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General Comment

March 15, 2025

Dr. Sethuraman Panchanathan

Director

National Science Foundation

2415 Eisenhower Avenue

Alexandria, VA 22314

RE: Response to Request for Information on the Development of an Artificial Intelligence (AI) Action Plan, 90 Fed. Reg. 9,088 (Feb. 6, 2025) (Docket No. NSF-2025-02305)

Dear Dr. Panchanathan,

On behalf of the National Congress of American Indians (NCAI), I am submitting our formal response to the Request for Information (RFI) regarding the development of the Artificial Intelligence (AI) Action Plan.

As required by the RFI guidelines, this document has been reviewed and formally approved by NCAI Executive Director Larry Wright, Jr., and includes the requisite statement regarding public dissemination. We affirm that this submission does not contain any proprietary or confidential information.

Our response outlines a series of key recommendations to ensure that the AI Action Plan upholds and respects the sovereignty of Tribal Nations. Specifically, we advocate for the recognition of Tribal digital sovereignty, securing informed consent for data usage, addressing the underrepresentation of Tribal data within AI systems, and prioritizing workforce education and training to empower Tribal communities in safeguarding their rights and maintaining control over emerging technologies.

Enclosed are two files: one containing our formal response and the other providing supplemental information for your review.

We appreciate the opportunity to engage in this critical dialogue and look forward to continued collaboration to ensure that the AI Action Plan aligns with the priorities and interests of Tribal Nations.

Sincerely,

Viswatej Attili

Environmental Analyst

National Congress of American Indians

Email: [REDACTED]

Attachments



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March 15, 2025

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Submitted electronically

RE: Response to Request for Information on the Development of an Artificial Intelligence (AI) Action Plan, 90 Fed. Reg. 9,088 (Feb. 6, 2025) (Docket No. NSF-2025-02305)

Dear Dr. Panchanathan,

The Networking and Information Technology Research and Development (NITRD) National Coordination Office (NCO), National Science Foundation (NSF), on behalf of the Office of Science and Technology Policy (OSTP), solicited input specifically from Tribal Nations on the Development of an Artificial Intelligence (AI) Action Plan.¹ We applaud NSF and OSTP for proactively seeking the input of Tribal Nations and recognizing that the 574 federally recognized Tribal Nations can both benefit from AI and play a vital role in advancing America's leadership in this field.

Founded in 1944, the National Congress of American Indians (NCAI) is the oldest, largest, and most representative organization dedicated to advancing the interests of American Indian/Alaska Native (AI/AN) Tribal Nations and communities. NCAI established the Institute for Environmental Sovereignty (IES) to, among other things, safeguard Indigenous cultural heritage and advance innovative Indigenous-led approaches to environmental protection. Along with other units of NCAI that address AI issues in Indian Country, IES investigates how critical technologies like artificial intelligence (AI) can enhance Tribal environmental management, addressing both the opportunities and challenges related to sovereignty and cultural relevance. The Center for Tribal Digital Sovereignty (the Center) is the nation's first

¹ 90 Fed. Reg. 9,088 (Feb. 6, 2025) ("OSTP and NITRD NCO seek input from the public, including from academia, industry groups, private sector organizations, state, local, and tribal governments, and any other interested parties, on priority actions that should be included in the Plan.") (emphasis added).



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center dedicated to helping Tribal governments navigate digital sovereignty, offering resources and expertise to assert Tribal rights in the digital age.² rights in the digital age.³ The NCAI Technology Task Force plays a key role in shaping AI policies by advocating for solutions that make AI technologies accessible and beneficial to Tribal communities while upholding and respecting their sovereignty.

NCAI's Tribal government members established a clear position on Tribal digital sovereignty through multiple resolutions, including NC-24-008⁴ "Supporting Tribal Digital Sovereignty as an Exercise of Self-Determination," which builds upon previous resolutions PDX-11-034⁵, ANC-22-010⁶, SAC-22-016⁷, and SAC-22-026⁸. These resolutions collectively assert:

1. Tribal Nations possess inherent sovereign rights to enforce their digital sovereignty standards on AI data usage.
2. AI technologies must not circumvent Tribal Nation data collection protocols or violate Tribal sovereignty principles.
3. All data collection, management, and ownership regarding Tribal communities must comply with standards established by Tribal laws and policies, including safety, security, and resiliency requirements.
4. Tribal Nations maintain authority to:
 - Determine parameters and scope of data collection
 - Assert ultimate ownership over data collected from their citizens
 - Require non-Tribal entities to comply with Tribal law, protocols, and digital standards

² The Center for Tribal Digital Sovereignty is a collaborative partnership entity of the National Congress of American Indians and the American Indian Policy Institute at the Sandra Day O'Connor College of Law at Arizona State University, <https://aipi.asu.edu/ctds> (last visited March 10, 2025).

³ The Center for Tribal Digital Sovereignty is a collaborative partnership entity of the National Congress of American Indians and the American Indian Policy Institute at the Sandra Day O'Connor College of Law at Arizona State University, <https://aipi.asu.edu/ctds> (last visited March 10, 2025).

⁴ See NCAI Resolution #NC-24-008 (June, 2024), <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=5502&index=0&total=534&view=viewSearchItem> ("calling upon Federal, State, and local governments to recognize Tribal Digital Sovereignty and its crucial role in modern Tribal self-governance")

⁵ See NCAI Resolution #PDX-11-034 (November, 2011), <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=1129> ("supporting federal communications policy reform to strengthen American Indian and Alaska Native self-determination").

⁶ See NCAI Resolution #ANC-22-010 (June, 2022), <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=1976> ("calling on the Federal Communications Commission (FCC) to respect Tribal data sovereignty regarding broadband data in the Broadband Data Collection Portal").

⁷ See NCAI Resolution #SAC-22-016 (November, 2022), <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=3141&index=0&total=1000&view=viewSearchItem> ("supporting Tribes exercising their inherent sovereign authority over the activities and data of their businesses, citizens, and jurisdiction online; and recognizing Tribal data sovereignty and jurisdiction online").

⁸ NCAI Resolution #SAC-22-026 (November, 2022), <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=3150&index=0&total=1000&view=viewSearchItem> (Stating that "all decisions involving the collection, management, and ownership of data taken from Tribal communities must adhere to standards, including those ensuring safety, security, and resiliency needs, set forth by Tribal laws and policies").



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5. As sovereigns, Tribal Nations have rights to determine ownership, access, use, and management of data derived from their citizens, including demographic, anthropological, archaeological, environmental, public health, genomic, medical, and traditional knowledge data, as well as proxy data and data obtained through third-party AI tools.
6. When a Tribal Nation lacks specific data governance laws, non-Tribal entities must:
 - Obtain formal, enforceable Tribal consent early in the research process
 - Provide ongoing opportunities for Tribal input throughout data collection efforts
 - Respect Tribal authority throughout the applicable data lifecycle
 - Uphold Tribal rights to refuse/withdraw consent and participation (including data removal)

In response to NSF’s solicitation for input on the AI Action Plan, we identify several opportunities for federal policy on AI to leverage Tribal Nations’ unique contributions while fulfilling the U.S. government’s trust responsibility to Tribal Nations. The unique political and legal relationship that Tribal Nations share with the United States is rooted in the inherent sovereignty of Tribal Nations, recognized in the U.S. Constitution, treaties, and many federal statutes, regulations, and policies.⁹ The U.S. Supreme Court has consistently recognized and upheld the distinct legal and political status of Tribal Nations and their citizens and communities. This important and enduring federal trust relationship and responsibility, also based in federal Indian law, treaties, statutes, and court decisions, forms the basis of the following recommendations in support of advancing U.S. interest in and dominance of AI and other emerging technologies so critical to our national security and economic prosperity.¹ NCAI offers the following recommendations in response to NSF’s request and stated commitment to respect the sovereignty and self-governance of American Indian/Alaska Native Tribal Nations.¹

⁹ *Morton v. Mancari*, 417 U.S. 535, 553, n. 24 (1974) (BIA employment preference for qualified Indians “is political, rather than racial in nature”). Any misclassification of AI policies and programs as “DEI” would severely undermine the federal trust responsibility and have a wide-ranging negative impacts both on Tribal Nations and those programs.



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Overarching Recommendations:

In alignment with Executive Order 14179's goal of removing barriers to American leadership in AI, NCAI offers recommendations that will ensure AI policies recognize and uphold Tribal Nations' digital sovereignty, self-determination, and data governance rights. The Center for Tribal Digital Sovereignty is poised to serve as a vital resource for the Office of Science and Technology Policy (OSTP) and the National Science Foundation, should our goals align in implementing these recommendations. To further advance these goals, NCAI proposes the following nine actionable policy recommendations for the AI Action Plan:

A. Recognize Tribal Digital Sovereignty to Protect Tribal Rights in AI Policy

"Digital Sovereignty" refers to Tribal Nations' inherent right to control their digital assets, data, and technological infrastructure. The amicus brief of NCAI and the Confederated Salish and Kootenai Tribes in the *Alario* case (attached) provides an expert and comprehensive expression of Tribal Digital Sovereignty, highlighting how Montana's TikTok ban infringed upon Tribal sovereignty and jurisdiction.¹⁰ This case emphasizes the importance of clear legal recognition of Tribal data governance rights. As summarized on page 2 of these Comments, NCAI has adopted formal resolutions that both recognize Tribal sovereignty over data in digital spaces and protect data sovereignty against irresponsibly designed AI tools that bypass Tribal Nations' established data protocols.¹¹

The collection and use of data from Indian Country through administrative processes, such as federal grant applications, raises significant concerns. Routine data collection—like mapping and household demographics—can lead to intrusive surveillance of Tribal communities when processed by AI systems. Federal agencies, as well as any associated parties such as grantees and contractors, must be mandated to obtain explicit Tribal consent for any data utilized in AI development. Policies should absolutely prohibit the secondary use of administratively collected Tribal data for AI training without the prior informed and obtained consent from affected and involved Tribal Nations.

