



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MOH-17-025

TITLE: Support for Ensuring Tribal Nations are the Primary Beneficiaries of Tribal Government Gaming and that Governments Comply with the Indian Gaming Regulatory Act

EXECUTIVE COMMITTEE

PRESIDENT
Brian Cladoosby
Swinomish Tribe

FIRST VICE-PRESIDENT
Fawn Sharp
Quinault Indian Nation

RECORDING SECRETARY
Aaron Payment
Sault Ste. Marie Tribe of Chippewa Indians of Michigan

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Jerry Isaac
Native Village of Tanacross

EASTERN OKLAHOMA
Joe Byrd
Cherokee Nation

GREAT PLAINS
Larry Wright
Ponca Tribe of Nebraska

MIDWEST
Roger Rader
Pokagon Band of Potawatomi

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Mel Sheldon, Jr.
Tulalip Tribes

PACIFIC
Jack Potter, Jr.
Redding Rancheria

ROCKY MOUNTAIN
Darrin Old Coyote
Crow Nation

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Liana Onnen
Prairie Band of Potawatomi Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh Pueblo

WESTERN
Bruce Ignacio
Ute Indian Tribe

EXECUTIVE DIRECTOR
Jacqueline Pata
Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, in the pursuit of maintaining the harmony established by the Power of Creation and in order to preserve for ourselves and our descendants the inherent sovereign rights of our nations, rights acknowledged and unacknowledged in treaties and agreements with the United States, and all other rights and benefits to which are secured under the laws and Constitution of the United States, articles of the UN Declaration of the Rights of Indigenous Peoples and established International Law, to enlighten the public toward a better understanding of Native people, to preserve Native cultural values, and otherwise promote the health, safety, welfare and prosperity of Native 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, Indian nations are sovereigns that pre-date the United States, with prior, inherent and treaty protected rights to self-government and to our Indian lands; and

WHEREAS, the Constitution of the United States, through the Treaty, Commerce, and Apportionment Clauses and the 14th Amendment, recognizes the sovereign status of Indian nations established prior to the United States; and

WHEREAS, the United States Supreme Court affirmed in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) that absent legitimate federal or state criminal prohibitions on certain activities, Indian nations possess the sovereign authority to conduct gaming activities on tribal lands without interference from states in preservation of their tribal self-government and economic development interests; and

WHEREAS, the Indian Gaming Regulatory Act (the "IGRA") was enacted one year after the *Cabazon* case to provide a statutory basis for the operation and regulation of gaming for the promotion of tribal economic development, tribal self-sufficiency, and strong tribal governments and for the protection of such gaming as a means of generating tribal revenue; and

WHEREAS, Indian nations have successfully leveraged gaming revenues to strengthen their communities, preserve their customs and traditions, develop thriving economies, and build strong government infrastructures; and

WHEREAS, one of Congress' principal goals in enacting IGRA was to ensure that Indian nations remained the primary beneficiaries of such gaming activities; and

WHEREAS, under the IGRA, state governments and tribal governments were required to enter into compacts when conducting Class III gaming; and

WHEREAS, the IGRA prohibits states from imposing any tax, fee, charge or assessment on a tribal government for gaming, except for an assessment to defray the costs of regulating tribal gaming; and

WHEREAS, tribal governments are not required to share any portion of their revenues generated from tribal government gaming, and in instances where they do, tribal governments must receive something of comparable value; and

WHEREAS, the Department of the Interior has established a two-part test for evaluating compact revenue-sharing agreements to ensure that they do not amount to an impermissible tax in violation of IGRA: in return for payments, a state must offer to a tribal government (1) significant and meaningful concessions that result in (2) substantial and quantifiable economic benefits to the tribal government; and

WHEREAS, exclusivity for tribal gaming has generally been the only type of substantial economic benefit that state governments can provide to tribal governments to justify revenue share. However, under the quantifiable economic benefits test, such exclusivity is devalued when other forms of gaming occur within state boundaries or near the exclusivity zones of tribal government gaming, such as is the case in New York where the state permits significant gaming within the exclusivity zone and existing race horsing venues and recently authorized commercial casino gaming in close proximity to the Seneca Nation's exclusivity zone; and

WHEREAS, the quantifiable economic value of exclusivity offered by a State may be diminished by competitive gaming available in surrounding States, Countries, and other jurisdictions who have gaming; and

WHEREAS, regardless of whether a tribal government shares a portion of its gaming revenue with a state, tribal government gaming provides significant economic benefits to the local non-tribal communities through the investment of billions of dollars into local infrastructure and economic development activities, contributions to local non-profits and community organizations, the creation of thousands of jobs, and the purchase of goods from local vendors.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) fully supports tribal government gaming; and

BE IT FURTHER RESOLVED, NCAI supports the voluntary contributions and benefits from tribal gaming to the local non-tribal communities; and

BE IT FURTHER RESOLVED, that while IGRA does not require or even mention Tribal Government assistance to local non-tribal communities, NCAI encourages actions by Tribal Governments that support such communities, regardless of whether there is an on-going state/tribal revenue sharing agreement in place; and

BE IT FURTHER RESOLVED, when disagreements arise within the term of revenue sharing from tribal government gaming, NCAI encourages the State and local governments to meaningfully engage with the Tribal Governments and collaboratively develop mutually beneficial solutions for continuing relationships into the future, and to ensure that any solutions respect Tribal nations as full partners and understand that tribal gaming must primarily benefit tribal nations, but tribal governments see value in also helping the progress of the local non-tribal communities; and

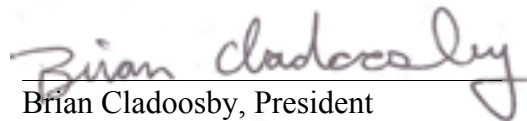
BE IT FURTHER RESOLVED, that NCAI would deem any refusal by a State to renew or negotiate a gaming compact because of an absence or end of a revenue sharing agreement, a violation of the intent and spirit of IGRA; and

BE IT FURTHER RESOLVED, that NCAI encourages tribal governments to seek technical assistance from the Department of the Interior when questions arise about the legitimacy of revenue sharing payments pursuant to the IGRA, and that the Department of the Interior provide such technical assistance; 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 2017 Midyear Session of the National Congress of American Indians, held at the Mohegan Sun Convention Center, June 12 to June 15, 2017, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary