



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #RAP-10-015

TITLE: Supporting 9th Circuit Court of Appeals Order in Favor of Rincon in Rincon v. Schwarzenegger

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 Rincon Band of Luiseno Indians filed a lawsuit in the Southern District of California against the State of California and Governor Arnold Schwarzenegger alleging that the Governor negotiated the Band's Tribal-State Gaming Compact in bad faith in violation of IGRA; and

WHEREAS, the District Court held that the State's insistence on an exchange of revenue earmarked for the State's general fund in return for an amended compact and no other meaningful consideration with Rincon was an illegal tax in violation of IGRA, and held the Governor to be negotiating in bad faith; and

WHEREAS, the 9th Circuit heard the case on appeal, and on April 20, 2010, affirmed the District Court's holding that the State of California negotiated in bad faith affirming the reasoning and holding of the District Court; and

WHEREAS, the Indian Gaming Regulatory Act, Section 2710(d)(4), prohibits a state from taxing an Indian tribe as a prerequisite to engaging in Class III gaming activities; and

WHEREAS, a state must offer a meaningful concession beyond those matters it has a federal obligation to negotiate under IGRA in exchange for revenue sharing with a Tribe; and

WHEREAS, funds earmarked to a state's general fund will not be used for gaming related purposes, such as programs to address problem gambling, support for government agencies impacted by tribal gaming, compensation for regulatory costs associated with the administration of the compact, or other purposes directly related to tribal gaming and identified in IGRA.

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NCAI HEADQUARTERS

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

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support the Ninth Circuit Court of Appeals' Opinion and holding in Rincon v. Schwarzenegger, and will support the ruling by taking necessary actions, such as filing an amicus curiae brief supporting the Rincon Band; and

BE IT FURTHER RESOLVED, that the NCAI hereby agrees that a state must negotiate a Tribal-State Gaming Compact in good faith; and

BE IT FURTHER RESOLVED, that the NCAI agrees that a state cannot demand a tax on Indian gaming activities under IGRA; and

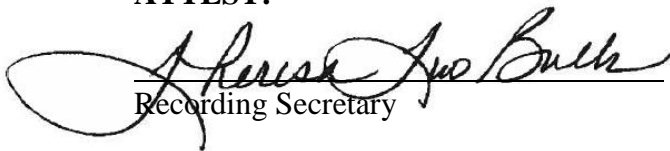
BE IT FURTHER RESOLVED, that the NCAI urges other states to cease to insist on revenue sharing demands to the state's general fund without meaningful concessions to tribes; and

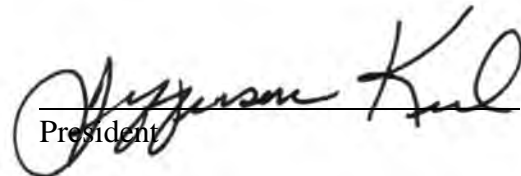
BE IT FINALLY RESOLVED, that this resolution shall be the policy of the NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2010 Mid-Year Session of the National Congress of American Indians, held at the Rushmore Plaza Civic Center in Rapid City, South Dakota on June 20-23, 2010, with a quorum present.

ATTEST:


Recording Secretary


President