



NATIONAL CONGRESS OF AMERICAN INDIANS

Resolutions Committee Recommendation

Resolution #: REN-19-021

Title: Affirming Tribal Rights to Regulate Economic Development Along Highway Rights of Way Within Indian Lands

Comments:

The resolution is emergency in nature because litigation appears imminent. Red-line edits focus the resolution on the equitable treatment of restricted fee lands and trust lands under the Highway Beautification Act to ensure the resolution is national in scope.

Recommendations:

The Resolution Committee recommends that this resolution be referred to the Land and Natural Resources committee and the Environmental Protection and Land Use subcommittee for discussion.

Sponsor a member in good standing (yes/no)?: _____



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #REN-19-021

EXECUTIVE COMMITTEE

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Chickasaw Nation

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WESTERN
Quintin C. Lopez
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CHIEF EXECUTIVE OFFICER
KEVIN ALLIS
*FOREST COUNTY POTAWATOMI
COMMUNITY*

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

TITLE: Affirming Tribal Rights to Regulate Economic Development along Highway Rights of Way within Indian Lands

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, Shinnecock Indian Nation is a Federally Recognized Tribe with full jurisdiction over its lands; and

WHEREAS, litigation now pending against the Shinnecock Indian Nation could set dangerous precedent interfering with jurisdiction and tribal governance in other tribal territories; and

WHEREAS, the Shinnecock Indian Nation, in reliance on its jurisdiction over its own lands, has entered into an economic development project, on land it has held from time immemorial, to construct and operate two digital billboards on either side of a State highway that runs through the Nation's lands pursuant to an Easement that gives the State no rights beyond road maintenance; and

WHEREAS, the Shinnecock Indian Nation has substantially completed construction pursuant to a permit issued by the Nation and commenced operation of one sign, over the objections of State and local governments; and

WHEREAS, the State of New York is attempting to sue the Shinnecock Indian Nation alleging various state regulatory authority, including that conferred by the federal government under the Highway Beautification Act (CITE), which requires states to enforce prohibition of roadside advertising on a certain class of roads; and

WHEREAS, the Interior Board of Indian Appeals has previously determined that the Highway Beautification Act is not applicable on Indian Lands (Morongo Band of Mission Indians v. California Area Director, 7 IBIA 299 (1979), and that determination was confirmed by the California Supreme Court in 1985 (Dept. of Transportation v. Naegele, 38 Cal. 2d 512, 689 P. 2d 150 (1985)); and

WHEREAS, the Highway Beautification act is a primary motivation for New York State's recent attempts to enforce a myriad of State Regulatory provisions on Sovereign lands; and

WHEREAS, technologic advances in electronic billboards create an attractive economic development option, particularly in light of exemption from State and Federal Regulation; and

WHEREAS, States have claimed Rights of Way across Tribal lands across the country; and

WHEREAS, other Tribes may be faced with State attempts to preclude them from lawful development of their own lands alongside highways; and

WHEREAS, State attempts to regulate Tribal advertising on tribal land represent an improper intrusion into tribal sovereignty.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) condemns the use of the Highway Beautification Act and other State regulatory efforts to limit tribal rights to lawfully undertake economic development on tribal land; and

BE IT FURTHER RESOLVED, that the NCAI supports the Shinnecock Indian Nation in its efforts to protect its exercise of sovereignty over its own Territory; and

BE IT FURTHER RESOLVED, that the NCAI calls upon the Bureau of Indian Affairs of the United States Department of the Interior to support tribes on a nationwide basis in their efforts to seek responsible economic development on their own lands; 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 2019 Mid-Year Session of the National Congress of American Indians, held at the Nugget Casino Resort, June 24-27, 2019, with a quorum present.

Jefferson Keel, President

ATTEST:

Juana Majel Dixon, Recording Secretary



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TITLE: Calling for Restricted Fee Lands to Receive the Same Treatment as Trust Lands Under the Highway Beautification Act. Affirming Tribal Rights to Regulate Economic Development along Highway Rights of Way within Indian Lands

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, Shinnecock Indian Nation is a Federally Recognized Tribe with full jurisdiction over its lands; and

WHEREAS, litigation now pending against the Shinnecock Indian Nation could set dangerous precedent interfering with jurisdiction and tribal governance in other tribal territories; and

WHEREAS, the Shinnecock Indian Nation, in reliance on its jurisdiction over its own lands, has entered into an economic development project, on land it has held from time immemorial and which is now restricted fee land, to construct and operate two digital billboards on either side of a State highway that runs through the Nation's lands pursuant to an Easement that gives the State no rights beyond road maintenance; and

~~**WHEREAS**, the Shinnecock Indian Nation has substantially completed construction pursuant to a permit issued by the Nation and commenced operation of one sign, over the objections of State and local governments; and~~

WHEREAS, the State of New York is attempting to sue the Shinnecock Indian Nation alleging various state regulatory authority, including that conferred by the federal government under the Highway Beautification Act (CITE), which requires states to enforce prohibition of roadside advertising on a certain class of roads; and

WHEREAS, the Interior Board of Indian Appeals has previously determined that states do not have the authority to apply the Highway Beautification Act is not applicable onto Indian Lands on tribal trust land (*Morongo Band of Mission Indians v. California Area Director*, 7 IBIA 299 (1979)), and that determination was confirmed by the California Supreme Court in 1985 (*Dept. of Transportation v. Naegele*, 38 Cal. 2d 512, 689 P. 2d 150 (1985)); and

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WHEREAS, federal Indian law statutes and case law typically treats trust land and restricted fee land the same e.g., 18 U.S.C. § 1151 (Major Crimes Act); 25 U.S.C. §§ 3703, 3715 (leasing of Indian agricultural lands); 25 U.S.C. § 323 (rights-of-way); 25 U.S.C. § 81 (contracts and agreements with Indian tribes that encumber Indian lands); and

WHEREAS, states may be attempting to impose their regulatory authority on restricted fee lands as a tool to intrude on tribal sovereignty~~the Highway Beautification act is a primary motivation for New York State's recent attempts to enforce a myriad of State Regulatory provisions on Sovereign lands.~~

~~**WHEREAS**, technologic advances in electronic billboards create an attractive economic development option, particularly in light of exemption from State and Federal Regulation; and~~

~~**WHEREAS**, States have claimed Rights of Way across Tribal lands across the country; and~~

~~**WHEREAS**, other Tribes may be faced with State attempts to preclude them from lawful development of their own lands alongside highways; and~~

~~**WHEREAS**, State attempts to regulate Tribal advertising on tribal land represent an improper intrusion into tribal sovereignty; and~~

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) condemns ~~the any attempt to apply the use of the~~ Highway Beautification Act to restricted fee lands and calls for restricted fee lands to be treated the same as trust lands in accordance with existing federal statutes and case law~~and other State regulatory efforts to limit tribal rights to lawfully undertake economic development on tribal land; and~~

~~**BE IT FURTHER RESOLVED**, that the National Congress of American Indians supports the Shinnecock Indian Nation in its efforts to protect its exercise of sovereignty over its own Territory; and~~

~~**BE IT FURTHER RESOLVED**, that the National Congress of American Indians calls upon the Bureau of Indian Affairs of the United States Department of the Interior to support tribes on a nationwide basis in their efforts to seek responsible economic development on their own lands; and~~

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

CERTIFICATION

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