



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #ABQ-19-008

TITLE: Calling on the U.S. Fish and Wildlife Service to Deny the Petition for Rulemaking Seeking to Revise Regulations to Allow Non-Indians to Possess and Use Eagle Feathers for Religious Purposes

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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 and the United Nations Declaration on the Rights of Indigenous Peoples, 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, bald and golden eagles are protected by the Bald and Golden Eagle Protection Act (Act), 6 U.S.C. §§ 668-668d, which criminalizes the taking or possession of eagles or their parts without a permit from the Fish and Wildlife Service (FWS); and

WHEREAS, recognizing the cultural and spiritual importance of the eagle in American Indian and Alaska Native culture and identity, in 1962 Congress amended the Act to provide the Secretary the authority to allow the use and possession of eagle feathers for the “religious purposes of Indian tribes;” and

WHEREAS, in *U.S. v. Dion* the Supreme Court held that Congress, in passing the Act, intended to abrogate Indian treaty rights to hunt bald and golden eagles, and thus the “religious purposes of Indian tribes” exception was not an impermissible racial classification, but a recognition of the political relationship between federally recognized tribes and the federal government and rights secured by treaties; and

WHEREAS, the existing federal regulations governing the “religious purposes of Indian tribes” exception recognize the limited language of the statute and its underlying political nature by only allowing members of federally recognized tribes to possess and use eagle feathers under the exception; and

WHEREAS, the FWS has published a petition for rulemaking and request for public comment related to a Petition that seeks to have the FWS amend the existing regulations governing the “religious purposes of Indian tribes” exception in the Act; and

WHEREAS, the Petition includes a request to have the existing regulations expanded to allow the “religious purposes of Indian tribes” exception to apply to any and all “sincere religious believers”, including non-Indians, who use eagle feathers in their religious practices; and

WHEREAS, the Petition’s request is in direct conflict with the express language of the Act and thus outside the scope of the FWS’s authority as established by the Supreme Court in *U.S. v. Dion* where they specifically rejected the “patronizing and strained view” that the Act allows the Secretary of the Interior to issue permits to non-Indians under the “religious purposes of Indian tribes” exception; and

WHEREAS, the Petition’s request would also diminish the rights of members of federally recognized tribes to the benefit of non-Indians and violate the government’s trust obligation to federally recognized tribes by judging the sincerity of federally recognized tribal members’ religious beliefs alongside non-Indians, making federally recognized tribal members compete against non-Indians in an already strained permitting system, and incentivizing the appropriation and commercialization of not only eagle feathers, but American Indian and Alaska Native culture and religious beliefs; and

WHEREAS, the Petition expressly seeks to challenge and undermine the political versus racial distinction upheld by the Supreme Court in *Morton v. Mancari* by arguing that “[t]he politically unique relationship between federally recognized tribes and the U.S. government does not justify granting [federally recognized tribes] a religious accommodation while denying it to others who engage in similar religious practices;” and

WHEREAS, the political versus racial distinction established in *Morton v. Mancari* is a fundamental principle in the framework of federal Indian law and must be protected against all attempts to diminish its standing under federal laws and policies; and

WHEREAS, the FWS failed to conduct meaningful consultation with federally recognized tribes on the Petition before publishing the Petition in the Federal Register and seeking public comments; and

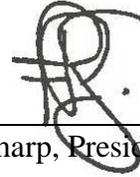
WHEREAS, the formal comment period for the Petition has now closed but a final determination on the Petition is still pending.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) hereby calls on the United States Fish and Wildlife Service to fully and conclusively deny the Petition for rulemaking, which seeks to have FWS revise the existing regulations governing the “religious purposes of Indian tribes” exception in the Bald and Golden Eagle Protection Act and calls upon the sponsor of the Petition to withdraw the Petition; 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 2019 Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, October 20-25, 2019, with a quorum present.



Fawn Sharp, President

ATTEST:



Juana Majel Dixon, Recording Secretary