

# **Reservation Rules and Revenue Roadblocks: Policy Analysis of the Lansing Casino Issue for Representative Theresa Abed (D-MI)**

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## **Executive Summary**

### **Purpose**

This policy brief will equip you with the knowledge necessary for you to support with confidence the Lansing casino policy proposed by the Sault Ste. Marie Tribe and the City of Lansing. This brief includes relevant background information, a summary of the policy's supporters and opponents, the policy's effects if enacted, and the political implications of supporting the casino. Because of its economic and educational potential for your constituents, I strongly recommend supporting the Lansing casino policy.

### **History of Issue**

In Michigan, new casino development is restricted to Indian land. Acquiring Indian land is a complex and lengthy process and involves a long history of federal policies that, until recently, aimed to reduce Indians' landholdings. The Sault Ste. Marie tribe of Michigan's Upper Peninsula is part of a small number of U.S. tribes that successfully operate casinos on their reservation land. The Sault tribe opened five casinos after entering into a compact with the State in 1993, and it has recently negotiated with the City of Lansing to create an off-reservation casino in Lansing.

### **Summary of Supporters**

Supporters of the Lansing casino base their arguments upon economic development. Sault Ste. Marie tribal leaders plan to use the casino's revenue to fund various programs for tribal members. The Sault tribe justifies the legality of the casino through the Michigan Indian Land Claims Settlement (MILCS) Act. The City of Lansing supports the casino because of the jobs it will provide, along with its potential for further economic stimulus to the downtown area of Lansing. Furthermore, Mayor Virg Benero plans to use the casino's revenues to support higher education for Lansing high school graduates.

### **Summary of Opponents**

Opponents of the Lansing casino base their arguments upon the legality of off-reservation casinos, as Attorney General Bill Schuette argues that the policy violates the State's compacts with various Michigan tribes. Notably, the Sault Ste. Marie tribe no longer shares revenues from its existing

casinos in the Upper Peninsula with the State, and public negotiations related to revenue-sharing with the State have not yet occurred. A coalition of other casino owners also opposes the Lansing casino, arguing that it will hurt them economically, as does a small group of Lansing community members.

### **Substantial Effects**

If the Lansing casino policy is successful, it will have substantial effects on the Sault Ste. Marie tribe by developing its economy and ultimately increasing its sovereignty. Additionally, enacting this policy will affect future policies related to off-reservation economic development. Other tribes in Michigan will likely follow the Sault tribe's precedent and develop casinos upon negotiation with individual Michigan cities.

### **Recommendation**

Because your duty is to represent the interests of your Lansing constituents, I strongly recommend supporting the Lansing casino. The political opposition you may face from some community members will be outweighed by the tremendous support you receive from the majority of the community, including influential political and business leaders who support the casino's economic and educational opportunities for Lansing.

### **History of Issue**

In Michigan, new casino development is restricted to Indian land. Acquiring Indian land is a complex and lengthy process and involves a long history of federal policies that, until recently, aimed to reduce Indians' landholdings. The Sault Ste. Marie tribe of Michigan's Upper Peninsula is part of a small number of U.S. tribes that successfully operate casinos on reservation land. The Sault tribe opened five casinos after entering into a compact with the State in 1993, and the tribe has recently negotiated with the City of Lansing to develop an off-reservation casino in Lansing. Both Lansing and the Sault tribe cite economic development as the most significant benefit of a tribal casino in Lansing.

### **Indian Land**

The U.S.'s history began with interactions with Native Americans, and conflicts between the natives and their European conquerors continue to shape modern policy debate. The complexity of the issue at hand reflects this lengthy history, which has consistently revolved around land. Accordingly, land underlies the current Lansing casino debate and, more specifically, the issue of off-reservation land for tribal gaming development.

