

November 7, 2006

Elisabeth A. Shumaker  
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS  
TENTH CIRCUIT

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PRAIRIE BAND POTAWATOMI  
NATION,

Plaintiff-Appellant,

v.

JOAN WAGNON, Secretary of the  
Kansas Department of Revenue,

Defendant-Appellee,

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WINNEBAGO TRIBE OF  
NEBRASKA, HCI DISTRIBUTION,  
THE KICKAPOO TRIBE OF  
INDIANS OF THE KICKAPOO  
RESERVATION IN KANSAS, THE  
IOWA TRIBE OF KANSAS AND  
NEBRASKA, AND THE SAC AND  
FOX NATION OF MISSOURI,

Amici Curiae.

No. 03-3218

D.C. No. 99-CV-4071-JAR  
(D. Kansas)  
(241 F. Supp. 2d 1295 (Kan. 2003))

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**OPINION ON REMAND FROM THE  
UNITED STATES SUPREME COURT**

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David Prager, III, Tribal Attorney, Prairie Band Potawatomi Nation, Mayetta,  
Kansas, for Plaintiff-Appellant.

John Michael Hale, Special Assistant Attorney General, Kansas Department of  
Revenue, Topeka, Kansas, for Defendant-Appellee.

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Before **LUCERO, McKAY, and HARTZ**, Circuit Judges.

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**McKAY**, Circuit Judge.

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In view of the Supreme Court's decision in *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. \_\_\_\_, 126 S. Ct. 676 (2005), and after supplemental hearing, the prior decision of this court is vacated, as is the portion of the district court's opinion that applies the interest-balancing test. The order of the district court granting summary judgment in favor of Defendant is **AFFIRMED**.