues*, 12 GAMING L. REV. 194 (2008).

"bright line" regulations for Class II machines,[3] and a chronically understaffed National Indian Gaming Commission (NIGC) marked what many saw as the Bush administration's failure to meaningfully support both Indian gaming and tribal economic development.

As the 2008 presidential election promised across-the-board "change" of one kind or another, the political and policy environment for Indian gaming was no exception. Republican presidential nominee and U.S. Senator John McCain (Ariz.), one of the original architects of the Indian Gaming Regulatory Act of 1988 (IGRA)[4] and ranking member of the Senate Committee on Indian Affairs, for several years had expressed concern that due to its enormous growth and profitability, the tribal gaming industry ran significant risks of being underregulated and subject to organized crime or corruption. McCain repeatedly identified Indian gaming's massive success, measured primarily through casino proliferation, exponential revenue growth, and attempts by tribes to establish gaming facilities on newly acquired lands as indicative of outcomes that Congress never in its "wildest dreams" had anticipated.[5] In a 2006 speech before the Oklahoma Petroleum Club, McCain labeled Indian gaming one of the nation's top three "out-of-control" issues.[6]

During his limited time in the U.S. Senate, Democratic presidential nominee Barack Obama (Ill.) had established no formal record on Indian gaming.[7] However, while on the campaign trail, Obama actively courted the American Indian vote and espoused the view that tribal casinos were important to tribal economic development.[8] More important to observers was his signal that an Obama administration would take seriously tribal sovereignty and the federal government's trust responsibility to tribes, seek to address other policy issues of importance to Indian Country, such as health services, education, housing, treaty rights, law enforcement and the drug trade, and engage in meaningful government-to-government relations.[9]

When President Obama took office, many expected or at least hoped for immediate and dramatic reversals on tribal gaming policy, especially concerning gaming on newly acquired lands. But after some 18 months of "radio silence" on tribal gaming from the Obama administration, most notably from Secretary of the Interior Ken Salazar, much initial optimism for significant shifts in Indian gaming policy had waned. The U.S. Supreme Court's 2009 decision in *Carcieri v. Salazar*,[10] which appeared to hold that the Interior Secretary lacked the authority to take land into trust for any tribe recognized after 1934, further clouded matters. Together,

---

[3] *See, e.g.*, Heidi McNeil Staudenmaier, *Proposed NIGC Class II Game Classification Standards: End of Class II Gaming Debate . . . or Just Further Fuel for Fire?*, 10 GAMING L. REV. 527 (2006).

[4] 25 U.S.C. §§ 2701-2721.

[5] Said McCain in 2005, "[N]ever in our wildest dreams . . . did [Congress] envision that Indian gaming would become the $19 billion-a-year enterprise that it is today." Hearing before the U.S. Senate Committee on Indian Affairs on S. 113, 109th Cong., 2nd Sess. (Apr. 5, 2005), at 1. Senator McCain continued, "It is long overdue time to review the impact and implications of the Indian Gaming Regulatory Act from a broad variety of aspects, not just that of taking land into trust for gambling purposes, but whether there is sufficient oversight of Indian gaming and whether there needs to be better enforcement of existing law." *Id.*

[6] The other two "out-of-control" issues were federal spending and illegal immigration. *McCain Calls Indian Gaming, Immigration "Out of Control,"* News, U.S. Senator Tom Coburn (R-Okla.), Sept. 9, 2006, <http://coburn.senate.gov/public/index.cfm/news> (last visited July 7, 2010). "It's probably too late, but I do believe that Indian gaming in America, not just in Oklahoma, needs much greater oversight," McCain said. "What you try to work is to increase the budget and size and capability of the Indian gaming regulatory commission and also prohibit further abuses, such as taking land into trust without the local input of governments directly affected by Indian gaming operations. We've been trying very hard and I can tell you that we are not successful." *Id.*

[7] As a state senator in Illinois, however, Obama expressed concerns about the "moral and social cost" of gaming writ large (e.g., riverboat casinos or other commercial operations that were legal in Illinois—as Indian gaming was not) on low-income populations and communities. Teddye Snell, *Election 2008: Indian Gaming and the Candidates*, TAHLEQUAH (OK) DAILY PRESS, Jan. 28, 2008, *available at* <http://tahlequahdailypress.com/features/x519338760/Election-2008-Indian-gaming-and-the-candidates?keyword=topstory> (last visited July 3, 2010).

