



# **NATIONAL INDIAN GAMING ASSOCIATION**

Rebuilding Communities Through Indian Self-Reliance

## **NATIONAL INDIAN GAMING ASSOCIATION RESOLUTION #3-PHX-AM-4-15-09**

**Title: Supporting Treatment of Indian Tribes as Governments For Purposes of the National Labor Relations Act and Also Opposing Amendments to the NLRA That Do Not Include Protections For Tribal Sovereignty**

**WHEREAS**, the National Indian Gaming Association (NIGA) is an intertribal association of 184 federally recognized Indian Tribes established to support Indian gaming and defend Indian sovereignty; and

**WHEREAS**, Indian Tribes are sovereigns that pre-date the United States, with prior and treaty protected rights to self-government and to our Indian lands, and

**WHEREAS**, the Constitution of the United States, through the Treaty, Indian Commerce, and Apportionment Clauses and the 14<sup>th</sup> Amendment, recognizes the sovereign status of Indian Tribes as Native nations established prior to the United States; and

**WHEREAS**, the Indian Gaming Regulatory Act (the “IGRA”) acknowledged and confirmed the inherent sovereign powers of Tribal Governments; and

**WHEREAS**, federally recognized Indian tribes are authorized by tribal and federal law to govern tribal nations and operate programs, services and activities for the benefit of the tribes and their members; and

**WHEREAS**, President Franklin D. Roosevelt’s New Deal for Indian tribes is the Indian Reorganization Act of 1934, enacted to strengthen tribal governments, encourage adoption of tribal constitutions and incorporation of wholly owned tribal government corporations; and

**WHEREAS**, the National Labor Relations Act (NLRA) of 1935 was FDR’s New Deal for Labor, which provides for collective bargaining in private industry, generally is not applied to governments, and from 1935 until 2004 the National Labor Relations Board (NLRB) consistently held that the NLRA does not apply to tribal governments; and

**WHEREAS**, the NLRB has ruled that the NLRA does not apply to territorial governments (Puerto Rico, American Samoa, Guam, U.S. Virgin Islands) although they are not mentioned; and

**WHEREAS**, in 2004 the National Labor Relations Board improperly reversed decades of precedent in deciding that tribes are subject to the National Labor Relations Act; and

**WHEREAS**, the United States has a treaty-based obligation to protect Indian tribal sovereignty within reservations and on Indian lands set apart for the use and occupancy of Indian tribes; and

**WHEREAS**, the Employee Free Choice Act is an amendment to the NLRA brought forward by labor unions to amend the process for organizing private industry, by limiting secret ballot elections and providing for Federal arbitration to set mandatory terms for labor contracts, among other things;

**NOW, THEREFORE, BE IT RESOLVED** That Congress must affirm the original construction of the National Labor Relations Act that treats Indian tribes as governments for all purposes, and

**BE IT FURTHER RESOLVED**, that NIGA and its Member Indian Tribes call upon Congress to enact an amendment to the National Labor Relations Act whether as part of the Employee Free Choice Act or as part of a separate amendment if the EFCA does not move forward, to accomplish the above purpose, to read as follows:

The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any state or local subdivision thereof, ***or any federally recognized Indian tribe, or subdivision, agency or instrumentality thereof, or any wholly owned tribal government corporation***, or any person subject to the Railway Labor Act [45 USC § 151 et eq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

**BE IT FURTHER RESOLVED**, that NIGA will work with the National Congress of American Indians and other regional tribal organizations to coordinate efforts to ensure that Indian Tribes are treated as governments under the National Labor Relations Act and any amendments thereto; and

**BE IT FINALLY RESOLVED**, that NIGA and its Member Indian Tribes oppose the enactment of the Employee Free Choice Act unless amended as described above.