Until recently, U.S. policies have explicitly aimed to reduce Indian landholdings through various types of policies, including the doctrine of discovery, removal and reservation policies, and allotment. Under the late eighteenth-century doctrine of discovery policy, Christian colonists of the New World seized Indian land, claiming that their God-given rights trumped Indians' occupancy rights. In 1823, the Supreme Court utilized the doctrine of discovery in *Johnson and Graham's Lessee v. William McIntosh* and ruled that Indians cannot sell titles to their lands, confirming that the federal government has the ultimate authority over Indian land (Prucha 35). Removal policies, such as President Jackson's 1830 Indian Removal Act, often forced tribes to move to the West, where they struggled to adapt and, subsequently, lived in poverty (Prucha 52-53; Olson and Wilson 39-41; Treuer 234). Under reservation policies of the 1830s and 1840s, Indians became the "first recipients of 'welfare' in United States history" and "had to deal with the paralyzing realization of economic uselessness" (Olson and Wilson 50), as poverty persisted on reservations (Treuer 215-16). Recognizing the failures of the reservation system, policy makers of the late nineteenth century created a new system for Indian Land under the 1887 Dawes Severalty Allotment Act (Prucha 170; Olson and Wilson 73). The allotment system broke up Indian reservations and instead promoted individual ownership. However, according to Indian Commissioner

Collier's Annual 1934 Report, allotment ultimately cost Indians 90,000,000 acres of land—that is two-thirds of Indian land—after 1887 (Prucha 226).

In the past eighty years however, policymakers have tried to restore some land to Indians and promote tribal economies through self-determination policies. The Indian Reorganization Act of 1934, a key component of the Indian New Deal, abandoned allotment policies, and over two million acres of land were restored to tribes (Prucha 223; Treuer 235). Policies that supported the economic development of tribes followed the Indian Reorganization Act, such as the 1935 Indian Arts and Crafts Board (Prucha 229). After a brief stint with termination policies, which aimed to promote assimilation and independence from government-supported programs in the mid-1900s, the federal government rededicated itself to restoring tribal land (Gaedo). These policies included some states' enactment of Public Law 280 in 1953 and various urban relocation policies. For example, part of President Johnson's Great Society's War on Poverty of the 1960s aided tribal economic development, including a provision to allow tribes to apply for federal grants with the assistance of Indian desks. Eventually, in 1970, under President Nixon, land that was part of a national forest was restored to the Taos Pueblo tribe because of its religious significance to the tribe (Prucha 259-60), and the Indian Financing Act of 1974 distributed millions of dollars to Indians for economic development (Treuer 220).

Currently, tribes may technically reacquire land through a formalized government process. The initial step in acquiring Indian land is to undergo an official recognition process through the Bureau of Indian Affairs (BIA). Once recognized, a tribe can reacquire land through three ways: a favorable court ruling for a tribe that has sued a state, congressional action, or purchase approved by the Department of the Interior. The most common avenues tribal leaders have pursued are lawsuits and congressional settlements, which has resulted in the restoration of eight million acres in the past half century.

### **Indian Gaming Regulatory Act (IGRA)**

Defining Indian land has become increasingly important in the past century because casinos are allowed to be built only on tribal land. However, gaming rights are not automatically granted to land-owning, federally recognized tribes. The legal framework that currently dictates Indian gaming is the 1988 Indian Gaming Regulatory Act (IGRA), a congressional policy that uniquely gives states the responsibility in Native American affairs. IGRA establishes three distinct classes of gaming, of which Class II and Class III games are regulated. In 2008, Congress passed section 2719 of the Act, colloquially called "section 20." Section 20 makes off-reservation gaming significantly more difficult to develop because it prohibits most Class II and Class III gaming on Indian land placed in trust after October 17, 1988. However, section 20 includes several exceptions, including those for Indian tribes that are landless, newly recognized tribes, restored tribes, lands won from claim settlements, or lands that are contiguous to land acquired before 1988. Another key exception is made for tribes that gain approval from the Secretary of the Interior, who must determine whether off-reservation gaming is in the best interest of the tribe and local community (Indian Gaming Regulatory Act). Currently, about 170 tribes, or one-third of all U.S. tribes, operate casinos (Treuer 244).

### **Sault Ste. Marie Tribe**

The Sault Ste. Marie tribe is one of the largest tribes in the Midwest and Northeast and is composed of over 40,000 members. It is headquartered in Michigan's Upper Peninsula in Sault Ste. Marie and was recognized by the BIA in 1972. It serves seven counties throughout the eastern part of the Upper Peninsula, which are split amongst five units.