[8] *See Jeff Mason, Obama Becomes Member of American Indian Tribe, Eyes Changes*, REUTERS, May 7, 2008, available at <http://www.reuters.com/article/idUSN19168547> (last visited July 3, 2010) (recounting honorary membership granted to Obama by the Crow Nation of Montana, along with a given name that meant "one who helps all people of this land").

[9] *See, e.g.*, Barack Obama's Principles for Stronger Tribal Communities, First Americans for Obama, at <http://my.barackobama.com/page/content/firstamissues> (last visited July 3, 2010) ("Perhaps more than anyone else, the Native American community faces huge challenges that have been ignored by Washington for too long. It is time to empower Native Americans in the development of the national policy agenda.") (quoting Barack Obama).

[10] *Carcieri v. Salazar*, 555 U.S. ___, 129 S. Ct. 1058 (2009). For decades, the Interior Secretary had relied on the statutory grant of authority in 25 U.S.C. § 465 to take land into trust for the benefit of "Indians," defined as "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction." 25 U.S.C. § 479. The *Carcieri* case, which arose

the Artman memorandum and *Carcieri* decision seemed to paralyze the Obama administration, or perhaps to provide it with sufficient political cover allowing it to avoid both developing a comprehensive tribal gaming policy and addressing issues raised by pending off-reservation gaming applications. Secretary Salazar's memorandum gives reason for renewed optimism on both counts.

THE SALAZAR MEMORANDUM

The Salazar memorandum addresses gaming on newly acquired lands, and begins with a recitation of the authority of the Interior Department to take land into trust for the purpose of conducting gaming in accord with IGRA and the 1934 Indian Reorganization Act.[11] The memorandum correctly, yet understatedly, notes that "the issue of Indian gaming engenders strong feelings among many parties." In particular, "decisions whether to take off-reservation land-into-trust [sic] for gaming purposes, or other gaming determinations, can raise difficult and contentious issues."[12]

The memorandum then recites a few basic facts about the tribal gaming industry: "Of the 564 federally recognized tribes, less than half, or 238 tribes, operate gaming facilities," with 232 of those tribes operating Class III casinos. The memorandum also emphasizes the public policy underlying IGRA, as well as Indian gaming itself:

> There is no question that gaming has provided important economic opportunities for some tribes. Indeed, Congress' declared policy under IGRA was to provide a basis for gaming by tribes "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." Revenues from tribal gaming are used for specific purposes, including funding tribal government operations and programs, and providing for the general welfare of the Indian tribe and its members. The proceeds that tribes realize from gaming allow many of them to provide greatly needed services such as health care, education and housing, which increases tribal self-reliance.[13]

The next section of the Salazar memorandum speaks to Indian gaming on newly acquired lands. A bit of background is helpful here to provide context for the memorandum's content.

IGRA generally prohibits both Class II and Class III gaming on Indian lands placed in trust after October 17, 1988, IGRA's date of passage.[14] Such lands are commonly referred to as "newly acquired" or "after acquired" lands. Section 2719 sets out a handful of exceptions to IGRA's general prohibition against gaming on newly acquired lands, including lands within or contiguous to a tribe's existing reservation;[15] for tribes without reservations, lands within the tribe's last recognized reservation;[16] land claim settlements;[17] initial reservations for newly acknowledged tribes;[18] and restored lands for restored tribes.[19]

The most controversial exception is what we call the "best interests" exception (also called the "two-part determination"), which allows gaming on newly acquired "off-reservation" lands. Under this exception, a tribe may conduct gaming on newly acquired lands, regardless of their proximity to the tribe's existing reservation or historical territory, if the Interior Secretary determines that gaming on the lands is "in the best interest of the tribe and its members, and would not be detrimental to the surrounding community."[20] In making this determination, the Secretary

---

out of state challenges to the Secretary's decision to take land into trust for the Narragansett Indian Tribe in Rhode Island, examined the statute's definition of "Indians." The Supreme Court held that the phrase "now under Federal jurisdiction" refers to a tribe that was under federal jurisdiction at the time of the statute's enactment in 1934. Because the Narragansetts were not under federal jurisdiction in 1934, the Secretary did not have power to take land into trust for the Tribe's benefit. The Court's decision cast significant doubt on the Secretary's authority to take land into trust for any tribe that was federally recognized after 1934. On the heels of the Court's decision, a legislative "fix" was introduced in the U.S. Senate. See Gail Courey Toensing, *Dorgan's* Carcieri *Fix Introduced to Senate*, INDIAN COUNTRY TODAY, Sept. 25, 2009, *available at* <http://www.indiancountrytoday.com/national/61472297.html> (last visited July 6, 2010). Yet nearly a year later, no further action has been taken.

