

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE.

The meeting was called to order by Chairperson Senator Nancey Harrington at 10:30 a.m. on March 28, 2001 in Room 245-N of the Capitol.

All members were present except: Senator John Vratil, Excused  
Senator James Barnett, Excused

Committee staff present: Russell Mills, Legislative Research Department  
Theresa Kiernan, Office of the Revisor  
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:

Natalie Haag, Chief Legal Counsel and Director of Governmental Affairs for the Governor  
Glen Thompson, Stand Up For Kansas  
Ron Hein, Indian Nations in Kansas

Others attending: See Attached List

Chairman Harrington opened the meeting by acknowledging the absence of Senator Brungardt due to the death of his father, and stated that the thoughts and prayers of the committee were with him and his family.

Chairman Harrington opened the hearing on:

**SCR 1611—Expressing opposition to amendments to IGRA; concerning Governor’s approval of land acquisitions**

Chairman Harrington then asked Russell Mills, Legislative Research Department, to give a brief explanation of SCR 1611.

Natalie Haag, Chief Legal Council and Director of Governmental Affairs for the Governor, presented testimony in favor of the resolution. (Attachment 1).

In response to a question from Senator O’Connor, Ms. Haag stated that the state had used the 11<sup>th</sup> Amendment in regard to the state having a certain amount of immunity from tribal lawsuits. She stated that SCR 1611 simply said that the rights of the states should not be circumvented, but instead, kept clear.

Glen Thompson, Stand Up For Kansas, presented testimony in favor of the bill. (Attachment 2). He stated that he would like to commend the Governor’s office for opposing the Wyandott Tribe’s attempts to use the land of a Huron cemetery to expand gambling in Kansas. He stated that the wording of the law was very important because a reservation was considered to be the land that the tribe was living on, not buried on, and casinos could only be built on reservation land.

In response to a question from Senator Gooch, Mr. Thompson stated that it was the ruling of the court that only the land on which Indians were living was part of their reservation, and a similar case had been decided recently in Oklahoma.

In response to a question from Chairman Harrington, Mr. Thompson stated that this would apply to all tribes, including “newly recognized” tribes.

In response to a question from Senator Gilstrap, Mr. Thompson stated that the ruling of the court was that the cemetery was not a reservation. He stated that there was a legal provision which stated that land adjacent to a reservation may be used for casinos, so the Wyandott tribe had tried to say that the cemetery was part of

CONTINUATION SHEET

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE on March 28, 2001 in Room 245-N of the Capitol.

their reservation in order to use adjacent land for a casino, but this was not in the Indian Gaming Regulatory Act (IGRA).

Ron Hein, Indian Nations in Kansas, presented testimony and proposed amendments in favor of the resolution. (Attachment 3). He stated that he believed the amendments his organization was requesting would show support for the resolution from the tribes and strengthen it.

Chairman Harrington stated that there was some concern about "newly recognized" tribes and their attempts to establish reservation land for gaming. Theresa Kiernan, Office of the Revisor of Statutes, asked if the wording regarded tribes "in" the state of Kansas or "of" the state of Kansas, and Mr. Hein stated that he had intended to keep the wording consistent with the bill, so it should be changed to "of".

Chairman Harrington asked if there was a preference; Ms. Kiernan stated that "of" seemed like better language.

Senator Barnett stated that this amendment seemed like a self-serving resolution to protect existing tribes, and Senator Gooch agreed. Mr. Hein stated that the tribes he represented did not intend this to be self-serving, but simply to protect existing tribes.

Senator Lana Oleen submitted written testimony in support of **SCR 1611**. (Attachment 4).

Senator O'Connor made a motion to adopt the balloon amendment. Senator Teichman seconded that motion. The resolution was amended.

Senator Gooch made a motion to pass SCR 1611 favorably to the entire Senate. Senator O'Connor seconded the motion. The motion passed.

Chairman Harrington stated that she would carry the bill on the floor.

The meeting was adjourned at 11:10 a.m. The next meeting is scheduled for first adjournment of the Senate on March 29, 2001.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE  
GUEST LIST

DATE: March 28, 2001

NAME	REPRESENTING
Gail Bright	A.G.
Rebecca P	KBWA & KCAA
Katrina Mule	AP
Sondra deCoursey	KS (Inclusion) Dept
John Peterson	KS Governmental Consulting

# STATE OF KANSAS

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## OFFICE OF THE GOVERNOR

**Before the Senate Federal and State Affairs Committee  
March 28, 2001**

**Testimony by Natalie G. Haag  
Chief Legal Counsel  
Director of Governmental Affairs  
SCR 1611**

Thank you for the opportunity to testify in support of Senate Concurrent Resolution No. 1611. For the last several years, federal legislation has been introduced to require the Secretary of Interior to take into trust for purposes of gaming land purchased by the Wyandotte Tribe of Oklahoma in Wyandotte County. The Indian Gaming Regulatory Act would not allow the land to be placed into trust for purposes of gaming without the Governor's approval. The proposed federal legislation would circumvent the Governor's approval.

