2013 Mid-Year Convention
Airway Heights, Washington

RESOLUTION #13 - 63

"ENSURING THE PROTECTION OF AMERICAN INDIGENOUS PRISONERS' INHERENT RIGHTS TO PRACTICE TRADITIONAL INDIAN RELIGION"

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 to 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 the ATNI; and

WHEREAS, Native Americans, Alaska Natives and Native Hawaiians in the United States (collectively "American Indigenous Peoples" or "Indian People") have the highest incarceration rate of any racial or ethnic group in the country, at 38% the national rate; and

WHEREAS, incarcerated American Indigenous Peoples depend upon their freedom to engage in traditional indigenous religious practices for their rehabilitation, survival, and the ability to maintain their identity as indigenous peoples; "for some Native American prison inmates, walking the red road in the white man's iron house is the path to salvation, the way of beauty, and the only road to rehabilitation and survival," Suzanne J. Crawford & Dennis F. Kelley, *American Indian Religious Traditions: An Encyclopedia* 774 (2005); and

WHEREAS, ATNI member tribes and other American indigenous governments, communities and societies generally share the penological goals of repressing criminal activity within their jurisdictions and thus preventing habitual criminal offense, and to that end, facilitating their imprisoned indigenous citizens' spiritual rehabilitation; and

WHEREAS, those traditional indigenous religious practices that further incarcerated American Indigenous Peoples' rehabilitation include, without limitation, the practice of sweat lodge, talking circle, blessing way, Change of Seasons, pipe, drumming, and pow wow ceremonies; and the related use of sacred traditional items like beadwork, pipes, eagle feathers, animal hides, bones and teeth, prayer fans, hand-drums and sticks, rattles and medicine bags, and sacred traditional medicines like sage, sweet grass, cedar, copal, bitter root, osha root, kinnikinnick, and tobacco; and

WHEREAS, many ATNI member tribes and other American indigenous governments, as a matter of those indigenous governments' own laws, policies, customs, traditions, and practices, affirm and support the traditional indigenous religious rights of incarcerated American Indigenous Peoples' freedom to believe, express, and exercise traditional indigenous religion; and

WHEREAS, it is the policy of the United States, according to the American Indian Religious Freedom Act of 1978, 42 U.S.C. § 1996, to "protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites;" and

WHEREAS, in the Native American Apology Resolution, Public Law No. 111–118, section 8113, Dec. 19, 2009, 123 Stat. 3453, the United States expressed "its commitment to build on the positive relationships of the past and present to move toward a brighter future where all the people of this land live reconciled as brothers and sisters . . . and encourage[d] all State governments similarly to work toward reconciling relationships with Indian tribes within their boundaries;" and

WHEREAS, the United States Supreme Court has recognized that prison inmates "do not forfeit all constitutional protections by reason of their conviction and confinement in prison," *Bell v. Wolfish*, 441 U.S. 520, 545 (1979); and

WHEREAS, the first Amendment of the United States Constitution, as well as state constitutional amendments and provisions, generally guarantee all Americans – including American Indigenous Peoples – the right to religious liberty; and

WHEREAS, the federal Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.*, generally prevents a prison from substantially burdening an incarcerated American indigenous person's religious exercise unless the imposition of the burden on that person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest; and

WHEREAS, the United Nations Declaration on the Rights of Indigenous Peoples ("the Declaration"), as endorsed by the United States in 2010, affirms that all doctrines, "policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust," and that indigenous peoples "have the right to be free from any kind of discrimination, in the exercise of their rights;" and

WHEREAS, the Declaration provides that States such as the United States "shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs;" and

WHEREAS, the Declaration further provides that "Indigenous peoples have the right to manifest, [practice], develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; [and] the right to the use and control of their ceremonial objects . . ."; and

WHEREAS, the International Covenant on Civil and Political Rights (ICCPR), as ratified by the United States in 1992, provides that "everyone shall have the right to freedom of thought, conscience and religion," which "shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching," and further states that religious or ethnic "minorities … shall not be denied the right, in community with other members of their group, to enjoy their own culture [and] to profess and practi[c]e their own religion;" and

WHEREAS, the ICCPR also provides that the "[f]reedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others," in regard to which the United Nations Office of the High Commissioners for Human Rights has declared that "persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint;" and

WHEREAS, the United States has further expressed, in its International Religious Freedom Report for 2011, that it opposes "governments that repress[] forms of expression and religious freedom;" and

WHEREAS, notwithstanding the above-referenced international, federal, and American indigenous government laws and norms, the inherent rights of incarcerated American Indigenous Peoples' freedom to believe, express, and exercise traditional indigenous religion, are too frequently violated by federal, state, and local government actors in the United States; and

WHEREAS, the states of Washington, Montana, and California, which share borders with several ATNI member tribal governments, have in recent years violated the inherent rights of incarcerated American Indigenous Peoples' freedom to believe, express, and exercise traditional indigenous religion; yet in the instance of Washington State, the state's Department of Corrections' violations of those inherent rights were subsequently remedied through the state and agency's meaningful consultation and collaboration with Washington tribal governments; and

