

**Testimony of
Gary Navarro
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2850 at the Graton Casino and Resort
before the
Health, Employment, Labor, and Pensions Subcommittee
of the Committee on Education and the Workforce
U.S. House of Representatives
regarding the
Legislative Hearing on H.R. 511, the *Tribal Labor Sovereignty Act of 2015*.
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Chairman Roe, Ranking Member Polis, and Members of the Subcommittee, thank you for inviting me to testify today.

My name is Gary Navarro. I'm from Santa Rosa, California, and I'm an enrolled member of the Pomo Nation, one of the largest in California, and a worker at the Native-owned Graton Casino & Resort in northern California. I am here to testify about how my family has always stood for full American rights for everyone—fought and died for this principle—and how opposed I am to the idea that in the name of my heritage, some of the most important rights Americans have would be taken away from the thousands of people who work in Native businesses. I became active in my union because of unjust treatment of casino workers by their managers and how nothing could be done about even sexual harassment because of sovereignty. Exercising our right to organize turned out to be the only way to protect ourselves and our co-workers. Don't strip us of these rights.

My Native Heritage

The Pomo Nation is divided into several groups throughout Northern California. My grandmother and her children grew up on the Round Valley reservation in Covelo, California, which is about four hours north of Santa Rosa. I go back there and visit family as often as I can,

five or six times in a year. My family has lived there many generations, as far back as anyone can remember. People there were poor. Mostly they were basket weavers and farmers. They didn't have an education. School was just so far – three or four hours away from where they lived.

There is much crime there because there is a lot of alcohol and drug abuse. In my grandma's time, it was mostly alcohol abuse and now it's a lot of drug abuse.

My grandma left the reservation at a very young age to bring her family to Santa Rosa because she didn't want to have to deal with that same poverty life for them. My whole life, my grandma has taught us pretty much how to hold our own and stand up for what's right. And as I was growing up, she always would teach us our heritage and to be proud of who we were, but also to be hardworking and understanding towards others' rights.

Like my grandma, my father would push us to do our best – he didn't want us to be in poverty and he didn't want what she stood for to die off and us to slack off. He always encouraged us to find our voice and speak up when we needed to and not sit back and let people take advantage of other people. I can't sit back and watch and see these rights under the National Labor Relations Act be taken away from all the workers, especially when I have family members who were in all the major wars – World Wars I and II, the Korean War, the Vietnam War – and I had relatives who died in that war and them spilling their blood for an American flag has always been something my family was proud of. My family died for rights for everyone to have, not just for Native Americans to have or for other races to have. These are rights that they believed everyone should have. I have three young boys who are six, seven and four. I don't want my kids to open up history books and learn about the loss of NLRA rights and say, “Wow,

Dad, how come your generation didn't stand up and fight this; why is it falling on us?" and have them be looked upon and judged by everyone else because poverty issues came into play and took everyone's rights away. And knowing that as a parent, and knowing what my father and my grandmother and my grandfather and all my other ancestors would have done, I knew I had to take this stance and stand up and say something because it's not right.

We Formed a Union at Graton

I'm now a slot attendant at Graton Resort & Casino, which they call a Guest Service Ambassador. Graton is owned by a combination of Pomo, my Nation but another part of it, and Mi-Wok. There are five Natives working at Graton now, including my cousin and two other Pomo. There's one from Graton. There used to be more. In total there are about 2500 employees. No managers are Native. They are all Caucasian and one African-American, all the way to the General Manager. The casino is run by Station Casinos for the Federated Tribes of Graton Rancheria.

I have seen sexual harassment at the casino. A General Manager, who is no longer there, was going up to girls and telling them that if they want promotions that they had to sleep with him, or he would invite them over to his house to have drinks, and he would go up and grab girls from behind. The girls were fired. We all complained about it to my manager, who filed a complaint but we never heard back. We were only told by Station Casinos management that the casino was part of a sovereign nation and that Station would figure it out on their own. I thought it was completely wrong. I thought it was completely unfair that the women were fired for telling on the General Manager who did it.

I was part of the organizing effort to have collective bargaining at Graton. Union organizers came to my house. I wasn't really quite sure about unions because I have never been in a union and I had probably the same questions as everyone else, like what it was going to do for me and all that, but I gave the guys a chance to talk to me and listened to what they had to say. When we were talking, it just clicked to me what they were talking about because people were getting disciplined just because management didn't like them and how it wasn't fair, and then I realized that we didn't have a voice working at the casino and that we needed a voice. We needed the union to help us organize ourselves so we could actually sit back and tell them no, that we shouldn't be written up for things like complaining about sexual harassment and we should be able to speak out about abuses like that without having to worry about our job being taken away from us.