Furthermore, Resolution #NC-24-008¹² supports the recognition of this sovereignty, which would remove barriers such as legal complexities, data misuse concerns, and limited resources hindering Tribal participation in AI development. Strengthening data sovereignty protections builds trust and enhances the AI ecosystem. We see a powerful example in the European Union's General Data Protection Regulation (GDPR), which fosters accountability and promotes a secure, transparent AI landscape. Policy actions include:

¹⁰ Searle, J., & Wright, B. M. (2024). Brief of amici curiae Confederated Salish and Kootenai Tribes, a federally recognized Indian Tribe, and the National Congress of American Indians in support of plaintiff-appellees (No. 24-34). United States Court of Appeals for the Ninth Circuit. Native American Rights Fund. Retrieved from <https://narf.org/nill/documents/20240507alario-knudsen-amicus-brief.pdf> (last visited March 10, 2025)

¹¹ See NCAI Resolution #ANC-14-015 (October, 2014), <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=2386&index=0&total=534&view=viewSearchItem> ("calling on Congress to establish formal recognition of Tribal sovereignty and Tribal consultation in the Communications Act")

¹² See NCAI Resolution #NC-24-008 (June, 2024), <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=5502&index=0&total=534&view=viewSearchItem> ("calling upon Federal, State, and local governments to recognize Tribal Digital Sovereignty and its crucial role in modern Tribal self-governance")



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1. Establishing clear federal guidelines recognizing Tribal data governance rights
2. Establishing clear, consent-driven processes for Tribal governments to manage how their data is used in AI development, ensuring robust protections against unauthorized use and upholding Tribal Nations' authority over their digital assets
3. Providing legal clarity on intellectual property protections for Tribal data and knowledge^{13,14}

B. Address Limited Tribal Data Representation to Improve AI Systems

Each Tribal Nation possesses unique characteristics, with inherent dissimilarities between and among the 574 federally recognized Tribal Nations. While AI systems learn from massive amounts of data, the contribution of data from Indian Country is markedly small, limiting the accuracy and effectiveness of AI applications.¹⁵ An analogy would be extrapolating from a limited dataset on the seventeenth- and eighteenth-century Dutch Republic to make broad assumptions that modern European culture, from Norway to Greece, is characterized by windmills, tulip fields, and *klompen*.

The use of AI is fundamentally suspect when representing Native peoples, consistently misrepresenting Tribal Nations' rich cultural patrimony without proper context or consent.¹⁶ Google Gemini's high-profile failures demonstrate how even well-meaning companies go catastrophically wrong without Tribal Nations' active involvement in AI development.¹⁷ These failures harm America's cultural heritage and lead to significant economic costs. For example, project delays can result in millions of dollars in lost revenue and hinder technological advancements. Additionally, consumer backlash—such as negative public reactions to companies that mishandle sensitive data—can damage a company's reputation and lead to stock devaluation. These effects extend to all Americans, causing market inefficiency, eroding trust in technology, and burdening taxpayers with the cost of remediation efforts. Policy actions include:

1. Supporting data collection initiatives that properly represent Tribal diversity^{18,19}
2. Establishing standards for detecting and mitigating AI misrepresentations of Tribal communities

¹³ Anderson, J. (2016). Indigenous knowledge and intellectual property rights. In C. Lennox & D. Short (Eds.), *Handbook of indigenous peoples' rights* (pp. 171–183). Routledge.

¹⁴ First Nations Information Governance Centre. (2016). The First Nations principles of OCAP®. *Journal of Aboriginal Health*, 23(1), 53–56.

¹⁵ Couldry, N., & Mejias, U. A. (2019). Data colonialism: Rethinking big data's relation to the contemporary subject. *Television & New Media*, 20(4), 336–349. <https://doi.org/10.1177/1527476418796632>

¹⁶ Asia Indigenous Peoples Pact (AIPP). (2023, May 29). Indigenous Peoples: AI is inherently ridden with algorithm bias and poisoned data. *Forus*. Retrieved March 11, 2025, from <https://www.aippnet.org/indigenous-peoples-ai-algorithm-bias-poisoned-data>

¹⁷ Titcomb, J. (2024, February 21). Google chatbot ridiculed for ethnically diverse images of Vikings and knights. *The Daily Telegraph*. Retrieved March 11, 2025, from <https://www.telegraph.co.uk/business/2024/02/21/google-chatbot-ethnically-diverse-images-vikings-knights/>

¹⁸ Rodriguez-Lonebear, D. (2016). Building a data revolution in Indian Country. In T. Kukutai & J. Taylor (Eds.), *Indigenous data sovereignty: Toward an agenda* (pp. 253–260). University of Arizona Press.

¹⁹ Rainie, S. C., et al. (2019). Indigenous data sovereignty. In T. Davies, et al. (Eds.), *The state of open data: Histories and horizons* (pp. 300–307). African Minds.



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3. Developing frameworks for ethically incorporating Tribal perspectives in AI training data²⁰
4. Creating oversight mechanisms to evaluate AI systems that purport to represent Native peoples
5. Requiring Tribal experts to review AI applications to verify historical accuracy, proper context, and appropriate representation before deployment in systems affecting Tribal communities²¹

C. Strengthen Tribal Consent Processes for Efficient Data Utilization

Uncertainty around proper Tribal data usage by researchers, companies, and agencies hinders innovation while risking unauthorized access to sensitive information. Clear authorization processes would accelerate AI development while protecting Tribal rights. NCAI Resolution #SAC-22-026²² specifically addresses how emerging technologies like AI can "circumvent Tribal data collection protocols" without proper consent. The Resolution highlights concern about automated systems extracting data from Tribal citizens without ensuring they have a clear understanding of future uses of that data—directly violating fundamental American principles of property rights, informed consent, and self-determination.

There are valid concerns about federal agencies or private entities developing AI systems that appropriate data belonging to Tribal Nations. This is an abomination and should be expressly prohibited. These practices can constitute copyright infringement or unauthorized collection. Unauthorized harvesting of Tribal data—such as traditional knowledge, cultural expressions, and community-generated content—violates Tribal sovereignty and intellectual property rights. NCAI wishes to inform the federal partners involved in AI that Tribal Nations would likely treat such actions like any other violative theft, and would likely avail themselves of all governmental and legal means of protecting themselves, their communities, and citizens in such situations.

Thus, the AI Action Plan should include strong provisions prohibiting the scraping, mining, or other non-consensual extraction of Tribal data for AI development, along with effective enforcement mechanisms that impose civil and criminal penalties for violations. Policy actions include:

1. Developing standardized, efficient consent protocols grounded in best practices for Indigenous Data Governance
2. Establishing clear prohibitions against repurposing data collected from Tribal communities intended for grant administration or determining program eligibility, for AI training or development without explicit, informed consent from relevant Tribal governments
3. Developing secure data sharing frameworks that protect sensitive information while enabling innovation, such as the National Institutes of Health's (NIH) All of Us secure data enclave model (which NCAI Resolution #ABQ-19-061²³ identified as requiring Tribal oversight) and monitored computing

²⁰ Whittaker, M., et al. (2018). AI Now Report 2018. AI Now Institute. https://ainowinstitute.org/wp-content/uploads/2023/04/AI_Now_2018_Report.pdf

²¹ Harding, A., et al. (2012). Conducting research with tribal communities: Sovereignty, ethics, and data-sharing issues. *Environmental Health Perspectives*, 120(6), 6–11. <https://doi.org/10.1289/ehp.1103904>

²² See NCAI Resolution #SAC-22-026 (June, 2022), <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=266&index=0&total=721&view=viewSearchItem> ("Preventing Evasion of Tribal Nation Data Sovereignty in the Health Research Sector by Means of Technological Modernization in an Unsettled Regulatory Frontier").

²³ See NCAI Resolution #ABQ-10-061 (October, 2019), <https://ncai.assetbank-server.com/assetbank-ncai/action/viewAsset?id=266&index=0&total=721&view=viewSearchItem> ("Calling on the National Institutes of Health to



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environments like those described in the *AI Now Report* that restrict data extraction while enabling collaborative research

4. Establishing expedited review processes for AI projects with Tribal data components that respect tribe-specific protocols while utilizing common frameworks developed by the Center for Tribal Digital Sovereignty to accelerate responsible innovation

D. Enhancing and Prioritizing Government-to-Government Consultation with Tribal Nations

Slow-moving, inefficient, and often stonewalling federal bureaucracies create significant barriers for Tribal Nations to engage in meaningful consultation, leading to delays and poorly planned projects that often end in litigation. Enhancing and providing top prioritization of these processes would accelerate AI deployment, respect Tribal sovereignty, and reduce costly legal disputes. Policy actions include:

1. Creating dedicated fast-track consultation channels for AI initiatives that build upon established consultation frameworks²⁴
2. Establishing clear timelines for Tribal input on AI policies consistent with government-to-government relationship principles
3. Developing efficient dispute resolution mechanisms for AI-related concerns, inspired by models like the Native American Rights Fund's (NARF) integration of traditional practices with legal frameworks and the GDPR, ensuring culturally relevant, sovereign solutions to technology conflicts²⁵

E. Overcome Barriers to AI Adoption by Investing in Strategic Infrastructure Development in Indian Country

Investing in AI infrastructure in Indian Country offers a transformative opportunity to empower Tribal Nations while strengthening U.S. AI competitiveness. With one in three Native Americans lacking reliable internet access and Tribal businesses serving as some of the largest employers in rural areas, AI infrastructure can bridge significant gaps in connectivity, job creation, and economic growth.²⁶ However, it is critical to prioritize responsible siting of data centers and AI-related facilities, as these can have negative environmental impacts, including excessive water

Consult with Tribal Nations and Establish Policies and Guidance for Tribal Oversight of Data on Tribal Citizens Enrolled in the All of Us Research Program”).

²⁴ Carroll, S. R., Rodriguez-Lonebear, D., & Martinez, A. (2019). Indigenous data governance: Strategies from United States Native Nations. *Data Science Journal*, 18, 31–43. <https://doi.org/10.5334/dsj-2019-031>

²⁵ European Parliament & Council of the European Union. (2016). *Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data*. Official Journal of the European Union, L 119, 1–88. <https://gdpr-info.eu/>

²⁶ Mejía, D. (2024, June 18). American Indian and Alaska Natives in Tribal Areas Have Among the Lowest Rates of High-Speed Internet Access. U.S. Census Bureau. <https://www.census.gov/library/stories/2024/06/american-indian-and-alaska-natives-in-tribal-areas-have-among-lowest-rates-of-high-speed-internet-access.html>



and land use, and high energy consumption, which could place unnecessary strain on Tribal resources.²⁷ Early Tribal input in planning is essential to address these concerns and prevent legal delays. By integrating sustainable practices from the outset and aligning with Tribal values and long-term stewardship of natural resources, these projects can minimize negative impacts and ensure these resources are safeguarded.

