TESTIMONY OF

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OPPOSITION TO H.R. 8255,
THE "CATAWBA INDIAN LANDS ACT"

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The Eastern Band of Cherokee Indians, a federally-acknowledged Tribal Nation based in Cherokee, North Carolina, opposes H.R. 8255. The bill would ratify the unlawful July 10, 2020 action of the Department of the Interior to proceed with taking land-into-trust for the Catawba Indian Nation for the purpose of operating an off-reservation casino near Charlotte, North Carolina. Driven by and primarily benefiting non-Indian casino developers, the Senate Committee on Indian Affairs heard a similar bill, S. 790, sponsored by Senators Lindsey Graham, Thom Tillis, and Richard Burr, on May 1, 2019. S. 790 failed to move out of Committee because of bipartisan opposition. The Eastern Band of Cherokee Indians (EBCI) based in Cherokee, North Carolina, opposes the bill for several reasons.

The Catawba Casino Project is Highly Controversial Within North Carolina
Thirty-eight members of the North Carolina Senate, 108 current and former members of the North Carolina House of Representatives, the entire western North Carolina state legislative delegation, eight counties, two cities, various community organizations, and thousands of individuals in North Carolina have formally expressed strong opposition to the casino project for various reasons. Opposition within the state continues to grow as the public learns more about the backroom dealing that led to the Department of the Interior taking the North Carolina land into trust for a South Carolina Tribe.

Congress Should Not Ratify an Off-Reservation Casino Deal That Gives The Tribal Gaming Industry A Black Eye
Indian Gaming Regulatory Act (IGRA) is designed to "shield [an Indian tribe] from organized crime and other corrupting influences [and] to ensure that the Indian tribe is the primary beneficiary of the gaming operation . . . ."[1] This bill, if passed into law, would introduce corrupt influences and organized crime into Indian gaming in North Carolina.

This bill is the result of political heavyweight, Wallace Cheves, who has been the Catawba Indian Nation's primary casino developer since at least 2009. Mr. Cheves has a checkered history in the commercial gaming industry. In 2003, Mr. Cheves and others were indicted in the U.S. District Court for the Northern District of Ohio for illegal gambling, conspiracy to defraud the United States, and money laundering. In 2013, Alabama Attorney General (and former U.S. Senator) Luther Strange successfully brought a forfeiture action against Mr. Cheves and others after Alabama law enforcement authorities seized 691 illegal slot machines and $283,657 in cash as contraband. In 2001, the South Carolina Attorney General determined that Mr. Cheves operated illegal sweepstakes games.

[1] 25 U.S.C. §2702(2).

The agreements in place call into question who truly stands to benefit from this proposed bill. If Congress ratifies this deal, the Catawba will pay an unnamed gaming company an unconscionable 6% of gross gaming revenue for 25 years and 8% of net gaming revenue thereafter.[2] This type of agreement seeks to circumvent the strict limitations on contracts and revenue sharing meant to protect tribes from unscrupulous actors. As an example, IGRA limits management contracts to five years, which may be extended to seven years if the Chairman of the Nation Indian Gaming Commission determines certain factors concerning investment and income projections are met.[3] Furthermore, IGRA requires that a tribal government have the "sole proprietary interest and responsibility for the conduct of any gaming activity."[4] But in the case of Mr. Cheves and other unnamed developers, they would be entitled to tribal gaming revenue off the top, in perpetuity. Thus, it is clear that bad actors who have made a career out of illegal gaming operations have an equity interest in this shady casino deal.

Mr. Cheves and the Catawba have not disclosed the other casino developers and investors in the casino deal. Congress, other tribal governments, and the public have a strong interest in ensuring that bad actors have no stake in tribal gaming. A primary purpose of IGRA is to "provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players."[5] Although IGRA provides protections for tribal governments and the public against "any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming,"[6] these background investigations only apply to "primary management officials" and "key employees," not developers like Mr. Cheves.[7]

Congress should be working to keep bad actors out of the tribal gaming industry, not endorsing casino deals with them.

