

**RESOLUTION OF THE GOVERNING BODY
OF THE
THREE AFFILIATED TRIBES
OF THE
FORT BERTHOLD INDIAN RESERVATION**

- WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act: and
- WHEREAS,** The Constitution of the Mandan, Hidatsa and Arikara Nation (Three Affiliated Tribes) of the Fort Berthold Indian Reservation generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and the enrolled members thereof; and
- WHEREAS,** Art. III § 5 of the Constitution mandates that, following a general election, a newly elected Tribal Business Council must meet within three days of the election and "organize by electing a Vice-Chairman, a Secretary, and a Treasurer from its own members; and from within or outside its own members, it may elect or appoint a Sergeant at Arms and such other officers and committees as it may find necessary" (emphasis added); and
- WHEREAS,** the Sergeant at Arms, like all other officers of the Tribal Business Council, is a political appointment, appointed at the election of the newly elected Council; and
- WHEREAS,** following the General Election on November 3, 1998, the newly elected Tribal Business Council met on November 6, 1998 to organize as required by Art. III § 5 of the Constitution, and after duly appointing James Pete Hale to serve as successor to newly elected Chairman Tex G. Hall's council seat for the Mandaree segment proceeded to elect and appoint officers; and
- WHEREAS,** the Tribal Business Council, despite a walk-out by three councilmen after the appointment of James Pete Hale, proceeded to elect Marcus Wells, Jr., as Vice-Chairman, Thomas Bird Bear as Treasurer, and James Pete Hale as Secretary, and thereafter delegated to the Chairman the power to appoint a new Sergeant at Arms and such other officers as were deemed necessary; and
- WHEREAS,** due to the walk-out by three councilmen, the Tribal Business Council has not adjourned its organizational meeting, and has been unable to complete a smooth transition to the new administration under Chairman Tex G. Hall and the newly elected officers; and
- WHEREAS,** Art. III § 1, and Art. VI § 3 of the Constitution of the

WHEREAS, at the hearing held in Fox and Hall on November 19, 1998, Austin Gillette, and his legal counsel, Donald Bruce, stipulated in open court, along with all the other parties to the case, to be bound by the court's judgement, and Austin Gillette further stated in a press conference on November 20, 1998 that he would honor the court's judgement; and

WHEREAS, despite their stipulation, Austin Gillette, through his counsel Donald Bruce, and certain other individuals in privity with them, have filed yet another case entitled Good Iron, et al. v. Hall, et al., Civil No. CV 98 0487, which seeks, without lawful basis, to relitigate the issues decided by the court in Fox and Hall, and which seeks to further undermine and disrupt the effort of the newly elected Chairman and executive officers to organize as is its constitutional mandate; and

WHEREAS, the plaintiffs in Good Iron also seek to challenge the eligibility of James Pete Hale to serve as the Mandaree segment councilmen on the alleged ground that James Pete Hale has not resided within the Mandaree segment for the past year; and

WHEREAS, the challenge to James Pete Hale's residency is one which should have been made to the Tribal Business Council at the time of his nomination and appointment by the Council to succeed Tex G. Hall on November 6, 1998, and in any event must be brought before the Tribal Business Council, not the Tribal Court, and

WHEREAS, under the circumstances the attempt to relitigate the issues of the four councilmen's authority to organize as a newly elected Council is an abuse of the Tribal Court System and a continuing threat to the stability and lawful organization of the Tribal Business Council under the Hall administration; and

WHEREAS, the failure of the plaintiffs in Good Iron to respect the ruling of the Tribal Court in Fox and Hall undermines the integrity of the Tribal Court System as well as the public interest in finality; and

WHEREAS, the claims of the minority faction of the Tribal Business Council, which includes Austin Gillette, were finally and definitively disposed of by the Tribal Court's decision in Fox v. Hall and Hall v. Lakeside State Bank and may not now be relitigated in the Fort Berthold District Court; and

WHEREAS, the Tribal Business Council has determined that it is in the best interests of the Nation to move beyond the Tribal governance disputes and the disruption created by the minority members of the Council and return to the business of governing in a positive and productive manner; and

WHEREAS, the Tribal Business Council has further determined that the minority faction of the Tribal Business Council has demonstrated its intent to continue in its attempts to disrupt and destabilize Tribal government notwithstanding the valid rulings of the Tribal Court System and regardless of the best interests of the Three Affiliated Tribes; and

WHEREAS, the acts of the minority faction have and are threatening the Three Affiliated Tribes' ability to provide essential goods and services to Tribal members and other residents of the Reservation, to maintain the financial stability of the Tribal government, to safeguard the integrity and credibility of the Tribal Court System, and to pursue the Tribes' interests in inter-governmental relations with other sovereigns; and

WHEREAS, the acts of the minority faction threaten to destabilize Tribal government and ultimately compromise the sovereignty of the Three Affiliated Tribes if allowed to continue; and

WHEREAS, pursuant to Resolution No. 79-67 which was signed by then Chairman Austin Gillette, the Tribal Business Council removed from the Tribal Court a case entitled Rose Crow Flies High, et al. v. Austin H. Gillette, Chairman, et al., Civil No. 1-79-A04-07, a case involving a political dispute like the one currently being pursued by Austin Gillette and those in privity with him; and

WHEREAS, in light of the Fort Berthold District Court's well reasoned decision in Fox v. Hall and Hall v. Lakeside State Bank, as well as the precedent established by Resolution 79-67, and in light of the continued instability and Tribal government crisis which has been created and fostered by the foregoing actions of Austin Gillette and those acting in privity with him, the Tribal Business Council finds that an emergency exists which requires immediate action.

