



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #ECWS-10-010

### TITLE: Special Federal Court of Appeals

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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**, in response to the US Supreme Court's decision in June 2008, *the Plains Commerce Bank vs. the Long Family Cattle Company*, the Affiliated Tribes of Northwest Indians adopted a resolution calling for the creation of a Special Court that would serve as a court of appeals for tribal courts in lieu of the federal district courts during its 2009 Annual meeting on September 19-21; and

**WHEREAS**, the Plains Commerce Bank case held that private parties had the right to remove their case out from the authority and jurisdictional authority over such parties and their legal disputes that were generated within the boundaries of a tribes' territorial jurisdiction such as involved the Plains Commerce Bank; and

**WHEREAS**, this case was the latest decision by the Supreme Court dating back to the Oliphant Case in 1978, which undermines the principles of tribal sovereignty recognized by Justice John Marshall in the 1834 case of *Worcester vs. Georgia* and upheld in 1959 in the case of *Williams vs. Lee* which recognized the right of tribes to exercise primary authority over all cases arising within the boundaries of their federally recognized territory. Whereas; since the Supreme Court decided the Plains Commerce Bank case tribal lawyers and tribal organizations have deliberated for almost two years whether a legal strategy to bring lawsuits with different fact situations should be pursued with the goal of persuading the federal courts to modify its holding could succeed without reaching broad based agreement on such a strategy, allowing the law to simply become more "**settled**" making it more difficult to change, and

**WHEREAS**; as more and more time is allowed to pass without taking any political action in the US Congress attempting to overturn the Court's decision or

provide effective alternatives, there is great risk that more lawsuits could be brought reinforcing the Plains Commerce Bank holding, increasing the difficulty of changing the law, and

**WHEREAS;** the window of time remaining in this session of the 111<sup>th</sup> Congress for such a response as the proposed Special Court of Appeals for Tribal Courts is rapidly closing,

**NOW THEREFORE BE IT RESOLVED;** that the NCAI does hereby commit to proceeding on an urgent, time sensitive basis with a request to appropriate members of the Congressional Leadership to design and draft legislation that establishes a new Special Court of Appeals for Tribal courts as soon as possible, and

**NOW THEREFORE BE IT FINALLY RESOLVED,** that the NCAI does hereby resolve, the time has come for all tribes to come together and demand that the US Congress take steps to counter the efforts of the Supreme Court and create a new Special Federal Court of Tribal Appeals; and

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