

our offices, we have held 11 hearings on nominations. That is more than two per month. There was an unprecedented August recess nomination hearing that Chairman LEAHY held. I chaired a hearing 2 days after the closure of all three Senate office buildings due to anthrax. We had to meet in the Capitol, in a cramped and crowded room. I believe it was on a Friday afternoon.

In 1999 and 2000, by contrast, when the committee was controlled by the people of the other side, there were only seven hearings per year, and that was the entire year, not just the 5 months we had.

Second, my friends from the other side of the aisle complain that we are confirming too few judges. We have put 27 on the bench up to now; that is in 5 months of being in the majority. We should get up to 32 by the time we leave this week. Let me underscore 32. That is 5 more than were confirmed in the entire first year of the Clinton administration, when Democrats controlled the Judiciary Committee. They argue we are stalling, but we are putting in more judges nominated by a Republican President, George Bush, in the first year or first 5 months, than we put in when there was a President of our own party, President Clinton, who was nominating. Claims ring hollow when you look at the facts.

Again, the idea of taking a 2 by 4 and trying to hit the chairman or the members of our committee over the head without the facts is not going to bear fruit. You can give as many speeches as you want.

Third, when we point to raw numbers, our colleagues change their arguments, and then they point to the percentage of seats that remain vacant. You can't create a problem and then complain that someone else isn't solving it fast enough.

Why are there vacant seats? There are vacant seats because when people from the other side controlled the Judiciary Committee during the last 6 years of the Clinton administration, vacancies on the Federal bench increased 60 percent—a 60-percent increase during the time they were in control. Now they are complaining there are record vacancies and we have to fill them all in 1 year. Give me a break.

We are not going to play games and say what is good for the goose is good for the gander. We are not suggesting two wrongs make a right. We are not going to increase the percentage of vacancies. Instead, we are going to decrease it, and we have gotten a good start to the task. But the proof is in the pudding or, in this case, in the numbers. We are going to fill these open seats as quickly as possible, but we are going to do it right. No one is going to cower us in the time-honored, constitutional way in which we select

judges, which has been always in the history of this country, at least during our better moments, when we do it with care.

That leads to my fourth point. Because so many Clinton nominees never got a hearing and never were voted on by the Senate when it was controlled by the folks from the other side, the courts now more than ever hang in the balance. Some of the nominees have records that suggest extreme viewpoints. We need to examine their records closely before we act.

Again, one of the most awesome powers we as Senators hold is the power to approve judges. We can't just blindly confirm judges who threaten to roll back rights and protections won through the courts over the last 50 years: Reproductive freedom, civil rights, the right to privacy, environmental protection, worker and consumer safety.

In my State of New York, the administration has so far worked with us in good faith to select nominees who have met what I told them are my three criteria for nominating people to the bench: Excellence, moderation, and diversity.

Nominees who meet those three criteria will win my swift support. But for those nominees whose records raise a red flag, whose records suggest a commitment to extreme ideological agendas, we have to look more closely.

These days, the Supreme Court is taking fewer than a hundred cases a year. That means these trial and, particularly, appellate court nominees will have, for most Americans, the last word on cases that are oftentimes the most important matters in their lives.

We need to be sure the people to whom we give such power—for life—are fairminded, moderate, and worthy of such a deep, powerful, and awesome privilege.

We have worked well together with our Republican colleagues on several matters since September 11. By and large, we have done well to keep things bipartisan. On judicial nominees, both sides must work together to correct the imbalance on the courts and keep the judiciary within the mainstream—not too far left and not too far right.

We need nominees who are fair and openminded, not candidates who stick to a narrow ideological agenda.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

INDIAN GAMING

Mr. BROWNBACK. Madam President, I have an issue I want to explain to my colleagues before the Labor-HHS conference report comes before the body. In that conference report, there was an item that was going to address a wrong that had been placed in an earlier appropriations bill and that was not the

Interior appropriations bill. This body passed a particular piece of legislation, a very small paragraph, that dealt with a situation in Kansas that was then taken out of the conference report. That is why I am objecting to the Labor-HHS conference report until I get some assurances that we are going to have this issue dealt with next year. It has to do with a cemetery in Kansas.

The pictures I have here are of a beautiful site in Kansas City, KS, that is called the Huron Indian Cemetery. The area overlooks the Kansas River. It is up on a bluff. It is in downtown Kansas City, KS. It is where a number of Native Americans are buried who lived in this area—the Wyandotte Tribe who lived in this area, before a number of them moved to Oklahoma, before the tribe moved to Oklahoma.

