



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #SAC-12-016

TITLE: Call for Three-Year Moratorium on IRS General Welfare Exclusion Policy

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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 Constitution acknowledges Indian tribes as sovereign governments in the Treaty, Commerce, and Supremacy Clauses; and

WHEREAS, the allegiance of tribal citizens to Indian tribes was expressly recognized in the Apportionment Clause phrase "Indians not taxed;" and

WHEREAS, through more than 370 Indian treaties, the United States has affirmed the status of Indian tribes as sovereigns, with a right of self-government over tribal citizens and tribal territory; and

WHEREAS, the 14th Amendment implicitly reaffirms the status of Indian tribes as sovereigns in the Citizenship Clause by acknowledging that tribal citizens were then subjects of tribal jurisdiction, not "subject to the jurisdiction of the United States;" and

WHEREAS, the 14th Amendment Apportionment Clause expressly reaffirms the status of tribal citizens as "Indians not taxed;" and

WHEREAS, the 14th Amendment must be read to ratify the United States' existing Indian affairs policy because the Amendment was ratified at the same time as the Congress was implementing the Indian Peace Policy through treaties negotiated by the Indian Peace Commission and the Amendment repeats the original language of the Constitution, "Indians not taxed;" and

WHEREAS, the 1924 Indian Citizenship Act expressly reserves the right of tribal citizens to tribal property unimpaired by the grant of U.S. citizenship, with the proviso that: "the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property;"

WHEREAS, the Internal Revenue Service (IRS) continues to interfere with tribal government delivery of programs and services to tribal citizens, if such programs and services to tribal citizens, if such programs and services are provided to all tribal members and are not poverty indexed or “means tested;” and

WHEREAS, there are numerous Federal and state government programs and services that are provided on a general basis and not poverty indexed or means tested and the IRS does not tax such programs and services based upon the view that the Federal and state governments have important policy reasons to support such programs and services, including public school education, college scholarships and student aid, education related travel, veterans benefits, and benefits provided to politicians, such as residences, transportations, etc.; and

WHEREAS, the IRS imposes value judgments against tribal government programs and seeks to tax such programs, although the Federal and state governments also provide such programs and the IRS views the Federal and state government programs as falling within the General Welfare Exclusion; and

WHEREAS, the Department of the Treasury has acknowledged that the IRS is interfering with tribal self-government by seeking to tax tribal government programs and services to tribal citizens; and

WHEREAS, the IRS has undertaken review of the so-called General Welfare Doctrine as applied to tribal governments and plans an imminent distribution of its proposal to respect tribal self-government.

NOW THEREFORE BE IT RESOLVED, that NCAI Resolution LNK-12-008 is hereby amended to add the following provisions:

“BE IT FURTHER RESOLVED, that NCAI calls upon the Administration and the IRS to place a moratorium on its review of tribal government programs for three years or until such time as it has thoroughly consulted with tribal governments in accordance with Executive Order 13175 on its forthcoming guidelines on the IRS General Welfare Exclusion application to tribal government programs and services, whichever is later; and

BE IT FURTHER RESOLVED, that NCAI calls upon the Administration, Congress and the IRS to support legislation that implements the U.N. Declaration on the Rights of Indigenous Peoples and immediately take steps to implement the U.N. Declaration, especially by respecting tribal self-government and the values that animate tribal government programs and services;” 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 2012 Annual Session of the National Congress of American Indians, held at the Sacramento Convention Center from October 21-26, 2012 in Sacramento, California, with a quorum present.



President

ATTEST:



Recording Secretary