



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #REN-19-004

TITLE: Affirming and Protecting Tribal Sovereign Immunity by Committing to Risk Management to Prevent Losses and Provide a System of Solutions for Claimants Alleging Torts or Other Economic Harms

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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 and the United Nations Declaration on the Rights of Indigenous Peoples, 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, tribal sovereignty is an inherent authority exercised by all federally recognized tribal nations and has been duly recognized by United States treaties, executive orders, statutes, and court decisions; and

WHEREAS, tribal nations provide essential governmental services to their citizens, including education, housing, healthcare, public safety, and public infrastructure for water, transportation, communications, and economic development; and

WHEREAS, tribal nations have the inherent right to conduct economic development activities for the purpose of raising revenues for the benefit of the tribal nation and its citizens, in order to achieve the dual goals of self-determination and self-governance; and

WHEREAS, in furtherance of these goals, some tribal nations have exercised their sovereignty by enacting tribal codes to address potential tort claims as a safeguard to protect tribal government revenue and provide a remedy and/or forum for potential claims of tort or economic harm; and

WHEREAS, other tribal nations require funding or technical assistance to assess risks and identify potential solutions for addressing claims arising from tribal government-owned and operated enterprises; and

WHEREAS, the President, Congress and the Supreme Court acknowledged tribal nations as sovereign governments vested with inherent rights of self-government, including sovereign immunity (*United States v. U.S. Fidelity & Guaranty Co.*, 309 U.S. 506 (1940); *see e.g.*, 25 U.S.C. secs. 81, 2710(d), 5321(d); Executive Order 13175 (2000) (“United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination”)); and

WHEREAS, the U.S. Supreme Court has viewed the scope of tribal sovereign immunity to be equal to the scope of federal and state immunity, subject only to unequivocal abrogation by an Act of Congress or an unequivocally clear and express waiver by a tribal nation of its own sovereign immunity from suit; and

WHEREAS, tribal sovereign immunity remains a critical legal doctrine that protects tribal nations from a wide range of lawsuits that would cripple their ability to provide essential governmental services and functions to their citizens; and

WHEREAS, the U.S. Supreme Court has repeatedly acknowledged that tribal sovereign immunity is a “core aspect of” and a “necessary corollary to” tribal sovereignty and self-governance, but in recent years has expressed a desire to limit it for tort claims, *see, e.g., Lewis v. Clarke*, 582 U.S. (2017); *Michigan v. Bay Mills*, 572 U.S. 782, 799 n.8 (2014); *id.* at 814-18; and

WHEREAS, lower federal courts and some of the states’ highest courts have entertained tort-based lawsuits against tribal nations and their government-owned entities, further jeopardizing tribal sovereign immunity; and

WHEREAS, tribal nations strongly oppose any abrogation of tribal sovereign immunity by the courts.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) urges Congress to reaffirm tribal sovereign immunity and work with tribal nations to identify a fair and reasonable process for resolving potential claims arising from tribal government-owned and operated economic development enterprises; and

BE IT FURTHER RESOLVED, that NCAI calls upon Congress and the Secretary of the Interior, acting through the Bureau of Indian Affairs’ Office of Indian Energy and Economic Development (BIA OIEED) and in cooperation with the Interior Office of Risk Management, to promote tribal self-determination by providing training, technical assistance, and grants in support of risk management, risk pools, claims processes, and related systems for tribal nations to minimize the risk of personal, property and economic losses, including losses to tribal nations, tribal enterprises, employees, business invitees, third parties, and the general public in areas not already covered by the Federal Tort Claims Act under existing law; and

BE IT FURTHER RESOLVED, that NCAI calls on Congress and the Administration to work in consultation with tribal nations, to develop tribal self-determination contracts and grant programs to assist tribal nations with the establishment of risk-management programs, enterprise risk-management frameworks, training, best practices, risk pools, inter-tribal risk pools, and claims resolution processes; and

BE IT FURTHER RESOLVED, NCAI calls on Congress to appropriate funds and direct the Department of Justice’s Office of Tribal Justice and BIA IEED to consult on a government-to-government basis with tribal nations concerning risk management, loss prevention, tort claims and alternative dispute resolution, and preserving tribal sovereign immunity in the context of economic development and to report back to Congress within 180 days on best practices for tribal risk management; and

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

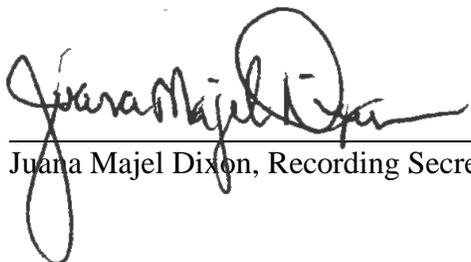
CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2019 Mid-Year Session of the National Congress of American Indians, held at the Nugget Casino Resort, June 24-27, 2019, with a quorum present.



Jefferson Keel, President

ATTEST:


Juana Majel Dixon, Recording Secretary