Like the many internet and technology-based economies in our nation and worldwide, AI-driven businesses could be a “game changer” in the maze of geopolitical and socioeconomic challenges of Tribal economies. Tribal governments are often hampered by limited taxing authority, reducing revenue that could be reinvested to support aspiring entrepreneurs and Tribal start-ups. By fostering AI-driven industries, Tribal Nations can gain control over their own data and resources, creating jobs, stimulating local economies, and unlocking significant economic potential. This approach can help establish a sustainable path to economic self-sufficiency, benefiting both Tribal Nations and the broader national AI ecosystem. Policy actions include:

1. Allocating resources for high-speed connectivity in Tribal communities, addressing documented connectivity gaps²⁸
2. Creating public-private partnerships for AI computing infrastructure in underserved Tribal areas
3. Establishing Tribal data centers that contribute to national AI capabilities while preserving Tribal control over data, with enhanced consent framework, respect for sovereignty, and public-private partnership support

F. Implement Efficient Cultural Protection Mechanisms

The widespread and comical technological cultural appropriation and stereotyping of American Indian and Alaska Native cultures, traditions, and knowledge is simply shameful. Protecting Indigenous Knowledge (IK) enhances the integrity and distinctiveness of American AI innovation by integrating diverse cultural perspectives, ethical principles, and sustainable practices deeply rooted in Indigenous traditions. This approach not only enriches AI development but also ensures that technologies are more holistic and inclusive, reflecting the strength of America’s diverse history and culture. By weaving together Indigenous wisdom with cutting-edge technology, we promote both cultural preservation and a more robust, innovative AI ecosystem. Policy actions include:

1. Developing guidelines for classifying sensitive cultural information based on research protocols, aligned with the American Indian Religious Freedom Act (AIRFA) to protect Indigenous knowledge and uphold values of freedom, cultural heritage, and religious rights in AI innovation
2. Creating secure repositories for authorized cultural data that follow sovereignty principles
3. Establishing protocols for cultural attribution in AI that uphold Indigenous knowledge ownership, ensure proper compensation, and treat IK as intellectual property, preventing exploitation and theft by the less scrupulous tech companies while encouraging those that follow these ethical principles

²⁷ Luccioni, S. (2024, December 18). Generative AI and climate change are on a collision course. WIRED. <https://www.wired.com/story/true-cost-generative-ai-data-centers-energy/>

²⁸ Federal Communications Commission. (2019). *Report on broadband deployment in Indian country, pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018*. Federal Communications Commission.



G. Support Strategic Tribal Workforce Development

Expanding the AI-skilled workforce is critical to American competitiveness. Tribal communities represent a valuable talent resource, with Native leaders such as Mason Grimshaw and Michael Running Wolf already making strides in fields like computer science and artificial intelligence. This demonstrates the immense potential for American AI dominance.²⁹ Indian gaming operations have developed and platformed a skilled professional class with expertise in cybersecurity and IT infrastructure who possess valuable skills in network security, data protection, and regulatory compliance.³⁰ There is a significant opportunity to enhance these capabilities to address broader Tribal Digital Sovereignty issues, such as AI implementation and data governance. Investing in upskilling this talent pool could strengthen Tribal Nations' digital sovereignty and contribute to technological advancement in the U.S. Policy actions include:

1. Investing in targeted STEM education in Tribal communities, addressing documented technology gaps
2. Creating apprenticeship programs connecting Tribal citizens with AI industries to build capacity
3. Developing specialized training programs to expand the expertise of existing Indian gaming IT professionals into broader digital sovereignty applications
4. Establishing pathways for Tribal AI entrepreneurs to access capital and markets based on successful models in Tribal technology development

H. Develop Balanced Regulatory Approaches

Overly restrictive regulations on AI development risk hampering innovation. A balanced approach would protect legitimate Tribal interests while enabling technological advancement. Policy actions include:

1. Creating regulatory zoning or “sandboxes” for AI projects led by Tribal Nations, utilizing Tribal data and addressing community needs to foster innovation, support Tribal businesses with grants, stimulate economic growth, and increase federal funding for Tribal Nations and Tribal Colleges and Universities, ensuring high return of investment (ROI)
2. Establishing clear safe harbors for responsible AI development that safeguards Tribal data sovereignty
3. Developing proportional enforcement mechanisms that protect innovation while addressing documented AI risks

I. Incorporate Tribal Security Considerations in National Defense

Tribal lands and data represent strategic national assets, including resources like energy, critical minerals, water rights, biodiversity, and unique cultural knowledge. Incorporating them into security frameworks strengthens America's overall AI resilience. Policy actions include:

²⁹ Grimshaw, M., Running Wolf, M., & IndigiGenius Team. (2023). Lakota AI Code Camp. IndigiGenius. Retrieved March 11, 2024, from <https://www.lakotaai.org>

³⁰ Thompson, O. (2019). Tribal gaming and educational outcomes in the next generation. *Journal of Policy Analysis and Management*, 38(3), 629-652. <https://doi.org/10.1002/pam.22129>



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1. Establishing government-to-government partnerships that respect Tribal sovereignty while addressing shared security concerns
2. Developing collaborative cybersecurity initiatives with Tribal governments³¹
3. Creating information-sharing protocols for threat detection and response consistent with Tribal data governance strategies³²

Conclusion:

These approaches will help the federal government meet its trust responsibility while promoting technological advancement and economic competitiveness as outlined in Executive Order 14179. The recommended policy actions aim to enhance America's global leadership in AI by removing barriers to Tribal Nation participation, expanding the nation's AI capabilities, and unlocking innovations that draw on the talents of a bright Native workforce and Indigenous knowledge.

We do not support unchecked AI development; rather, we insist that Tribal Nations must have meaningful influence in shaping and governing AI technologies. This is not about compromise, but about ensuring that any technological advancement fully respects and protects tribal sovereignty, cultural heritage, and data rights. Such protection fulfills the United States' non-negotiable obligations under federal trust responsibility and treaty commitments. By eliminating participation barriers, we enable Tribal Nations to engage with AI according to their values, advancing innovation while preserving their sovereign rights.

NCAI, through its Center for Digital Sovereignty and Institute for Environmental Sovereignty, is committed and ready to work with the Trump Administration to develop an AI Action Plan that strengthens America's position as the global AI leader while ensuring that the 574 federally recognized Tribal Nations, and their institutions, communities, and citizens can fully participate in and benefit from AI innovation.

Respectfully,

Larry Wright, Jr.
Executive Director
National Congress of American Indians

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³¹ See NCAI Resolution #DEN-18-012 (December, 2018), <https://archive.ncai.org/resources/resolutions/support-for-tribal-nations-access-to-cyber-security-services-and-funding> ("Support for Tribal Nations' Access to Cyber Security Services and Funding").

³² First Nations Information Governance Centre. (2014). *Ownership, control, access and possession (OCAP™): The path to First Nations information governance*. The First Nations Information Governance Centre.

No. 24-34

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SAMANTHA ALARIO, HEATHER DIROCCO, CARLY ANN GODDARD,
ALICE HELD, AND DALE STOUT,

Plaintiff-Appellees,

and

TIKTOK INC.,

Plaintiff-Appellee,

v.

AUSTIN KNUDSEN, in his official capacity as Attorney General of the
State of Montana,

Defendant-Appellant,

On Appeal from the United States District Court for the District of Montana Nos.
CV 23-56-M-DWM and CV 23-61-M-DWM
Hon. Donald W. Molloy

**BRIEF OF *AMICI CURIAE* CONFEDERATED SALISH AND KOOTENAI
TRIBES, A FEDERALLY RECOGNIZED INDIAN TRIBE, AND THE
NATIONAL CONGRESS OF AMERICAN INDIANS IN SUPPORT OF
PLAINTIFF-APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

The Confederated Salish and Kootenai Tribes is a federally recognized sovereign nation, for which no corporate disclosure is required.

Pursuant to Fed. R. App. P. 26.1(a) and 29(a)(4)(A), the National Congress of American Indians states that it does not have parent corporations, nor is it publicly traded.

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Other Authorities

Anahid Bauer et al., <i>The Tribal Digital Divide: Extent and Explanations</i> (2022), https://www.minneapolisfed.org/-/media/assets/papers/cicdwp/2021/cicd-wp-2021-03.pdf	8
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Sara Reardon, <i>Social media helps Native Americans preserve cultural traditions during pandemic</i> , CNN (Feb. 29, 2021, 3:25 PM EST), https://www.cnn.com/2021/02/08/health/coronavirus-native-americans-internet-khn-wellness-partner/index.html	10
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INTEREST OF *AMICI CURIAE*¹

Amicus curiae the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“CSKT”) is a federally recognized tribe with approximately 8,000 enrolled members, 5,500 of which live on the Flathead Reservation. The Reservation comprises over 1.2 million acres in the northwestern region of Montana. CSKT has an interest in protecting the economic security and health and well-being of its citizens and recognizes the importance of digital resources to achieving these objectives.

Amicus curiae the National Congress of American Indians (“NCAI”) is the oldest and largest national organization comprised of Tribal Nations and their citizens. Since 1944, NCAI has advised and educated Tribal Nations, states, and the federal government on a range of issues, including self-government, treaty rights, and policies affecting Tribal Nations. NCAI works daily to strengthen the ability of Tribal Nations to ensure the health and welfare of their communities.

¹ Counsel for all parties have consented to the filing of this brief. *Amici* affirm that no counsel to a party authored this brief in whole or in part; no party or counsel to a party contributed money intended to fund preparing or submitting this brief; and no person other than *Amici* and their counsel contributed money intended to fund preparing or submitting this brief.

