

USET/USET SPF Board of Directors-

In December, a federal district court in Texas, in a case captioned *Texas v. United States*, ruled that the individual mandate under the Patient Protection and Affordable Care Act (ACA) is unconstitutional following Congress' reduction of the associated tax penalty to \$0. The district court also decided that the individual mandate was an essential component of the ACA, and therefore ruled that the entire ACA must be invalidated. This would include the Indian Health Care Improvement Act (IHCIA), which was amended and permanently reauthorized as part of the ACA, as well as other Indian-specific provisions of great importance to the tribal health care system.

The district court ruling is now on appeal to the United States Court of Appeals for the Fifth Circuit. Due to the critical importance of the IHCIA and other Indian-specific provisions to Indian Country, Geoff Strommer at Hobbs, Straus, Dean & Walker is leading an effort to file an amicus brief on behalf of tribes and tribal organizations throughout the country, focusing on the need to preserve those provisions (USET SPF is a direct participant in this amici effort). Hobbs, Straus filed a similar brief before the Eleventh Circuit Court of Appeals in 2011 and the Supreme Court in 2012 when the individual mandate was under attack then in *National Federation of Independent Business v. Sebelius* (USET SPF was a direct amici participant at this time as well).

The legal argument advanced in this amicus brief are the same as it was then: that regardless of the constitutionality of the individual mandate, the IHCIA and other Indian-specific provisions of the ACA should be preserved because they are wholly independent from, and not reliant on, the individual mandate. A number of other parties in the appeal will be attacking the district court's underlying conclusion that the individual mandate is unconstitutional; however, this brief will focus only on the Indian-specific provisions and why they should be protected *no matter what* the Fifth Circuit decides with respect to the rest of the ACA.

A draft of the amicus brief, which is still a work in progress, is [attached](#) for your review. Feedback on the draft is encouraged. Please send any comments you have about the brief by March 11 to Geoff Strommer at gstrommer@hswor.com. Based on the current briefing schedule, the amicus brief is due to be filed by April 1, 2019. **Please let us and Geoff Strommer know if your Tribal Nation is interested in signing on to this brief.** Also, please feel free to share this draft with any other Tribal Nation or tribal organization that you think might be interested in signing on.

When a similar tribal amicus brief was filed in the Supreme Court in 2012, it was supported by 449 Tribal Nations individually or as represented through tribal organizations. We are hoping for a similar showing of support this time around, to underscore to the Fifth Circuit just how important it is to Indian Country that the IHCIA and Indian provisions in the ACA be preserved.

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