

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION**

**(Approving Participation as *Amicus Curiae* before the U.S. Supreme Court  
in the case of EEOC v. Peabody Western Coal Company)**

**WHEREAS,** pursuant to Section 1(a) of the Constitution of the White Mountain Apache Tribe, inter alia, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and

**WHEREAS,** the Tribe's Indian Preference Policy provides that:

“Proper regard will be given for an applicant's privacy and constitutional rights as citizens, except that Indian preference shall be exercised in favor of enrolled White Mountain Apache Tribal Members and then in favor of other enrolled members of federally recognized Tribes and Nations. For the purpose of this policy, White Mountain Apache is defined as someone who is a legally enrolled member of the White Mountain Apache Tribe. Preference in hiring will be given after a candidate first meets the minimum qualifications for a job; preference in selection is based on priority listings. If a White Mountain Apache Tribal Member is available and fully qualified for the job, he or she shall be hired.” *Personnel Policies and Procedures Manual* (the “Manual”), at VIII-53; and

**WHEREAS,** the Manual is based upon the Tribal Employment Rights Ordinance (“TERO”); and

**WHEREAS,** under TERO, *WMAT Labor Code*, Ordinance No. 203, enacted December 20, 1995, Indian preference means the following priority of employment preference: (1) an enrolled member of the Tribe; (2) an Indian spouse of an enrolled member of the Tribe; (3) other Indians; and

**WHEREAS,** Peabody Western Coal Company and Peabody Coal Company, LLC are petitioning for a writ of certiorari review of the case of EEOC v. Peabody Western Coal Company, 400 F.3d 774 (9<sup>th</sup> Cir. 2005), supporting Indian preference; and

**WHEREAS,** the Navajo Nation is planning to file a “Brief of Amicus Curiae in Support of the Petition for a Writ of Certiorari,” by December 19, 2005; and

**WHEREAS,** the Legal Department has advised the Tribal Council about the EEOC case; and

**WHEREAS,** in EEOC, on behalf of two members of the Hopi tribe and one member of the Otoe tribe, the U.S. Equal Employment Opportunity Commission is suing Peabody Western Coal Company (“Peabody”) for maintaining a Navajo hiring preference policy at the mines that Peabody leases from Navajo Nation, and thus seeks to undo Indian preference as expressed under the laws of the Navajo Nation; and

**WHEREAS,** on appeal from the district court, the 9<sup>th</sup> Circuit, the Court of Appeals ruled that it was feasible to join Navajo Nation pursuant to F.R.C.P. 19 in order to effect complete relief between the parties and that the EEOC's claim does not present a nonjusticiable political question; and

**WHEREAS,** the EEOC case may prevent an Indian Tribe from compelling a business that it is contracting with to adhere to the Tribe's employment preference policy favoring the Tribe's members; and

**WHEREAS,** the Legal Department has this day recommended that the Tribe file an *amicus curiae* ("friend of the court") brief given the impact that the EEOC case may have on tribal preference for the Tribe's enrolled members; and

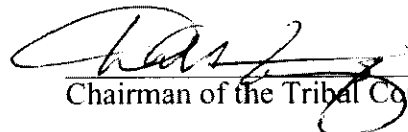
**WHEREAS,** the Native American Rights Fund, the National Congress of American Indians, and several other tribes have expressed interest in filing a consolidated *amicus curiae* brief, separate and apart from the brief to be filed by Navajo Nation, for which the Tribe's likely share of the associated cost would be \$2,000.00; and

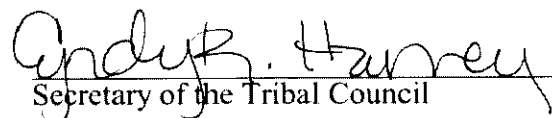
**WHEREAS,** the Tribal Council, after careful review and consideration, finds that filing an *amicus curiae* brief in the EEOC case to be in the best interests of the Tribe and the employment of its members, as well as the furtherance of the Tribe's self-determination and self-governance.

**BE IT RESOLVED** by the White Mountain Apache Tribal Council that:

1. The Legal Department is hereby authorized to join with other similarly situated Tribes in filing an *amicus curiae* brief in the U.S. Supreme Court concerning the case of EEOC v. Peabody Western Coal Company, 400 F.3d 774 (9<sup>th</sup> Cir. 2005), and expend up to \$2,000.00 for said purpose.
2. The Legal Department is further directed to keep the Council informed as to the progress and requirements of filing the *amicus* brief.

The foregoing resolution was on DECEMBER 7, 2005, adopted by a vote of FIVE for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Sections 1 (a), (b), (s), (t) and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council