NOW THEREFORE BE IT RESOLVED THAT, to preserve and protect the integrity and stability of Tribal government and the sovereignty of the Mandan, Hidatsa, and Arikara Nation,

Mandan, Hidatsa and Arikara Nation vests all necessary sovereign, legislative and judicial authority in the Tribal Business Council, subject only to the limitations contained in Art. VI § 3 (b); and

WHEREAS, pursuant to the powers vested in it by Art. VI § 3 of the Tribal Constitution the Tribal Business Council established a court system to adjudicate general civil and criminal matters arising on the reservation; and

WHEREAS, in establishing the Tribal Court System the Tribal Business Council did not delegate to the Tribal Court the authority to review the internal actions of a newly elected Council in organizing pursuant to its obligation under Art. III § 5 of the Constitution or otherwise second guess the political decisions of the Council; and

WHEREAS, in the consolidated cases of Fox, et al., v. Hall, et al., Civil No. 98 CV 0477 and Hall, et al., v. Lakeside State Bank, et al., Civil No. 98CV 0478, the Fort Berthold District Court ruled that the actions of Chairman Tex G. Hall and the Councilmen who supported him at the newly elected Council's organizational meeting convened on November 6, 1998 were lawful and consistent with the Tribal Constitution and laws, and did not violate the Indian Civil Rights Act; and

WHEREAS, the Fort Berthold District Court in Fox and Hall further ruled that the actions of the Tribal Business Council in organizing itself under Art. III § 5 of the Tribal Constitution were lawful, and presented political questions which were not subject to judicial review; and

WHEREAS, the Fort Berthold District Court in Fox and Hall further ruled that it could not lawfully compel the Council to call for a Special Election to displace James Pete Hale and fill the Council seat vacated by the election of Tex G. Hall as Tribal Chairman; and

WHEREAS, the Fort Berthold District Court further ruled that the four councilmen who remained at the newly elected Council's organizational meeting on November 6, 1998 after the three councilmen walked out to destroy a quorum had the authority, as a majority of the Council, to appoint interim officers subject to approval by the Council, after a quorum is reached, and that it is inappropriate for the Court to substitute its opinion for that of the remaining four councilmen who remained at the meeting in response to the walk-out of the other three; and

the Tribal Business Council hereby removes from the jurisdiction of the Tribal Court System the case of Good Iron, et al. v. Hall, et al., Civil No. 98 CV 0487, and any and all other matters involving of the Tribal Business Council following the general election of November 3, 1998 and further directs that the Good Iron case be dismissed with prejudice and shall not be subject to appeal in any court; and

BE IT FURTHER RESOLVED THAT the judgement of the Fort Berthold District Court in Fox, et al. v. Hall, et al., Civil No. 98 CV 0477, and Hall, et al., v. Lakeside State Bank, et al., Civil No. 98 CV 0478, is hereby declared final and not subject to collateral attack in the Fort Berthold District Court.

BE IT FURTHER RESOLVED THAT the Chairman's action in appointing a Sergeant at Arms, and in appointing all other Tribal security officers, which action was taken pursuant to previously delegated authority by a majority of the Tribal Council is hereby approved.

BE IT FURTHER RESOLVED THAT the Chairman's previous action in appointing a Chief Of Staff, and any other officers in connection with the organization of the newly elected Tribal Business Council is hereby approved.

BE IT FURTHER RESOLVED that the Chairman's previous action in appointing Jerry Nagle as Chief Magistrate is hereby amended to an appointment as a Special Magistrate and is approved as amended, and the Chairman is hereby authorized to extend that appointment as Special Magistrate for an additional 30 to 90 days.

BE IT FURTHER RESOLVED that the Chairman's request by memorandum dated November 12, 1998 to Karen Simmonds, Court Administrator, requesting certain personnel actions relating to the removal of Kermit Heart and Jimmy Johnson as court magistrates, and the reinstatement of Lisa Redford as temporary prosecutor, are hereby approved and made a directive and subject to any right of the affected persons to file grievances with the Council or Personnel committee, as appropriate; and

BE IT FURTHER RESOLVED that if necessary this Resolution shall be presented for ratification at the next Tribal Council meeting at which a quorum is present, but shall remain effective and legally binding until then.

BE IT FINALLY RESOLVED, that the Tribal Chairman is hereby

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authorized and directed to take such action as is necessary to carry out the terms and intent of this Resolution.

Affirmatively approved by the undersigned members of the Tribal Business Council. To be present at the next Tribal Business Council meeting at which a quorum is present.

James P. Hale
Member, Tribal Business Council

Marcus Wells
Member, Tribal Business Council

Thomas Bradburn
Member, Tribal Business Council

Jim H. Hall
Member, Tribal Business Council

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 (seven) members of whom 5 constitute a quorum, and that 4 members, constituting a majority of the Tribal Council, whose signatures appear above, voted in favor of the foregoing Resolution.

Dated this 10th day of Dec, 1998.

James P. Hale
Secretary, Tribal Business Council

ATTEST:

Jim H. Hall
Chairman, Tribal Business Council