The National Congress of American Indians
Resolution #MIC-06-012

TITLE: Opposition to Senate Bill S. 2078, "the IGRA Amendments of 2006"

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, in treaties, the United States pledged to protect Indian tribes and guaranteed the right of tribal self-government; 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, in 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA) to promote tribal economic development, self-sufficiency and strong tribal governments; and

WHEREAS, Congress determined that only tribes and states would regulate Class III gaming through the tribal-state compact process, except for the authority of the National Indian Gaming Commission (NIGC) to approve management contracts for Class III gaming; and

WHEREAS, Congress established the NIGC to oversee Class II gaming, to approve tribal gaming ordinances, to review background checks, and to review audits; and

WHEREAS, Indian tribes conduct Indian gaming as an exercise of inherent sovereign authority to fund tribal government functions and services and to provide for the general welfare of tribal members; and

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WHEREAS, under the Indian Gaming Regulatory Act (IGRA), many Indian tribes have successfully created jobs and economic opportunity, and are rebuilding their communities through enhancement of educational and cultural opportunities, thereby fulfilling the goals of the IGRA; and

WHEREAS, tribal gaming operations are governmental, not commercial, activities, and tribal governments have the inherent sovereign right to determine what information should be disclosed for governmental purposes; and

WHEREAS, since the Supreme Court's decision in *Seminole Tribe v. Florida* (1996), some state governments have ignored their obligations to negotiate or renegotiate tribal-state gaming compacts in good faith; and

WHEREAS, the Eighth, Ninth, Tenth, and D.C. Circuit Courts of Appeal have held that technologic aids to Class II gaming are not subject to the Johnson Act; and

WHEREAS, Senate Bill 2078, the Indian Gaming Regulatory Act Amendments of 2006 (S. 2078), as marked-up and reported out of the Senate Indian Affairs Committee on June 6, 2006, fundamentally changes the structure of the IGRA and infringes on tribal self-government by: 1) granting the NIGC new authority to regulate Class III gaming over and above the tribal-state compact process and the approval of Class III management contracts; 2) granting the NIGC broad new authority to regulate and approve development, consulting, financial, and gaming-related contracts; 3) striking the Section 20 two-part process for off-reservation gaming and burdening the process for landless, restored and newly recognized Indian tribes to take land into trust for Indian gaming; 4) infringing on the sovereign authority of tribal governments to determine the confidentiality of governmental information; 5) failing to address the U.S. Supreme Court decision in *Seminole* that destroyed the balance of tribal-state compact negotiations; and 6) failing to require the NIGC to comply with federal negotiated rulemaking procedures when engaging in any rulemaking; and

WHEREAS, in 2005 tribal governments invested over $370 million on regulation, including over $300 million on tribal regulation, over $60 million to reimburse state governments for their role in regulating tribal gaming operations, and $12 million to fund the NIGC; and

WHEREAS, the negative impact of a new burdensome bureaucracy has not been studied and the costs and benefits of S. 2078 are unknown; and

WHEREAS, the new authority for NIGC to regulate Class III gaming would upset the balance in the tribal-state compact process and would hinder, not help, the regulatory process; and

WHEREAS, the new gaming-related contract provisions would create a huge and unworkable bureaucratic impediment to lawful economic activity, and would replace the business judgment of tribes' gaming enterprises with that of a federal regulatory bureaucracy.

NOW THEREFORE BE IT RESOLVED, that NCAI opposes S. 2078 as marked-up and reported out of the Senate Committee on Indian Affairs because it infringes on Indian sovereignty and tribal self-government, unnecessarily burdens economic development and lawful business transactions, and creates new bureaucratic roadblocks and mandatory agency reviews that even the NIGC admits it does not have the capability or resources to implement; and

BE IT FURTHER RESOLVED, that S. 2078 must be amended to clarify that: tribal gaming commissions are the primary regulators of Indian gaming; NIGC regulations must be consistent with the terms of tribal-state compacts; and the NIGC's regulatory authority must be limited to gaming activities only; and

BE IT FURTHER RESOLVED, that S. 2078 must be amended to ensure that its approval standards for gaming-related contracts are consistent with those contained in existing tribal-state compacts and to be more narrowly written to avoid sweeping in thousands of contracts; and

BE IT FURTHER RESOLVED, that S. 2078 must be amended to respect the primacy of tribal lawmaking authority, tribal ordinances, and tribal-state compacts; and

BE IT FUTHER RESOLVED that NCAI calls upon the 109th Congress to delete the provision that abrogates tribal sovereignty by requiring tribal governments to reveal governmental information relating to their gaming operations; and

BE IT FURTHER RESOLVED, that NCAI calls upon the 109th Congress to include a provision that resolves the inability of tribal governments to enforce the obligation of state governments to negotiate tribal-state compacts in good faith and thereby addresses the Supreme Court *Seminole* decision; and

BE IT FURTHER RESOLVED, that S. 2078 must be amended to include a provision codifying the holding of the Federal Courts of Appeal that technologic aids to Class II gaming are not subject to the Johnson Act; and

BE IT FURTHER RESOLVED, that S. 2078 must be amended to require the NIGC to engage in negotiated rulemaking when promulgating any new regulations; and

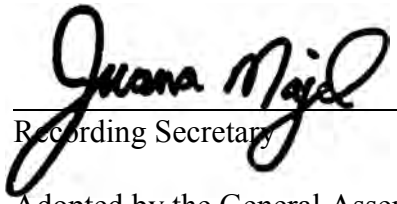
BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted at the 2006 Mid Year Session of the National Congress of American Indians, held at the Kewadin Hotel and Casino in Sault Ste. Marie, Michigan on June 21, 2006 with a quorum present.

President

ATTEST:



Recording Secretary

Adopted by the General Assembly during the 2006 Mid Year Session of the National Congress of American Indians held from June 18-21, 2006 at the Kewadin Hotel and Casino in Sault Ste. Marie, Michigan.