



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ATL-14-032

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TITLE: Calling for Protection of Native Peoples' Sacred Places, Sacred Objects and Ancestors under United States, Native Nations and International Law, Policy and Practice

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 American Indian Religious Freedom Act of August 11, 1978 was enacted as a U.S. policy declaration, without a statutory cause of action for protection of Sacred Places, and various U.S. Congresses and Presidents have enacted follow-on religious freedom laws and taken other actions for the return of specific Native Sacred Places, as well as for repatriation and protection of Funerary and Sacred Objects, Ancestors and Burial Grounds; the use of Peyote by members of the Native American Church; and certain practices exercised by Native inmates; and

WHEREAS, on September 13, 2007, the General Assembly of the United Nations adopted the Declaration on the Rights of Indigenous Peoples, which the United States endorsed on December 15, 2010, and which states in part:

“Article 11, 1: Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.

“Article 11, 2: States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.”

“Article 12, 1: Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.”

“Article 25: Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard;” and

WHEREAS, the General Assembly of the NCAI Convention adopted its Policy Statement on Sacred Places on October 24, 2008, which states in part:

“The American Indian Religious Freedom Act (AIRFA) was enacted into law...in 1978, and states that ‘it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites....

“However...in 1988, the Supreme Court ruled that neither AIRFA nor the U.S. Constitution provides a cause of action for Native Americans to defend their sacred places in court. The high court also stated that Congress would need to enact a statute for that purpose, but Congress has not enacted a statutory right of action for tribes to protect their sacred places and site-specific ceremonies....

“Protecting sacred places is necessary for the survival of traditional religions, cultures and lifeways and our identity and status as sovereign nations. We Native Peoples are required by the tenets of our traditional religions to protect the physical integrity of these places and we call on others to remove legal and other barriers that stand in the way of our spiritual duty of care and protection....

“Burial places are also sacred places. At present, there are entities subverting existing laws designed to protect our burial places and our ancestors....;” and

WHEREAS, on December 4, 2012, the Departments of Agriculture, Defense, Energy and Interior and the Advisory Council on Historic Preservation agreed by Memorandum of Understanding to work collaboratively until December 31, 2017, to address the protection of and Indian access to Sacred Places, but have not used the MOU to protect any sacred places to date or consulted with any Native Peoples to do so; and, on June 26, 2013, the President of the United States issued Executive Order 13647, establishing the White House Council on Native American Affairs, which consists of cabinet secretaries and heads of other federal entities, and is responsible for coordinating policies across the federal government; and

WHEREAS, notwithstanding adoption of the Declaration by the United Nations and endorsement of it by the United States or establishment of the White House Council on Native American Affairs and the nearly two-year-old MOU “Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites,” there still is not a statutory right of action or a broad administrative effort to protect Native Sacred Places or to consult with Native Peoples to actually protect any specific Sacred Places; and

WHEREAS, the NCAI is deeply concerned about the protection of Native Peoples’ Sacred Places, Sacred Objects and Ancestors, wherever they are located or held, within or outside the United States, by whatever person(s) or entity(ies), and is unconditionally opposed to their desecration or dispossession, and to any adverse impact, damage, endangerment, injury or threat to them; and

WHEREAS, notwithstanding the United Nations’ Declaration and the United States’ endorsement of it, Native Peoples’ Sacred Objects and Ancestors are held and bartered in and by museums, auction houses and other repositories and collections throughout the world. Disturbingly, a French court in 2013 refused to stop auctions of Native Sacred Objects or to recognize United States’ or Native Nations’ laws or United Nations’ conventions on cultural and human rights -- and the French auction house owner was reported around the world erroneously declaring that U.S. law and the court’s decision meant that Native Peoples’ Sacred Objects are “desacri-fied” when non-Natives possess them -- making a loophole for the world’s profiteers and black-marketeers to traffic in Native Peoples’ Sacred Objects and Ancestors in France. NCAI also is disturbed by the recalcitrance of The British Museum to respect Native Nations’ requests to return their Ancestors or Sacred Objects (which are kept in basement storage), in accordance with the United States’ and Native Nations’ repatriation laws or the international covenants regarding human remains and cultural materials.