The Bill Would Set Historically Bad Precedent That Would Authorize An Off-Reservation Casino And Encourage Reservation Shopping

Congress has never enacted legislation that would ratify or authorize an off-reservation casino. This would be the first. Congress has never authorized a tribe to cross state lines or encroach on another tribe's aboriginal territory to build a casino—also historical firsts. Congress has never endorsed blatant "reservation shopping," the practice of casino developers pairing a willing Indian tribe with a city or county government receptive to a casino, and petitioning the

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[2] Catawba Indian Nation Financial Statements and Independent Auditor's Reports as of and for the year ended December 31, 2018, at p. 30 (http://www.catawbaindian.net/assets/docs/2018-CIN-Audited-Financial-Statement.pdf) ("In the event that the [Catawba] Nation is approved for gaming in North Carolina, they will pay 6% of gross revenues from gaming activities to [a gaming] company for a period of 25 years at which point the payment will be 8% of net revenues from gaming.")

[3] 25 U.S.C. § 2711(b).

[4] *Id.* at § 2710(b)(2)(A).

[5] *Id.* at § 2702(2).

[6] *Id.* at § 2710(b)(2)(F).

[7] *Id.* at § 2710(b)(2)(F)(i).

federal government to create a new reservation outside the willing tribe's aboriginal territory.

In reservation shopping deals, the casino developer agrees to pay for lawyers, lobbyists, and development costs in exchange for a share of the casino profits. Here, Mr. Cheves and other casino investors have paired Cleveland County, North Carolina, with the South Carolina-based Catawba Indian Nation for the sole purpose of creating a 17-acre "casino reservation" in Cherokee aboriginal territory. Both Congress and Indian country have repeatedly denounced this harmful practice of reservation shopping.

H.R. 8255 Does Not "Clarify" the Catawba Indian Tribe of South Carolina Land Claims Settlement Act But Instead Creates Expansive New Law

The Catawba Nation's claim that this bill only "clarifies" the Catawba Settlement Act is demonstrably false. The Catawba Settlement Act and Agreement do not contemplate taking lands in North Carolina into trust for the Catawba Nation. Rather, the Agreement itself calls the settlement "a good faith effort on the part of all parties [the Catawba Indian Nation and South Carolina] to achieve a fair and just resolution of claims"[8]—claims that were limited to the Catawba Indian Nation's "possessory rights to certain lands in South Carolina."[9]

Further, H.R. 8255 contradicts the terms of the finalized agreement and Settlement Act—an agreement and Settlement Act to which the State of North Carolina was not a party—by authorizing new lands to be taken into federal trust not considered under the terms of the original Settlement Agreement and Settlement Act,[10] authorizing an out-of-state casino, and applying a portion of IGRA to the Catawba Nation. Furthermore, under the terms of the Settlement Agreement, South Carolina continues to maintain jurisdiction over all Catawba tribal lands, including reservation lands, except in special circumstances.[11] Assuming H.R. 8255 only clarifies the terms of the Settlement Act, the effect of this bill would presumably provide for South Carolina jurisdiction over the proposed Catawba lands located in North Carolina.[12]

All of these fundamentally change the terms of the bargain led to the enacted agreement.[13]

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[8] 27 S.C. § 27-16-20(3).

[9] 27 S.C. § 27-16-20(1).

[10] The boundaries for lands to be taken into trust for the Catawba Indian Nation are set forth in the Settlement Agreement between the Catawba Indian Nation and South Carolina, which include only those lands described in Sections 14.3 and 14.4 of the Agreement, and over lands which South Carolina has direct jurisdiction, as considered by Section 14.5

[11] *See* Catawba Settlement Agreement 4.3 ("Extent of Jurisdiction. Federal recognition shall not be construed to empower the Catawbas with special jurisdiction, or to derogate from the jurisdiction of the State of South Carolina or its political subdivisions other than municipalities over the Catawba Indian Tribe and its members . . . . The Catawba Tribe, its members, and the lands and natural resources owned by the Tribe and its members (including land and natural resources held by the United States in trust for the tribe) shall be subject to the civil, criminal, and regulatory jurisdiction of the State [of South Carolina]. . . .") (emphasis added); see also S. Rep. 103-124 at 45 (1993) ("The principal justification for the jurisdictional allocation in this and the other East ern Indian claims is the fact that the acts provide a land base for the tribe which is carved from land subject to the jurisdiction of the State [of South Carolina], and transfer that land to tribes which have not historically exercised governmental control over a land base.").

