

*the*  
**Chickasaw  
Nation**

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*Bill Anoatubby*  
Governor

*Jefferson Keel*  
Lt. Governor

July 19, 2019

Mark Burget, General Counsel  
Office of the Governor  
Oklahoma Capitol Building  
2300 N. Lincoln Boulevard, Suite 100  
Oklahoma City, Oklahoma 73105

Dear Mr. Burget:

Please be advised we view your client's public statements as suggesting a potential risk of injury to a compact framework and relationship that has served Oklahoma, the Chickasaw Nation, other Tribes, and all Oklahomans well for nearly fifteen years. As counsel for the Chickasaw Nation, I must also advise that any act taken to disrupt or interfere with the operation of our compact, which will renew January 1, 2020, will result in our taking all available and appropriate action under Federal and/or State law to protect our rights and interests. We remain hopeful, however, that no such action will be necessary.

Your client says he has long been "transparent and clear" regarding his intention to seek renegotiation of "gaming fees." We do not question his intent. We were not surprised he wanted to renegotiate *rates*. In fact, the compact itself lays out a mechanism for any party to seek to renegotiate rates even as the compact renews. However, your client's public declaration that he intends to walk away from the compact *in its entirety*—that is, to abandon the full sweep of its intergovernmental framework—did come as a surprise. As I hope you can appreciate, I also found this declaration difficult to understand. You and I met to discuss a variety of issues a week prior to your client's announcements. During our conversation, you asked my opinion on the compact's renewal, which I shared, but you offered no indication whatsoever of the plans that must have already been in motion. Your silence at that time is difficult to square with claims to the transparency of your client's intent.

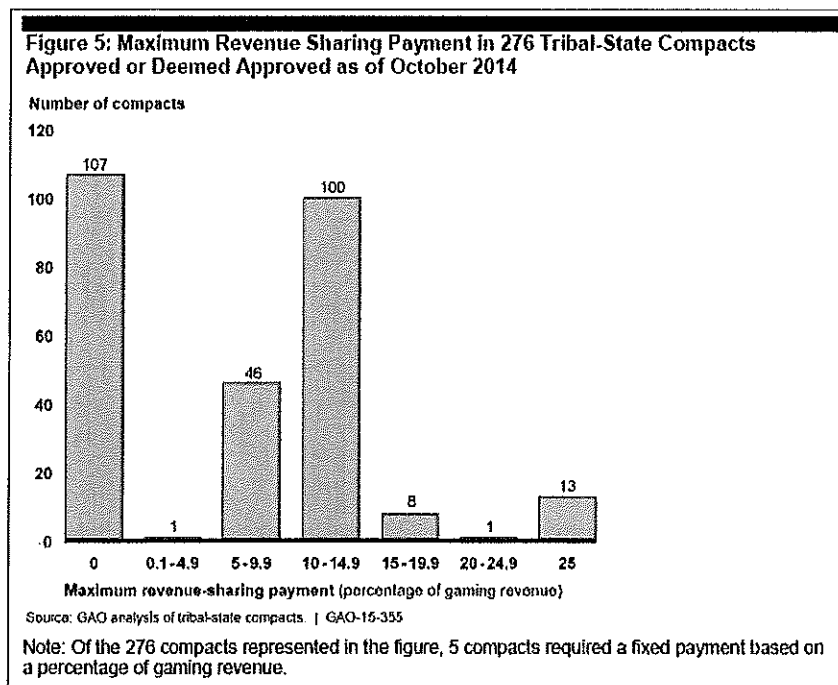
Taking his statements at face value, though, if your client's goal were to develop a new compact from the ground up, we would have expected a proposal of potential replacement terms. Instead, we have received, as have more than thirty Tribal sovereigns, a call to meet so we can develop new terms and obtain Federal approvals within the next six months. Not only is this proposal wholly infeasible, but with all due respect, your client lacks the constitutional authority to unilaterally replace the State's codified compact offer with something of his own design.

On the other hand, if your client's goal is to renegotiate compact "gaming fees," he has an available mechanism. As provided in Part 15.B., "either the tribe or the state, acting through its Governor, may request to renegotiate the terms of subsections A and E of Part 11." As I believe you are aware, subsection A of Part 11 lays out the compact's revenue-share rates, and

subsection B defines the exclusivity obligation, which rests on a prohibition against the State’s permitting any expansion of non-Tribal gaming. As Federal law provides and the compact itself recites, revenue-share rate and scope of exclusivity are the only ingredients relevant to any renegotiation of the compact’s economic terms. Accordingly, Part 15.B. provides your client his path if he wants to seek a negotiated rate adjustment.