SUMMARY OF ARGUMENT

It is uncontested that Montana’s TikTok ban (“Montana law” or “the Ban”) cannot legally take effect on Tribal lands in Montana. Indeed, in response to an inquiry from the District Court, both parties affirmed that the Ban is not enforceable on Tribal lands, as Tribal lands do not fall within the “territorial jurisdiction” of Montana to which the law applies. Tr. of Oct. 12, 2023 Oral Arg. at 19-22, 45-47. Despite this acknowledgment, the record shows the Montana law would likely be enforced on Tribal lands in practice, as TikTok users’ locations cannot be precisely tracked through IP addresses. SER-177. Therefore, a user who is on Tribal lands, and beyond the jurisdictional reach of the State, may nonetheless appear to be outside Tribal lands and within the “territorial jurisdiction” of Montana. Tr. of Oct. 12, 2023 Oral Arg. at 21-22. Because of this likelihood, TikTok’s counsel suggested access to TikTok may be affected on Tribal lands. *Id.* This imposition of Montana law on Tribal lands, even if inadvertent, infringes on Tribal sovereignty. *Amici* write to provide context as to how the Ban infringes upon Tribal sovereignty and on Tribal governments’ interest in exercising digital sovereignty on Tribal lands without state interference.

I. The Montana Ban Improperly Imposes Montana’s Civil Regulations on Tribal Lands and Infringes on Tribal Sovereignty.

It is well established that Tribal Nations were “self-governing political communities” long before the establishment of the United States. *Denezpi v.*

United States, 596 U.S. 591, 598 (2022) (citing *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978)). The policy that Tribal Nations are separate sovereigns “has remained.” *Williams v. Lee*, 358 U.S. 217, 219 (1959); *see* 25 U.S.C. § 5301 (noting the Congressional policy of Tribal Nation “self-government”); Exec. Order No. 14,112, 88 Fed. Reg. 86,021 (Dec. 11, 2023) (noting the policy of protecting “Tribal sovereignty and self-determination.”); COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 1.07 (Nell Jessup Newton ed., 2023).

As sovereign governments, Tribal Nations have jurisdiction over the activities and conduct on “land belonging to the Tribe or held by the United States in trust for the Tribe.” *Montana v. United States*, 450 U.S. 544, 557 (1981). This authority allows Tribal Nations “[t]o determine who may enter the reservation; to define the conditions upon which they may enter; to prescribe rules of conduct; [and] to expel those who enter the reservation without proper authority.”

Swinomish Indian Tribal Cmty. v. BNSF Ry. Co., 951 F.3d 1142, 1153 (2020) (quoting *Quechan Tribe of Indians v. Rowe*, 531 F.2d 408, 411 (9th Cir. 1976)); *see also Window Rock Unified Sch. Dist. v. Reeves*, 861 F.3d 894, 899 (9th Cir. 2017), as amended (Aug. 3, 2017) (“The Supreme Court has long recognized that Indian tribes have sovereign powers, including the power to exclude non-tribal members from tribal land.”). To avoid interference with these sovereign prerogatives, Tribal jurisdiction on Tribal lands is assumed to be the exclusion of states. *Williams*, 358

U.S. at 219-20. Even on non-Indian fee land within a reservation, Tribal Nations retain jurisdiction to regulate. *See e.g., FMC Corp. v. Shoshone-Bannock Tribes*, 942 F.3d 916, 931 (2019); *Knighton v. Cedarville Rancheria of N. Paiute Indians*, 922 F.3d 892, 899-900 (9th Cir. 2019). Unless and “until Congress acts, the tribes retain” their historic sovereign authority. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014).

Tribal Nations’ exclusive jurisdiction by virtue of their inherent sovereignty is reinforced by federal preemption. This includes treaties with the United States that reserve Tribal Nations’ exclusive jurisdiction within their lands. *See, e.g.,* Treaty with the Blackfeet, 1855, art. 4, 11 Stat. 657 (1855) <https://treaties.okstate.edu/treaties/treaty-with-the-blackfeet-1855-0736>; Treaty with the Crow Indians, 1868, art. II, 15 Stat. 649 (1868) https://indianlaw.mt.gov/_docs/crow/treaties/1868_treaty.pdf; Treaty of Hell Gate, 1855 (Confederated Salish and Kootenai Tribes), art. 2, 12 Stat. 975 (1855) <https://www.washingtonhistory.org/wp-content/uploads/2020/04/hellgateTreaty.pdf>. The United States Supreme Court has consistently held such “right to exclude” language in Indian treaties vests Tribal Nations with civil jurisdiction over members and nonmembers alike and preempts exercise of jurisdiction by states. *See Williams v. Lee*, 358 U.S. 217 (1959); *McClanahan v. State Tax Comm’n of Ariz.*, 411 U.S. 164 (1973); *Kennerly v. Dist.*

Ct. of 9th Jud. Dist. of Mont., 400 U.S. 423 (1971); see also *Little Horn State Bank v. Stops*, 170 Mont. 510 (1976).

Likewise, the plain language of the Montana Enabling Act and the Montana Constitution recognize a lack of state jurisdiction over Tribal lands. The Montana Enabling Act conditioned entry into the Union upon Montana disclaiming “all right and title . . . to all lands . . . owned or held by any Indian or Indian Tribes.” Enabling Act of 1889, 25 Stat. 676 at § 4. To leave no doubt, the Enabling Act further provided that Tribal lands would remain under the “absolute jurisdiction and control of the Congress of the United States.” *Id.* The Montana Constitution adopted and ratified these terms, including,

the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

Mont. Const. art. I. The Montana Supreme Court has also held that the federal government and Tribal Nations are the sovereigns that retain jurisdiction over Indian country, to the exclusion of states. *Big Spring v. Conway*, 360 Mont. 370, 380 (2011). Thus, Montana generally has no civil regulatory authority over Tribal lands in Montana.

While Montana may not intend for the Ban to be enforced on Tribal lands, the Ban’s enforcement design nevertheless is likely to impose Montana’s civil

regulatory scheme on Tribal lands. Such an imposition exceeds Montana's jurisdiction. To illustrate, in her declaration, Karen Sprenger, Chief Operating Officer of LMG Security, a cybersecurity and information technology consulting firm, testified "[A] user in Sidney, Montana, for example, may be identified as being in North Dakota, or a user in West Yellowstone, Montana may be identified as being in Wyoming. Similarly, a user in Kellogg, Idaho may be identified as being in Montana." SER-182. The Montana Solicitor General testified the same circumstances would pertain to Tribal lands. SER-49.

Besides the preemptive effect of treaties and the Montana Enabling Act, state exercise of jurisdiction is contrary to the "longstanding policy of encouraging tribal self-government . . . [which] . . . operates 'even in areas where state control has not been affirmatively pre-empted by federal statute.'" *Big Spring*, 360 Mont. 370 at 380 (quoting *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14 (1987)). In cases where states are found to have jurisdiction in Indian country, courts conclude so because of unique circumstances in which they find there is no preemptive federal law, there is a lack of Tribal Nations' and the federal government's interest in encouraging tribal self-government, and the state has a significant interest in exercising its regulatory authority in a way that does not infringe upon Tribal self-government. See *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144-45 (1980). These conditions are not met here. As described in detail below, Tribal

Nations have a significant interest in exercising digital sovereignty on their lands to protect the health and welfare of their people. In contrast, Montana has no significant interest in imposing its digital and data sovereignty policy preferences on Tribal lands.² Moreover, there is no reason to let Montana's policy preferences override those of Tribal Nations. Such an imposition exceeds Montana's civil regulatory authority and infringes on Tribal sovereignty.

II. Tribal Nations Exercise Digital Sovereignty for the Health and Welfare of Their People.

The Ban interferes with Tribal Nations' significant interest in crafting their own policy decisions in the digital and data realm to protect the health and welfare of their people. The federal government has recognized Tribal digital sovereignty and closing the "digital divide" as essential for the health and welfare of Tribal Nations, calling access to high-speed internet no longer a luxury, but a necessity.

FACT SHEET: PRESIDENT BIDEN AND VICE PRESIDENT HARRIS REDUCE HIGH-SPEED INTERNET COSTS FOR MILLIONS OF AMERICANS (May 9, 2022),

<https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/09/fact-sheet-president-biden-and-vice-president-harris-reduce-high-speed-internet-costs-for-millions-of-americans/>.

² *Amici* take no position on the underlying merits of the Montana law, only on the imposition of that law on Tribal lands.

Tribal digital sovereignty is an important and growing component of Tribal sovereignty and is critical to close the digital divide and achieve “digital equity” in Indian country. Tribal Nations are a necessary regulatory and governmental authority in the equitable development of digital infrastructure and economies on Tribal land. Tribal Nations exercise their authority to address the unique needs of their communities in an increasingly digital society. In 2019, the American Indian Policy Institute³ conducted a study surveying the extent of the digital divide in Indian country. Davida Delmar, *Indigenous Digital Sovereignty: From the Digital Divide to Digital Equity*, NATIONAL DIGITAL INCLUSION ALLIANCE (2023)

[hereinafter Delmar],

<https://www.digitalinclusion.org/blog/2023/07/19/indigenous-digital-sovereignty/>.

The study found that 18% of reservation residents have no internet access at home, either wireless or land-based internet (cable, DSL, dial-up), and 33% rely on cell phone service for at-home internet. *Id.* A separate study conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis emphasized these inequities. Anahid Bauer et al., *The Tribal Digital Divide: Extent and Explanations* (2022), [https://www.minneapolisfed.org/-](https://www.minneapolisfed.org/-/media/assets/papers/cicdwp/2021/cicd-wp-2021-03.pdf)

[/media/assets/papers/cicdwp/2021/cicd-wp-2021-03.pdf](https://www.minneapolisfed.org/-/media/assets/papers/cicdwp/2021/cicd-wp-2021-03.pdf). This study found that,

³ The American Indian Policy Institute of the Sandra Day O’Connor College of Law of Arizona State University, <https://aiapi.asu.edu/>.

compared to non-Tribal areas, download speeds are approximately 75% slower in Tribal areas and “the lowest price for basic Internet service in Tribal areas is 11% higher.” *Id.* These inequities are exacerbated by the fact that Native Americans have the highest poverty rate among all demographics. Dedrick Asante-Muhammad et al., *Racial Wealth Snapshot: Native Americans*, NCRC (2022), <https://ncrc.org/racial-wealth-snapshot-native-americans/>. The lack of reliable and affordable internet access makes it challenging for Tribal members to fully engage in economic and social opportunities necessary to thrive in today’s society. The American Indian Policy Institute highlighted that each Tribal Nation experiences unique barriers to closing the digital divide and thus it is important for Tribal Nations to define their own solutions. Delmar, *supra* at 8.

