

Congressman Paul A. Gosar
Extension of Remarks
May 14, 2015

For several years, I have been actively involved in a troubling off-reservation gaming issue in my home state of Arizona involving the Tohono O'odham Nation. The tribe has been attempting to move from their ancestral lands in Tucson, into another tribe's former reservation in the Phoenix metro area, for the sole purpose of building a Las Vegas style casino.

This comes after Tohono O'odham and 16 other Arizona tribes adopted a compact, approved by Arizona voters, which expressly promised there would be no additional casinos or gaming in the Phoenix metro area until 2027. In exchange for this promise, the voters granted the tribes a statewide monopoly on gaming and other tribes gave up significant rights.

H.R. 308 was introduced to ensure that the promise of no additional casinos in the Phoenix area is kept until the existing tribal-state gaming compacts expire, without interfering in the trust acquisition itself.

Let me explain how this legislation came to be and why it must be enacted into law. In return for exclusivity in Arizona, the tribes agreed to a cap on the number of casinos in the state and in the Phoenix metro area, to restrict the number of machines in the state and to share machine revenue with rural non-gaming tribes so they could benefit from the compact.

Every urban tribe, except for Tohono O'odham, agreed to this limitation. Tohono refused, citing the need for a new casino in Tucson or on the rural part of the tribe's reservation. The state and other tribes finally agreed to the restrictions on gaming being pushed by Arizona's Governor and others, but also yielded to Tohono's stated need.

After the agreement was reached, the tribes and state promoted their model compact by saturating the airwaves and newspapers with the clear message that under the compact there will be no additional casinos in Phoenix and only the possibility for Tohono O'odham to build one more facility in the Tucson area. Tohono O'odham alone spent \$1.8 million dollars urging Arizona voters to rely on this limitation.

Tohono had begun efforts to find land in the Phoenix area to open their fourth casino.

The voters approved the tribal state compact in November 2002 and rejected two competing propositions. The first would have allowed unrestricted tribal gaming without any revenue sharing for rural non-gaming tribes; the second would have allowed for full commercial gaming without restriction.

Shockingly, a few months after the voters approved the compact, Tohono finalized a multiyear effort to purchase land in Glendale for a casino and used a shell corporation to conceal its identity.

Tohono's dismissal of their promise to build no additional casinos in Phoenix is not something that Congress can ignore when the result will be so harmful to what had been a national model.

Furthermore, Tohono has falsely been claiming a victory in court relative to their less-than-honest dealings with other tribes and the State of Arizona.

This sentiment is factually wrong and morally indefensible. The Tohono "won" nothing based on the merits. Rather, the case was dismissed on the draconian doctrine of sovereign immunity.

In other words, the court ruled that the tribe cannot be sued in court because ... It can't be sued in court.

In fact, the Court made a statement that it would have likely ruled against Tohono had it not been for sovereign immunity. Mr. Speaker, I now ask permission to submit evidence obtained from underlying litigation discovery in *State of Arizona v. Tohono O'odham* into the Congressional Record in order to supplement the record on H.R. 308. The opponents of this bill falsely claim that the Tohono O'odham Nation (Tohono O'odham, TO or the Nation) "won" in court relative to TO's less-than-honest dealings with other tribes and the State of Arizona. Indeed, one Member of the House publicly stated that the bill circumvents a court ruling.

This sentiment is factually wrong and morally indefensible. The TO "won" nothing on the merits. Rather, the case was dismissed on the draconian doctrine of sovereign immunity. In other words, the court ruled that the tribe cannot be sued in court because ... It can't be sued in court. That circular logic is pretty much the extent of the victory. The merits of the case were never addressed, and that is why Congress' oversight in these matters is so important.

As it turned out, discovery in *State of Arizona v. Tohono O'odham* revealed that the TO Nation was secretly looking to purchase land in the Phoenix metropolitan area during the last 18 months of the compact negotiations and during the entire referendum process when the tribes were actively seeking support from Arizona voters on the basis that the model compact would not permit additional casinos in the Phoenix area. Evidence of these secret plans were primarily obtained from Vi-ikam Doag Industries (VDI), a Tohono O'odham chartered and owned corporation. Below are quotations from meeting transcripts and minutes:

- 5/18/01: VDI meeting notes including a description of a presentation delivered by Mark Curry, Tohono O'odham's lead negotiator in compact negotiations. The notes reflect "107th Avenue-Stadium," "gaming compact-unsure what will happen," "put in a shell company-need to keep it quiet especially when negotiations of compact at stake"

- 6/26/01: VDI meeting with Tohono O'odham's San Lucy District Council. "We are also looking at another project . . . based on discussions we had and continue to have about a casino on the west end of Phoenix. And part of that discussion that we've had was that – we didn't want to publicize that because of the confidentiality in terms of that issue Now, in the meeting we had last summer—with the task force and Jim had met with the casino people in their—in their environment. And the understanding is that it is a good opportunity again depending on what happens with the big compact. . . You have a situation with a confidentiality issue. And that's how we're holding it, as confidential, because we don't want, you know,

people to know we are seriously considering this. Because if you do, I'm sure that there's going to be a lot of resistance from, you know, the general public." p. 25:5-20.

- 8/26/01: San Lucy District Meeting: "[Male Voice]—but that is why the Buckeye property has been identified as a casino-feasible area. And that's really why we focused on that. There—there is some county islands closer in to Phoenix that we have looked at." p. 24:10-15.