The tribe's government is a representative democracy, and its constitution was adopted in fall of 1975. Twelve board members and one chairperson, all of whom are elected officials, compose the tribe's governing body, the Board of Directors. These members represent each of the tribe's five units and serve four-year terms, meeting twice a month. Additionally, the tribe has established a law enforcement department, consisting of eighteen police officers and a two-part tribal court.

The Sault Ste. Marie tribe's economy is business-based. Through its casinos, businesses, and governmental agencies, the tribe employs nearly two thousand members, making it one of Northern Michigan's largest employers. The tribe currently operates five casinos in each of its units, located in Sault Ste. Marie, Christmas, Hessel, Manistique, and St. Ignace. The tribe's first casino operation began in 1984, and all of its casinos in the Upper Peninsula have been financially successful (Sault Ste. Marie Tribe of Chippewa Indians, "History & Culture").

### **The Compact: Timeline of Lansing Casino Issue**

On August 20, 1993, Governor Engler entered into compacts with seven federally-recognized tribes, including the Sault Ste. Marie tribe. These compacts are similar to "minor treaties" that lay out the basics of a gaming agreement between a state and a tribe (Treuer 242). The compacts permitted the tribes to have Class III gaming on Indian lands as determined by IGRA. Furthermore, the State and tribes signed a consent decree that required tribes to provide eight percent of casino revenue to the State government and two percent to their local government. It also included an exclusivity cause that guaranteed that only tribes could operate casinos in the state (Griffin).

In November 1996, voters passed Proposal E, which was quickly expanded to the Michigan Gaming Control & Revenue Act. Proposal E enabled Detroit to open three privately-owned casinos, effectively breaking the compact's exclusivity cause. Then, eight tribes, including the Sault tribe, ceased revenue-sharing with the State in 1999 (Daly, "Lansing Casino..."; Griffin).

Ten years later, Ted O'Dell moved from the Upper Peninsula to Lansing and founded the Lansing Jobs Coalition. In an effort to create jobs for the Lansing area, he began to build local support for a tribal casino in the downtown entertainment district. In January 2012, the Sault tribe passed a resolution stating its plan for a Lansing casino and entered into a Comprehensive Development Agreement with the City of Lansing. In July, the project gained further support, as it was approved by the Lansing City Council, the Sault Board of Directors, and members of the Sault tribe via a tribal referendum. On November 1, 2012, the City of Lansing, represented by Mayor Virg Benero and businessman Bob Liggett, met with the Sault tribe's chairman, Aaron Payment, and negotiated a sale of land near the downtown Lansing Center.

However, the City of Lansing and the Sault tribe faced major opposition from the State of Michigan, and in September 2012, Attorney General Bill Schuette filed a lawsuit against the project, challenging the legality of an off-reservation casino. On March 5, 2013, U.S. District Judge Robert Jonker granted the State's motion for an injunction, effectively stalling the Lansing casino project.

### **Supporters**

Supporters of the Lansing casino policy base their argument upon economic development. The Sault Ste. Marie tribe projects millions of dollars of annual profit from the casino, and tribal leaders plan to use the money to fund various programs for tribal members, helping to fulfill the Indian Reorganization Act's vision of alleviating poverty for Indians. The Sault tribe justifies the legality of the casino through the MILCS Act. The City of Lansing supports the casino because of the jobs it will provide, along with its potential for further economic stimulus to the downtown area of Lansing. Additionally, Mayor Virg Benero plans to use the casino's revenues to support higher education.

### **Sault Ste. Marie Tribe**

The Sault Ste. Marie tribe's support for the Lansing casino lies in the project's significant economic potential for both the tribe and Lansing, and, ultimately, the project's potential to increase tribal sovereignty. Tribal leaders have already established specific uses for casino profits. Joe Eitrem, a former tribal chairman, lists the following as objectives: funding and restoring memberships programs, replenishing the tribe's self-sufficiency fund, paying off their debt, and increasing membership programs and services. Other objectives involve employment programs, college scholarships, and funeral assistance. Eitrem stresses that the Lansing casino is a crucial step towards tribal financial independence