[11] The Indian Reorganization Act authorizes the Secretary of the Interior to acquire land and hold it in trust "for the purpose of providing land for Indians." 25 U.S.C. § 465.

[12] Salazar memorandum at 1.

[13] *Id.* (citing 25 U.S.C. § 2702).

[14] 25 U.S.C. § 2719(a). Congress has authorized the Interior Secretary to acquire lands and place them in trust for the benefit of a tribe. 25 U.S.C. § 465; *see also* 25 C.F.R. pt. 151. *But see* note 10, *supra*.

[15] 25 U.S.C. § 2719(a)(1).

[16] *Id.* § 2719(a)(2)(B). A special exception also applies to tribes without reservations that have acquired trust lands in Oklahoma. *See id.* § 2719(a)(2)(A).

[17] *Id.* § 2719(b)(1)(B)(i).

[18] *Id.* § 2719(b)(1)(B)(ii).

[19] *Id.*. § 2719(b)(1)(B)(iii).

[20] *Id.* § 2719(b)(1)(A).

must consult with the tribe, the state, local officials, and officials of nearby tribes. Further, before the exception will apply, the state's governor must concur with the Secretary's determination.[21] The consultation and governor's concurrence requirements create significant potential political obstacles that limit the reach of the "best interests" exception.

The Salazar memorandum categorizes the § 2719 exceptions as authorizing either "off-reservation" applications (i.e., pursuant to the "best interests" exception) or "reservation or equal footing" applications (i.e., via the remaining § 2719 exceptions). It further calls for "clarity regarding all aspects of how [the Interior Department] will review and make decisions on these two distinct types of Indian gaming applications."[22]

The Salazar memorandum notes that only five off-reservation applications arising under § 2719's "best interests" exception have been approved in more than 20 years. Nine more are currently under review by the Interior Department, and the memorandum calls for the continuation of the "appropriately lengthy and deliberate" review of these off-reservation applications. Further, the memorandum directs that "current guidance and regulatory standards" concerning the "best interests" exception be reviewed with tribal input provided through a process of government-to-government consultations. The memorandum expresses an expectation that the result of the review process should be the Department's adoption of "principled and transparent criteria" and "sound policy" for off-reservation gaming.[23]

For the other § 2719 exceptions for gaming on newly acquired lands, the Salazar memorandum points out that the exceptions relating to lands within or contiguous to a tribe's existing reservation, or within the tribe's last recognized reservation, are quite obviously based on reservation lands. The exceptions for land claim settlements, initial reservations, and restored reservations are "equal footing" exceptions intended by Congress to "place certain tribes on equal footing" with those possessing reservation or trust lands in 1988, the date of IGRA's passage. As the memorandum notes, gaming under these § 2719 exceptions is indeed exceptional—36 applications have been approved since 1988, and another 24 currently are pending. Here, the memorandum calls for the Department of Interior Solicitor's office to make the legal determination of whether a tribe's application meets one of the reservation or equal-footing exceptions.[24]

Finally, the Salazar memorandum calls for the Interior Department to engage in "regular and meaningful consultation and collaboration with tribal leaders to develop sound federal Indian gaming policy," coordinate with the Solicitor's office and the Deputy Secretary, and ensure that Congress is "fully aware of our efforts" related to Indian gaming policy. The memorandum's most important policy statement may in fact be its straightforward conclusion: "It is important that we *move forward with processing applications and requests for gaming on Indian lands* within the context of objective statutory and regulatory criteria.[25]

OUR THOUGHTS ON WHAT THE SALAZAR MEMORANDUM SIGNALS FOR THE FUTURE

Though the Salazar memorandum does not promise much in terms of concrete outcomes, it provides some important clues as to how the Obama administration will approach Indian gaming generally, as well as gaming on newly acquired lands specifically. We parse those signals here and provide some thoughts on their implications:

Signal 1: Policymaking based on facts and objective criteria

The Salazar memorandum emphasizes the need for accurate information in assessing tribal gaming and, presumably, in policymaking regarding gaming on newly acquired lands: "It is important that all interested persons know the facts," and "It is important [that off-reservation gaming applications be considered] within the context of objective statutory and regulatory criteria."[26]