WHEREAS, on April 19, 2013, Huy, a non-governmental organization lead by Northwest tribal leaders and advocates that provides economic, educational, rehabilitative and religious support for incarcerated American Indigenous Peoples, submitted a Letter of Allegation to United Nations Special Rapporteur on the Rights of Indigenous Peoples S. James Anaya, requesting an investigation into the pervasive pattern in the United States of increasing state and local restrictions on the religious freedoms of incarcerated American Indigenous Peoples; now

THEREFORE BE IT RESOLVED, that ATNI commends and supports the inherent rights of federally and state incarcerated American Indigenous Peoples to believe, express, and exercise traditional indigenous religion; and

BE IT FURTHER RESOLVED, that ATNI denounces and opposes any inappropriate or illegal federal, state or local government restriction upon incarcerated American Indigenous Peoples' inherent rights to believe, express, and exercise traditional indigenous religion, including any such restriction that does not advance the shared penological goals of federal, state and American indigenous governments or that was not preceded by meaningful tribal consultation with affected ATNI tribes or other American indigenous governments; and

BE IT FURTHER RESOLVED, that ATNI specifically denounces and opposes the California Department of Corrections and Rehabilitation's "emergency" amendments to Section 3190(b) of the California Code of Regulations, Title 15, Crime Prevention and Corrections, and related regulatory restrictions regarding American Indigenous Peoples' religious properties and sweatlodge ceremonies, because those state regulations violate federal, state and international law, were promulgated without any consultation with American indigenous governments, and are contrary to the penological interest of rehabilitating incarcerated American Indigenous Peoples; and

BE IT FURTHER RESOLVED, that ATNI calls upon the United States, all fifty American states and the District of Columbia – including federal and state executive, agency, legislative, corrections, and judicial officials and employees – to:

(a) Take all reasonable steps to commend, support, and facilitate incarcerated American Indigenous Peoples' inherent rights to believe, express, and exercise traditional indigenous religion,

(b) Denounce or cease any unduly inappropriate or illegal federal, state, or local government restriction upon incarcerated American Indigenous Peoples' inherent rights to believe, express, and exercise traditional indigenous religion, and

(c) Explore how federal, state, and American indigenous governments can jointly develop and advance shared penological goals in regard to incarcerated American Indigenous Peoples.

; and

BE IT FURTHER RESOLVED, that ATNI calls upon the National Congress of American Indians, other regional inter-tribal associations, ATNI member tribes and other American indigenous governments, the United States Attorney General and Department of Justice and the American Correctional Association and American Association of State Correctional Administrators, and the United Nations Special Rapporteur on the Rights of Indigenous Peoples to also formally call upon the United States, all fifty American states, and the District of Columbia, to:

(a) Take all reasonable steps to commend, support, and facilitate incarcerated American Indigenous Peoples' inherent rights to believe, express, and exercise traditional indigenous religion,

(b) Denounce or cease any unduly inappropriate or illegal federal, state, or local government restriction upon incarcerated American Indigenous Peoples' inherent rights to believe, express, and exercise traditional indigenous religion, and

(c) Explore how federal, state, and American indigenous governments can jointly develop and advance shared penological goals in regard to incarcerated American Indigenous Peoples.

; and

BE IT FURTHER RESOLVED, that ATNI joins Huy in calling upon the United Nations Special Rapporteur on the Rights of Indigenous Peoples S. James Anaya, for an investigation into the pervasive pattern in the United States of increasing state and local restrictions on the religious freedoms of incarcerated American Indigenous Peoples; and in reporting to the United Nations Human Rights Committee, in anticipation of its upcoming review of the United States, the United States' failure to comply with its obligations under the ICCPR with regard to federal and state incarcerated American Indigenous Peoples' inherent rights to believe, express, and exercise traditional indigenous religion; and

BE IT FINALLY RESOLVED, that this Resolution shall be immediately transmitted to the President of the National Congress of American Indians, the United States Attorney General and the Assistant Attorney General for the U.S. Department of Justice Civil Rights Division, the

United States Ambassador-at-Large for International Religious Freedoms, the Chairwoman of the Senate Committee on Indian Affairs and the Chairman of the House of Representatives Subcommittee on Indian and Alaska Native Affairs, the Presidents of the American Correctional Association and American Association of State Correctional Administrators, the Secretary of California Department of Corrections and Rehabilitation, and the United Nations Special Rapporteur on the Rights of Indigenous Peoples.

CERTIFICATION

The foregoing Resolution was adopted at the 2013 Mid-Year Convention of the Affiliated Tribes of Northwest Indians, held at Northern Quest Resort Casino, Airway Heights, Washington on May 13 – 16, 2013 with a quorum present.

Fawn Sharp, President

Norma Jean Louie, Secretary