You can see the pictures we have of a peaceful site in Kansas City, KS. It is virtually a park for a lot of people, a very solemn cemetery that is maintained quite nicely in this area.

We have Indian gaming in Kansas, and four tribes are recognized in Kansas. Each has a casino in the State. There is a tribe in Oklahoma, the Wyandotte Tribe, that wants to build a casino in Kansas, even though they are now located in Oklahoma. Initially, they wanted to build it on top of the cemetery. Local people protested, saying: Why are you ruining this sacred site to put in a casino?

They said: OK, we will put stilts on it and you will still have the cemetery, but this will sit on top of it.

Next they said: We want to build it right next to it. We are going to buy property next to the cemetery and we want to put in a casino, even though we are not a Kansas tribe and we are from out of State; some of our ancestors from the Wyandotte Indians were buried here 200 years ago, so we want to be able to claim this as an Indian reservation in Kansas, even though we are an Oklahoma tribe; we want to be able to claim it in Kansas so we can build a casino in Kansas.

That is what they desired to do.

The four recognized tribes in Kansas opposed it and said: Look, you left the State, and we stayed here; we have the appropriate authorization to build casinos; we don't want another one in the State; we don't want you coming here. The unofficial Wyandottes who stayed in Kansas said: We don't want you to have a casino next to our graveyard. It is a sacrilege to put a casino on it, on top of it, or next to it. We oppose that.

The Governor of Kansas opposed them doing that, saying this isn't fair to our tribes in the State. It isn't fair to the Wyandotte Indians and their ancestors who stayed in the area for an Oklahoma tribe to come in. They fought them on doing that. This matter was litigated first in Federal court, lower court, and in the Tenth Circuit Court. In each case, Kansas, and the

tribes in Kansas, the local people who stayed in Kansas, won against the Oklahoma tribe. They won at all levels—lower court, district court, and Tenth Circuit Court. So they could not declare this land adjacent to the cemetery as part of the Oklahoma Wyandotte Reservation in Kansas. That is what they were trying to do. The court said they disagreed with that.

Let me take you to the Department of the Interior Appropriations bill. In that appropriations bill, nothing was passed regarding this issue on either side, the House side or Senate side. In the conference committee that met, there was a handwritten sentence that was written in by a staff member that overruled the court ruling and allowed for the creation of a casino next to this cemetery. That was done in the Interior Appropriations bill.

Both Senator ROBERTS and I are opposed to doing this. This was not brought to the Senate floor, not handled here. This was a handwritten sentence that was inserted. They declared: We are going to overrule the court case, overrule what the Kansas Senators want to do. They are going to allow them to build a casino next to the cemetery, regardless of what the local tribes and the Governor and what the people in the State of Kansas or what the two Senators say.

It is an egregious abuse of the appropriations process to do this—and in my State where people don't want this to take place—just for the financial advantage of an Oklahoma tribe. If they want to do this in Oklahoma, build casinos there. That is up to them. Fine. But in Kansas this is not appropriate. Yet they slipped in that handwritten note to the Interior conference report.

This body, the Senate, corrected that in the Labor-HHS appropriations bill. We said this is not appropriate to take place in Kansas. That was the amendment that was on the floor and was accepted. That was the position of this body.

In the conference meeting that took place last night, the House would not agree with the Senate position, so the Senate position was taken out and now we are left with the Oklahoma Wyandottes being allowed to build a casino right next to this cemetery in Kansas City, KS, and overrule a court ruling of the Tenth Circuit Court of Appeals.

Mr. REID. Will the Senator yield?

Mr. BROWNBACK. Yes.

Mr. REID. I have been in touch with Senator BYRD. Senator BYRD agrees with me that, on the Interior bill next year, it would be possible for you to do it in subcommittee, or committee, or any member of the subcommittee has an absolute right to offer that amendment. We know how strongly you feel about it. I personally feel it should not have been in the Interior bill in the first place. I indicated that to the Senator. We will work with you on the mi-

nority and majority sides to make sure this issue is raised in the subcommittee and at the full committee level next year.

Mr. BROWNBACK. I appreciate that being raised by my colleague from Nevada—his assurance that we get this dealt with next year. We have talked off the floor about that. He agrees this is not the right way for this to come in. I point out that this is something we are going to have to deal with next year because this matter will still be under construction, or starting to be constructed at that point in time. It needs to be changed back in the Department of the Interior appropriations bill. I am very pleased that the Senator from Nevada recognizes that as well.

