House Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Fiftieth Legislature
First Regular Session
2011

HOUSE RESOLUTION 2001

A RESOLUTION

RESOLVING INTENT TO AFFIRM THE SOVEREIGNTY OF THE STATE OF ARIZONA UNDER THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND TO OPPOSE THE CREATION OF A NEW INDIAN RESERVATION FOR GAMING PURPOSES WITHIN THE EXTERIOR BOUNDARIES OF A MUNICIPALITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Whereas, the Tenth Amendment to the Constitution of the United States reads as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; and

Whereas, the United States Constitution expressly enumerates the limited authority delegated to federal government by the several states; and

Whereas, the State of Arizona retains rights and authority not expressly delegated to the federal government by the Constitution, including and specifically the right to maintain full governmental authority over its territory unless this legislative body grants the federal government leave to diminish that territorial authority; and

Whereas, with respect to Indian gaming, this State has specifically reserved its rights by statute; and

Whereas, in addition to the reserved powers of the state, the federal government has expressly granted to the states authority to regulate commerce with the tribes related to Indian gaming in Class III gaming facilities by requiring that the states and tribes enter into gaming compacts; and

Whereas, the Tohono O'odham Nation has filed an application with the federal government to create a reservation for the purposes of building an expansive gaming facility within the exterior borders and neighborhoods of the City of Glendale; and

Whereas, the Tohono O'odham Nation claims rights to establish its reservation under a federal statute that fails to recognize or accommodate the state's constitutional authority and, therefore, exceeds the authority delegated to the federal government by the states; and

Whereas, the Tohono O'odham Nation has amended its initial application under the federal statute to create a reservation by removing its request for authority to conduct gaming on the property notwithstanding the fact that the Nation has consistently stated its intention to conduct gaming activity on the location in contravention of federal and state law. The federal government, in addition to exceeding its constitutional authority, has wrongfully accepted that amendment and thus failed to incorporate the Nation's expressly stated intentions when making its decision to create a new reservation; and

Whereas, the federal government, in addition to exceeding its constitutional authority, incorrectly bases its decision on an interpretation that the land that it seeks to remove from state jurisdiction is not, as required by the federal statute on which the Tohono O'odham Nation relies, "within a city or town," as that term would be reasonably interpreted in the context of Arizona statutes given that the land in question is a county island in the middle of a developed metropolitan area and is completely surrounded by the City of Glendale; and

Whereas, the Tohono O'odham Nation's proposed gaming facility is located within a developing community, across the street from a high school, and people residing or conducting business in this community did not

anticipate or have any reason to anticipate that their lives and livelihoods would be impacted by the creation of an area and a business enterprise that is not subject to the laws and regulations of this State or its local governmental jurisdictions; and

Whereas, the voters of Arizona, with the public encouragement of the Tohono O'odham Nation, approved a ballot measure in 2002 that created laws expressly intended to preclude the development of a gaming facility in or close to neighborhoods, which is directly inconsistent with the Nation's current proposal; and

Whereas, six other Arizona tribes have passed resolutions expressly opposing the Tohono O'odham Nation proposal.

Therefore

Be it resolved by the House of Representatives of the State of Arizona:

1. That the House of Representatives of the State of Arizona hereby expresses its intent to protect its sovereignty by preserving the rights not specifically enumerated and granted to the federal government in accordance with the Tenth Amendment of the Constitution of the United States.

2. That this body opposes as a matter of law and just public policy the Tohono O'odham Nation's pending application to create a reservation within the exterior boundaries of the City of Glendale.

3. That the term "within a city or town," as used in the federal statute on which the Tohono O'odham Nation relies in its attempt to create a new Indian reservation for the purposes of gaming, consistent with the Arizona statute and the evolution of annexation statutes with this state, would include any territory that is surrounded on three sides by a city or town.

4. That this Resolution shall serve as notice to the federal government that it must deny, in accordance with the constitutional limitation on federal authority, the Tohono O'odham Nation's application for the creation of a new reservation within the State of Arizona without prior legislative approval as required by Article I of the United States Constitution.

5. That this body accepts the order of the Arizona Federal District Court in the matter of *Gila River Indian Community, et al. v. The United States of America, et al.*, Case No. CV10-1993-PHX DGC, allowing members to join as parties in that lawsuit opposing the actions of the federal government to impede on the sovereignty of this state by creating a new reservation within the State of Arizona without prior legislative approval.

6. That the Secretary of State of the State of Arizona transmit copies of this Resolution to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Speaker of the House and the President of the Senate of each state's legislature and each Member of Congress from the State of Arizona.

PASSED BY THE HOUSE JANUARY 25, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JANUARY 25, 2011.