The proposed federal legislation could also lead to gaming on said land without the State's approval.

In 1988, in accordance with the Indian Gaming Regulatory Act, Congress granted the States specific rights to participate in the determination of legal gaming on Indian lands. SCR 1611 simply recognizes that right and encourages Congress to do the same.

Senate Fed + State  
3-28-01  
Attachment 1-1





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**Testimony To Senate Federal and State Affairs Committee  
on Senate Concurrent Resolution No. 1611**

by  
Glenn O. Thompson  
Executive Director, Stand Up For Kansas  
March 28, 2001

Good morning Senator Harrington and other members of this committee. Thank you for this opportunity to speak at this public hearing. I am speaking today on behalf of Stand Up For Kansas, a state-wide coalition of grassroots citizens who oppose the expansion of gambling in Kansas. **We urge you to vote YES on SCR 1611.**

First, I would like to commend the governor and his legal staff for opposing, first in the district court and then in the Tenth Circuit Court of Appeals, the Oklahoma Wyandotte Tribe's proposal for a casino adjacent to the Huron Cemetery. The ruling of the Appeals court with regard to their interpretation of the word "reservation," as used in the Indian Gaming Regulatory Act (IGRA), will have a major impact on future "off-reservation" Indian casinos, not only in the six states covered by the Tenth Circuit, but throughout the United States.

As you may know, the Appeals Court concluded:

*"... that the interpretation forwarded by plaintiffs (Graves, et al) is the one Congress intended to adopt when it enacted IGRA. As noted by plaintiffs, IGRA's use of the phrase 'the reservation of the Indian tribe' in 25 USC 2719(a)(1), suggests that Congress envisioned that each tribe would have only one reservation for gaming purposes."* (underline added for emphasis)

*"Further, as pointed out by plaintiffs, IGRA specifically distinguishes between the 'reservation' of an Indian tribe and lands held in trust for the tribe by the federal government."* (underline added for emphasis)

*"Applying what we believe to be the proper definition of the term 'reservation' for purposes of IGRA to the facts of this case, it is apparent that the Huron Cemetery does not fall within that definition."* (underline added for emphasis)

(See attached March 6, 2001 "Casino Alert" for more on this ruling.)

Now, with respect to HR 291, since the appeals court ruled that the Huron Cemetery is not the reservation of the Oklahoma Wyandotte Tribe, Congressman Moore, the tribe and their financial backers have introduced HR 291 in Congress to build and operate an Indian casino in Kansas without the approval of the governor or any other state elected official. **This is bad public policy!** Congress enacted IGRA in 1988 to establish an orderly process for a state, through the governor, to have a voice on a proposed Indian casino on land acquired and put in trust after the enactment of IGRA (Oct. 17, 1988). **HR 291 is an obvious tactic to bypass this process.**

**I urge you to express your opposition to HR 291 to Congress by approving SCR 1611.**

1. Tenth Circuit US Court of Appeals, No. 00-3063, Sac and Fox Nation of Missouri; Iowa Tribe of Kansas and Nebraska; Prairie Band of Potawatomi Indians; Bill Graves, Governor of State of Kansas, Plaintiffs-Appellants, v. Gale A. Norton, Secretary of the Interior; Wyandotte Tribe of Oklahoma, Defendants-Appellees, Feb. 27, 2001

Senate Fed + State  
3-28-01  
Attachment 2-1

# STAND UP FOR KANSAS



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## *Casino Alert*

A Newsletter for Kansas Legislators

March 6, 2001

### *Federal appeals court halts Wyandotte tribe casino development*

The U. S. 10<sup>th</sup> Circuit Court of Appeals in Denver ruled on Feb. 27 that the Huron Cemetery in Kansas City, Ks. is not a tribal reservation and that the Secretary of the Interior erred in approving the Oklahoma Wyandotte Tribe's petition to use the adjacent Shriner tract of land for a casino.<sup>1</sup>

This decision overturned a decision made by the U.S. District court in Topeka last year. Kansas Gov. Bill Graves and the four Kansas tribes appealed the district court decision.