[12] *See* Catawba Settlement Agreement 16.2 (1993) ("Except as specifically provided in the Federal Implementing legislation and this Agreement, all laws, ordinances and regulations of South Carolina and its political subdivisions govern the conduct of gambling or wager by the Tribe on and off the Reservation.").

[13] Catawba Settlement Agreement § 3.1 ("The parties agree that they will use their best efforts to ensure passage of

Encroachment into Cherokee Aboriginal Territory

The off-reservation lands that Wallace Cheves and the Catawba Indian Nation have sought to acquire and have held in federal trust are located within Cherokee aboriginal territory. The Cherokee ceded these lands, located between the Catawba River and the Broad River, in the Cherokee Treaty of July 20, 1777. In this treaty, the Cherokee (not the Catawba) ceded lands in present-day Cleveland County, North Carolina, including the Kings Mountain Site where Mr. Cheves now seeks to build his casino. Further, in the process of reaching a settlement with the EBCI on the EBCI's claims before the Indian Claims Commission, the United States relied upon the 1884 Royce Map of Cherokee Land Sessions to define Cherokee territory in North Carolina as evidence of Cherokee aboriginal lands.[14] The 1884 Royce Map demonstrates that present-day Cleveland County is within the Cherokee aboriginal territory.

To the extent that the Catawba relies upon the "service area" definition in the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 for authority to demonstrate aboriginal ties to Cleveland County, such reliance is misplaced. The House Report on the bill makes clear that "the Catawba health care service area" only "creates a service area which will enable tribal Members in need of health services to receive assistance." H.R. Rep. No. 103-257, pt. 1, at 21 (1993).[15] It is not a proxy for aboriginal ties.

The EBCI continues to exercise cultural sovereignty over these lands. When a federal agency identifies Native remains in Cleveland County, the agency contacts the EBCI and the two other federally-recognized Cherokee tribes (Cherokee Nation and United Keetoowah Band of Cherokee Indians) to address the treatment of these remains. Indian Country has repeatedly stated that federal law and policy should respect tribal aboriginal and historical territories. This legislation would ignore and erase the voices of Indian Country that have worked through this thorny area of law and policy and made express statements against aboriginal lands encroachments.

Congress Should Allow the Federal Courts to Decide the Outcome of This Dispute

The EBCI, the Cherokee Nation, and 12 individual citizens that live near the proposed casino site have brought an action in federal court against the U.S. Department of the Interior for its unlawful March 12, 2020, decision to approve the off-reservation casino within Cherokee historical territory.[16] The Cherokee Nation based in Tahlequah, Oklahoma, specifically sued to protect and preserve Cherokee sovereign cultural authority over lands, religious sites, burials, and cultural patrimony within traditional Cherokee treaty territory. The Department's decision

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federal, state and local legislation and tribal action implementing the provisions of this Agreement without any material change and will attempt throughout the legislative process to fulfill the intent of this Agreement.") (emphasis added).

[14] *Eastern Band of Cherokee Indians v. United States*, 28 Ind. Cl. Comm. 386 (1972).

[15] *See also* S. Rep. 103-124 (1993) (The related settlement bill before the Senate clarified that the term "service area" "defines the Catawba health care service area as the State of Carolina and six outlying counties in the State of North Carolina. This definition creates a service area which will enable tribal Members in need of health services to receive assistance.").

[16] *See Eastern Band of Cherokee Indians v. United States* (1:20-cv-00757-JEB) (D.D.C.).

violates the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993[17] (1993 Settlement Act), as well as the Indian Reorganization Act (IRA), IGRA, the Administrative Procedure Act (APA), the National Historical Preservation Act (NHPA), and the National Environmental Policy Act (NEPA). The case is pending in the federal court in Washington, D.C. Congress should not consider legislation until that case reaches final judgment.

[17] Pub. L. No. 103–116, 107 Stat. 1118.