- 8/22/02: VDI meeting transcript discussing the West Phoenix casino project, whether Governor Hull's successor would also oppose additional Phoenix area casinos, and the importance is confidentiality ahead of the vote on Proposition 202. "Max: Because if that's going to be the position of the State, they don't want any more casinos around the Phoenix area, then they're going to fight it, whoever the new governor is, (inaudible), if he's going to go along—he or she go along with Jane Hull regarding taking a position. Jim: Which is why we really want to wait until the initiative passes before it gets out." TON0116093-94.

- 9/19/02: VDI meeting transcript discussing a possible leak of information related to the West Phoenix project. "Jim: So there is some type of information going out or a leak or—they didn't Jonathan and Mark [two in-house Tohono O'odham attorneys] didn't seem too concerned, is what they had got it wasn't up at the governor's level or at the negotiating level . . . but it's still a concern out there, especially prior to the propositions coming up for election So, we just need to be careful about, you know, things getting out and spoiling it." p. 14:18-15:6.

- 10/25/02: VDI meeting transcript discussing the upcoming Prop 202 vote. "Male Voice: We are . . . a week and a half, two weeks away from the vote. And that's going to clarify a lot also on what we can do. And, you know, assuming that it is 202 that passes, then, you know, we'll proceed in how we need to make that project develop." p. 2:[7-3:24](#).

This evidence, attached hereto, establishes the fraudulent intent by the TO to deceive the state, the public and other tribes. Proposition 202, which authorized the existing tribal-state compacts, was approved by voters on November 5, 2002, less than two weeks after VDI discussed waiting for voter approval before moving forward with the West Phoenix casino plans.

In addition to the above, additional transcripts underscore the same double-dealing after the vote:

- 2/10/03: VDI meeting transcript discussing VDI's meetings with the Tohono O'odham Gaming Authority. "And I think that's coming about because the agreement has been signed, the compact has been signed, and so there are no more real concerns that might jeopardize our chances on this discussion. So I think they're ready to move forward." p. 3:2-4:5.

- 2/23/03: VDI meeting transcript discussing the Glendale plan. "Through 99-503 [Gila Bend Act] we could have a casino built, it allows it, but politically we might have problems. If we decide to, we need to put it in escrow and it needs to be kept confidential for the time being." p. [17:22-18:14](#)

- 2/23/03: VDI meeting transcript discussing potential political problems with the proposal.

“Male Voice: I just hope that . . . in terms of the political (inaudible) that’s going to be coming (inaudible), that some of the metro tribes over there don’t come back and jump on us too. . . . Male Voice: Might Gila River and Salt River indicate that it’s a violation of the 202 (inaudible) metro area? Male Voice: Well, that’s what I said in terms of political impact, is that even—even those metro tribes, particularly those three that are right there, might—might say something. But that’s a big question mark. That’s all.” p. 48:21-50:23.

In March 2013, Tohono O’odham created Rainer Resources, Inc. and incorporated the company in Delaware as an attempt to keep the land purchase confidential. Rainer Resources then purchased the Glendale parcel in August 2013. Rainer Resources and Tohono O’odham kept their plan secret until April 2009, when the Nation submitted its fee-to-trust application to the Department of the Interior and finally disclosed its scheme to its sister tribes.

These statements were uncovered during discovery in *State of Arizona v. Tohono O’odham* and revealed the depth of Tohono O’odham’s conscious effort to mislead and defraud voters, as well as its State and tribal partners. Unfortunately, the U.S. District Court dismissed the State of Arizona’s fraud and misrepresentation claims not on the merits, but because Tohono O’odham refused to waive its sovereign immunity from suit. With regard to the State of Arizona’s “promissory estoppel” claim, which alleged that Tohono O’odham made false promises that induced the parties to enter into the compact to their disadvantage thus creating an enforceable promise, the court found on May 7, 2013, that the evidence supported the claim but that Tohono O’odham’s sovereign immunity nevertheless barred its review of those allegations. Although Congress, through IGRA, waived tribal sovereign immunity for claims arising from executed compacts, the court determined Congress had not done so with regard to actions that preceded a compact’s execution such as those that gave rise to the fraud, misrepresentation, and promissory estoppel claims in *State of Arizona v. Tohono O’odham*. The legal conclusion is dubious as it promotes fraud and sharp dealings long since rejected in modern commerce and illegal in many contexts.

H.R. 308, the Keep the Promise Act, is narrowly crafted to address those claims that are shielded by Tohono O’odham’s assertion of sovereign immunity.

I believe it is important for the truth to be known. The tribe acted immorally and covertly against its fellow tribes, the State and the general public. This incident and breach of trust has proven that TO cannot be trusted in the future relative to business dealings, tribal matters and commercial relations. I urge Congress to resolve this issue and reaffirm its authority by providing proper oversight of commerce amongst tribes.

An identical bill, H.R. 1410, passed overwhelmingly out of the Natural Resources passed the House last Congress by voice vote on September 17, 2013. This legislation has already passed the full Natural Resources Committee by unanimous consent in the 114th Congress.

I urge immediate adoption of this commonsense legislation once again by the House of Representatives. Thank you again for the opportunity to speak on this critical issue Mr. Speaker and with that, I yield back.