I point this out because I think this is such an abuse of the process. It is just wrong for this to take place.

I ask unanimous consent to have printed in the RECORD a letter from the Governor of the State of Kansas regarding this matter and also one from the four Indian nations in Kansas, the four recognized tribes, all opposed to the expansion of the Oklahoma Indian tribe into Kansas to build a casino.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

STATE OF KANSAS,
OFFICE OF THE GOVERNOR,
Topeka, KS, October 10, 2001.

HON. PAT ROBERTS,
U.S. Senator, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR PAT ROBERTS: On behalf of the State of Kansas, I am writing to express my strong opposition to language proposed for inclusion in H.R. 2217, the Department of the Interior and Related Agencies Appropriation Act of 2002. Language that proposes to clarify the authority of the Secretary of the Interior should not be included in the final text of the bill.

The language proposed as a technical amendment states, "the authority to determine whether a specific area of land is a 'reservation' for purposes of sections 2701-2721 of title 25, United States Code, was delegated to the Secretary of the Interior on October 17, 1988."

As you are aware the State of Kansas has been actively involved in litigation concerning the authority of the Secretary of the Interior. The Tenth Circuit Court of Appeals in *Sac and Fox Nation of Missouri v. Norton*, recently upheld the position of the State of Kansas that "... the Secretary lacked authority to interpret the term 'reservation' as used in IGRA." The decision of the Tenth Circuit Court of Appeal has been appealed and the Wyandotte Nation has requested a writ of certiorari to the Supreme Court of the United States. If the proposed language were to be included in the final version of H.R. 2217 it has the potential to negatively impact ongoing litigation. This is simply another effort to avoid IGRA and expand gaming by non-residential tribes.

I request your support in opposing the inclusion of this proposed language in the final version of H.S. 2217.

Sincerely,

BILL GRAVES,
Governor.

INDIAN NATIONS IN KANSAS,

June 19, 2001.

Re: Four Tribes' Joint Resolutions Opposing Gaming Within the State of Kansas by Out-of-State Indian Nations.

Hon. BILL GRAVES,
Governor of Kansas,
Topeka, Kansas.

GOVERNOR GRAVES: The four (4) Indian Nations in Kansas ("INIK") have unanimously supported the governor of the State of Kansas in opposition to out-of-state Tribes attempting to gain land holdings in the state of Kansas for purposes of establishing gaming enterprises. At this juncture, the Four Nations have passed joint resolutions similar to the Kansas Legislative Resolution (SCR 1611) opposing such efforts. Enclosed herein are INIK's originals of both of their resolutions. Resolution I opposes the Wyandotte Tribe of Oklahoma's efforts, and Resolution II opposes all out-of-state Tribes.

The Kansas Tribes join with the State of Kansas in this effort, and want you to have this information to see their formal position. If you have any questions, please feel free to contact any of the Tribal Chairpersons.

Respectfully Submitted,

NANCY BEAR,

Chairperson, Kickapoo Tribe in Kansas.

Mr. BROWNBACK. I want to read from the Governor's letter:

I continue to support the rights of the four existing residential Native American tribes to conduct gaming in Kansas in accordance with approved compacts. Efforts to side-step IGRA negatively impact the rights of our residential tribes as well as the rights of the State of Kansas.

This is a quote from the Indian Nations of Kansas, the four tribes—the Kickapoo, Sac and Fox, Prairie Band, and Iowa Tribe:

The four Indian Nations in Kansas have unanimously supported the governor of the State of Kansas in opposition to out-of-state Tribes attempting to gain land holdings in the state of Kansas for purposes of establishing gaming enterprises.

They are all united and opposed to what was stealthily slipped in the dark of night by staff in a handwritten note, and it is wrong for this to take place.

I put my colleagues on notice, I put the House on notice, and I put the Wyandotte Tribe in Oklahoma on notice: This is going to be back next year. You have bought the land, and you may have won this round, but we will be back at this next year.

The way this happened is not fair. I think it is a sacrilege for them to desecrate this sacred site for their own gaming purposes, their own income purposes, their own purposes of making money that they would take this upon this sacred site. In all traditions, burial grounds are treated as a sacred site. This is wrong. It should not happen, and it was slipped in the wrong way.

Madam President, I thank you for your understanding of this situation. I hope we can correct this next year. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.