Tribal communities are often located in rural areas, where access to broadband and social media apps is vital. Many Tribal Nations have Facebook accounts, Instagram accounts, YouTube accounts, or other social media accounts that provide critical information to Tribal communities. *See, e.g.*, CSKT Facebook page, <https://www.facebook.com/share/8cg6MwvAK9mDKAM3/?mibextid=A7sQZp> (last visited May 6, 2024). Whether it is to update members about oncoming severe weather, provide information about missing and murdered relatives, preserve culture, or simply notify the community about an upcoming Tribal Council

meeting, access to these platforms is critical to the health and welfare of Tribal Nations. See e.g., Sara Reardon, *Social media helps Native Americans preserve cultural traditions during pandemic*, CNN (Feb. 29, 2021, 3:25 PM EST), <https://www.cnn.com/2021/02/08/health/coronavirus-native-americans-internet-khn-wellness-partner/index.html>.

Tribal Nations already exercise authority in this area by building broadband infrastructure, providing crucial telehealth, telework, and telelearning opportunities to their members, and protecting private Tribal data. Traci Morris, *Indigenous Digital Sovereignty Defined*, ASU AMERICAN INDIAN POLICY INSTITUTE, <https://aipi.asu.edu/blog/2023/07/indigenous-digital-sovereignty-defined#:~:text=Indigenous%20Digital%20Sovereignty%20is%20both,data%2C%20infrastructure%2C%20and%20networks>.

Tribal Nations have the capability to tackle digital inequity and are the proper sovereigns to determine their policies for their communities. A perfect example is the Blackfeet Nation, which established its own corporation, Siyeh Communications, to address specific digital equity needs (such as effective and reliable broadband access) for Tribal members and those within its service areas. Siyeh Communications' goal is to manage and upgrade the telecommunications infrastructure to improve the quality of life and create economic opportunities for the residents and business within its service area. Siyeh Communications, *History*

of Siyeh Communications, <https://www.siycom.com/about>. The Blackfeet Nation Tribal Chairman Tim Davis described Siyeh Communications' efforts as "a major step in the exercise of the Blackfeet Tribe's sovereign rights." *Id.* The Chairman further stated that, Siyeh Communications "gives the Tribe a level of control necessary to prioritize and develop modern telecommunications technology on the Blackfeet Reservation, especially during a pandemic." *Id.*

It is important to recognize that regulation in the digital realm is not a one size fits all. As Tribal Nations lead the effort to strengthen their digital governance, they can address the issues most critical to them and formulate policies that are best for their communities. Indeed, across the United States, 49 Tribal Nations have enacted Tribal laws relating to Tribal data sovereignty, an important subset of digital sovereignty. Angela R. Riley, *The Ascension of Indigenous Cultural Property Law*, 121 Mich L. Rev. 75 (2022). Data is increasingly becoming digitally stored and used by third parties, which comes with risks especially understood by Tribal Nations who have experienced a long history of unauthorized storage and use of Tribal data and information. *See, e.g.,* Robyn L. Sterling, *Genetic Research among the Havasupai: A Cautionary Tale*, AMA JOURNAL OF ETHICS (2011), <https://journalofethics.ama-assn.org/article/genetic-research-among-havasupai-cautionary-tale/2011-02>, (Researchers at Arizona State University misappropriated blood samples of approximately 100 members of the Havasupai Tribe for research

which neither the Tribe nor the member-subjects had provided informed consent to conduct). Responsive to this, Tribal Nations have passed their own regulations regarding the use and storage of their data. *See, E.g.*, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, MICHIGAN - TRIBAL CODE, Title 12 https://www.narf.org/nill/codes/grand_traverse/Title_12.pdf; NAVAJO NATION CODE ANNOTATED, N.N.C. Title 13, Ch. 25, § 3252, <https://www.nnols.org/wp-content/uploads/2022/05/13-20.pdf> (setting “the conditions under which investigators, physicians, researchers and others may perform research activities on living human subjects within the territorial jurisdiction of the Navajo Nation.”); *see also e.g.*, CRIT HUMAN AND CULTURAL RESEARCH CODE § 1-101(2), https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.crit-nsn.gov/crit_contents/ordinances/Human-and-Cultural-Research-Code.pdf&ved=2ahUKEwjPzq7tjPqFAxUAGDQIHtyJCmoQFnoECBgQAQ&usg=AOvVaw1o-iMXdvmBXHQOx3ZSfBqG (The Colorado River Indian Tribes code to protect citizens’ data, “including physical, real, cultural and intellectual property and communal property such as blood and tissue samples from the Tribe in large scale human subjects research.”).

Thus, Tribal Nations, just as Montana, have their own serious concerns regarding the gathering and use of Tribal data by a wide range of companies, government agencies, and other actors. However, implementing these laws is a

costly and resource-intensive endeavor. It requires immense investments in broadband infrastructure, network business models, and network technologies.

Broadband Network Deployment Engineering, an Overview, NTIA

BROADBANDUSA, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-03/Broadband%20Network%20Deployment%20Engineering%20PDF.pdf>. So, for instance, while Tribal codes establishing data privacy laws to protect Tribal citizens' privacy are an important first step in exercising data sovereignty, the effectiveness of their implementation, among other data sovereignty laws, often depends upon the collaboration of states and the federal government.

Implementing Tribal digital sovereignty overall is strengthened when states, the federal government, and Tribal Nations work collaboratively. Already, we see direct and effective partnerships. For example, in California, the digital divide “is especially endemic on tribal lands” as “over a quarter of households” lack effective and reliable broadband service. Ben Polsky et al., *How California Is Bridging the Digital Divide on Tribal Land*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, <https://carnegieendowment.org/2023/08/28/how-california-is-bridging-digital-divide-on-tribal-land-pub-90433>. Wildfires and other weather-related issues often “disturb the basic communications infrastructure needed to” provide emergency services and critical status updates to Tribal populations during weather-related disasters. *Id.* In response, the federal government and California

made federal and state funding available directly to Tribal Nations to assist in improving this infrastructure. *Id.* Further, California partnered directly with the Hoopa Valley Tribe to construct and bring the state-owned fiber infrastructure directly to the Tribe. *Id.* California acknowledged that this state-Tribal partnership worked to strengthen “the [T]ribe’s self-determination and sovereignty goals of providing essential services to its nation.” *Id.*

Montana, too, has seen efforts to build up Tribal digital sovereignty and address the digital divide. The federal government, Tribal Nations, and Montana came together to discuss how recent federal funding could aid in addressing the state’s digital divide. *Envisioning an Equitable, Inclusive, Connected America, Montana*, National Telecommunications and Information Administration, <https://www.ntia.doc.gov/report/2024/office-internet-connectivity-and-growth-2023-annual-report/implementation-partnering-in-the-field-part-two/states-territories/montana>. Laws like the Ban are counterproductive to such efforts.

Because the Ban implicates various forms of Tribal self-governance, it should be aligned with Tribal Nations’ goals so that it is not out of step with measures the federal government, states, and Tribal Nations are implementing to strengthen Tribal self-governance. Instead, state laws should be designed to support collective efforts to bring Tribal Nations’ regulatory frameworks in the digital realm to reality. State laws that would have the effect of regulating digital or data

sovereignty on Tribal lands or within Tribal jurisdictions—whether intentionally or inadvertently—have the potential to undermine, rather than help, in this effort.

To avoid this, state lawmakers must design laws touching issues in the digital world carefully, keeping in mind how those laws, and the regulatory policies that will devolve from them, implicate Tribal Nations. This includes ensuring that state laws will not encroach upon Tribal Nation jurisdiction, inconsistent with federal policy of promoting Tribal self-governance. *Bracker*, 448 U.S. at 144-45. State lawmakers must also consider the complex circumstances in which Tribal Nations operate—such as often being in rural areas and having limited visibility by the greater public—to determine if the design of a law may violate Tribal jurisdiction. Montana’s failure to do so here resulted in a law that cannot be implemented without infringement upon Tribal sovereignty. Not only is this precluded by federal and state law, but it is also contrary to the strong interests Tribal Nations, states, and the federal government have in strengthening Tribal digital sovereignty.

CONCLUSION

Tribal digital sovereignty is crucial for Tribal self-governance in today’s world. Because the Ban’s enforcement design is likely to encroach upon the jurisdiction of Tribal Nations in Montana, the Ban is incongruent with state and federal law and is contrary to efforts to strengthen Tribal digital sovereignty.

