



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #MKE-17-054

TITLE: Supporting the Recognition of Tribal Tax Authority in Supreme Court Review of *South Dakota v. Wayfair*

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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, the 1967 *Bellas Hess* and the 1992 *Quill* Supreme Court decisions denied states the authority to collect sales and use taxes from out-of-state sellers that have no physical presence in the taxing state; and

WHEREAS, states are concerned that the inability to collect sales and use taxes on remote sales made through traditional carriers and electronic commerce threatens the future viability of the sales tax as a stable revenue generator for state and local governments; and

WHEREAS, the South Dakota state legislature enacted Senate Bill (S.B.) 106 which requires certain out-of-state sellers to comply with South Dakota's tax laws "as if the seller had a physical presence in the state" *See* S.B. 106 at § 1; and

WHEREAS, in *South Dakota v. Wayfair*, the South Dakota Supreme Court recently held S.B. 106 to be prohibited by prior Supreme Court precedent thereby clearing the way for the State of South Dakota to petition the Supreme Court for review, and possibly an overruling of the prior holdings established in the 1967 *Bellas Hess* and the 1992 *Quill* Supreme Court decisions; and

WHEREAS, the State of South Dakota hopes that the makeup of the current Supreme Court along with the dynamic changes in electronic and remote commerce since the 1967 *Bellas Hess* and the 1992 *Quill* cases will pave the way to new precedent in this area of the law; and

WHEREAS, any such change in precedent may allow states to collect sales and use taxes from sellers without a physical presence within the taxing state; and

WHEREAS, Indian tribal governments throughout the United States regulate their own jurisdictions through lawful and applicable sales and use taxes; and

WHEREAS, the Supreme Court in *Oklahoma Tax Comm'n v. Chickasaw Nation* preempted state taxes where the legal incidence of the tax falls on an Indian within an Indian reservation; and

WHEREAS, the Supreme Court in *Central Machinery Co. v. Arizona State Tax Comm'n* held that state taxes are preempted by the Indian Trader Statute and regulatory scheme even where the vendor isn't a licensed trader so long as the goods or services are traded to a tribe or a tribal member in a transaction involving delivery to the reservation; and

WHEREAS, the Supreme Court precedent in *Oklahoma Tax Comm'n* and *Central Machinery* are meant to preserve and promote tribal taxing authority as a revenue generator available to sovereign Tribal Nations, and to protect the bargaining interests of Tribes and Tribal members for transactions carried out within Indian country.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) strongly urges the respect for and deference to tribal taxing jurisdictions and trade interests, such as was upheld in *Oklahoma Tax Comm'n* and *Central Machinery*, within any legal framework that considers the collection of remote sales and use taxes, and all sales and use taxes, within Indian country; and

BE IT FURTHER 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 Annual Session of the National Congress of American Indians, held at the Wisconsin Center in Milwaukee, WI, Oct 15, 2017 - Oct 20, 2017, with a quorum present.



Jefferson Keel, President

ATTEST:



Juana Majel Dixon, Recording Secretary