



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PHX-16-030

TITLE: Support for the Swift Nomination and Confirmation of a Supreme Court Justice Supportive of Tribal Sovereignty

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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, 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, there is a government-to-government relationship between tribal nations and the federal government and the Indian tribes that is acknowledged in the U.S. Constitution, treaties, statutes, policies, and the federal trust relationship; and

WHEREAS, tribal nations are affected by the federal courts, especially the U.S. Supreme Court, to a greater degree than almost any other group since many issues facing tribes and tribal citizens are in federal statutes and federal common law; and

WHEREAS, the United States Supreme Court, as the highest court in the United States, has been seen by tribes for many decades as a protector of tribal nations rights and the rights of tribal citizens; and

WHEREAS, in the last several decades, tribes have witnessed that the lack of judicial diversity and knowledge of federal Indian law in federal judiciary, especially the Supreme Court, has had a negative impact tribal sovereignty and tribal self-governance by changing the basic tenants of federal Indian law; and

WHEREAS, during the 2000 Term, the Supreme Court issued two devastating Indian law opinions, *Atkinson Trading Co. v. Shirley* (tribes lack authority to tax non-Indian businesses within their reservations) and *Nevada v. Hicks* (Tribal Courts lack jurisdiction to hear cases brought by tribal members against non-Indians for harm done on trust lands within their reservations), which struck crippling blows to tribal sovereignty and tribal jurisdiction—the most fundamental elements of continued tribal existence; and

WHEREAS, in September 2001 tribal leaders met Washington, DC, and established the Tribal Supreme Court Project as part of the Tribal Sovereignty Protection Initiative, with the purpose to strengthen tribal advocacy before the Supreme Court by developing new litigation strategies and coordinating tribal legal resources, and to ultimately improve the win-loss record of Indian tribes; and

WHEREAS, the Tribal Supreme Court Project is staffed by attorneys with the Native American Rights Fund (NARF) and the National Congress of American Indians (NCAI) and consists of a Working Group of over 200 attorneys and academics from around the nation to monitors cases affecting the rights of tribal nations and individual tribal citizens and provide assistance to tribes with cases that will be heard by the Supreme Court and other federal courts; and

WHEREAS, the Tribal Supreme Court Project has chronicled the continuation of incorrectly decided cases which misapply federal Indian law and has advocated for the need for more Native American federal judges and more judges with a background and understanding of federal Indian law; and

WHEREAS, at the present, the continued vacancy on the Supreme Court puts the rights of tribal nations and their citizens in jeopardy.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians hereby urges the President and the Senate to act swiftly to nominate and confirm a new Supreme Court Justice with a background and understanding of tribal sovereignty, tribal self-governance; and federal Indian law; and

BE IT FURTHER RESOLVED, NCAI urges the President and the Senate to give serious consideration to whether any potential nominee understands the fundamental principles of inherent tribal sovereignty and the federal trust responsibility; and

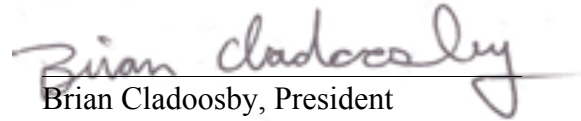
BE IT FURTHER RESOLVED, that NCAI urges the Senate Judiciary Committee to include in its confirmation proceedings a public discussion of the U.S. Constitution and its relationship to tribal self-governance; and

BE IT FURTHER RESOLVED, that NCAI urges all of the Justices of the United States Supreme Court to increase their understanding of Indian tribal governments, to engage in visits to Indian reservations and discussions with elected tribal leaders and tribal judges, and to support the principles of respect for tribal self-government and deference to the political branches and intergovernmental comity in determining the course of the federal-tribal relationship and the scope of acknowledged tribal authority; 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 2016 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center, October 9th- 14th 2016, with a quorum present.


Brian Cladoosby, President

ATTEST:


Aaron Payment, Recording Secretary