



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ABQ-03-116

Title: To Support Passage of Legislation by the United States Congress for the Purpose of Expressly Clarifying that Indian Tribal Governments are “Governments” Under the Employee Retirement Income and Security Act of 1974 (“ERISA”) and the Internal Revenue Code (“Code”) by Amending Section 3(32) of ERISA and Section 414(d) of the Code

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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, Indian tribal governments are responsible for providing for the health, safety, and welfare of their tribal citizens through the exercise of their inherent governmental authority and powers by operating an effective and efficient government body through employment of highly-qualified individuals; and

WHEREAS, President George H. Bush, in 1991 recognized “the unique government-to-government relationship that exists between Indian tribes and the Federal Government” and that “more than 500 tribal entities stand shoulder to shoulder with the other governmental units that form our Republic” (Presidential Proclamation 6368, 56 FR 56145, 1991 WL 353210 (Pres.), October 30, 1991 Pres. George H. Bush); and

WHEREAS, Indian tribal governments, limited to the extent in which they can offer competitive salaries and bonus options because of their fiduciary duties to preserve the public treasury with which they have been entrusted, must instead attract, recruit, and retain competent and qualified individuals for employment by offering employees benefit plans which are competitive with employers in both the public and private sectors; and

WHEREAS, numerous Indian tribal governments all over the country have adopted employee benefit plans in order to recruit and retain qualified personnel and to provide for the long term welfare and economic well-being of those individuals, based on their status as governments; and

WHEREAS, despite repeated requests from Indian tribal government employers, the Internal Revenue Service and the Department of Labor of the United States have consistently failed to provide meaningful guidance concerning the status of those tribes as “governments” which are entitled to the same regulatory exemptions as state, federal and local governments who offer the same benefit plans as incentives to recruit and retain competent and qualified employees within their own governmental operations; and

WHEREAS, the United States government has otherwise consistently recognized the governmental status of Indian tribes, with all of the inherent rights, responsibilities, and privileges that such status confers; and

WHEREAS, Indian tribal governments, in order to be able to continue to provide employee benefit plans on par with state, federal, and local governments, and to maintain a level of service for its citizens consistent with that provided by other governmental entities to their citizens, must be clearly and unambiguously recognized as “governments” by the Internal Revenue Service and the Department of Labor through amendment of the ERISA and the Internal Revenue Code; and

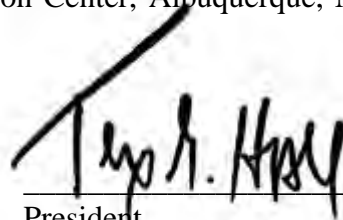
WHEREAS, a ruling issued by the Department of Labor or the Internal Revenue Service concluding that an Indian tribal government is not to be considered a “government” for purposes of the governmental plan exclusion under ERISA section 3(32) or Code Section 414(d) would be inconsistent with over 200 years of federal-tribal legal history and political relations, and will adversely impact the ability of Indian tribes to employ qualified personnel to operate essential government programs for the benefit of Indian people.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby urge the United States Congress to pass amendments to section 3(32) of the Employee Retirement and Income Security Act of 1974 (ERISA) and section 414(d) of the Internal Revenue Code to clarify that Indian tribal governments, as employers, are to be entitled to the same privileges and regulatory exemptions as state, federal, and local employers under those acts; and

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

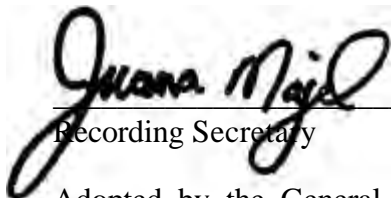
CERTIFICATION

The foregoing resolution was adopted at the 60th Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, Albuquerque, New Mexico, on November 21, 2003 with a quorum present.



President

ATTEST:



Recording Secretary

Adopted by the General Assembly during 60th Annual Session of the National Congress of American Indians, held in Albuquerque, New Mexico, from November 17-21, 2003.