Dated: May 6, 2024

Respectfully submitted,

s/ Jason Searle

Jason Searle

Beth M. Wright

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*Counsel for Amici Confederated
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American Indians*

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and Circuit Rule 32-1(a) because this brief contains 4,210 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Furthermore, this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: May 6, 2024

s/ Jason Searle

Jason Searle

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2024, I electronically filed this brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM / ECF system. I certify that all participants in this case are registered CM / ECF users and service will be accomplished by the CM / ECF system.

s/ Jason Searle

Jason Searle

Beth M. Wright

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Pechango Band of Indians

1ST VICE PRESIDENT
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RECORDING SECRETARY
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Lummi Nation

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GREAT PLAINS
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ROCKY MOUNTAIN
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SOUTHEAST
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Upper Mattaponi Indian Tribe

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Oklahoma*

SOUTHWEST
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Pueblo of Santa Domingo

WESTERN
Randi Lone Eagle
Summit Lake Paiute Tribe

EXECUTIVE DIRECTOR
Larry Wright, Jr.
Ponca Tribe of Nebraska

The National Congress of American Indians Resolution #NC-24-008

TITLE: Supporting Tribal Digital Sovereignty as an Exercise of Self-Determination

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 and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, 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, the inherent sovereignty of Tribal Nations has been recognized and upheld by the U.S. Supreme Court through its holdings in *Worcester v. Georgia* 358 U.S. 217, *William v. Lee* 31 U.S. 515, and *United States v. Wheeler* 435 U.S. 313; and

WHEREAS, NCAI has passed resolutions PDX-11-034, ANC-22-010, and SAC-22-016 supporting the recognition of Tribal sovereignty over data in digital spaces to achieve digital equity and digital jurisdiction in Tribal communities and to advance self-determination and self-reliance; and

WHEREAS, Tribal Digital Sovereignty is the umbrella term that encompasses the exercise of sovereign authority over physical and virtual network infrastructure, and the intangible, virtual digital jurisdictional aspects of the acquisition, storage, transmission, access, and use of data including policy developments that impact a Tribal Nation's digital footprint in both real-world and virtual spaces; and



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WHEREAS, Tribal Digital Sovereignty encompasses all aspects of a Tribal Nation’s digital plan and footprint, such as Tribal codes, managing data protection, digital equity, network infrastructure, development of funding sources, education, healthcare, public safety and law enforcement, economic and community development, and capacity building; and

WHEREAS, broadband and other modern communications technologies are the 21st century platform for tribal self-determination; and

WHEREAS, the Native American Rights Fund has filed an amicus brief in March 2024, on behalf of the Confederated Salish and Kootenai Tribes and NCAI, in the U.S. Court of Appeals for the Ninth Circuit in *Alario v. Knudsen*, a case concerning the banning of TikTok by the state of Montana, which represents an unprecedented incursion on tribal sovereignty and as that amicus brief argues that Tribal Digital Sovereignty is crucial to Tribal self-governance, and state laws limiting access to websites encroaches on Tribal sovereignty; and

WHEREAS, Congress passed Public Law No. 118-49 in April 2024, which expands the definition of “electronic communications service providers” and is very likely to include Tribal entities that operate internet and data infrastructure on Tribal lands in warrantless surveillance under the Foreign Intelligence Surveillance Act, and represents an unprecedented incursion on tribal sovereignty , and on June 4, 2024, the expected markup legislative fix proposal was not introduced ; and

WHEREAS, Congress and state legislatures are considering other measures to regulate virtual conduct with no consideration for their impacts on Tribal Digital Sovereignty; and

WHEREAS, Tribal Nations are the necessary regulatory and governmental authorities in their development of Tribal DigitalSovereignty and the economies resulting therefrom, and Tribal Nations are already exercising their authority to address the unique needs of their communities in an increasingly digital society; and

WHEREAS, NCAI supports the exercise of Tribal Digital Sovereignty through its capacity to form subcommittees, pass resolutions, and support policy solutions addressing Tribal Digital Sovereignty issues.



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WHEREAS, on June 4, 2024, Arizona State University and NCAI launched a new Center for Tribal Digital Sovereignty that is expected to form a new coalition to advance Tribal Digital Sovereignty; and

NOW THEREFORE BE IT RESOLVED, that NCAI calls upon Federal, State, and local governments to recognize Tribal Digital Sovereignty and its crucial role in modern Tribal self-governance; and

BE IT FURTHER RESOLVED, that NCAI calls upon Tribal, state, local, and federal legislators, regulators, and jurists, and the appropriate law enforcement to respect and enforce Tribal Digital Sovereignty; and

BE IT FURTHER RESOLVED, that the newly created Center for Tribal Digital Sovereignty and its work to create a new coalition be the vehicle for advocacy, analysis, scholarship, and resources needed to help Tribal Nations develop their digital environments and exercise their Tribal Digital Sovereignty ; and

BE IT FURTHER RESOLVED, that NCAI calls for an immediate fix to P.L 118-49 because as the law is currently written it could force Tribal Nations to surveil their own citizens, which is an affront to tribal sovereignty; and

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



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CERTIFICATION

The foregoing resolution was adopted unanimously by the Executive Committee on Friday, June 14, 2024, following recommendations of adoption by the relevant Committees and referral from the General Assembly at the 2024 Mid Year Convention of the National Congress of American Indians, held June 1-6, 2024, in Cherokee, NC.

Mark Macarro, President

ATTEST:

Nickolaus Lewis, Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #PDX-11-034

TITLE: Support for Federal Communications Policy Reform to Strengthen American Indian and Alaska Native Self-Determination

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Juana Majel Dixon
Pauma Band of Mission Indians

RECORDING SECRETARY
Edward Thomas
*Central Council of Tlingit & Haida
Indian Tribes of Alaska*

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

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PACIFIC
Don Arnold
Scotts Valley Band of Pomo Indians

ROCKY MOUNTAIN
Scott Russell
Crow Tribe

SOUTHEAST
Larry Townsend
Lumbee Tribe

SOUTHERN PLAINS
Robert Tippeconnie
Comanche Nation

SOUTHWEST
Joe Garcia
Ohkay Owinge

WESTERN
Ned Norris, Jr
Tohono O'odham Nation

EXECUTIVE DIRECTOR
Jacqueline Johnson Pata
Tlingit

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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, 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, Native communities are the worst connected communities in the United States; and

WHEREAS, the Federal government and the Federal Communications Commission (FCC) has a trust responsibility to support American Indian tribes and Alaska Native villages (AI/AN), and recognize the unique status and needs of AI/AN; and

WHEREAS, the FCC is in the process of substantially changing regulatory rules for the Universal Service Fund and for Inter-Carrier Compensation Rules; and

WHEREAS, the telecommunications industry has made numerous proposals to frame the transition of the Universal Service and Inter-Carrier Compensation programs to a new reformed program and to a new Connect America Fund, without a single reference to or acknowledgement of AI/AN and their unique circumstances and needs; and

WHEREAS, AI/AN, NCAI, and tribal organizations have spoken to the Federal government and the FCC on vital policy imperatives on behalf of AI/AN, and NCAI must re-state the urgency of securing telecommunications parity with non-Native communities; and

WHEREAS, the NCAI has previously recognized the importance of tribal positions on Universal Service Reform at the 2011 NCAI Mid-Year Conference in Milwaukee, WI through the passage of Resolution #MKE-11-005.

NOW THEREFORE BE IT RESOLVED, that the NCAI hereby urges that in the reform of Universal Service and Inter-Carrier Compensation regulations, and in the transition from Universal Service Fund to the Connect America Fund that the FCC must honor and respect the sovereignty of AI/AN governments and not lose sight of the unique needs of our communities; and

BE IT FURTHER RESOLVED, that NCAI reaffirms Resolutions #MKE-11-004 and #MKE-11-005 passed at the 2011 Mid-Year Conference in Milwaukee, WI, for the creation of a ‘Native Nations Broadband Fund’ and positions on Universal Service reform that would benefit tribes; and

BE IT FURTHER RESOLVED, that to ensure the sovereignty of AI/AN, the FCC should defer to AI/AN governments and allow them to decide which Eligible Telecommunications Carriers (ETCs) can service their lands, and enforce the principle that no ETCs should serve AI/AN lands without obtaining permission by the tribal government, community, or Alaska Native village; and

BE IT FURTHER RESOLVED, that the FCC must: 1) support AI/AN efforts to provide their own regulatory services by removing regulatory barriers and targeting all available federal resources and support for tribal effort; 2) extend a ‘Native Priority’ to all communications service sectors and provide regulatory support to ‘Native Nations’ in the promotion of public interest; 3) provide support to connect key tribal public and anchor institutions to broadband service; 4) protect tribal regulatory and cost based service through a tribal carve out policy to sustain current infrastructure and future tribal broadband regulatory services; 5) adopt a Native Broadband Lifeline and Linkup program to help low-income tribal consumers who cannot afford broadband service to be connected—and benefit from the promise of universal service; 6) ensure that funding for Native communities be allocated according to need, not basing support on the cheapest infrastructure proposed or the cheapest areas to serve in Native communities; 7) take all necessary procedures to make spectrum available for tribal communities to use for public interest services and to attain broadband service, applying extraordinary procedures and waiver of spectrum rules to promote public interest; and

BE IT FURTHER RESOLVED, when planning the potential right of first refusal by price-cap carriers to recede from carrier-of-last-resort obligations in certain rural service areas, that the FCC must consult with tribal governments on the development of procedures and policies and require commercial consultation on quality of service between ETC’s and tribes, and give tribes the first option to serve its own community, or elect an outside ETC to provide service on tribal lands; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2011 Annual Session of the National Congress of American Indians, held at the Oregon Convention Center in Portland, Oregon on October 30 – November 4, 2011, with a quorum present.

President**ATTEST:**

Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ANC-22-010

TITLE: Calling on the Federal Communications Commission (FCC) to Respect Tribal Data Sovereignty Regarding Broadband Data in the Broadband Data Collection Portal

EXECUTIVE COMMITTEE

PRESIDENT

Fawn R. Sharp
Quinault Indian Nation

1ST VICE PRESIDENT

Mark Macarro
Pechanga Band of Luiseño Indians

RECORDING SECRETARY

Stephen Roe Lewis
Gila River Indian Community

TREASURER

Shannon Holsey
Stockbridge-Munsee Band of Mohican Indians

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Akiak Native Community (IRA)

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Wyandotte Nation

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Harold Frazier
Cheyenne River Sioux Tribe

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Rebecca Crooks-Stratton
Shakopee Mdewakanton Sioux Community

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Jack Potter
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Reggie Tupponce
Upper Mattaponi Indian Tribe

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Gonzo Flores
Apache Tribe of Texas

SOUTHWEST

Joe Garcia
Ohkay Owingeh Pueblo

WESTERN

Bernadine Burnette
Fort McDowell Yavapai Nation

CHIEF EXECUTIVE OFFICER

Dante Desiderio
Sappony

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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 and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, 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, the Federal Communications Commission (FCC) is an independent agency of the federal government and recognizes its own general trust relationship with, and responsibility to, federally-recognized Indian tribes; and

WHEREAS, the FCC also recognizes the rights of tribal governments to set their own communications priorities and goals for the welfare of their membership; and

WHEREAS, in 2018, the Government Accountability Office released the report, “Broadband Internet: FCC’s Data Overstate Access on Tribal Lands” GAO 18-630, which found that Form 477 broadband data from the Federal Communications Commission was inaccurate for tribal lands; and

WHEREAS, in 2020, U.S. Congress passed the Broadband Deployment Accuracy and Technological Availability Act (the “Broadband DATA Act”) to improve broadband data collection; and

WHEREAS, the Federal Communications Commission is implementing the “Broadband DATA Act” with the Broadband Data Collection portal, which will accept broadband deployment data from Internet Service Providers and state, local, and tribal governments; and

WHEREAS, the Broadband Data Collection portal requires that data submitted by state, local, and tribal governments be certified by a professional engineer; and

WHEREAS, the initial filing period for the Broadband Data Collection portal is June 30, 2022 through September 1, 2022; and

WHEREAS, “data sovereignty” in the context of Tribal Nations and for the purposes of this resolution refers to “the right of [each Tribal Nation] to govern the collection, ownership, and application of its own data. It derives from tribes' inherent right to govern their peoples, lands, and resources.”, as defined by the Native Nations Institute.¹

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) urges the Federal Communications Commission (FCC) to adhere to inherent tribal data sovereignty and to work in partnership with Tribal Nations to ensure accurate broadband data collection on tribal lands; and

BE IT FURTHER RESOLVED, that NCAI urges the FCC to fully adhere to inherent tribal sovereignty when collecting tribal data by allowing alternate methods of data certifications, such as tribal self-certification, enabling waivers, and providing technical assistance; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the Mid Year Conference of the National Congress of American Indians, held in Anchorage, Alaska from June 12-16, 2022 with a quorum present.

