



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #PDX-11-059

**TITLE: Calling upon the U.S. Department of Justice, the Department of the Interior, and Congress to Defend Tribal Sovereignty from Unauthorized Attacks by the National Labor Relations Board**

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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 National Labor Relations Act of 1935 (NLRA), by its express terms, does not apply to government employers; and

**WHEREAS**, between 1935 and 2004, the National Labor Relations Board (Board) never sought to apply the NLRA to tribal government employers, and for decades affirmatively held that the Act does not apply to tribal governments; and

**WHEREAS**, in 2004 the Board reversed its longstanding position and began asserting jurisdiction over tribal government employers, while asserting the discretion to decline to exercise jurisdiction on a case by case basis; and

**WHEREAS**, the Board's recent change in position requires Indian tribal governments to submit to the Board's process in order to establish that such governments are exempt from that very same process; and

**WHEREAS**, the Board never engaged in government to government consultation with Indian Tribes prior to or since its change in position; and

**WHEREAS**, the Board never published regulations regarding its proposed change in position such that Indian Tribes could submit comments to the Board; and

**WHEREAS**, the assertion of Board jurisdiction over tribal government employers threatens Tribes with the possibility of crippling strikes and the cessation of essential tribal government services to tribal members and surrounding communities—the very reasons why the 1935 Act was never intended to apply to government employers in the first place; and

**WHEREAS**, in prior Resolutions NCAI has taken action to ensure that the right of tribal self-governance is protected from the Board's assertion of jurisdiction over any tribal government (including NCAI Resolutions DC-01-005 (supporting the San Juan Pueblo in litigation before the U.S. Court of Appeals for the Tenth Circuit), MOH-04-028 (supporting the San Manuel Band of Mission Indians before the U.S. Court of Appeals for the District of Columbia Circuit), and NGF-09-10 (calling upon Congress to clarify the tribal exemption from the NLRA); and

**WHEREAS**, in the past the U.S. Department of the Interior has defended the right of tribal governments to control their own labor relations matters free of interference from the NLRB, including most recently in 2011 in a matter involving the Little River Band of Ottawa Indians; and

**WHEREAS**, Federal Judge West of the United States District Court for the Western District of Oklahoma on July 8, 2011 entered an injunction prohibiting the Board from asserting jurisdiction over the Chickasaw Nation, based upon the Chickasaw Nation's right of self-government as reflected in the Chickasaw Nation's Treaties with the United States, and due to the absence of any indication in the NLRA that Congress intended to NLRA to apply to tribal governmental employers. (Chickasaw Nation v. NLRB, No. 11-506, \_\_ F.Supp.2d \_\_ (July 8, 2011), appeal pending No. 11-6209 (10<sup>th</sup> Cir.)); and

**WHEREAS**, the Board is now asking the U.S. Court of Appeals for the Tenth Circuit to reverse Judge West's injunction against the Board.

**NOW THEREFORE BE IT RESOLVED**, that the:

1. NCAI calls upon the U.S. Department of Justice and the U.S. Department of the Interior to participate in the Chickasaw Nation appeal before the Tenth Circuit Court of Appeals in support of the Chickasaw Nation;
2. NCAI will participate in the foregoing appeal in support of the Chickasaw Nation to argue that the NLRA does not apply to tribal governments; and
3. NCAI urges Congress to prohibit the NLRB from asserting jurisdiction over tribal governments, including by cutting off all funding to the Board to carry out any such activities; 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 2011 Annual Session of the National Congress of American Indians, held at the Oregon Convention Center in Portland, Oregon on October 30 – November 4, 2011, with a quorum present.

  
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President

**ATTEST:**

  
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Recording Secretary