We could not agree more, on both counts. Informed policymaking requires information. Policy analysis and evaluation must be based on empirical data weighed against objective criteria, including stated policy goals. Yet debate over and decisions on Indian gaming policy, not unlike gambling policy generally, often lack grounding in reliable and complete infor-

---

[21] *Id.*
[22] Salazar memorandum at 1-2.
[23] *Id.* at 2.
[24] *Id.* at 2-3.
[25] *Id.* at 3 (emphasis added).
[26] *Id.* at 1, 3.

mation.[27] A commitment to fact-based analysis—as well as transparency regarding the same—would go a long way toward sound policymaking.

Signal 2: Considering carefully "off-reservation" applications

On the issue of gaming on newly acquired lands, the Salazar memorandum categorizes only the "two part" determination as "off-reservation" gaming. We've been saying for years that the only truly "off-reservation" gaming is under the "best interests" exception, as all of the other § 2719 exceptions require some tie to reservation or historical lands.[28] The memorandum is a step toward dismantling the political straw man of widespread "off-reservation" gaming—the threat of a tribal casino on every street corner. The memorandum recognizes that IGRA's current controls on off-reservation gaming appear to be effective, if not highly restrictive, as only a handful of "best interest" exceptions have been approved in more than two decades, and fewer than 10 currently are pending. Along with the rest of the memorandum, the appropriate categorization of the "two-part" determination signals the Interior Department's willingness to consider all § 2719 exception applications, with the most careful attention appropriately placed on applications under the "best interests" exception.

There are legitimate policy reasons, recognized in the memorandum, for the Interior Department to consider off-reservation gaming applications. As we've argued elsewhere, federal policymakers should be cognizant of how off-reservation gaming serves IGRA's policy goals by allowing rural tribes with access to only limited markets to make use of gaming as a tool for economic development. Off-reservation gaming under the "best interests" exception also presents an opportunity for cooperative policymaking among states and tribes. We have urged careful examination of the controversy over off-reservation gaming and other issues related to gaming on newly acquired lands, as it is most likely that existing legal and political controls are sufficient to guard against inappropriate expansion of gaming under IGRA's exceptions. Any policy or regulatory reforms should be tailored to meet demonstrated, rather than exaggerated or unrealized, problems. Federal Indian gaming policy should preserve opportunities for rural tribes to realize gaming's potential for increasing tribal self-sufficiency and building strong tribal governments. It should also encourage cooperative policymaking between states and tribes that is appropriately respectful of tribal authority.[29]

Signal 3: Revisiting the "commutable distance" test

Along the lines raised above, the memorandum certainly seems to suggest a revisiting of the 2008 Bush administration Artman memorandum and its "commutable distance" test. This test, articulated in "guidance" form but with clear substantive force, has been excoriated in Indian Country as a blatant example of circumventing the legally accepted federal regulatory policymaking process while failing to solicit tribal input. Along with economist Alan Meister, we've questioned the legal basis and economic logic of the "commutable distance" test and called for reforms grounded in reliable and accurate information as well as sound public policy.[30]

Signal 4: Acknowledging IGRA's public policy goals

The Salazar memorandum expressly acknowledges the role gaming plays in tribal economic development and diversification. This signals support for Indian gaming as a tool serving tribal economic development, tribal self-sufficiency, and strong tribal governments—exactly what Congress intended when it passed IGRA in 1988.[31] The memorandum also recognizes what we call the "spectrum of success" of Indian gaming—that although a relatively small number of tribal casinos earn huge profits, most are small, marginally profitable operations in rural areas, where job creation and modest tribal government revenue are the goals of the gaming enterprise.[32]

---

[27] *See* Kathryn R.L. Rand and Steven Andrew Light, *The Moral Landscape of Indian Gaming: Is It Any Different?*, in GAMBLING AND THE AMERICAN MORAL LANDSCAPE (Alan Wolfe and Erik Owens eds., 2009) (discussing Indian gaming policy as a product of "morality policymaking," driven by core values and beliefs with little emphasis on information).

[28] *See* Kathryn R.L. Rand and Steven Andrew Light, *How Congress Can and Should "Fix" the Indian Gaming Regulatory Act: Recommendations for Law and Policy Reform*, 13 VA. J. SOC. POL'Y & L. 396, 465-69 (2006).