NOW THEREFORE BE IT RESOLVED, that the NCAI calls on the President of the United States to issue a Special Message to Congress that includes an entreaty to pass a statutory right of action to protect and defend Native Sacred Places; and

BE IT FURTHER RESOLVED, that the NCAI renews its calls for the U.S. Congress to amend the American Indian Religious Freedom Act or to pass free-standing legislation to establish a statutory right of action of the kind described 26 years ago by the U.S. Supreme Court, or to set forth a process to return and otherwise protect Native Peoples’ Sacred Places; and

BE IT FURTHER RESOLVED, that the NCAI renews its calls on the President – in keeping with the U.S. policy proclaimed in the AIRFA “to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions” and with the U.N. Declaration on the Rights of Indigenous Peoples -- to direct federal entities to review and report on the manner in which they acquired jurisdiction regarding Native Peoples’ Sacred Places and whether such jurisdiction was asserted and Sacred Places taken with or without Native Peoples’ free, prior and informed consent, and whether the federal government disposed of Sacred Places or turned over control of them to others with or without Native Peoples’ free, prior and informed consent; and for federal entities, in collaboration with the Native Nation(s) with traditional religious interest in a Sacred Place prepare recommendations for its protection, through existing laws and policies, through a federal-tribal agreement to co-manage or jointly steward the Sacred Place or through transfer and return of the Sacred Place; and

BE IT FURTHER RESOLVED, that the NCAI calls on the White House Council on Native American Affairs to investigate, review and provide remedies, regarding instances of desecration or dispossession, and any adverse effect, damage, endangerment, injury or threat to Native Peoples' Sacred Places, Sacred Objects and Ancestors; and to consult with tribal traditional leaders, lineal descendants and next of kin, to facilitate repatriation to the Native Peoples having cultural, religious or lineal or kinship relationships with the Sacred Places, Sacred Objects or Ancestors; and

BE IT FURTHER RESOLVED, that the NCAI calls on all entities dealing with these critical issues to apply the following, which already are law and policy: 1) that Funerary Items are Sacred Objects and Burials, Graves and Burial Grounds are Sacred Places; 2) that Surrogates in the Native American Graves Protection and Repatriation Act are Surrogates for Ancestors and, therefore, are Human Remains; 3) that Native Peoples claiming Sacred Objects under the NAGPRA category of cultural patrimony do not have to prove their sacredness; and 4) that Sacred Places, Sacred Objects and Ancestors never lose their sacredness or cultural integrity, even after others may perceive that they are "destroyed," and it is never too late to provide remedies for redress; and

BE IT FURTHER RESOLVED, that notwithstanding deficiencies in federal or international laws regarding the protection of Native Peoples' Sacred Places, Sacred Objects or Ancestors and their abuse by states, private individuals or any brokers, developers or profiteers, within or outside of the United States, NCAI shall not excuse or tolerate acts of desecration or dispossession, or any adverse effect, damage, endangerment, injury or threat to Sacred Places, Sacred Objects and Ancestors, and shall hold such actors accountable with due and proper public opprobrium; and

BE IT FURTHER RESOLVED that NCAI calls upon England, France and all countries to prohibit the unlawful trafficking of Native Peoples' Sacred Objects and Ancestors, and to consult with Native Peoples' traditional leaders and lineal descendants and next of kin to facilitate repatriation of Funerary Objects, Sacred Objects or Ancestors to the Native Peoples with cultural, religious or lineal or kinship relationships to them; and

BE IT FURTHER RESOLVED, that NCAI calls upon Native Peoples to make and strengthen laws protecting all Sacred Places, Sacred Objects and Ancestors, for Native Nations' courts to uphold them, for Native organizations to honor them and for non-Native entities, both within and outside the United States, to accord the rule of respect and recognition to Native Peoples' protection laws; 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 2014 Annual Session of the National Congress of American Indians, held at the Hyatt Regency Atlanta, October 26-31, 2014 in Atlanta, Georgia, with a quorum present.


President

ATTEST:


Recording Secretary