Leaving those matters aside, your client supports his call for talks with inapplicable analogies and misstatements of fact. For example, his recent op-ed points to Arkansas’ new *commercial* gaming rates to support an argument that our rates are too low. However, the taxes applicable to commercial, non-Tribal gaming—such as those in Arkansas or those paid by operators of Oklahoma organization licensee gaming—are the product of an economic and jurisdictional framework that is inapplicable to Tribal gaming under the Indian Gaming Regulatory Act. It would be a mistake for your client to base a Tribal compact rate negotiation position on an analysis of non-Tribal commercial tax rates.

Your client has also stated “most state-tribal compacts around the country provide for exclusivity fees to the state of 20% to 25%.” This is simply not true. As of June 2015, only 14 of the 276 Tribal-State gaming compacts (i.e. 5% of extant compacts) provided for a rate that high. Furthermore, as illustrated below,<sup>1</sup> the most common Tribal-State gaming compact rate is 0%, which controls under 107 of the 276 compacts (i.e., 39% of extant compacts). If one were to make a characterization about “most tribal-state compacts around the country,” the majority (i.e., 154 of 276 or 56% of extant compacts) include a rate of *less than 10%*. That rate is one-half of what your client claims is the prevailing rate and is precisely what our compact includes.



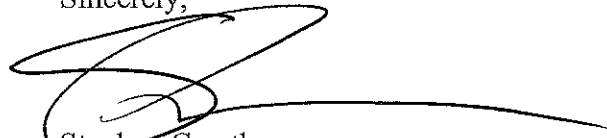
<sup>1</sup> Source: U.S. Gov’t Accountability Office, GAO-15-355, Indian Gaming—Regulation and Oversight by the Federal Government, States, and Tribes (June 2015), available at <https://www.gao.gov/assets/680/670603.pdf>.

As matters stand, Governor Anoatubby has communicated with Governor Stitt, *see* letter from Governor Bill Anoatubby to Governor Kevin Stitt (July 19, 2019) (enclosed), and the Chickasaw Nation has gone on record to reject any attempted repudiation of our compact, *see* Inter-Tribal Council of the Five Civilized Tribes, Resolution No. 19-17 (July 12, 2019). Meanwhile, Oklahoma continues to receive among the highest returns of any state under any Tribal-State gaming compact anywhere in the country.<sup>2</sup> If your client has a proposal for improving its return based on a bargained-for exchange of value, we remain open to reviewing it in accord with the processes established in Part 15.B. of our compact.

However, for any talks to have a realistic chance for success, the parties need to remedy circumstances arising from prior public declarations and be clear on the process for moving forward. As to remedying circumstances, we believe your client must formally retract his declared intent to walk away from our compact. As to process, our lawful path is what we followed to implement the 2018 table games compact supplements. Namely, any negotiated term would have to be: *one*, memorialized in an appropriate legislative amendment to or supplement of Oklahoma's model compact offer, 3A O.S. §§ 280-281; *two*, formally accepted by a compacting Tribe so it could be integrated into individual Tribal-State compacts; and *three*, approved by the Federal trustee in accord with the Indian Gaming Regulatory Act.

Unless and until reasonable and fact-based talks can be engaged in a good faith and lawful process, we must and will remain vigilant as to any act intended to interfere with or to disrupt our compact's renewal. While we choose to remain hopeful, we will act in accord with the best interests of the Chickasaw people and our interest in the lawful stability and longevity of an intergovernmental compact that has already served all parties all so well.

Sincerely,



Stephen Greetham  
Senior Counsel

Encl: Letter from Governor Bill Anoatubby to Governor Kevin Stitt (July 19, 2019)  
Cc: Oklahoma Attorney General Mike Hunter  
Matthew Morgan, Chairman, Oklahoma Indian Gaming Association

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<sup>2</sup> *See generally* Meister Economic Consulting/American Gaming Ass'n, The Economic Impact of Tribal Gaming: A State-By-State Analysis (Nov. 2018), *available at* <https://www.americangaming.org/wp-content/uploads/2018/11/Economic-Impact-of-Tribal-Gaming-Two-Pager-11.5.18.pdf>.