The National Congress of American Indians
Resolution #PHX-16-068

TITLE: Protecting Native Artisans Against Impermissible Restrictive State Legislation

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, NCAI was organized, in part, to resist the efforts of the United States to terminate American Indian Nations and to promote and protect inherent tribal sovereignty and American Indian rights, identity, and culture; and

WHEREAS, the Oklahoma State Legislature has passed, and on June 8, 2016 the governor has signed, HB 2261, legislation purporting to impose criminal penalties and jail time on an artificial class of Native crafters and sellers. Flatly conflicting with the federal Indian Arts and Crafts Act, Oklahoma would fine or imprison American Indians who are not members of BIA-listed tribes who sell Native crafts in the State. Although Federal law recognizes a broader class of Native artists, including members of state recognized tribes, Oklahoma attempts to override that express protection, by limiting the definition of “American Indian” and related nomenclature to mean exclusively those who are members of tribes listed as federally recognized by the BIA; and

WHEREAS, this Oklahoma legislation conflicts with existing federal law and policy, attempting to override existing criteria for Native artisan status by introducing artificial and wrongful distinctions based on tribal recognition; and

WHEREAS, this legislative action, and any similar to it, alienates American Indian people who are citizens of non-BIA listed tribes from rights protected under federal law; and

WHEREAS, this Oklahoma law threatens fines up to $250 and jail terms of 30-90 days on Native crafts people in Oklahoma despite conflicting federal law; and
WHEREAS, this law has immediate and serious impact on Native peoples seeking to make a living (or avoid criminal penalties) in Oklahoma; and

WHEREAS, if this law is not challenged, other states may consider similarly oppressive legislation; and

WHEREAS, the purpose of protecting the integrity and of authenticity of Indian Arts and Crafts is not served by the artificial exclusion of Native artisans based on their federal status, as the United States Congress has determined, in enacting the Indian Arts and Craft Act of 1990 (25 USC 305), which already governs the subject matter nationwide; the subject matter is preempted by both federal and tribal law (US v Michigan).

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians affirms the inherent dignity and identity of all American Indian peoples and opposes any effort to alienate citizens of historic American Indian Nations from their identity, culture, inherent rights, or from federal regulations or international policies under which they are protected; and

BE IT FURTHER RESOLVED, that NCAI calls on the State of Oklahoma to repeal HB 2261, which has now been codified into law, as it is preempted by federal law and is in contradiction to the Indian Arts and Crafts Act of 1990 (25 USC 305); 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 2016 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center, October 9th - 14th 2016, with a quorum present.

Brian Cladoosby, President

ATTEST:

Aaron Payment, Recording Secretary