



## **RESOLUTION # 2014-4**

### **TITLE: To Support Changes to the Federal Acknowledgment Process**

**WHEREAS**, the National Native American Bar Association (“NNABA”) works to promote issues important to the Native American community and to improve professional opportunities for Native American lawyers, we do hereby establish and submit the following resolution; and

**WHEREAS**, NNABA was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA strives to be a leader on social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, NNABA represents over 2,500 American Indian, Alaska Native and Hawaiian Native attorneys throughout the United States; and

**WHEREAS**, the Department of Interior established the Federal Acknowledgment Process in order to provide an objective framework so that Tribes left off of the federally recognized Tribes list in 1978 could seek to clarify their status in an efficient and timely manner; and

**WHEREAS**, since 1978, only 51 Tribes have completed the Federal Acknowledgment Process in 36 years, 34 receiving negative determinations and 17 receiving positive determinations; and

**WHEREAS**, in 2001, the Government Accounting Office issued a report entitled “Indian Issues: Improvements Needed in Tribal Recognition Process” outlining problems in the Federal Acknowledgment Process including lack of clarity in the process and evaluation, lack of timeliness, and uncertainty about the basis of recognition decisions; and

**WHEREAS**, Tribes lacking federal acknowledgment are often denied human rights outlined in the United Nations Declaration on the Rights of Indigenous Peoples; and

**WHEREAS**, the United Nations Declaration on the Rights of Indigenous Peoples states that Indigenous peoples have the right to self-determination, self-government in matters relating to their internal and local affairs [Article 4], the right to “distinct political, legal, economic, social and cultural institutions” [Article 5], “the right to the recognition, observance, and enforcement of treaties, agreements and other constructive arrangements concluded with the States or their successors and to have States honour and respect such treaties agreements and



other constructive arrangements” [Article 36], and that States shall “take the appropriate measures, including legislative measures, to achieve the ends of this Declaration” [Article 38]; and

**WHEREAS**, the August 30, 2012 addendum on the situation of indigenous peoples in the United States of America in the Report of the Special Rapporteur, James Anaya, on the rights of indigenous peoples to the United Nations General Assembly recognizes the inequities of the federal acknowledgment process and how it has left many Tribes “especially disadvantaged” and finds that “it is not a system that is working under any stretch of the imagination;” and

**WHEREAS**, on August 29, 2014, in evaluating the United States’ compliance with the Convention on the Elimination of all forms of Racial Discrimination, the United Nations Committee on the Elimination of Racial Discrimination expressed concern with “[t]he ongoing obstacles to the recognition of tribes, including high costs and lengthy and burdensome procedural requirements” and recommended that the United States “take effective measures to eliminate undue obstacles to the recognition of tribes”; and

**WHEREAS**, on March 19, 2013, Assistant Secretary - Indian Affairs Kevin Washburn testified before the Senate Committee on Indian Affairs, acknowledging the criticism that the Federal Acknowledgment Process has become “expensive, inefficient, burdensome, intrusive, less than transparent and unpredictable,” further indicating that the Bureau of Indian Affairs was reviewing “existing regulations to consider ways to improve the process to address these criticisms”... and to promote transparency, timeliness, efficiency, and flexibility; and

**WHEREAS**, on May 22, 2014 the Bureau of Indian Affairs issued a proposed rule to amend the Federal Acknowledgment Process; and

**WHEREAS**, the Proposed Rule improves transparency, clarifies the legal standard, provides for the automatic disclosure of documents to a petitioning Tribe, reduces the documentary and financial burden to petitioning Tribes, provides for an independent legal review of a negative agency decision and the removal of the Interior Board of Indian Appeals, and improves the integrity of the process; and

**WHEREAS**, the 1934 date for proving social and political community is consistent with changes in federal Indian policy, reversing allotment and assimilation and promoting tribal governance, while reducing the documentary and financial burden on the petitioner; and

**WHEREAS**, the clarification that “historical” means any time prior to 1900 improves flexibility and reduces the documentary burden on the petitioner; and



**WHEREAS**, an improved and fair process for federal acknowledgment is needed to address decades of neglect and inefficiency and to ensure that the rights to self-government and self-determination of all Tribes indigenous to the United States is respected.

**NOW THEREFORE BE IT RESOLVED**, that the National Native American Bar Association calls upon the Bureau of Indian Affairs, Department of the Interior, to ensure that the reform of the Federal Acknowledgment Process results in a fair and just process for the acknowledgment of Indian tribes unjustly left off of the list of federally recognized tribes.

**BE IT FINALLY RESOLVED**, that the National Native American Bar Association supports changes to the Federal Acknowledgment Process that will improve the process for tribes seeking federal recognition; and that the National Native American Bar Association supports, as a matter of long overdue justice and fairness, the BIA's efforts to review, address, and modify particular areas of the regulations that have wrongfully become an obstacle to the recognition of tribes, including those changes that increase efficiency, improve transparency, promote the automatic disclosure of documents to tribal petitioners, lower the documentary and financial burden, clarify the legal standard, and allow for independent legal review of the agency's decision.

#### **CERTIFICATION**

The foregoing resolution was adopted by the Board of Directors at a duly called meeting of the Board of Directors on September 5, 2014, with a quorum present.

*Mary Smith*

---

Mary Smith, President