(Wittrock, “Sault Ste. Marie Tribe...”), a long-term goal of all U.S. Indian policy. Tribal leaders predict that the casino will generate \$41 million for the tribe in its opening year and an annual profit of \$115 million after it has paid off building costs (Sault Ste. Marie Tribe of Chippewa Indians, “Lansing Casino Partners...”). Aaron Payment, the current tribal chairman, insists that the tribe has a legal right to develop on its land in Lansing because of this provision in MILCS, arguing that the Sault tribe is “...steadfastly committed to pursuing our legal right to develop our Lansing casino.... [W]e expect to prevail because our 1997 federal Land Claims Settlement Act clearly gives us the right” (qtd. in Carmody).

## **City of Lansing**

One of the most vocal supporters of the casino is Virg Bernero, the mayor of Lansing. Bernero’s reasons are entirely related to economics, as he desires to turn downtown Lansing into a “profit center.” He offers a “three-fer” explanation of the benefits of a tribal casino in Lansing: creation of jobs, funding for education, and alleviation of budget deficits. Specifically, Bernero claims that the project would create fifteen hundred permanent, “good paying jobs with benefits with preference for Lansing-based residents,” along with approximately seven hundred construction jobs (Balaskovitz, “Lansing Casino: ‘3-fer’”). According to an article by Daly, in regards to education, Bernero aims to use the projected five to six million dollars of casino revenue to create a Lansing Promise scholarship. This scholarship will “revitaliz[e]” Lansing schools, as it provides Lansing high school graduates with four-year funding for college. Lastly, Bernero insists that a casino will help make the Lansing Center significantly more profitable by attracting more businesses, such as hotels, and “tens of thousands of tourists.” Currently, the Center is subsidized by the city and costs about \$800,000 a year (“Lansing Casino...”).

Another key supporter is the main investor, Bob Liggett. Liggett, who previously owned Lansing radio station WFMK and currently owns several Michigan Big Boy restaurants, also owns most of Lansing Future Development LLC. Lansing Future Development LLC, a group of investors, is the Sault tribe’s partner in the project (Daly, “Coalition Lauds...”). Additionally, Ted O’Dell, an experienced public servant who has worked in the Upper Peninsula, has supported the Lansing Casino project from its start. He proposed legislation in 2011 that laid the groundwork for future negotiations between the city and the tribe. O’Dell founded the Lansing Jobs Coalition in 2009 and has consistently argued that a casino in the Lansing Center would provide jobs and stimulate business (Balaskovitz, “Casino Lansing?”; Balaskovitz, “Casino to Council”).

## **Analysis**

The economic potential of a Lansing casino for both the Sault tribe and the City of Lansing is a strong argument. However, the legality of a casino hundreds of miles away from the Sault tribe’s headquarters in Sault Ste. Marie is less convincing. Policy related to off-reservation gaming is unclear, but it is arguable that MILCS, in accordance with section 20 of IGRA, establishes the legality of off-reservation casino development. MILCS permits tribes to spend settlement money within the constraints of a predetermined purpose, as outlined in the act (Thorpe). For the Sault tribe, the MILCS specifically states that “any lands acquired using amounts from interest or other income of the Self-Sufficiency Fund shall be held in trust by the Secretary for the benefit of the tribe” (State of Michigan, “Michigan Indian...” 10-12). The Sault tribe purchased land in Lansing with settlement money, and its demand that the land be taken into trust by the Secretary of the Interior makes it potentially eligible for gaming privileges under section 20 of IGRA.

## **Opponents**

Opponents of the Lansing casino base their arguments on the legality of off-reservation casinos, as Attorney General Bill Schuette argues that the policy violates the State’s compacts with various Michigan tribes. Notably, the Sault Ste. Marie tribe no longer shares revenues from its current casinos in the Upper Peninsula with the State, and public negotiations related to revenue-sharing with the State have

not yet occurred. A coalition of other casino owners also opposes the Lansing casino, arguing that it will hurt them economically, as does a small group of Lansing community members.