[29] *Id.*

[30] *See* Rand, Meister, and Light, *supra* note 2.

[31] These are, of course, IGRA's policy goals. *See* 25 U.S.C. § 2702.

[32] STEVEN ANDREW LIGHT AND KATHRYN R.L. RAND, INDIAN GAMING AND TRIBAL SOVEREIGNTY: THE CASINO COMPROMISE 10 (2005).

It's not just a casino's revenues that serve IGRA's public policy goals. Importantly, Indian gaming presents an opportunity for tribal government institution building. While job creation and economic development are the bedrock economic rationales for tribal gaming, tribes transform casino profits into public services, infrastructure, and programs. These benefits are not exclusive to a tribe: a healthy reservation community ultimately benefits both surrounding non-tribal communities and the state.[33]

Signal 5: Engaging in meaningful government-to-government consultation

The Salazar memorandum's repeated reference to "government-to-government" relations with tribes, including "regular and meaningful consultation and collaboration with tribal leaders," appears to signal a more robust and deliberate approach to policy making. This language echoes President Obama's 2009 statement on tribal consultation by executive departments and agencies: "My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications."[34] Under prior administrations, federal implementation of government-to-government relations policy has been criticized as, in essence, hearing but not listening. Tribal leaders have expressed frustration with consultations that appear to have little or no effect on policy outcomes. While "meaningful consultation and collaboration" seems to promise concrete effects from tribal input on federal policy and regulations, this one is a "wait and see."

We have called on the federal government to facilitate tribal government institution building through indirect regulation of Indian gaming.[35] One of the largely untold success stories of Indian gaming is the role it has played in tribal institution building. Each gaming tribe has created its own regulatory authorities that are responsible for administering the myriad regulatory challenges of Indian gaming.[36] Tribes are primarily responsible for growing and regulating a $26 billion industry that has expanded, in the words of Senator McCain, beyond Congress's "wildest dreams." Tribes are, in short, experts in tribal gaming. We take this opportunity to urge the Obama administration to welcome tribal input on Indian gaming issues and to truly collaborate with tribal leaders in shaping federal Indian gaming policy.[37]

CONCLUSION

While perhaps not a 180-degree reversal of the Bush administration's approach to Indian gaming (at least not yet), Secretary Salazar's memorandum certainly signals support of the tribal gaming industry and its related policy goals. It also portends a thaw to the ongoing deep-freeze—whatever in the first place were the reasons for it—on applications for gaming on newly acquired lands. If so, the Obama administration indeed has charted a "path forward on Indian gaming policy."

---

[33] *See* Rand and Light, *How Congress Can and Should "Fix" the Indian Gaming Regulatory Act, supra* note 28, at 421-26.

[34] Barack Obama, Memorandum for the Heads of Executive Departments and Agencies on Tribal Consultation, Nov. 5, 2009, *available at* <http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president> (last visited July 5, 2010) (original statement continues).

[35] *See* Rand and Light, *How Congress Can and Should "Fix" the Indian Gaming Regulatory Act, supra* note 28, at 458-62.

[36] Before a tribe may operate either Class II or Class III gaming, IGRA requires that the tribe adopt a gaming ordinance that must be approved by the NIGC Chair. The ordinance must address a number of issues, including the tribe's proprietary interest in and responsibility for gaming, use of gaming revenues, audits, vendor contracts, facility maintenance, and background checks and licensing. Typically, tribes create gaming commissions to implement the tribal gaming ordinance and to ensure compliance with IGRA, tribal-state compacts, and other relevant tribal and federal laws. A tribe's certificate of self-regulation issued by the NIGC under IGRA creates additional tribal responsibility for regulating Class II gaming, while a tribal-state compact may further detail the tribe's obligations with regard to Class III gaming. Tribes, of course, also are free to adopt additional ordinances and regulations governing their gaming operations. Tribal regulators interact with tribal, state, and federal law enforcement agencies, tribal casino surveillance and security operations, and tribal court systems, as well as state and federal regulatory authorities. For a detailed description of tribal regulation of Indian gaming, see KATHRYN R.L. RAND AND STEVEN ANDREW LIGHT, INDIAN GAMING LAW AND POLICY 114-16 (2006).

[37] For our detailed response to the concern of agency capture by tribes, see Rand and Light, *How Congress Can and Should "Fix" the Indian Gaming Regulatory Act, supra* note 28, at 450–58.