Opening Statement of Gregorio Kilili Camacho Sablan
House Education and Workforce Committee
Subcommittee on Health, Employment, Labor and Pensions
Legislative Hearing on
H.R. 986, the Tribal Labor Sovereignty Act of 2017
March 29, 2017

Thank you Mr. Chairman for holding a legislative hearing on H.R. 986, the Tribal Sovereignty Act.

The effect of this legislation would be to strip employees, who work at businesses owned and operated by an Indian tribe and located on Indian lands, of the protections afforded by the National Labor Relations Act.

This bill deals with a dispute between the sovereign rights of the Native American tribes and the rights of workers to organize and bargain collectively.

However, this bill does not reconcile these competing interests, but rather strips hundreds of thousands of workers of their rights

I am a Chamorro, one of the native people of the Northern Marianas, and fully appreciate the importance of tribal sovereignty for Native Americans.

But I also believe deeply in workers' right to organize, to collectively bargain, and to protect their right to fight for a safe workplace, fair pay to provide a living for themselves and their families and good benefits.

To be fair, legislation and labor board decisions must balance these competing principles, and not favor one at the expense of the other. That is precisely what happened in the *San Manuel Indian Bingo and Casino* decision, where a Bush-era Labor Board (by a bipartisan 3-1 vote) asserted jurisdiction over a tribal casino on tribal lands. Using a template widely accepted by the federal courts, the Board stated it would exercise jurisdiction over commercial tribal enterprises, unless doing so would "touch exclusive rights of self-government in purely intramural matters" or "abrogate rights guaranteed by treaty."

In the *San Manuel* decision the Board noted a distinction between commercial tribal enterprises that employ a substantial number of non-Indians and cater to a non-Indian clientele versus traditional tribal services or governmental functions.

At least 75% of employees at tribal casinos are not tribal members, and in some cases, as few as 1 percent of the employees are members of the tribe operating the casino. They have no say in the decision-making of tribal governments.

There has been criticism of the *San Manuel* decision. However, the NLRB applied the same criteria as has been applied to other "laws of general applicability", such the Occupational Safety and Health Act, the

Fair Labor Standards Act and many criminal statutes. For that reason, it is not surprising that multiple Appeals Courts have upheld *San Manuel*. Last year, the Supreme Court declined two petitions to overturn *San Manuel*.

Federal labor law and tribal sovereignty can comfortably co-exist at tribal casinos, without stripping workers of their rights under the NLRA. As will be explained by a witness, some unions have consented to being governed by Tribal Labor Relations Ordinances because these tribes adopted a mutually agreeable labor ordinance that protects workers' right to join a union and establishes a neutral dispute resolution panel. The important point, however, is that if these tribal ordinances were amended in the future, the workers would still be protected by the NLRA.

Tribal labor ordinances can be a workable option only if (1) they provide protections substantially equivalent to those afforded by the NLRA and (2) the NLRA exists as a backstop.

I want to thank the witnesses for taking the time to prepare their testimony and traveling to be here with us today. I also want to recognize one of the tribal casino workers, Mary Elizabeth Carter, who works at the Cache Creek Casino in Yolo County California, and is a member of UNITE HERE. I yield back my time.