I actively started going to and talking to my workers and telling them why we needed this union, that it would be our voice and would help us so that we were no longer written up for petty things like the way your hair looked that day even though there was nothing wrong with it, or that the fact that management has favorites and wanted to write you up because their favorite did something wrong but needed to blame someone else. We went from two people supporting the union to 15 people to 64 people in the whole department finally agreeing that we needed this union. It was, to me, a win because we had been divided because management came in and started saying, look if you guys start doing the union, we're going to take action on you. They wanted to know who was organizing the union in the group and I had no problem saying it was myself that was standing up for my group. I've gotten dinged a few times for it. They put me in a corner and I stayed there the whole time and I've gotten off every trial that they've put me on, trying to fire me, because I worked hard and I showed that my work ethic was where it should be

and I would give them no reason to keep writing me up. Even though they would look for reasons, I would never give them a reason to. But even though management was opposed to us having a union, the Graton tribe was OK with it. The tribe went in and told Station management to back off and let it go – let it be the way it needed to be. That Graton had given permission for us to organize. After the tribe went to bat for us, Station Casinos management backed off and it went smoothly from there. The union is recognized, and we are in the end of our negotiations right now.

Job protection and fair treatment have been the main achievements in our negotiations. Now they have to have just cause to write us up, and we will have a chance to see if it actually makes sense. I will be recommending that my co-workers vote to ratify the agreement we have negotiated. The Graton Rancheria will also vote on it.

The Tribal Labor Sovereignty Act of 2015 (H.R. 511)

I don't think a bill to exempt all native-owned commercial enterprises from the National Labor Relations Act is right. If you exempt any of these businesses, you're also giving power to the companies that manage them, like Station Casinos in Las Vegas, that are hired to come in and manage their businesses. Under this proposed legislation, companies would be exempt from the NLRA at Native-owned casinos and other businesses, which means they can go ahead and say, now we're sovereign, so we're going to go ahead and take everyone else's rights and do what we want to do and if we feel like doing it, we can because there's nothing you can do about it. It honestly isn't fair to the worker because everyone has rights. Even though it's a piece of Native American land, it's still America and everyone should still have the same rights. It shouldn't be like we're taking this from you because we can. It's embarrassing as a Native

American to have to sit back and think maybe, just maybe this could happen and have to go to work every day trying to smile, looking at all my co-workers knowing deep down inside that I'm upset because they have no rights because my band of brothers, my family, my heritage took them away thinking it was OK when it's not.

My opinion would still be the same if the casino was actually run by the Graton Rancheria itself instead of an outside contractor. It's not fair to take anyone's rights away from them. To say just because it's a Native American land that we have and they work on it, that they don't have those rights, that's wrong. It should still go by federal law, no matter what. I think that they should be treated just like any other company. They're no different than anyone else. They're a company. They've got to go by every law. Even though you have your own sovereignty and your own nation, your native land, but still, it is a company that is being run, they are paying taxes on, therefore you should still follow the same rules that any other company follows including consumer and environmental laws. You wouldn't build a power plant on a Native American land and then say, OK, we're sovereign, we don't have to worry about dumping waste in violation of environmental laws – it's sovereign so we can do it. No, you still have to follow the law.

Without NLRA coverage, employees in Native-owned businesses are at the mercy of changes in tribal government or philosophy. For instance, things are going smoothly now at Graton. The tribe has leadership that supports employees' right to organize and have collective bargaining. We are close to finishing our collective bargaining agreement, which gives us a decent standard of living and the guarantee that comes with an employment contract. This could change. If a new tribal government came in that did not have the respect for non-Native workers – or members of other tribes, like me – or if simple greed took over its decisions, the tribe might

walk away from the contract when it expires. This cannot happen under the NLRA because the employer is obligated to continue bargaining with the union after the contract expires. The Graton Tribal Labor Relations Ordinance does not require this, but federal law does. A new tribal government could not only refuse to bargain with us again, but could take away everything we have after expiration of our contract. We would then be the mercy of the tribe and their management company. Only the NLRA would help us protect what we have gained. To be clear, what we have gained is the ability to work hard and in exchange, get wages and benefits that enable us to have self-sufficiency. The success of tribal businesses should work for both the tribe's members and for the workers. These businesses are a route to tribal self-sufficiency and workers' self-sufficiency. As a Native American and as a worker, I do not want to be in poverty or on welfare. I can avoid that through my union and collective bargaining, as long as those things are protected by federal law.

