



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #TUL-04-024

TITLE: Opposition to Proposed Johnson Act Amendment to Limit Use of Technologic Aids to Class II Gaming

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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 Congress enacted the Indian Gaming Regulatory Act (IGRA) to promote Indian economic development and strengthen tribal governments by protecting Indian gaming as a means of generating tribal governmental revenues; and

WHEREAS, IGRA specifically states that class II games may be used in connection with “electronic, computer, or other technologic aids;” and

WHEREAS, Congress intended that “tribes ... be given the opportunity to take advantage of modern methods of conducting class II games and the language regarding technology is designed to provide maximum flexibility;” and

WHEREAS, for the past five years, the U.S. Department of Justice has challenged, in a variety of federal courts, the ability of Indian Tribes to use electronic technologic aids to class II games, contending that the Johnson Act prohibits their use; and

WHEREAS, the Eighth, Ninth, Tenth, and D.C. Circuit Courts of Appeal have held that the Johnson Act does not prohibit the use of technologic aids to class II games; and

WHEREAS, in 2002, the National Indian Gaming Commission (NIGC) adopted regulatory definitions, which reflect that Congress did not intend the Johnson Act to apply to IGRA technologic aids to class II games; and

WHEREAS, tribal governments have relied upon these laws, regulations, and court decisions in making investments in their gaming operations, which generate essential governmental revenue; and

WHEREAS, the U.S. Department of Justice (DOJ), after losing legal arguments in the various federal courts, is developing a legislative proposal that would: reverse Congress' intent to permit "maximum flexibility" in the use of technologic aids to class II games; reverse the NIGC's regulations on this subject; reverse the above mentioned federal court decisions; and would place greater limits on class II Indian gaming than it would on charitable gaming; and

WHEREAS, the NIGC is an independent agency, established to regulate Indian gaming, implement regulations to carry out the Indian Gaming Regulatory Act; and

WHEREAS, the NIGC, which is made up of at least two Native Americans, is designed to have experience in working with tribal governments; and

WHEREAS, the Department of Justice proposal would authorize DOJ to approve or disapprove NIGC regulations in a manner that would destroy the independence of the NIGC, discriminate against the NIGC, and treat the NIGC as a subordinate agency; and

WHEREAS, the DOJ proposal contains no economic analysis that would quantify the effects of its proposal in Indian Country.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby that the NCAI calls upon the United States Congress to reject legislative proposals which would improperly limit the ability of tribal governments to use technologic aids to class II games; and


BE IT FURTHER RESOLVED, that the NCAI urges the DOJ and the NIGC to provide full and meaningful consultation with all affected tribal governments in accord with Executive Order 13175, President Bush's Executive Memorandum dated September 23, 2004, the NIGC Consultation Policy, and DOJ policy on government-to-government relations with Indian Tribes; to conduct regional and tribal meetings with adequate notice in advance, maintain a record of such meetings, and report back to tribal nations on how tribal concerns are being addressed and the least intrusive alternatives are being developed before amending the IGRA; and

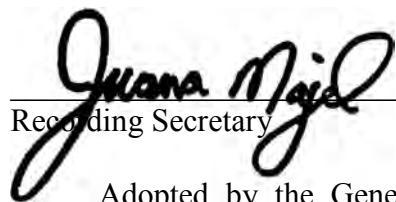
BE IT FURTHER RESOLVED, that the NCAI supports the continued independence of the NIGC as intended by Congress; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until the aforementioned proposal is withdrawn from consideration by the Administration.

CERTIFICATION

The foregoing resolution was adopted at the 2005 Annual Session of the National Congress of American Indians, held at the 62nd Annual Convention in Tulsa, Oklahoma on November 4, 2005 with a quorum present.



President**ATTEST:**

Recording Secretary

Adopted by the General Assembly during the 2005 Annual Session of the National Congress of American Indians held from October 30, 2005 to November 4, 2005 at the Convention Center in Tulsa, Oklahoma.