### **State of Michigan**

Attorney General Bill Schuette has opposed the Sault tribe's Lansing casino from the beginning, calling it an "...unchecked expansion of tribal gaming" (qtd. in Carmody). On behalf of the State, Governor Rick Snyder and Bill Schuette wrote a formal letter of opposition to Sault Chairman Joseph Eitmen on February 7, 2012. Snyder and Schuette explain that the proposed casino in Lansing violates state and federal law, their gaming compact, and possibly gaming compacts with two Pottawatomie tribes. The men also dismiss the MILCS, simply saying they are not "aware of any legal authority" that supports the tribe's argument. The letter concludes with a warning that if the tribe continues to develop plans for the casino, it "does so at its own risk." When the tribe requested that their purchased land in Lansing be taken into trust by the U.S. Department of Interior, Schuette filed a lawsuit, and in March 2013, U.S. District Judge Robert Jonker granted the State's motion for an injunction pending resolution of the lawsuit (Carmody).

### **The "Coalition"**

Other major opponents include a coalition of two Indian tribes, the Saginaw Chippewa Indian tribe and the Nottawaseppi Huron band of Pottawatomie Indians, and two Detroit casinos, MGM Grand Detroit and Greektown. Whereas the State's opposition lies mostly with legal issues dealing with off-reservation gaming, the tribes and Detroit casinos oppose the project because of the competition it would provide. Both Indian tribes own casinos within one hundred miles of the Lansing area, with the Saginaw Chippewa Indian Tribe's Soaring Eagle casino in Mount Pleasant and the Nottawaseppi Huron band of Pottawatomie Indians' FireKeepers casino in Battle Creek. (See Figure 1.) James Nye, a spokesperson for the coalition, calls the Sault tribe's proposal "...reservation shopping for casinos in the homelands of other tribes" (qtd. in Daly, "Coalition Lauds...").



**Figure 1** Map of Indian Casinos in Michigan (State of Michigan, “Location of Tribal Casinos...”)

Although not formally part of the coalition, some Lansing community members stand as another important source of opposition. Small business owner Ted Wilson argues that the casino will only generate its revenue by taking from other Lansing businesses. In March 2012, Wilson began a grassroots campaign to rally against the casino, emphasizing the importance of a strong, visible opposing force to stop the casino development. Wilson has gained the support of local church leaders, along with other neighborhood groups, who have moral concerns about gambling. He claims that the casino is “purely being proposed and supported by the mayor’s office, the developers and the tribe,” and thus it lacks actual support from the people the casino would affect most, the residents of Lansing (Witrock, “Lansing Casino Opposition...”).

## **Analysis**

The economic benefits IGRA provides for qualifying tribes was specifically designed to help Indians. Although the Lansing casino has tremendous potential to benefit the Sault Ste. Marie tribe's members, there is also a significant chance that it will weaken other tribes and thus defeat IGRA's ultimate purpose. The legality of off-reservation gaming is unclear, but it is certain that tribal gaming was intended to strengthen tribes. U.S. Indian policy has a long history of failing to fulfill its economic promises to tribes and actually harming tribal members more than helping them, as evident in the persistently high rates of poverty and joblessness on Indian reservations. The Lansing casino could potentially follow this harmful trend of Indian policy by creating so much competition for other Michigan tribes that their economic development would be hindered. Many individuals believe that this fear could drive opponents to continue to battle with supporters of the policy, resulting in an increase in intertribal conflict.

### **Substantial Effects**

If the Lansing casino policy is successful, it will have substantial effects on the Sault Ste. Marie tribe by developing its economy and ultimately increasing its sovereignty. Additionally, enacting this policy will affect future policies related to off-reservation economic development. Other tribes in Michigan will likely follow the Sault tribe's precedent and develop casinos upon negotiation with individual Michigan cities.

### **Enhanced Tribal Sovereignty**

Most immediately, the Lansing casino's projected revenue would positively impact the economic development of the Sault Ste. Marie tribe. Specifically, casino profits would pay for increased membership services, such as elder care, and likely "help fund a dramatic renaissance in Indian culture and language" (Treuer 244). Tribes that have successfully opened off-reservation casinos in other states have used casino revenue to fund tribal hospitals and "language immersion schools," effectively benefitting the tribe and promoting its culture (243-44). These effects of tribal casinos reflect the goals of the Indian Reorganization Act, which promoted tribal self-determination through economic development and cultural appreciation.

