



2022 Mid-Year Conference

Ferndale, WA

RESOLUTION #2022 – 17

Calling Upon The Department Of The Interior To Amend Regulations To Protect The Interests Of Native Nations And Ensuring That States Engage In Good Faith Compact Negotiations Pursuant To The Indian Gaming Regulatory Act

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, and Northern California, and Alaska; and

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

WHEREAS, the Indian Gaming Regulatory Act the IGRA was enacted to provide a statutory basis for the operation and regulation of Native Nation gaming in a manner that promotes tribal economic development, tribal self-sufficiency, and the protection of such gaming as a means of generating Native Nation revenue; and

WHEREAS, Congress structured the IGRA in a way to try to balance the powers between federal, Native Nation, and state governments while ensuring that Native Nation governments could conduct the same gaming activities afforded to other entities within a state; and

WHEREAS, the IGRA requires states to negotiate gaming compacts with Native Nations in good faith; and

WHEREAS, in balancing the sovereignty of Native Nations with states' rights, Congress created an opportunity for Native Nations to sue states in federal court if a state fails to negotiate a gaming compact in good faith; and

WHEREAS, the U.S. Supreme Court dismantled this balance in *Seminole Tribe v. Florida*, 517 U.S. 44 (1996), when it held that Congress could not abrogate a state's Eleventh Amendment immunity; and

WHEREAS, after *Seminole* and understanding that Native Nations can no longer seek relief in federal court without a waiver of the state's immunity, some states have refused to negotiate compacts with Native Nations unless the Native Nations agree to make high revenue share payments to the state in exchange for little or illusory concessions; and

WHEREAS, the Seneca Nation and the State of New York are an example of two parties that have been in conflict over whether the Seneca Nation must make revenue share payments during the tribal-state gaming compact renewal period; and

WHEREAS, the parties went to arbitration and the resulting arbitration decision substantially changed the terms of the compact, effectively amending the compact, without review by the Interior Department as required by IGRA; and

WHEREAS, the Department of the Interior and the National Indian Gaming Commission were not able to adequately review and analyze the applicability of the revenue sharing requirements for the renewal term; and

WHEREAS, the federal courts upheld the arbitration decision and New York Governor Kathy Hochul abused her authority by holding all of the Seneca Nation's bank accounts hostage to force the Nation into paying the money; and

WHEREAS, the Seneca Nation must now dialogue with the state to obtain a new or amended gaming compact by December 2023, but is concerned that in light of the recent history between the parties, the state may not negotiate in good faith; and

WHEREAS, the Seneca Nation may need assistance from the Department of the Interior in order to take the state to court for a determination regarding the state's lack of good faith negotiations; and

WHEREAS, a state should not be able to use its Eleventh Amendment immunity to violate IGRA without any recourse available to Native Nations; now

THEREFORE BE IT RESOLVED, that ATNI demands that states negotiate in good faith with Native Nations for new or amended gaming compacts, as required by IGRA; and

BE IT FURTHER RESOLVED, that the Department of the Interior establish guidance that can be used by Native Nations as a resource for establishing whether a state is acting in bad faith; and

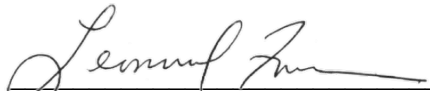
BE IT FURTHER RESOLVED, that ATNI will submit comments and recommendations to the Department of the Interior regarding the pending Part 293 regulation that address fair and due process when states are not acting in good faith; and

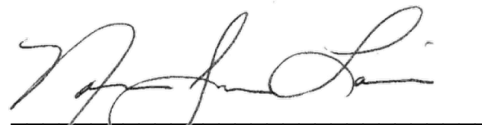
BE IT FURTHER RESOLVED, that ATNI urges national Native Nation organizations to support this resolution including NCAI; and

BE IT FINALLY RESOLVED, to the extent that states fail to negotiate in good faith, ATNI demands that the federal government work with Native Nations to ensure that Native Nations are able to continue to engage in class III gaming activities consistent with the IGRA.

CERTIFICATION

The foregoing resolution was adopted at the 2022 Mid-Year Convention of the Affiliated Tribes of Northwest Indians, held at the Silver Reef Casino Resort, Ferndale, Washington, on May 16-19, 2022, with a quorum present.


Leonard Forsman, President


Norma Jean Louie, Secretary