

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(NCAI Support of Resolution Opposing Senate Bills 2298, 2299, 2300, 2301,
and 2302 in the United States Senate)**

RESOLUTION NO. 98-446

**WHEREAS, Senator Slade Gorton has introduced five bills in the United States Senate,
namely**

- 1) S. 2298, the Indian Civil Rights Enforcement Act;**
- 2) S. 2299, the American Indian Contract Enforcement Act;**
- 3) S. 2300, the State Excise, Sales and Transaction Tax Enforcement Act of 1998;**
- 4) S. 2301, the Tribal Environmental Accountability Act; and**
- 5) S. 2302, the American Indian Tort Liability Insurance Act; and**

**WHEREAS, these bills are a continuation of Senator Gorton's longstanding attack on
tribal self government, self determination, economic independence and
sovereignty; and**

**WHEREAS, S. 2298 provides a Congressional waiver of the sovereign immunity of all
Indian Tribes in tribal court and in federal district court for claims brought
under the Indian Civil Rights Act for declaratory judgment and injunctive
relief, and allows the federal court to set aside the findings of fact of the
tribal court if the tribal court hearing is determined to be unfair, if the
tribal court is not independent of the legislative and executive branches of
government, or if the factual determinations of the tribal court are not
fairly supported by the record; and**

**WHEREAS, S. 2299 provides a Congressional waiver of the sovereign immunity of all
Indian Tribes in federal court for contract claims to obtain money
damages against Indian tribal governments for breaches of contracts
made by the governing body of the Indian Tribe or on behalf of an Indian
Tribe; and**

**WHEREAS, S. 2300 provides a Congressional waiver of the sovereign immunity of all
Indian Tribes and tribal retail enterprises in federal court for declaratory
judgments and for tax collection lawsuits brought by a State for collection**

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of certain qualified State retail taxes imposed on and payable by non-members of the Tribe, with an exception for cases where the Tribe imposes and collects an equivalent tax on the same sale or where an agreement between the Tribe and the State exempt certain tribal retail enterprises from collecting and remitting the tax; and

WHEREAS, S. 2301 seeks to make Indian Tribes subject to the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. ("NEPA"), and waives the sovereign immunity of Indian Tribes to the extent necessary for NEPA actions to be brought against Tribes, and further waives the sovereign immunity of Indian Tribes so that citizen lawsuits authorized under any federal environmental law may be brought against any Indian Tribe; and

WHEREAS, S. 2302 provides a Congressional waiver of the sovereign immunity of all Indian Tribes in federal court for tort lawsuits (lawsuits involving claims for property injury or loss, personal injury, or wrongful death based on negligent or intentional conduct of the Indian Tribe) and provides that the Secretary of the Interior shall obtain or provide a tort liability insurance policy for each Indian Tribe that receives a Tribal Priority Allocation in which insurance policy the insurance carrier is precluded from asserting the defense of sovereign immunity, and provides that the Secretary of the Interior shall withhold future Tribal Priority Allocation payments until the Secretary determines that the Tribe has paid its insurance premiums; and

WHEREAS, these Senate Bills are offensive to Indian tribal governments because they undermine the jurisdiction of tribal courts and attack the competence of tribal courts; and

WHEREAS, these bills will cause a financial strain on Indian tribal governments by subjecting them to tort and contract lawsuits and payment of damages at a time when tribal funds are severely diminished by the federal

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government's withholding of adequate federal funding of essential tribal governmental services; and

WHEREAS, Indian Tribes are capable of waiving their own sovereign immunity in a manner compatible with their own needs and conditions, and of creating mechanisms for administrative review of claims prior to judicial action similar to the mechanism in the Federal Tort Claims Act, but the proposed bill waiving immunity from tort lawsuits unilaterally waives the sovereign immunity of all Tribes and forces Tribes directly into court without the chance for administrative review of tort claims; and

WHEREAS, the Tohono O'odham Nation has provided limited waivers of sovereign immunity in certain tribal laws where the Tohono O'odham Legislative Council has deemed it prudent to waive sovereign immunity, including the Tohono O'odham Gaming Authority Charter and the Tohono O'odham Solid Waste Management Code.

NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Nation strenuously opposes enactment by the United States Congress of S. 2298, the "Indian Civil Rights Enforcement Act," S. 2299, the "American Indian Contract Enforcement Act," S. 2300, the "State Excise, Sales and Transaction Tax Enforcement Act of 1998," S. 2301, the "Tribal Environmental Accountability Act," and S. 2302, the "American Indian Tort Liability Insurance Act" because the need for these measures is not founded in fact and because they are unwarranted attacks on the self government, self determination, economic independence and sovereignty of Indian Tribes and Nations.

BE IT FINALLY RESOLVED that the Tohono O'odham Nation requests that the National Congress of American Indians do adopt a resolution supporting the Tohono O'odham Nation in opposing Senate Bills 2298, 2299, 2300, 2301, and 2302.

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The foregoing Resolution was passed by the Tohono O'odham Council on the 15TH day of OCTOBER, 1998 at a meeting at which a quorum was present with a vote of 1,766.0 FOR; -0- AGAINST; -0- NOT VOTING; and 161.0 (09) ABSENT, pursuant to the powers vested in the Council by Section 1 (j) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).


TOHONO O'ODHAM LEGISLATIVE COUNCIL



Dennis Ramon, Legislative Chairman

16th day of October, 19 98

ATTEST:

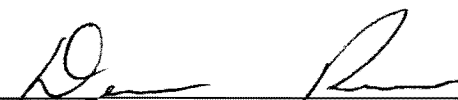


Julianna Saraffio, Acting Legislative Secretary

15 day of Oct, 19 98

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'Odham Nation on the 16th day of October, 19 98 at 5:13 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



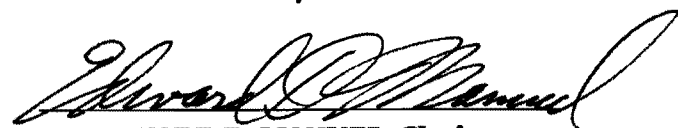
Dennis Ramon, Legislative Chairman

APPROVED

on the 16th day of October, 19 98

DISAPPROVED

at 5:18 o'clock, P.M.



EDWARD D. MANUEL, Chairman

TOHONO O'ODHAM NATION

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Returned to the Legislative Secretary on the 16th day of

October, 1998, at 5:28 o'clock, P.M.



Julianna Saraficio, Acting Legislative Secretary

ACTION: NCAI SUPPORT OF RESOLUTION OPPOSING SENATE BILLS 2298, 2299, 2300, 2301, AND 2302 IN THE UNITED STATES SENATE

MOVED: COUNCILMAN ALEX RAMON

SECOND: COUNCILWOMAN FERN SALCIDO

DATE: OCTOBER 15, 1998

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
CHUKUT KUK 189.0	1. DAVID GARCIA (Marvin Thomas)	94.5	X			
	2. KENNETH WILLIAMS (Arnold F. Smith Sr.)	94.5	X			
HICKIWAN 146.0	1. ALEX JOSE ()	73.0	X			X
	2. LLOYD FRANCISCO (Susan Sam)	73.0	X			
GU VO 142.0	1. FERN SALCIDO (Larry Montana)	71.0	X			
	2. GLORIA MONTANA (Phillip Antone)	71.0	X			
SAN LUCY 114.0	1. JOHN RENO (Mary Hoffman)	57.0	X			X
	2. ALBERT MANUEL, JR. (Jana Montana)	57.0	X			
PISINEMO 139.0	1. BARBARA SALVICIO ()	69.5	X			
	2. JOHNSON JOSE ()	69.5	X			X
GU ACHI 190.0	1. LOUIS JOHNSON ()	95.0	X			X
	2. ALEX J. RAMON ()	95.0	X			
BABOQUIVARI 258.0	1. FRANCES MIGUEL ()	129.0	X			
	2. FRANCES G. ANTONE (Edward N. Kisto)	129.0	X			X
SAN XAVIER 146.0	1. TONY BURRELL ()	73.0	X			X
	2. DENNIS RAMON ()	73.0	X			
SCHUK TOAK 120.0	1. JOSEPH JUAN ()	60.0	X			X
	2. AMBROSE ENCINAS ()	60.0	X			
SELLS 322.0	1. DENNIS E. JOSE ()	161.0	X			
	2. EVELYN JUAN ()	161.0	X			
SIF OIDAK 161.0	1. RITA MARTINEZ (Maxine Norris)	80.5				X
	2. MARY ANN ANTONE (Darlene Andrew)	80.5				X
TOTAL		1,927.0	1,766.0	-0-	-0-	161.0 (09)

**PASSED VOTES