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The National Congress of American Indians
Resolution #DEN-18-045

TITLE: Support for a Legislative Solution that Provides Indian Country with Clarity and Certainty on Marijuana

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, in 2012 voters in Washington and Colorado voted to legalize recreational use of marijuana and shift towards a civil regulatory regime rather than a criminal prohibitory regime; and

WHEREAS, since Washington and Colorado voters made this decision in 2012, voters in seven other states have voted to legalize the recreational use of marijuana; and

WHEREAS, marijuana is legal for medical purposes in more than half of the states; and

WHEREAS, these marijuana legalization efforts have created unique challenges and opportunities for Indian Country because the scope of tribal jurisdiction hinges on whether state law is criminal prohibitory or civil regulatory; and

WHEREAS, tribes located in states that have legalized the use of marijuana, especially tribes in Pub. L. 83-280 states, are often left without the tools necessary to enforce their own criminal laws prohibiting use and possession of marijuana against non-Indians; and

WHEREAS, tribes located in states that have legalized the use of marijuana also lack legal clarity necessary to engage in marijuana activities and effectively regulate marijuana because marijuana activities remain illegal under federal law; and

WHEREAS, in 2013, in response to the legalization efforts in Washington and Colorado, former U.S. Attorney General James M. Cole issued a memorandum ("Cole Memorandum") to all U.S. attorneys instructing prosecutors and law enforcement to focus on eight federal law enforcement priorities activities, including preventing the distribution of marijuana to minors; preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; and preventing violence and the use of firearms in the cultivation and distribution of marijuana, among others (collectively "Federal Priorities"); and

WHEREAS, the Cole Memorandum further stated that due to limited resources, the U.S. Department of Justice would not enforce federal marijuana prohibition in states that "legalized marijuana in some form and…implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana," except where lack of federal enforcement would undermine Federal Priorities; and

WHEREAS, the Cole Memorandum further rests on the U.S. Department of Justice's "expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems" and that the "enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity" in states that have enacted laws legalizing marijuana in some form; and

WHEREAS, subsequently, in 2014, Monty Wilkinson, the Director of the United States Attorneys, issued a memorandum ("Wilkinson Memorandum"), which stated that the "eight priorities in the Cole Memorandum will guide United States Attorneys' marijuana enforcement efforts in Indian Country, including in the event that sovereign Indian Nations seek to legalize the cultivation or use of marijuana in Indian Country;" and

WHEREAS, states relied on the Cole Memorandum while Indian Country relied on the Wilkinson Memorandum for guidance when crafting their civil regulatory regimes; and

WHEREAS, several tribes located within states that have legalized marijuana have established robust marijuana regulatory regimes as well as retail, wholesale, and agricultural marijuana enterprises; and

WHEREAS, the ability of tribes to regulate the marijuana industry has helped to create new tax revenues, job growth, and safer communities; and

WHEREAS, on January 4, 2018, Attorney General Jeff Sessions issued a memorandum, entitled "Marijuana Enforcement," rescinding prior guidance issued by the U.S. Department of Justice, including the Cole Memorandum and Wilkinson Memorandum, and instead broadly recommended that U.S. Attorney's Offices focus prosecutorial priorities away from state-legal marijuana activity except where certain heightened risk factors were present; and

WHEREAS, without the Cole Memoranda and Wilkinson Memoranda, there is uncertainty among states and tribes that have legalized marijuana and invested resources into the marijuana industry; and

WHEREAS, in response to the U.S. Department of Justice's actions, Congress is actively exploring legislation to provide clarity and authorization for states that have, or would like to, legalize the use of marijuana within their jurisdictions; and

WHEREAS, the unique sovereignty and jurisdictional status of Indian Country means that if tribes are not explicitly included in any federal legislative solution they could possibly be left out from accessing the benefits of the legislation.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) believes that tribes located within states that have legalized marijuana should also be able to regulate marijuana; and

BE IT FURTHER RESOLVED, that the NCAI calls on Congress to enact legislation to remove the threat of federal intervention and prosecution in states that regulate marijuana use and sales; and

BE IT FURTHER RESOLVED, that the NCAI asks Congress to explicitly include tribes as sovereign nations in any such legislation; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2018 Annual Session of the National Congress of American Indians, held at the Hyatt Regency in Denver, Colorado October 21-26, 2018, with a quorum present.

Jefferson Keel, President

ATTEST:

Juana Majel Dixon, Recording Secretary