



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ABQ-03-115

Title: Support for S. 1721, the American Indian Probate Reform Act of 2003 – as Amended

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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, to enlighten the public toward a better understanding of the Indian people and their way of life, 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, in the late 19th and early 20th century, the federal government began a push to destroy the reservation land base and assimilate Indian people by allotting tribal lands to individual Indian ownership. The General Allotment Act of 1887 was the most broadly applicable of the allotment statutes; between the years of 1887 and 1934 the tribes lost more than 90 million acres, nearly 2/3 of all reservation lands; and

WHEREAS, in 1934, Congress passed the Indian Reorganization Act to stop allotment and the dramatic decline in the economic, cultural and social well-being of Indian tribes caused by allotment. As noted by one of the IRA's principal authors, Congressman Howard of Nebraska, "the land was theirs under titles guaranteed by treaties and law; and when the government of the United States set up a land policy which, in effect, became a forum of legalized misappropriation of the Indian estate, the government became morally responsible for the damage that has resulted to the Indians from its faithless guardianship." (78 Cong. Rec. 11727-11728, 1934.); and

WHEREAS, the ownership of many trust allotments has become fractionated into hundreds and sometimes thousands of undivided interests through the application of various federal and state inheritance laws. According to the Bureau of Indian Affairs, there are approximately 4 million different ownership interests in 170,000 tracts of allotted trust and restricted land. Fractionation has created an accounting nightmare for the federal government and enormous difficulties for owners in putting the land to beneficial use; and

WHEREAS, when allotted land interests pass to heirs who are not members of Indian tribes, some interests lose their trust or restricted status. For many tribes, significant volumes of Indian land pass out of trust each year. This loss of trust land is a continuation of the disgraceful legacy of the allotment era and compounds the jurisdictional and management difficulties associated with Indian land; and

WHEREAS, allotment left many tribes with scattered parcels and often renders the trust land base essentially unusable from a practical standpoint; and

WHEREAS, S.1721 includes the following provisions:

Corrects the Limits on the Ability of Owners of Trust and Restricted Interests to Devise to Heirs. S. 1721 corrects concerns regarding unconstitutional takings by providing for the devise of trust and restricted interests to lineal descendants.

Partition and Consolidation of Highly Fractionated Parcels. - S. 1721 would allow and encourage tribes and individual owners of trust and restricted interests to acquire highly fractionated interests in Indian land that are held in common with such owners. Consolidation of highly fractionated parcels will improve the related administration and management of such parcels as well as remove barriers to the productive use of such parcels.

Uniform Federal Probate Code For Trust and Restricted Property. S. 1721 provides new uniform rules for the passing of trust and restricted property in the absence of a tribal probate code. The new uniform rules provide for spouses and provides for the passing of trust and restricted interests to lineal descendents of the owner and to co-owners in a manner which limits fractionation.

Provides for Elective Owner Management of Trust and Restricted Interests. S. 1721 responds to the desire of individual landowners to remove some of the barriers to their productive use of their trust and restricted lands. Co-owners of a parcel of land would elect to assume some management responsibilities, relieving the Department of some of its responsibilities, while maintaining the land within tribal jurisdiction and in its tax-exempt status.

Encourages and Promotes Estate Planning. S. 1721 includes provisions to promote estate planning so that individual landowners and their families may actively decrease fractionation and consolidate their interests in order to use their lands productively.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby support S. 1721 including the provisions outlined above and excluding the abandoned property provision; and

BE IT FURTHER RESOLVED, that the NCAI encourages the Senate Committee on Indian Affairs to continue working closely with the NCAI and other members of the informal Task Force, as well as representatives from the Department of Interior, to consider additional amendments that will decrease fractionation, such as “single heir” intestate succession for small interests and improvements and enhancements to federal and tribal programs for purchase and consolidation of fractionated land; and

BE IT FURTHER RESOLVED, that the NCAI requests that the Senate Committee on Indian Affairs and the House Resources Committee continue to work with Indian Nations to address any technical issues that may arise during the implementation of the bill; and

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

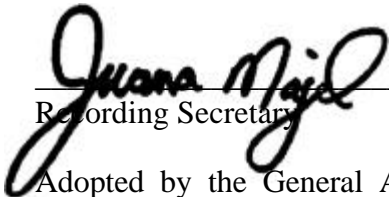
CERTIFICATION

The foregoing resolution was adopted at the 60th Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, Albuquerque, New Mexico, on November 21, 2003 with a quorum present.



President

ATTEST:



Recording Secretary

Adopted by the General Assembly during 60th Annual Session of the National Congress of American Indians, held in Albuquerque, New Mexico, from November 17-21, 2003.