Under federal law, if the tribe refused to bargain after the expiration of our contract, this would violate its bargaining duty. We could file charges with the National Labor Relations Board, which would issue a complaint or seek injunctive relief to force the tribe back to the bargaining table. If the tribe took away our wages or benefits, again we could file charges with the NLRB and get the remedy of reinstatement of what we had and a make-whole for what we lost. Without the NLRA, there is very little we could do. We could complain to the tribe itself, but there is very little chance that would be successful if they had a change of heart. We could complain to the state, but there is little the state can do short of threatening to terminate the gaming compact, which is even more unlikely, even if the tribe's actions gave the state legal grounds for termination. We could not go to either federal or state court, the doctrine of

“sovereign immunity” means that we cannot sue the tribe even when it clearly violates our rights. We would be like people who live under dictatorship with no rights.

What could happen to us in the future at Graton without the NLRA is what would be true right now for employees of Native enterprises in other parts of the country. If Congress repealed the NLRA for tribal businesses, these employees would have no way to organize for collective bargaining unless a tribe decided to allow it. They would have no ability to protect their jobs if they even said a word about wanting to act together in their dealings with management. They would not even be able to speak in favor of collective bargaining, wear a union button, circulate a petition about their terms and conditions of employment, etc. They have none of these rights except through the NLRA and whatever a tribe decides to allow them – and only for so long as it chooses to do so.

The states cannot help. The states cannot prosecute the tribes for violating our rights under state law, because of the doctrine of “sovereign immunity”. So even though we are covered by things like state laws against discrimination, the states cannot enforce them unless the tribe agrees to waive its sovereign immunity. We are the only American workers in this precarious situation.

A comparison between tribal businesses and state and local governments does not wash. First of all, we are talking about tribal businesses, not governments. These are not just casinos, but enterprises engaged in retail, hotels, forest products, and many other types of businesses in both Native country and outside. Naturally, Native-owned businesses want to grow and diversify just like any others. These are not government functions in what they do or how they behave.

Second, workers and their organizations have political rights in state and local government. They have none in Native tribal government. In fact, attempting to influence tribal government

is usually grounds for termination. Because tribal government is not considered government for the purposes of the Bill of Rights, we have no First Amendment protections. We have no right of free speech. We have no right to petition the tribal government. Yes, we have these political rights in the state and local governments, but because of “sovereign immunity”, these governments cannot do anything for us. And because we are not protected by the First Amendment, tribal employers can fire us for complaining even to state and local governments about how we are treated. But under the NLRA, we become Americans again with the right to speak and act to improve our conditions. The NLRA allows us to talk to the government, customers and anyone else who will listen. Take away our NLRA rights, and we are like people in countries with the most repressive dictatorships.

I think this is why Native country has not been treated under other laws like it was foreign country. Many important federal laws apply to Native businesses. These include environmental and consumer-protection laws. For example, Native businesses are just as much subject to regulation by the Federal Trade Commission as the same businesses owned by non-Natives. Who can really argue with the justice of that? That is the problem with the sovereignty argument when it is applied to ordinary businesses. Where does it end? The courts have held that OSHA applies to Native businesses. Should it be repealed so that in addition to having no right to speak, workers in these businesses may be subjected to working conditions that will maim and kill them? The same is true of the Fair Labor Standards Act. Does sovereignty mean that it should be repealed, so that Native businesses can use child labor?

It is bad enough that Title VII of the 1964 Civil Rights Act does not apply to these businesses. Yes, that is right, the courts have interpreted the exemption in Title VII for Native tribes to include Native businesses, even ones that are staffed by non-Natives and cater to non-Natives,

like casinos. That means that all forms of discrimination, including sexual harassment, are fair game. I have personally been told that nothing can be done about sexual harassment because of this. Once again, the state and local governments cannot help. Even though they have their own anti-discrimination laws, “sovereign immunity” prevents them from being enforced against tribal businesses. Congress should not make a bad situation worse by also taking NLRA protections. The NLRA enables workers who have been subjected to harassment and other forms of discrimination to get together to complain about it. This is concerted activity that is protected by the NLRA. Take away the NLRA, and you have not only sexual harassment but no ability to speak out about it. No one can think this is right.

Conclusion

I am proud to be Pomo and I believe deeply in our sovereignty to determine our own laws and customs to govern ourselves. But we are also Americans who should treat others as equals, just as we wish to be treated. Taking away workers’ rights under the NLRA to act together to improve themselves puts all Americans, Native and not, in a much worse condition.