Fawn Sharp, President

ATTEST:

Stephen Roe Lewis, Recording Secretary

¹ <https://nni.arizona.edu/programs-projects/policy-analysis-research/indigenous-data-sovereignty-and-governance>

The National Congress of American Indians
Resolution #SAC-22-016

TITLE: Support for Tribes Exercising their Inherent Sovereign Authority Over the Activities and Data of their Businesses, Citizens, and Jurisdiction online; and Recognition of Tribal Data Sovereignty and Jurisdiction Online

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 and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, 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, U.S. Courts and Federal law currently delineate the jurisdiction of Tribal Nations based on physical geography, namely whether lands and activities are on- or off-reservation; and

WHEREAS, these physical distinctions frequently restrict the ability of Tribal Nations to compete in the physical marketplace and develop Tribal economies; and

WHEREAS, the world is transitioning to an increasingly digital format, with ecommerce activities outpacing brick and mortar transactions for all sectors with predictions that digital transactions will account for nearly one-third of all economic transactions in the United States within the next five years; and

WHEREAS, NCAI recognizes that the internet provides vital opportunities for remotely located and rurally-situated Tribal Nations to participate in the modern economy by creating the opportunity for customers to digitally access on-reservation Tribal services and jurisdiction, which serves to diversify and develop Tribal economies and support Tribal self-determination; and

WHEREAS, NCAI also recognizes that the internet necessarily requires a recognition of Tribal data, including its development, uses, and regulation and that respect for Tribal data sovereignty and regulation must include data related to the Tribal Nation, as well as its businesses, citizens, and activities for research, cultural preservation, economic sustainability, and other uses; and



WHEREAS, Tribal sovereignty and Tribal jurisdiction are being eroded in the digital marketplace as Federal agencies, states and private parties fail to recognize Tribal digital sovereignty, specific examples include: Tribal Nations utilizing the internet for economic and community development facing legal attacks by private plaintiffs and courts ignoring Tribal sovereignty and jurisdiction in online contracting, the failure of states and other sister sovereigns to recognize Tribal taxation authority for online transactions conducted by Tribal citizens from Tribal lands,¹ and the failure of Federal and state agencies to recognize Tribal data sovereignty in online and digital programs;² and

WHEREAS, simultaneous to this disregard of Tribal digital sovereignty by U.S. Courts, federal agencies, and states, the United States is aggressively encouraging the development of digital infrastructure on reservations and within Tribal communities through billions of dollars in support for Tribal broadband infrastructure development; and

WHEREAS, Tribal jurisdiction and Tribal sovereignty apply to digital and online transactions and the collection and use of Tribal data and must be recognized by Congress, federal agencies, and states, as well as public and private institutions; and

WHEREAS, NCAI has created a Technology Task Force to address issues in the fields of technology and communications in Indian Country; and

WHEREAS, this resolution is consistent with NCAI's previous efforts and policy to call on the federal government to recognize Tribal jurisdiction online and respect Tribal data sovereignty.³

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) fully supports the economic and community development opportunities for Tribal Nations provided by the internet and broadband infrastructure recognizing that, especially, for rurally located tribes, the internet is an essential link for tribes to participate in the modern economy; and

BE IT FURTHER RESOLVED, NCAI supports Tribal Nations' right to assert and protect their Tribal digital jurisdiction and sovereign authority over the data related to their citizens, businesses, and activities online, and that the collection, use, and application is subject to Tribal laws and policies (e.g. Data Use Agreements); and

BE IT FURTHER RESOLVED, NCAI calls upon the Administration, including the White House Council on Native American Affairs, and Federal agencies to engage in consultations and discussions with Tribal Nations to ensure Tribal digital jurisdiction and data sovereignty, including Tribal Nations' safety, security, and resiliency needs and priorities, are acknowledged and addressed conclusively in Federal policies and actions; and

¹ See e.g., Arizona applying taxes to online purchases by Tribal citizens from Tribal lands but not remitting or reimbursing those taxes to Tribal Nations in opposition to *Washington v. Confederated Tribes of Colville Rsrv.*, 447 U.S. 134 (1980).

² NCAI Resolution #ANC-22-010.

³ NCAI Resolution #KAN-18-011, NCAI Resolution #ANC-22-010.

BE IT FURTHER RESOLVED, NCAI assigns to the Technology Task Force a continuing obligation to investigate, inform, guide, and generate strategic insight for subsequent advocacy and education, including with the U.S. Congress, public institutions, private corporations, businesses, and stakeholders; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2022 Annual Conference of the National Congress of American Indians, held in Sacramento, CA, October 30-November 4, 2022, with a quorum present.

Fawn Sharp, President

ATTEST:

Stephen Roe Lewis, Recording Secretary



The National Congress of American Indians Resolution #SAC-22-026

TITLE: Preventing Evasion of Tribal Nation Data Sovereignty in the Health Research Sector by Means of Technological Modernization in an Unsettled Regulatory Frontier

EXECUTIVE COMMITTEE

PRESIDENT
Fawn R. Sharp
Quinault Indian Nation

1ST VICE PRESIDENT
Mark Macarro
Pechanga Band of Luiseño Indians

RECORDING SECRETARY
Stephen Roe Lewis
Gila River Indian Community

TREASURER
Shannon Holsey
Stockbridge-Munsee Band of Mohican Indians

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EASTERN OKLAHOMA
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Wyandotte Nation

GREAT PLAINS
Harold Frazier
Cheyenne River Sioux Tribe

MIDWEST
Rebecca Crooks-Stratton
Shakopee Mdewakanton Sioux Community

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Shinnecock Indian Nation

NORTHWEST
Melvin Sheldon, Jr.
Tulalip Tribes of Washington

PACIFIC
Jack Potter
Redding Rancheria

ROCKY MOUNTAIN
VACANT

SOUTHEAST
Reggie Tupponce
Upper Mattaponi Indian Tribe

SOUTHERN PLAINS
Gonzo Flores
Lipan Apache Tribe of Texas

SOUTHWEST
Joe Garcia
Ohkay Owingeh Pueblo

WESTERN
Bernadine Burnette
Fort McDowell Yavapai Nation

EXECUTIVE DIRECTOR
Larry Wright, Jr.
Ponca Tribe of Nebraska

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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 and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, 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, “data sovereignty” in the context of Tribal Nations and for the purposes of this resolution refers to “the right of [each Tribal Nation] to govern the collection, ownership, and application of its own data. It derives from tribes' inherent right to govern their peoples, lands, and resources.”, as defined by the Native Nations Institute;¹ and

WHEREAS, in Resolution SAC-22-016, Support for Tribes Exercising their Inherent Sovereign Authority Over the Activities and Data of their Businesses, Citizens, and Jurisdiction online; and Recognition of Tribal Data Sovereignty and Jurisdiction Online, NCAI formally recognizes that the prerogatives of Tribal Nations include, overseeing data collection, data management, and other practices to safeguard their data; and

WHEREAS, the proliferation of data collection by machines and artificial intelligence tools warrants assurance to Tribal Nations that such technologies will not circumvent their own data collection protocols and shall not violate principles of tribal sovereignty; and

WHEREAS, to the extent Federal agencies rely on data collected from tribal communities to fulfill Federal treaty and trust obligations, Tribal Nations have authority to determine the parameters and scope of such data collections, to invoke ultimate ownership over the data collected on their citizens, and to require non-Tribal entities to comply with Tribal law and Tribal protocols and digital standards for data collection and storage; a

¹<https://nni.arizona.edu/programs-projects/policy-analysis-research/indigenous-data-sovereignty-and-governance>; see also NCAI Resolution ANC-22-010.

WHEREAS, as self-governing nations, Tribes can determine ownership, access, use, and management of certain data derived from their citizens, including but not limited to: demographic data, anthropological data, archaeological data, environmental data, public health data, genomic data, medical data, traditional knowledge, proxy data and data obtained using third-party artificial intelligence tools; and

WHEREAS, there is a demonstrated propensity of non-Tribal entities, such as private corporations, Federal research institutions, and university research institutions to extract data from Tribal citizens and potentially divide the Tribal interest in protection of its citizens by automating Informed Consent with blockchain and other ledger technologies, without ensuring a clear mutual understanding about how that data will be used and disseminated in the future, which can lead to the data being exploited for commercially-driven purposes over objectives to advance science; and

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls upon the Department of Health and Human Services, the Department of Defense, and other Federal agencies that regularly collect data in Tribal communities to ensure that each agency adheres to standards that recognize Tribal sovereignty as it relates to ethical data collection procedures and ownership; and

BE IT FURTHER RESOLVED, that out of respect for Tribal sovereignty, all decisions involving the collection, management, and ownership of data taken from Tribal communities must adhere to standards, including those ensuring safety, security, and resiliency needs, set forth by Tribal laws and policies; and

BE IT FURTHER RESOLVED, if a Tribe lacks a data governance law, the default research practice by non-Tribal entities must require formal and enforceable Tribal consent early in the research process and opportunities for Tribal input shall continue throughout the duration of data collection efforts and the applicable data-life; and

BE IT FURTHER RESOLVED, that NCAI recognizes that Tribes also benefit from drafting their own Data Use Agreements and creating their own Tribal Institutional Review Boards to limit or amend the scope under which researchers may use data collected as part of a given project and, furthermore, all researchers must be required to enter into a Data Use Agreement prior to commencing research projects in Tribal communities or on Tribal citizens; and

BE IT FURTHER RESOLVED, that NCAI recognizes and supports the role of Tribal Epidemiology Centers in the collection and handling of health data and any other core functions established under the Indian Health Care Improvement Act; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the Annual Convention of the National Congress of American Indians, held in Sacramento, California from October 31 – November 4, 2022 with a quorum present.

