



TOHONO O'ODHAM NATION

OFFICE OF THE CHAIRMAN AND VICE CHAIRMAN

We:sij T-we:m

ALL OF US TOGETHER

NED NORRIS JR.
CHAIRMAN

ISIDRO LOPEZ
VICE CHAIRMAN

PRESS RELEASE

FOR IMMEDIATE RELEASE

Wednesday, March 17, 2010

Contact: Peter Delgado, (520) 383-2028

Matt Smith, (520) 321-1111

TOHONO O'ODHAM NATION CONDEMNS HOUSE VOTE ON HB 2297

*Former US Solicitor General Finds Legislation Unconstitutional
Local and National Tribal Interests Oppose Dangerous Precedent*

SELLS, Ariz. – The Tohono O'odham Nation (Nation) condemns the vote earlier today in the Arizona House of Representatives in favor of HB 2297. The Nation also expresses its gratitude to the 26 legislators who had the courage to take a stand and oppose passage of this unconstitutional legislation. The legislation, which would allow Arizona municipalities to immediately annex land without a landowner's consent and without due process, will now be sent to the Arizona Senate for debate.

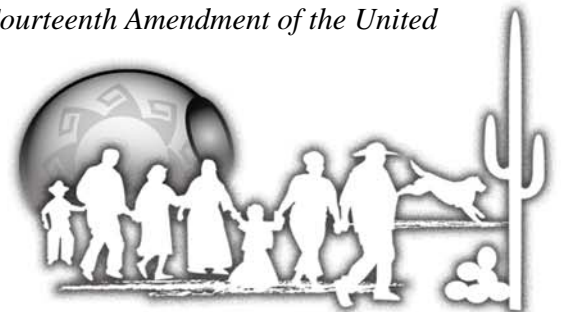
Ned Norris Jr., Chairman of the Tohono O'odham Nation, said, "*HB 2297 is unconstitutional and a direct attack against the Tohono O'odham Nation. It is also an affront to all Arizona tribes and indeed, all Arizonans. It undermines the basic constitutional rights afforded to all of us as Americans. It is time for the authors of HB 2297 to abandon the legislation so we can all focus on providing a new and significant economic development opportunity for the Nation, the West Valley and the entire state of Arizona.*"

The legislation has been opposed locally and nationally by tribal interests. The National Congress of American Indians (NCAI) passed a resolution last month opposing all discriminatory state legislation, specifically referencing the Arizona Legislature's attempt to discriminate against the Tohono O'odham Nation. In addition to the NCAI, the Hualapai Tribe has also come out against this bill due to its violation of sovereign rights and the precedent it would set for all tribal lands.

Stated Chairman Norris, "*This legislation is an unjust and unjustifiable taking of the Tohono O'odham Nation's property rights. Additionally, it violates the U.S. Constitution's Supremacy Clause and the rights of Due Process and Equal Protection as guaranteed by the Fourteenth Amendment of the United States Constitution.*"

-more-

P.O. BOX 837 • SELLS, ARIZONA 85634
PHONE: 520-383-2028 • FAX: 520-383-3379



Seth Waxman, the United States Solicitor General under the Clinton administration, was asked by the Nation to provide an opinion on whether the language of HB 2297 violates the United States Constitution. After conducting a thorough legal analysis, Waxman determined that HB 2297, if enacted, would violate several provisions of the U.S. Constitution.

HB 2297, according to Waxman, would violate the 14th Amendment protections assuring every person “equal protection of the laws” and forbidding the taking of “life, liberty or property without due process of the law.” Waxman believes that it is highly suspect that HB 2297 singles out certain tribes—in particular the Nation—for disfavored treatment.

In his report, Waxman writes, “The manner in which the bill strips a tiny group of landowners of the rights accorded to all other landowners, without any apparent justification for the distinction, suggests that it is not rationally related to a legitimate government purpose.” He also said, “Both the purpose of HB 2297 and the means it employs to achieve that purpose raise significant due process questions... Frustrating Indian tribes’ ability to exercise their rights under federal law is not a legitimate purpose for state legislation.”

Waxman also concluded that HB 2297 would violate the Constitution’s Takings Clause, which requires that private property may not “be taken for public use without just compensation.” HB 2297 would clearly interfere with the Nation’s property rights and intended use of the property it owns. Waxman wrote, “The Nation has a strong argument that annexation of its land pursuant to HB 2297 would be a taking, entitling the Nation to just compensation for the loss of the highest and most profitable use of its property.”

Editor’s Note: See attached for copy of Seth Waxman Report

###