



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #PDX-11-042

### **TITLE: Supporting the National Indian Gaming Association Principles of Sovereignty and Discussion Draft of Indian Country Amendments to any Internet Gaming Legislation**

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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 Indian Gaming Association (NIGA) has a position statement, "Principles of Sovereignty and Discussion Draft of Indian Country Amendments to any Internet Gaming Legislation," and have requested comments on this in advance of potential Congressional legislation; and

**WHEREAS**, the NCAI staff and the NCAI leadership have reviewed the NIGA position statement and provide the following comments:

The National Congress of American Indians continue to work with the National Indian Gaming Association and thank their members for their significant investment of time given to meet with tribes across the United States to take our comments on the improvements needed in the potential legislation for the development of Internet Gaming. We find the position statement to be effective as written and NCAI supports the position statement by the National Indian Gaming Association.

**NOW THEREFORE BE IT RESOLVED**, that NCAI does not support any Federal Internet gaming or Internet Poker legislation; however, in the event that such legislation is moving forward, at a minimum, it must meet the following: "Principles of Sovereignty and Discussion Draft of Indian Country Amendments to any Internet Gaming Legislation" (attached); and

**BE IT FURTHER RESOLVED**, that NCAI appreciates the efforts of the National Indian Gaming Association; 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 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:**  
\_\_\_\_\_  
Recording Secretary

# **PRINCIPLES OF SOVEREIGNTY AND DISCUSSION**

## **DRAFT OF INDIAN COUNTRY AMENDMENTS TO**

### **ANY INTERNET GAMING LEGISLATION**

**Any legislation that legalizes Internet gaming, including Internet poker, must satisfy the following principles that are essential for fairness to Tribal Governments:**

1. Indian tribes are sovereign governments with a right to operate, regulate, tax, and license Internet gaming, and those rights must not be subordinated to any non-federal authority;
2. Internet gaming authorized by Indian tribes must be available to customers in any locale where Internet gaming is not criminally prohibited; and
3. Consistent with long-held federal law and policy, tribal revenues must not be subject to tax;
4. Existing tribal government rights under Tribal-State Compacts and the Indian Gaming Regulatory Act (“IGRA”) must be respected;
5. The legislation must not open up the IGRA for amendments; and
6. Federal legalization of Internet gaming must provide positive economic benefits for Indian country.

### **PROBLEMS WITH PENDING AND PRIOR INTERNET GAMING LEGISLATION**

#### **WITH RESPECT TO INDIAN COUNTRY**

- # 1. Some Internet gaming bills limit the class of eligible Internet gaming operators (or licensees) to existing casino gaming facilities with 500 or more machines in one location.**

This is contrary to the principle that Indian Tribes should have access to customers in jurisdictions where Internet gaming is permitted. No bill should restrict the class of eligible Internet gaming operators to tribal government casino gaming facilities with 500 or more machines in one location. All Federally recognized Tribes that are, or may be currently eligible to conduct gaming, must also be eligible to conduct internet gaming under any internet gaming legislation.

**PROPOSED AMENDMENT:** The term “casino gaming facilities” must be defined to include any class II, class III, or internet gaming operation, that is, or may be, operated by an Indian tribe.

**# 2. Some Internet gaming bills prevent Indian Tribes from serving as licensing and regulatory bodies if they have a direct or indirect ownership interest in a facility that engages in Internet gaming, including Internet poker.**

This is contrary to the principle that Indian tribes are sovereign governments with a right to operate, regulate, tax, and license gaming activities within Indian country, including Internet gaming operations.

PROPOSED AMENDMENT: The class of qualified regulatory bodies in any Internet gaming bill must include all Indian tribes that engage in, or may engage in, class II or class III gaming facilities, including internet poker, and it must provide that such tribes have a right to own, control, or operate a facility that engages in casino gaming or Internet gaming, including Internet poker.

**# 3. Some Internet gaming bills create an Office of Internet Poker Oversight within the Department of Commerce with licensing and regulatory authority over Indian Tribes that engage in Internet gaming, including Internet poker.**

This is contrary to the IGRA, which established the National Indian Gaming Commission (“NIGC”) as the principal Federal regulatory body overseeing Indian gaming. It is also contrary to the principle that Indian tribes are sovereign governments and are the primary regulatory body for Indian gaming activity.

PROPOSED AMENDMENT: Any Internet gaming bill, including internet poker, must provide that the NIGC shall be the exclusive federal agency to provide oversight of gaming activities by Indian Tribes in lieu of oversight by the Office of Internet Poker Oversight or the Secretary of Commerce. This shall not be in derogation of Tribal governments’ rights to regulate internet gaming.

**# 4. All Internet gaming bills impose licensing fees and taxes on Indian Tribes that engage in Internet gaming activities.**

All internet gaming bills must recognize that the IGRA already assesses all Tribal gaming revenues with a 100% tribal tax and there is no room for federal or state taxation. Under principals of federalism, one sovereign does not tax the essential government revenues of another sovereign. Tribal gaming revenues must not be subject to Federal or State taxation.

Federal or State taxation would undercut the economic benefit derived by Indian Tribes from Internet gaming by preempting Tribal authority to tax Internet gaming operators.

PROPOSED AMENDMENT: Any Internet gaming bill that affects Indian country must recognize that Internet gaming revenues generated by an Indian tribe are subject to the restrictions on the uses of net revenue under 25 U.S.C. 2710(b) and (d), which states that net revenues from any tribal gaming are not to be used for purposes other than--**(i)** to fund tribal government operations or programs; **(ii)** to provide for the general welfare of the Indian tribe and its members; **(iii)** to promote tribal economic development; **(iv)** to donate to charitable organizations; or **(v)** to help fund operations of local government agencies. Tribal Government revenues shall not be subject to Federal or State taxation or license fees.

**# 5. All proposed Internet gaming bills must respect Tribal-State negotiations and must not impact existing Tribal-State compacts or Tribal-State agreements.**

Tribal government rights under Tribal-State Compacts and the Indian Gaming Regulatory Act must be respected. Internet gaming legislation must permit Indian tribes to operate Internet gambling facilities without renegotiating their Tribal-State compacts under the IGRA. Revenue sharing agreements contained in existing Tribal-State compacts must not be voided and the exclusivity requirements in those agreements must be continued in full force and effect.

Enacting a bill with provisions that render exclusivity agreements null and void without the consent of affected States and Tribes, may violate the Fifth Amendment Due Process and Takings Clauses.

PROPOSED AMENDMENT: Any Internet gaming bill that affects Indian country must provide that nothing in the bill will supersede the provisions of a Tribal-State compact approved pursuant to 25 U.S.C. § 2710 and it must provide Indian Tribes are not required to renegotiate their Tribal-State.

**# 6. Some bills provide Nevada with a 3-5 year early entry period into Internet gaming, over and above Tribal governments, state lotteries and others.**

PROPOSED AMENDMENT: Upon enactment of any internet gaming legislation all federally recognized tribal governments shall be eligible to license, operate, and regulate internet gaming, subject to tribal governmental regulatory systems.

Indeed, in order to overcome historical discrimination against Indians and the destruction of traditional tribal economies, tribal governments should have an early entrance into internet gaming, with a limited period of exclusivity.