



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #REN-08-003

TITLE: To Protect Tribal Rights and Implement Effective Class II Gaming Regulations

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Jacqueline Johnson
Tlingit

NCAI HEADQUARTERS
1301 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
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, 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, Indian Tribes are governments that pre-date the United States and, through the Indian Commerce Clause and the Treaty Clause, the Constitution of the United States recognizes the status of Indian Tribes as sovereigns; and

WHEREAS, in *California v. Cabazon* (1987), the Supreme Court reaffirmed the inherent right of Indian Tribes to conduct Indian gaming as an essential element of Tribal self-government, free from State interference; and

WHEREAS, the Indian Gaming Regulatory Act (the "IGRA") acknowledged and confirmed the inherent sovereign powers of Indian tribes to be the primary regulators of their gaming operations, and established the National Indian Gaming Commission (the "NIGC") as an oversight agency with secondary regulatory authority; and

WHEREAS, the IGRA specifically authorized the use of electronic and computerized aids in the play of Class II games; and

WHEREAS, on October 24, 2007, the NIGC published in the Federal Register proposed regulations regarding Classification of Class II electronic aids and amending the current definition of an Electronic Facsimile (hereinafter referred to jointly as the "Proposed Classification Regulations"); and

WHEREAS, the Proposed Classification Regulations will contradict the plain language and express intent of IGRA by infringing on the inherent sovereign powers of Indian tribes to be the primary regulator of their gaming operations, through aggregating to the NIGC and private for-profit gaming laboratories the role of primary regulator of Class II games that utilize electronic aids; and

WHEREAS, the Proposed Classification Regulations will contradict the plain language and express intent of IGRA by adding new legal elements to the statutory definition of bingo and thereby overturning Federal Court decisions which have confirmed the rights of tribes to utilize electronic aids in the play of bingo; and

WHEREAS, the NIGC commissioned an Economic Impact Study (the “Study”) of the Proposed Classification Regulations, and the Study showed that the Proposed Classification Regulations would have a direct negative impact on Indian tribes of \$1.2 billion to \$2.8 billion by making economically infeasible the use of Class II game electronic aids; and

WHEREAS, the Proposed Classification Regulations would not prevent the U.S. Department of Justice (the “DOJ”) from attempting to prosecute Indian tribes pursuant to the Johnson Act, and even opens new avenues for prosecution of tribes offering Class II gaming; and

WHEREAS, the Proposed Classification Regulations will have a chilling effect on the ability of Indian tribes to obtain financing and investment in their Class II gaming operations; and

WHEREAS, by making Class II gaming economically infeasible and increasing the potential for prosecution by the DOJ, the Proposed Classification Regulations severely limit the sovereign rights of Indian tribes to choose what class of gaming under IGRA should be offered on their reservations; and

WHEREAS, the NIGC did not consult with tribes prior to publishing the Proposed Classification Regulations, did not consult with tribes after release of the Study, and still has not engaged in meaningful consultation with tribes regarding the Proposed Classification Regulations; and

WHEREAS, also on October 24, 2007, the NIGC published in the Federal Register proposed regulations regarding Technical Standards for Class II electronic aids and Minimum Internal Control Standards for Class II games (hereinafter referred to jointly as the “Proposed Technical Standard and MICS Regulations”), which proposed regulations had been vetted significantly by tribal representatives, and with further consultation and minor revision will receive the support of most tribes engaged in Class II gaming.

NOW THEREFORE BE IT RESOLVED, that the NCAI member tribes call upon the NIGC to immediately withdraw the Proposed Classification Regulations; and


BE IT FURTHER RESOLVED, that the NCAI member tribes call upon the NIGC to immediately engage in consultation to reach consensus on final, appropriate language for the Proposed Technical Standard and MICS Regulations; and

BE IT FURTHER RESOLVED, that the NCAI member tribes strongly encourage all of their Members of Congress to call upon the NIGC to withdraw the Proposed Classification Regulations; and

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

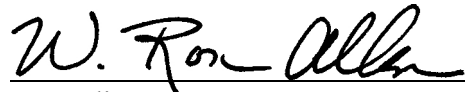
CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2008 Mid-Year Session of the National Congress of American Indians, held at John Ascuaga's Nugget Hotel and Casino in Reno, Nevada on June 1-4, 2008, with a quorum present.



President

ATTEST:



Recording Secretary