



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #TUL-13-069C

TITLE: Emergency Department of Interior Enforcement Required to Protect Tribal Sovereign Immunity

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Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
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, Bay Mills Indian Community has built a tribal casino in Vanderbilt, Michigan as a test case to determine the scope of its rights under the Michigan Indian Land Claims Act of 1997. Bay Mills has taken the legal position that any lands purchased with MILCSA trust funds are lands eligible for tribal gaming under Section 20 of the Indian Gaming Regulatory Act; and

WHEREAS, both the Solicitor of Interior and the National Indian Gaming Commission have issued legal opinions that the Vanderbilt site does not qualify as "Indian lands" under the IGRA, but neither agency has taken final agency action leaving the legal status in limbo; and

WHEREAS, the litigation has gone significantly off course. In the absence of any final agency action under the IGRA, the State of Michigan has pursued a remedy through the federal courts seeking to enjoin gaming on the Vanderbilt parcel. In response, the Bay Mills asserted tribal sovereign immunity. The U.S. Court of Appeals for the Sixth Circuit held that federal courts lack subject matter jurisdiction under IGRA over an allegation that the Tribe's casino is not on Indian lands, and that the other claims brought by the State are barred by the doctrine of tribal sovereign immunity; and

WHEREAS, NCAI is extremely concerned that the Supreme Court has accepted review and this case potentially threatens tribal sovereignty, Indian gaming, tribal sovereign immunity, Indian land status and federal jurisdiction; and

WHEREAS, sovereign immunity is a critical legal doctrine that protects all governments, including tribal governments, from myriad lawsuits that would cripple governmental functions; and

WHEREAS, the Department of Interior has jurisdiction over the title status of all federal Indian land, and has authority and responsibility to protect tribal governments; and

WHEREAS, the case is scheduled for oral argument before the Supreme Court on December 2, 2013 and attorneys general from seventeen states comprising much of Indian country have joined with the State of Michigan in urging the Supreme Court to decide this Bay Mills case by abolishing the longstanding judicial doctrine of tribal sovereign immunity for all Indian tribes and all purposes.

NOW THEREFORE BE IT RESOLVED, that the NCAI urges the Department of Interior and its Agencies (including Secretary Sally Jewell and Assistant Secretary for Indian Affairs Kevin Washburn) to take leadership on this critical legal matter and immediately issue a final agency decision on the land status of the Vanderbilt casino, permitting the status of the land to be determined on its legal merits in Federal Court, thereby removing the issue of tribal sovereign immunity from the pending U.S. Supreme Court decision; 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 2013 Annual Session of the National Congress of American Indians, held at the Cox Business Center from October 13 - 18, 2013 in Tulsa, Oklahoma with a quorum present.


President

ATTEST:


Recording Secretary