TITLE: Request DOI Revisit 1940 Solicitor’s Opinion on “Excluding Indians not Taxed”

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 U.S. Congress, during the Bicentennial Celebration, enacted the Iroquois Resolutions referenced as Senate Concurrent Resolution #76 and House Concurrent Resolution #331 both which recognized that the United States has a government-to-government relationship with the Indian Tribes based on the US Constitution; and

WHEREAS, as mandated by the U.S. Congress (1787 to 1871), the President negotiated over 700 Peace Treaties with Indian Tribes, and the U.S. Senate ratified half of said treaties and then took the benefit of all said treaties (ratification by action) and secured to itself nearly four million square miles of land and natural resources for its posterity; and

WHEREAS, Indian Country recognizes that said Concurrent Resolutions addressed the application of the treaty clause (Article II, Sec. 2, Cl.2) and the Indian Commerce Clause (Art. I, Sec. 8, Cl. 3), and the power of the Supreme Court to review treaties made (Art. III, Sec. 2 & Cl. 1) as Supreme law of the land (Art. VI, Cl.2) but failed to address the “Exclusion” of tribal Indians from the Apportionment Clause and the reinforcement of that exclusion by the Fourteenth Amendment (Sec. 1 & Sec. 2) as designed by 39th and 40th U.S. Congresses; and

WHEREAS, the Apportionment Clause excluded said “Tribal Indians” from being included for purposes of representation in the House of Representatives, and excluded from taxation for purposes of apportionment thereof, and that at the time the Senate represented the States until the Constitution was amended to make the election of Senators a popular sovereignty process; and
WHEREAS, the 1924 Indian Citizenship was enacted for the specific purpose of providing tribal Indians with First Amendment Religious Freedom since they were being prosecuted under the DOI/BIA Religious Crimes Code, and said enactment did not amend the Apportionment Clause nor the intent and purposes of the 14th Amendment, as so much applied to the tribal Indians (as concluded in Elk. v. Wilkins, 1884), nor is the use of the Naturalization Clause (Art. I, Sec.8, Cl. 4) lawfully applied since the Apportionment Clause and the 14th Amendment specifically forbid its application to the Tribal Indians otherwise known as “Excluding Indians not Taxed;” and

WHEREAS, the US Department of Interior, Solicitor’s Office, in November 1940, issued a faulty legal opinion that there are no more tribal Indians, and that there is no longer a valid application of the constitutional language that recognized tribal Indians as “Excluding Indians not Taxed” and that this is in direct contravention of the canon of construction of written constitutions and has caused serious economic and governmental damage to the Indian tribes and tribal people, as exemplified by the Internal Revenue Service applying the whole Internal Revenue Code to tribal Indians because they are classified as “citizens;” and

WHEREAS, Indian Country is composed of over 550 federally recognized Indian tribes and each tribe has enrolled tribal members that are recognized by the US government as entitled to benefits of Self-determination, Self-government, and Indian Health Services, and that this is proof that the Indian Nations and Tribal Indians have never been successfully terminated, exterminated, or destroyed as tribal people or tribal nations with inherent sovereignty protected by the US Constitution from external interference by the national and individual state governments; and

WHEREAS, the current Assistant Secretary of the Department of Interior (DOI) has jurisdiction over Indian Affairs for the Department and has access to the Solicitors that advise the Department on matters of federal Indian law, as so much falls in compliance with canons of construction of written constitutions and the Supreme Law of the Land.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby call on the Assistant Secretary of the Department of Interior, to meet with the Secretary of Interior and the Obama Administration to secure authorization to revisit and rewrite the 1940 Solicitor’s Opinion on “Excluding Indians not Taxed” in compliance with “Canons of Construction” of written constitutions, and thereby protect the constitutional status of “Tribal Indians;” and

BE IT FURTHER RESOLVED, that the NCAI does hereby requests the Assistant Secretary of the Department of Interior to meet with the elected tribal leadership of Indian Country including the National Congress of American Indians, the National Indian Gaming Association, the Great Plains Tribal Chairman’s Association, the Tribal Alliance of Sovereign Indian Nations, the All Indian Pueblo Council, and other such regional and national intertribal organizations and tribal leadership to address this subject matter, as an issue of great concern that should be and must be subjected to “Consultation” with the Indian 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 by the General Assembly at the 2009 Annual Session of the National Congress of American Indians, held at the Palm Springs Convention Center in Palm Springs, California on October 11-16, 2009, with a quorum present.

ATTEST:

[Signature]
Recording Secretary

[Signature]
President