Fawn Sharp, President

ATTEST:

Stephen Roe Lewis, Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ANC-14-015

TITLE: Calling on Congress to Establish Formal Recognition of Tribal Sovereignty and Tribal Consultation in the Communications Act

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Jacqueline Johnson Pata
Tlingit

NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005

www.ncai.org

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, 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, on December 3, 2013, the House of Representative's Energy and Commerce Committee announced a multi-year plan for the Committee to "examine and update the Communications Act to reflect the Internet era;" and

WHEREAS, by the Communications Act of 1934, Congress first established the universal access goal for communications by charging the Federal Communications Commission (FCC) with ensuring that "all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex" have access to "rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges;" and

WHEREAS, the Communications Act of 1934 did not acknowledge tribal governments, tribal sovereignty, or the federal trust relationship between the FCC and tribal governments, and in updating the Communications Act in 1996, Congress again did not acknowledge tribes; and

WHEREAS, the FCC has recognized that access to basic phone service on tribal lands lags other areas of America, and the percentage of Americans in rural tribal communities without access to fixed broadband is 8 times higher than the national average; and

WHEREAS, the FCC has expressed deep concern for the lack of access to telecommunications services on tribal lands and has sought comment on how to promote access to wireline and wireless services, and radio and TV broadcasting services to preserve tribal cultures and support self-governance, economic opportunity, health, education, public safety, and welfare; and

WHEREAS, in 2010 the FCC formally established the Office of Native Affairs and Policy (ONAP) to promote consultation with tribal nations and native communities as they exercise their sovereignty and self-determination, which has resulted in very positive, tangible benefits; and

WHEREAS, despite these earnest efforts by the FCC, formal recognition of tribes through statutory obligation is the only means to ensuring lasting tribal engagement and consultation to address telecommunications issues in Indian Country.

NOW THEREFORE BE IT RESOLVED, that NCAI does hereby urge Congress to address past oversights and include in any Communications Act update and formal acknowledgement of tribal governments, tribal sovereignty, and the federal trust relationship between the FCC and tribal governments; and

BE IT FURTHER RESOLVED, that in the event of a Communications Act update, Congress must address vital issues to eliminate barriers to tribal access and participation in the Digital Age, such as increasing access to spectrum licenses, preservation of tribal components of the Lifeline and Link Up programs, modernization of the E-rate program to support tribal schools and libraries, creation of a Tribal Broadband Fund that provides targeted Universal Service funding for broadband deployment and technical training as referenced in the National Broadband Plan, and addresses issues regarding Intercarrier Compensation, rate floor, and net neutrality mechanisms that have long supported tribal eligible telecommunications carriers; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Mid-Year Session of the National Congress of American Indians, held at the Dena'ina Civic & Convention Center, June 8-11, 2014 in Anchorage, Alaska, with a quorum present.

President

ATTEST:

Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ABQ-19-061

TITLE: Calling Upon the National Institutes of Health to Consult with Tribal Nations and Establish Policies and Guidance for Tribal Oversight of Data on Tribal Citizens Enrolled in the *All of Us* Research Program

EXECUTIVE COMMITTEE

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Quinault Indian Nation

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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 and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, 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, the National Institutes of Health (NIH), a part of the U.S. Department of Health and Human Services, is the nation's medical research agency, and researchers funded by NIH have made important discoveries that have the potential to improve health and reduce health disparities; and

WHEREAS, American Indians and Alaska Natives (AI/ANs) have significant health disparities that the findings of research could help address, but are often overlooked and not represented in research studies; and

WHEREAS, tribal nations have inherent sovereign rights to govern research that occurs with their citizens and on their lands, and are concerned that past negative experiences with research may continue to impact their nations; and

WHEREAS, in some cases, tribal nations have established tribal research codes, laws, and research oversight processes to govern research to ensure it benefits their nations and reduces risks of harm to their communities; and

WHEREAS, the NIH established the *All of Us* Research Program to recruit one million or more people in the United States to improve health through precision medicine, which involves the collection of data and biospecimens from individuals to understand differences in lifestyle, environment, and biology, including analysis of genetic data; and

WHEREAS, at the request of tribal nations, the NIH initiated a tribal consultation on the *All of Us* Research Program on May 24, 2019, requesting input on how to “develop meaningful, culturally appropriate collaborations with AI/AN populations” and how to identify “priorities and opportunities around the inclusion of AI/AN populations in the research program while also implementing the appropriate protections to comply with tribal research oversight and laws;” and

WHEREAS, the NIH does not have a tribal consultation policy but follows the U.S. Department of Health and Human Services Tribal Consultation Policy, updated in 2010, and held consultation and listening sessions with tribal nations in various locations during the summer of 2019; and

WHEREAS, NIH in its May 24, 2019 letter initiating tribal consultation “welcomed written testimony” by August 31, 2019, and then issued a Request for Information (RFI) on September 3, 2019, to solicit “additional input to the *All of Us* Research Program 2019 Tribal Consultation” that allows input from the public “for information and planning purposes” which is not a mechanism that is used in the U.S. Department of Health and Human Service Tribal Consultation Policy and does not represent a government-to-government form of consultation; and

WHEREAS, the NIH Tribal Advisory Committee recently approved a motion to extend the tribal consultation by two months to allow for more input and discussion with tribal nations, and also requested to review the recommendations of the *All of Us* Research Program Tribal Collaboration Working Group, which is not a part of the tribal consultation process; and

WHEREAS, both NCAI and the United South Eastern Tribes sent letters to the NIH Director and the *All of Us* Research Program in September 2019 requesting an extension to the timeline of the tribal consultation and more information and clearer timelines on how the NIH plans to respond to the tribal consultation.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls on the NIH to continue the *All of Us* Research Program tribal consultation to allow for more meaningful discussions and input; and

BE IT FURTHER RESOLVED, that NCAI calls on NIH to work closely with the NIH Tribal Advisory Committee to assess consultation input to date and immediately develop clear processes and guidelines that ask individual sovereign tribal nations to provide prior consent before collecting data and specimens from their tribal members, and provide tribal nations oversight of any data or biospecimens that are associated with or identified to be from a citizen of their tribal nation; and

BE IT FURTHER RESOLVED, that all data collected on AI/AN individuals and data identified to be associated with specific tribal nations must be restricted from any research use until tribal oversight processes and guidelines are adopted by the NIH *All of Us* Research Program; and

BE IT FURTHER RESOLVED, that the NIH send any draft final processes and guidelines to tribal nations for consultation and input prior to being finalized and implemented; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2019 Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, October 20-25, 2019, with a quorum present.

Fawn Sharp, President

ATTEST:

Juana Majel Dixon, Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #DEN-18-012

TITLE: Support for Tribal Nations' Access to Cyber Security Services and Funding

EXECUTIVE COMMITTEE

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Jefferson Keel
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Tlingit & Haida Indian Tribes of Alaska

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Cherokee Nation

GREAT PLAINS
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Ponca Tribe of Nebraska

MIDWEST
Roger Rader
Pokagon Band of Potawatomi

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
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Suquamish Tribe

PACIFIC
Willie Carrillo
Tule River Tribe of California

ROCKY MOUNTAIN
Darrin Old Coyote
Crow Nation

SOUTHEAST
Nancy Carnley
Ma-Chis Lower Creek Indians

SOUTHERN PLAINS
Zach Pahmahmie
Prairie Band of Potawatomi Nation

SOUTHWEST
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Ohkay Owingeh Pueblo

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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 and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, 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, since 2003, approximately 98 percent of Department of Homeland Security (DHS) grant funding has gone to state and local governments; and

WHEREAS, almost every year over \$1 billion dollars has been appropriated for DHS grants yet Tribal Nations are only directly eligible for \$10 million dollars of non-emergency DHS grants through the Tribal Homeland Security Grant Program; and

WHEREAS, Tribal Nations have been encouraged to see the increase in the Tribal Homeland Security Grant Program to \$10 million dollars but recognize that the funds are not adequate to help all 573 federally recognized tribes build and sustain their homeland security capabilities; and

WHEREAS, the Department of Homeland Security funded Multi-State Information Sharing and Analysis Center (MS-ISAC), which services for detecting and identifying cyber security threats offers free Albert senior services to States but requires Tribal Nations to pay for the sensors; and

WHEREAS, Tribal Nations maintain the sensitive data of tribal and non-tribal citizens, medical records, employment records, membership rolls, and critical infrastructure information; and

WHEREAS, Tribal Nations are constant targets of cyber security attacks and threats; and

WHEREAS, Tribal Nations cyber security preparedness and maturity continues to fall well short of state and local governments as measured by the National Cyber Security Review; and

WHEREAS, equitable treatment between Tribal Nations' cyber security needs and state cyber security needs would increase the ability of Tribal Nations to protect tribal and non-tribal citizen's data they are tasked with safeguarding.

NOW THEREFORE BE IT RESOLVED, that the National Congress of American Indians (NCAI) calls upon the Department of Homeland Security and the United States Congress to fulfill their trust responsibility to Tribal Nations by substantially increasing funding for the Tribal Homeland Security Grant Program and direct MS-ISAC to provide free Albert sensors to each Tribal Nation as they do to states; and

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

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2018 Annual Session of the National Congress of American Indians, held at the Hyatt Regency in Denver, Colorado October 21-26, 2018, with a quorum present.

Jefferson Keel, President

ATTEST:

Juana Majel Dixon, Recording Secretary