This revitalization of Indian culture will also increase tribes' political influence with local and state governments. As tribes' economies develop through casino revenue, they will be equipped to negotiate with states on an increasingly equal playing field, where tribal sovereignty is respected by states. As demonstrated in the mutually beneficial agreement between the Sault Ste. Marie tribe and the City of Lansing, both Indian and U.S. parties can build policy based on shared values and goals, in stark contrast to the U.S.'s historical policies of Indian oppression.

### **Setting Precedents**

Furthermore, the impacts this policy would have, if enacted, would set two influential precedents for other Michigan tribes: first, that tribes do not necessarily have to share casino revenue with the State, and second, that tribes may own casinos off of their reservation. Currently, the Sault Ste. Marie tribe does not intend to directly share any revenue from the Lansing casino with the State. Future Michigan tribes will likely follow the Sault tribe's suit and negotiate casino development on a local level, opting to gain support only from their respective tribe's members and the city in which they wish to develop a casino. Furthermore, if this policy is enacted, it will undoubtedly result in more casinos in Michigan, as other local tribes mimic the Sault tribe's legal arguments and fight for their right to operate off-reservation casinos and realize their own economic potential. Lastly, as sovereign nations within the U.S., tribes may argue their unique right to engage in activities typically reserved for the federal government. For example, Indians will likely use this precedent to engage in other enterprises, such as banking (Treuer 252).



Ultimately, if the Lansing casino policy is adopted, it will change the direction of Indian policy. The U.S. government has attempted to promote tribal economic development throughout its history, from 1800s policies that encouraged Indians to farm on reservations to policies that sent Indian children to Christian boarding schools, but these policies have generally been a failure (Olson and Wilson 60-65). Tribal gaming signals a decisive shift in Indian policy, as it holds true economic potential for tribes that have historically had little means to develop economically. Already, tribal gaming is a “\$20 billion-per-year industry” (Treuer 242) that actually produced twice as much revenue as Las Vegas casinos did in 2006 (214).

### **Recommendation**

I strongly recommend supporting the Sault Ste. Marie tribe’s Lansing casino plan. First and foremost, it is imperative that you support the policy because you are a Lansing representative. Key political players, such as Mayor Virg Benero and businessman Bob Liggett, have invested significant amounts of time and money into this project, and both would remember your support. Your relationship with these influential and well-financed political players will significantly help your reelection campaign.

Furthermore, your constituents are Lansing residents, most of whom are somehow connected to a Lansing high school graduate. Guaranteed full-tuition college scholarships for Lansing graduates, as provided from the casino’s revenue, are a strong selling point, especially as college prices increase annually. Additionally, college affordability is a critical part of the Democratic platform, and you must honor the Democratic support you received from both the national party and the Democratic voters of your area. Additionally, opposing this policy would provide your political opponents with an easy argument against you: that you do not support job creation and higher education.

You will nonetheless likely encounter negative feedback from some of your constituents that are either economically or morally threatened by the casino. I recommend addressing both parties’ concerns by explaining that the positive effects the casino will have on the local community outweigh possible negative effects. Comfort small-business owners by assuring them the Lansing casino will bring additional consumers to the area, effectively adding to their businesses, instead of taking away from them. Additionally, remind constituents who are concerned about local economic competition that many Lansing residents currently travel to nearby casinos in Mount Pleasant, Battle Creek, Detroit, and Canada, and hosting a casino in Lansing will keep those consumers’ dollars in the area. For constituents that voice moral reservations about the casino project, I recommend reemphasizing the collegiate opportunities that the casino will enable Lansing to provide for its graduates. These constituents may also be comforted by understanding that the Lansing casino will generate hundreds of permanent local jobs and its revenue will reduce the city’s debt.

Lastly, supporting this policy will certainly enhance your reputation as a humanitarian. The Lansing casino holds significant potential for the Sault tribe’s economy and sovereignty. Indians have been subject to unfair and harmful U.S. policy for centuries, and tribal gaming offers a new direction in policy. By supporting the Lansing casino, you will affirm your commitment to social work and have legitimate credibility in aiding an oppressed group, Indians.

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