#### "Reservation" clarified

The most far-reaching portion of the court's ruling was the court's interpretation of the word "reservation." The Indian Gaming Regulator Act (IGRA) uses this word numerous times but does not define the meaning. IGRA prohibits casinos "on lands acquired by the Secretary in trust for the benefit of an Indian tribe" after Oct. 17, 1988, except under certain conditions. One exception is that "such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe" on Oct. 17, 1988 [25 USC 2719(a)(1)]

In the appeal, the Secretary of the Interior contended that there is no requirement that tribal members actually reside on "reservation" property.<sup>1</sup>

Plaintiffs (Graves, et al) argued that the term "reservation ... refers to land set aside by the federal government for the occupation of tribal members."<sup>1</sup>

The court concluded:

"... that the interpretation forwarded by plaintiffs is the one Congress intended to adopt when it enacted IGRA. As noted by plaintiffs, IGRA's use of the phrase 'the reservation of the Indian tribe' in 25 USC 2719(a)(1), suggests that Congress envisioned that each tribe would have only one reservation for gaming purposes."<sup>1</sup>

"Further, as pointed out by plaintiffs, IGRA specifically distinguishes between the 'reservation' of an Indian tribe and lands held in trust for the tribe by the federal government."<sup>1</sup>

The meaning and ramifications of this ruling will be argued many times in future court cases. Nevertheless, it appears that the court's interpretation of the word "reservation" will reduce the number of petitions for "off-reservation" casinos, at least within the six states covered by the Tenth Circuit Court of Appeals.

1. Tenth Circuit US Court of Appeals, No. 00-3063, Sac and Fox Nation of Missouri; Iowa Tribe of Kansas and Nebraska; Prairie Band of Potawatomi Indians; Bill Graves, Governor of State of Kansas, Plaintiffs-Appellants, v. Gale A. Norton, Secretary of the Interior; Wyandotte Tribe of Oklahoma, Defendants-Appellees, Feb. 27, 2001

For additional information, contact Glenn Thompson at 316-634-2674.

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**Testimony re: SCR 1611  
before Senate Federal and State Affairs  
Presented by Ronald R. Hein  
on behalf of  
Indian Nations In Kansas  
March 28, 2001**

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Indian Nations in Kansas (INIK). INIK is an ad hoc coalition of three of the four Kansas Native American Indian Tribes, the Kickapoo Tribe in Kansas, the Prairie Band Potawatomi Nation, and the Sac and Fox Nation of Missouri.

The Indian Nations in Kansas support SCR 1611. This resolution expresses opposition to House Resolution 291 currently before Congress or any similar legislation which would nullify the legal rights of the State of Kansas preserved by the Indian Gaming Regulatory Act.

The INIK Tribal Councils are in the process of adopting similar resolutions to be submitted to Congress.

Attached to my testimony are balloon amendments that we propose be adopted to indicate the Tribes' support for the Governor and this resolution. With the balloon amendments, the Resolution would stress that the Governor, the legislature, and the Tribes are speaking with a unified voice to oppose this type of congressional action.

The Indian Nations in Kansas would urge adoption of the amendments and adoption of SCR 1611.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Senate Fed + State  
3-28-01  
Attachment 3-1



# Senate Concurrent Resolution No. 1611

By Committee on Federal and State Affairs

3-21

3-2

9 A CONCURRENT RESOLUTION expressing the Legislature's oppo-  
10 sition to amendments to the Indian Gaming Regulatory Act which  
11 eliminate the Governor's right to concur in acquisitions of land for  
12 gaming purposes.  
13

14 WHEREAS, In 1995, the State of Kansas entered into a tribal-state  
15 gaming compact with each of the resident tribes of the state, namely the  
16 Iowa Tribe of Kansas and Nebraska, the Kickapoo Tribe in Kansas, the  
17 Prairie Band Potawatomi Nation of Kansas and the Sac and Fox Nation  
18 of Missouri in Kansas and Missouri; and

19 WHEREAS, The four resident tribes each currently operate a tribal  
20 gaming casino under tribal-state gaming compacts; and

21 WHEREAS, The Wyandotte Tribe of Oklahoma, a nonresident tribe  
22 seeks to construct and operate a gaming casino in downtown Kansas City,  
23 Kansas, on land which is adjacent to the Huron Cemetery; and

24 WHEREAS, The Wyandotte Tribe of Oklahoma claims that the Hu-  
25 ron Cemetery is a reservation; and

26 WHEREAS, The Governor of the State of Kansas ~~has~~ expressed op-  
27 position to the establishment of casino gaming by nonresident tribes; and

28 WHEREAS, Litigation has been filed to stop the construction and  
29 operation of a casino by the Wyandotte Tribe of Oklahoma; and

30 WHEREAS, The Tenth Circuit Court of Appeals rendered a decision  
31 on February 27, 2001, finding that the Huron Cemetery is not a reser-  
32 vation and requested a review by the Department of Interior on the trust  
33 status of land purchased by the Wyandotte Tribe of Oklahoma; and

