



2021 Virtual Winter Convention

RESOLUTION #2021 – 09

REVERSING THE TRUMP ADMINISTRATION’S POSITION IN THE *CHEHALIS V. MNUCHIN* LITIGATION

PREAMBLE

We, the members of the Affiliated Tribes of Northwest 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 rights secured under Indian Treaties, Executive Orders and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (“ATNI”) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of ATNI; and

WHEREAS, Congress enacted Title V of the CARES Act on March 27, 2020, to provide funding to state, local, and Tribal governments to respond to the COVID-19 pandemic and directed the Secretary of the Treasury (“Treasury”) to provide \$8 billion to Tribal governments within 30 days of enactment of the CARES Act; and

WHEREAS, the CARES Act defined a “Tribal government” to be “the recognized governing body of an Indian Tribe” and defined “Indian Tribe” by reference to the Indian Self-Determination and Education Assistance Act’s usage of the same term:

[A]ny Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), *which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians*.[.]

WHEREAS, Treasury determined on April 23, 2020, that it would treat Alaska Native Corporation (“ANCs”) as Tribal governments eligible for coronavirus relief fund payments under Title V of the CARES Act. This determination would mean that approximately 200 ANCs—which are for-profit entities incorporated under state law that generate billions of dollars in annual revenue from oil and gas drilling, refining, and marketing; mining and other resource development; real estate and other business ventures—would receive hundreds of millions of dollars in funding that would otherwise be paid to federally recognized Indian tribes and Alaska Native villages; and

WHEREAS, in *Chehalis v. Mnuchin*, the Confederated Tribes of the Chehalis Reservation and the Tulalip Tribes together sued Treasury challenging its determination that ANCs are “Tribal governments” under Title V of the CARES Act. Nine other Indian tribes joined the lawsuit, including the Alaska Native Villages the Akiak Native Community, Asa’carsarmiut Tribe, and Aleut Community of St. Paul Island. Subsequently, two lawsuits with similar arguments involving seven Indian tribes, including additional Alaska Native Villages, were consolidated with the *Chehalis v. Mnuchin* case; and

WHEREAS, many regional intertribal organizations joined in the amicus brief filed by the National Congress of American Indians in favor of the plaintiff tribes’ position, including the Affiliated Tribes of Northwest Indians, the All Pueblo Council of Governors, California Tribal Chairpersons’ Association, Great Plains Tribal Chairmen’s Association, the Inter-Tribal Association of Arizona, Inc., the Inter-Tribal Council of the Five Civilized Tribes, the Midwest Alliance of Sovereign Tribes, USET Sovereignty Protection Fund, the National Indian Gaming Association (NIGA), and Arizona Indian Gaming Association, and California Nations Indian Gaming Association; and

WHEREAS, in a unanimous decision dated September 25, 2020, the United States Court of Appeals for the D.C. Circuit held that ANCs are not “Tribal governments” for purposes of Title V of the CARES Act; and

WHEREAS, at the request of the Trump Administration and the ANCs, the Supreme Court granted certiorari to review the D.C. Circuit’s decision in favor of the Chehalis plaintiff tribes; and

WHEREAS, the United States’ current position imperils the sanctity of its government-to-government relationship with federally recognized Indian tribes and Alaska Native villages, would radically alter the status of ANCs under federal law by placing them on an equal footing with federally recognized tribes, and risks opening the door to claims from other non-recognized Indian groups that they are entitled to benefits under scores of statutory programs presently reserved for federally recognized tribes; and

WHEREAS, if the ANCs succeed in arrogating to themselves the same authority as sovereign, federally recognized Indian tribes and Alaska Native villages, it will mark a radical change in federal Indian law and policy with far-reaching consequences such as allowing them to compete against Alaska Native Villages and other tribes under the dozens of statutes using the ISDA definition for limited funds that Congress intended to support Indian self-government in a host of areas, as the CARES Act illustrates; and

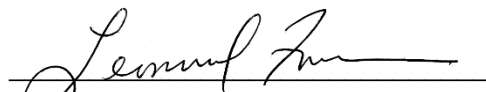
WHEREAS, if ANCs have the same authority as sovereign Alaska Native Villages and other tribes it would require federal agencies to fundamentally restructure how they allocate funds to Indian tribes nationwide and result in shifting vast resources away from sovereign tribal governments to private corporations which, by their own admission, are not governments and do not provide governmental services; and

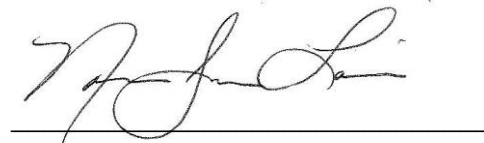
WHEREAS, the Chehalis and Tulalip Tribes and other tribal plaintiffs in the *Chehalis v. Mnuchin* case have requested that the newly appointed Biden administration officials in the Department of the Interior and Treasury reverse course in the litigation and rescind the Trump administration's prior determinations that ANCs are eligible for funding under Title V of the CARES Act; now

THEREFORE BE IT RESOLVED, the Affiliated Tribes of Northwest Indians respectfully requests that (1) the Department of the Interior rescind the April 2020 letter from Solicitor Daniel Jorjani to Brian Callahan, General Counsel of the Department of the Treasury, regarding the eligibility of ANCs for Title V funding, (2) Treasury withdraw its April 23, 2020, determination that ANCs are eligible "Tribal governments" and issue a new determination that ANCs are not "Tribal governments"; and (3) that the United States file briefs and advocate for the tribal plaintiffs' position in upcoming proceedings before the U.S. Supreme Court.

CERTIFICATION

The foregoing resolution was adopted at the 2021 Virtual Winter Convention of the Affiliated Tribes of Northwest Indians, Portland, Oregon, on January 25-28, 2021, with a quorum approving.


Leonard Forsman, President


Norma Jean Louie, Secretary