The National Congress of American Indians  
Resolution #TUL-13-067

TITLE: Support for Legislation to Amend 42 U.S.C. § 418 (Section 218 of the Social Security Act)

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, on January 1, 1951 Section 218 of the Social Security Act (42 U.S.C. § 418) was enacted, allowing States, on a voluntary basis, to extend Social Security coverage to governmental employees not covered under a retirement system by entering into a “Section 218 Agreement;” and

WHEREAS, the Internal Revenue Service promulgated Rev. Rul. 59-354, 1959-2 C.B. 25 (July 1959) which denies various federal benefits, including Social Security and unemployment taxes, to elected officials of Tribal governments; and

WHEREAS, in 1965, Medicare was legislated and employees covered by Social Security were automatically covered for Medicare Hospital Insurance (HI). This included employees covered under a “Section 218 Agreement;” and

WHEREAS, Medicare coverage became mandatory for State and local government employees hired or rehired after March 31, 1986; and

WHEREAS, prior to 1987, the Social Security Administration and the States were responsible for collecting Social Security and Medicare payments from governmental employers. Effective January 1, 1987, responsibility shifted to the IRS. Now, governmental employers pay Social Security and Medicare taxes directly to the IRS; and

WHEREAS, on July 2, 1991, Social Security and Medicare coverage became mandatory for State and local governments employees who are not members of a public retirement system and who are not covered under a “Section 218 Agreement;” and
WHEREAS, 42 U.S.C. § 418 is silent regarding its applicability to Tribal governments; and

WHEREAS, Tribal governments do not have the opportunity to enter into “Section 218 Agreements;” and

WHEREAS, the legislative silence of 42 U.S.C. § 418, coupled with Rev. Rul. 59-354, have resulted in elected officials of Tribal governments not having access to the same benefits, including Social Security, unemployment, and Medicare, that are available to elected officials of state governments; and

WHEREAS, the NCAI believes this disparate treatment of elected officials requires an immediate legislative remedy; and

WHEREAS, the NCAI supports the amendment of 42 U.S.C. § 418 to allow Tribal governments to enter into “Section 218 Agreements” with the Federal government so that elected Tribal officials can receive the same benefits as elected State and local government officials.

NOW THEREFORE BE IT RESOLVED, that NCAI urges the Administration to ensure that elected tribal legislators are afforded the right to choose, at their option, to participate in Social Security; and

BE IT FURTHER RESOLVED, that if the Administration fails to secure the right of tribal legislators to participate in Social Security, if they so choose, then NCAI urges the adoption of legislation by both houses of Congress to amend 42 U.S.C. § 418 to include Tribal governments so that Tribal governments may enter into “Section 218 Agreements” with the Federal government that will allow elected Tribal officials to receive the same benefits as elected State and local government officials; and

BE IT FURTHER RESOLVED, that this resolution be referred to the NCAI tax working group for review and seek solutions; and

BE IT FINALLY 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.

ATTEST:  

[Signature]  
Recording Secretary

[Signature]
President