



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #TUL-05-029

TITLE: Supporting Amending NAGPRA Definition of “Native American”

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NCAI HEADQUARTERS

1301 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
202.466.7767
202.466.7797 fax
www.ncai.org

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 Native American Graves Protection and Repatriation Act (NAGPRA) was passed in 1990 in order to benefit tribes by restoring to indigenous peoples the basic human rights to protect the graves of their ancestors; and

WHEREAS, the Bonnicksen litigation, addressing the repatriation of *Techaminsh Oytpamanatityt* (aka the Ancient One or Kennewick Man), has created many problems throughout the country in implementation of NAGPRA; and

WHEREAS, one problem created by the Bonnicksen litigation is the judicially established requirement of a significant relationship to an existing tribe prior to NAGPRA applying, which has created a loop-hole whereby museums and agencies can unilaterally, and without consultation, determine remains not to be Native American and therefore not start the NAGPRA process for repatriation; and

WHEREAS, in 2004, Senator Ben Nighthorse Campbell introduced S. 2843, an amendment to NAGPRA to resolve one of the problems created by the Ancient One litigation, adding the words “or was” to the definition of Native American, but the bill did not pass; and

WHEREAS, in March, 2005, Senator McCain introduced S. 536, Native American Omnibus Act of 2005, which contained a similar amendment to NAGPRA introduced by Senator Campbell; and

WHEREAS, the amendment to NAGPRA would add the words “or was” to the definition of Native American as well as the words “*any geographic area that is now located within the boundaries of*” so that the new definition would read:

“Native American” means of, or relating to, a tribe, people, or culture that is *or was* indigenous to *any geographic area that is now located within the boundaries of* the United States.”

which would address the problems created by judicial interpretations of NAGPRA and restore to the law the congressional intent behind the legislation; and

WHEREAS, in a May 10, 2005 letter to the Senate Committee on Indian Affairs, Matt Eames, Director of the Office of Congressional and Legislative Affairs voiced the support of the Department of the Interior for S. 536 containing, among other things, the amendment to NAGPRA; and

WHEREAS, on July 28th, 2005, Paul Hoffman, Deputy Assistant Secretary for Fish and Wildlife and Parks testified on behalf of the Department of the Interior in opposition to the NAGPRA amendment; and

WHEREAS, every other testifier supported, or did not oppose, the legislation with the exception of the attorneys who represented the scientists in the Bonnicksen litigation; and

WHEREAS, the Department of the Interior has a trust responsibility to protect the interests of the tribal nations as well as a duty to implement the law passed to benefit those tribes yet it failed to consult or communicate with any tribes prior to taking this position on the NAGPRA amendment.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support the amendment to the Native American Graves Protection and Repatriation Act inserting the words “or was” and “*any geographic area that is now located within the boundaries of*” to the definition of “Native American;” and

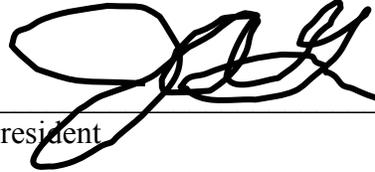
BE IT FURTHER RESOLVED, that NCAI calls upon the Department of the Interior to support the NAGPRA amendment because it benefits tribes and resolves problems in NAGPRA implementation raised in the Bonnicksen litigation; and

BE IT FURTHER RESOLVED, that NCAI requests the Department of the Interior to consult, as soon as possible, with tribes nationally on NAGPRA to explain why the Department changed its opinion of the NAGPRA amendment so dramatically and without consultation with any tribes; and

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

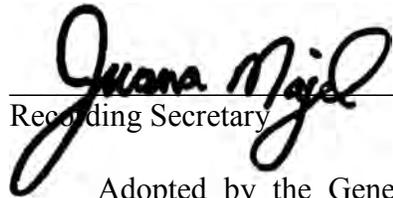
CERTIFICATION

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



President

ATTEST:



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.