



# NATIONAL CONGRESS OF AMERICAN INDIANS

## The National Congress of American Indians Resolution #TUL-05-018

### TITLE: Support for Congress to Codify Secretarial Compacting Procedures

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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 Indian Gaming Regulatory Act of 1988, 25 U.S.C.A. §§2701-2721 divides Indian gaming into three classes, with different regulatory results for each class, including a provision for Class III gaming within §2710(d)(1), which requires that gaming be conducted in accordance with a Tribal-State compact entered into by an Indian Tribe and the State; and

**WHEREAS**, the Indian Gaming Regulatory Act provides that, upon request of a tribe, a state shall negotiate in good faith with the tribe to enter such a compact; and

**WHEREAS**, the United States Supreme Court in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) ended a tribe's right to bring a cause action in federal court directly against a state that refused to bargain in good faith for a tribal state gaming compact—unless that state waives its sovereign immunity; and

**WHEREAS**, there is no remedy for an Indian tribe to sign a compact with a state refusing to negotiate in good faith; and

**WHEREAS**, the Department of the Interior has promulgated regulations for alternative compacts that provide a remedy when a state refuses to negotiate by allowing the Secretary of Interior to proscribe “procedures” for class III gaming. (25 C.F.R. §291); and

**WHEREAS**, the authority for the Secretary of the Interior to issue these regulations needs to be codified by Congress to prevent years of litigation and confusion – thereby creating the “*Seminole fix*,” and

**WHEREAS**, Congress has to ratify in statute the clear authority of the Department of the Interior to issue alternative compacts when a state Governor or state legislature refuses to negotiate in good faith a compact with an Indian tribe and raises an 11<sup>th</sup> hour defense.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI does hereby urge the Congress that any amendments to the Indian Gaming Regulatory Act must codify, by statute the authority to the Secretary of Interior to issue the Secretarial procedures to issue alternative compacts when a state Governor or state legislature refuses to negotiate in good faith a compact with an Indian tribe; and

**BE IT FURTHER RESOLVED**, that the members of the NCAI continue to promote intergovernmental cooperation between states and tribes and that codifying the authority of the Secretary to issue Secretarial procedures in lieu of a compact will result in the furtherance of a cooperative relationship between the states and tribes; and

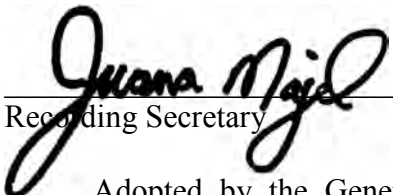
**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

#### CERTIFICATION

The foregoing resolution was adopted at the 2005 Annual Session of the National Congress of American Indians, held at the 62<sup>nd</sup> Annual Convention in Tulsa, Oklahoma on November 4, 2005 with a quorum present.

  
\_\_\_\_\_  
President

**ATTEST:**

  
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Recording Secretary

Adopted by the General Assembly during the 2005 Annual Session of the National Congress of American Indians held from October 30, 2005 to November 4, 2005 at the Convention Center in Tulsa, Oklahoma.