34 WHEREAS, House Resolution No. 291, introduced in the United  
35 States House of Representatives on January 30, 2001, would authorize  
36 gaming without the Governor's prior approval on land to be purchased  
37 by the Wyandotte Tribe of Oklahoma; and

38 WHEREAS, The amendment proposed in House Resolution No. 291  
39 would eliminate the right of the Governor of the State of Kansas under  
40 the Indian Gaming Regulatory Act to concur in acquisition of land for  
41 gaming purposes within the State of Kansas; and

42 WHEREAS, The Governor of the State of Kansas recently wrote to  
43 the Kansas Republican Congressional Delegation expressing his opposi-

four

and the four resident tribes in Kansas have

WHEREAS, the four resident tribes have actively participated in such litigation with the State of Kansas; and

22



; and

WHEREAS, the four resident tribes of Kansas are wholly opposed to the legislation being proposed in the U. S. Congress and are in support of the Governor's position

3-3

1 tion to the legislation: Now, therefore,  
 2 *Be it resolved by the Senate of the State of Kansas, the House of Rep-*  
 3 *resentatives concurring therein:* That the Legislature of the State of  
 4 Kansas joins with the Governor of the State of Kansas in expressing its  
 5 opposition to House Resolution No. 291 or any similar legislation which  
 6 would nullify the legal rights of the State of Kansas preserved by the  
 7 Indian Gaming Regulatory Act and the interpretation of such act by the  
 8 decision of the Tenth Circuit Court of Appeals; and  
 9 *Be it further resolved:* That the Secretary of State be directed to pro-  
 10 vide an enrolled copy of this resolution to the Honorable: Secretary of  
 11 State Colin L. Powell; President pro tempore of the United States Senate,  
 12 Senator Strom Thurmond; Speaker of the United States House of Rep-  
 13 resentatives, Representative J. Dennis Hastert; Chairperson of the Senate  
 14 Committee on Indian Affairs, Senator Ben Nighthorse Campbell; Chair-  
 15 person of the House Committee on Resources, Representative James V.  
 16 Hansen; and to each member of the Kansas Congressional Delegation,  
 17 Senator Sam Brownback, Senator Pat Roberts, Representative Todd  
 18 Tiahrt, Representative Jerry Moran, Representative Jim Ryun and Rep-  
 19 resentative Dennis Moore.

3

# State of Kansas

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COMMITTEE ASSIGNMENTS  
CHAIR: CONFIRMATION OVERSIGHT  
VICE CHAIR: ORGANIZATION, CALENDAR & RULES  
MEMBER: STANDING & JOINT COMMITTEES

## Majority Leader Kansas Senate

SENATE CHAMBER, STATE CAPITOL  
TOPEKA, KANSAS 66612-1504

### Testimony Senate Federal & State Affairs Committee Wednesday, March 28, 2001 SCR 1611

Chairman Harrington and Members of the Committee:

I appreciate the opportunity to offer testimony today in support of **SCR 1611**, which expresses the Kansas Legislature's opposition to House Resolution No. 291 which would eliminate the Governor's right to concur in acquisitions of land for gaming purposes.

Kansas recognizes four tribes as resident tribes: the Iowa Tribe of Kansas and Nebraska, the Kickapoo Tribe in Kansas, the Prairie Band Potawatomi Nation of Kansas and the Sac and Fox Nation of Missouri. Each has a reservation located within the boundaries of the state and has compacted with the state for casinos. The Wyandotte Tribe of Oklahoma is not a resident tribe, yet, the tribe is attempting to establish residency in order that they may open a gaming casino in Kansas City, Kansas area. In its efforts to achieve this goal, the Wyandotte Tribe of Oklahoma has consistently tried to work around Kansas law, the Governor and the Kansas Legislature by going to the United States Congress.

Through creation of the State-Tribal Relations Committee, legislators and tribal members have worked with the four resident tribes extensively over the last twelve years. We have worked with representatives of the Governor's office, the Kansas Legislature and the tribes to establish and maintain positive, working relationships. The methods utilized by the Wyandotte Tribe of Oklahoma do not promise for a similar relationship.

Governor Graves and the four resident tribes have joined in a lawsuit to prevent the Oklahoma tribe from circumventing the provisions in the Indian Gaming Regulatory Act. I support the position of the Governor and the four resident tribes of Kansas and would ask the committee's support, as well. I strongly urge the committee to recommend **SCR 1611** favorably for passage to the full Senate.

Sincerely,

A handwritten signature in black ink that reads "Lana Oleen".

Lana Oleen

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