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SOVEREIGNTY PROTECTION FUND

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USET Sovereignty Protection Fund Candidate Position Checklist *Strengthening Tribal Nation-United States Diplomatic Relations*

Background

United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty federally recognized Tribal Nations from the Canadian Border to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to enhancing the development of federally recognized Tribal Nations, to improving the capabilities of Tribal governments, and assisting USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people.

We advocate for actions that will help us to provide essential government services for our people, increase the exercise of our inherent sovereignty and self-determination, and uphold the government-to-government relationship between the United States and Tribal Nations, as well as deliver upon the unique obligations owed to us by the federal government.

It is our expectation that federal partners, including those seeking office, will pledge not only to honor the solemn promises of the government's trust and treaty obligations, but also support an evolved trust model that reflects a true nation-to-nation partnership built upon diplomacy. The following are policy principles and priorities that provide a foundation for the modern-day U.S.-Tribal Nation relations envisioned by our Tribal leadership.

USET SPF Policy Principles and Priorities

Recognize, Promote, and Advance Tribal Sovereign Rights and Authorities

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples, which pre-dated the founding of the Republic. The Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that the federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. Our federal partners must recognize the inherent right of Tribal Nations to fully engage in self-governance and expand the authority of Tribal governments, so we may exercise full decision-making in the management of our own affairs and governmental services, including jurisdiction over our lands and people.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe – Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

- ✓ Recognize Tribal criminal jurisdiction by fixing the Supreme Court decision in *Oliphant v. Suquamish Indian Tribe*.
- ✓ Promote Tribal control and autonomy over resources, programs, and funding, including through expansion of Indian Self Determination and Education Assistance Act contracting and compacting to all federal agencies and programs.
- ✓ Appoint Supreme Court justices and federal judges that support, protect, and promote our inherent sovereign rights and authorities.

Commitment to Meaningful and Evolved Trust Relationship

The current trust model is a remnant of an era and mindset that has no place in current Nation-to-Nation relations, as it is based on two deeply flawed and paternalistic assumptions: (1) that Tribal Nations are incompetent to handle our own affairs, and (2) that Tribal Nations would eventually disappear. Indian Country has proven both of these assumptions wrong over and over again. The time is now to revisit and redefine our sacred Nation-to-Nation relationship in order to remove existing barriers that interfere with our ability to implement our inherent sovereign authority to its fullest extent which, in turn, will allow Indian Country to realize its great potential.

- ✓ Endorse and seek to implement Trust Modernization principles and strategies.
- ✓ Evolve, standardize, and enforce federal agency consultation requirements, with a goal of reaching Tribal Nation consent for federal action.
- ✓ Implement, not merely endorse, the mandates of the United Nations Declaration on the Rights of Indigenous Peoples.

Uphold and Defend Political Status

Increasingly, our political status under the Constitution has come under attack, including by the Department of Health and Human Services allowing states to impose Medicaid work requirements, a federal district court's decision striking down the Indian Child Welfare Act (ICWA), and various Executive statements and actions. Undermining the constitutionality of programs, laws, spending, and exemptions specific to Native people and Tribal Nations flies in the face of well-settled law that defines our relationship with the United States as political in nature and not one based on race.

- ✓ Ensure compliance with and defend challenges to existing law, such as ICWA.
- ✓ Provide legal and regulatory exemptions from actions that would undermine trust obligations.

Prioritize and Increase Funding for Federal Fiduciary Obligations

The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native peoples. Native peoples experience some of the greatest disparities among all populations in this country—including those in health, economic status, education, and housing. Indeed, in December 2018, the U.S. Commission on Civil Rights issued the "Broken Promises" Report, which found deep failures in the delivery of federal fiduciary trust and treaty obligations. The Commission concluded that the funding of the federal trust responsibility and obligations remains "grossly inadequate" and a "barely perceptible and decreasing percentage of agency budgets."

- ✓ Propose budgets that reflect full funding for all federal Indian agencies and programs.
- ✓ Support making all federal Indian funding mandatory rather than discretionary.

Restore Tribal Homelands

USET SPF Tribal Nations continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. And as our partner in the trust relationship, it is incumbent upon the federal government to prioritize the restoration of our land bases. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which

fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions.

- ✓ Advocate for a fix to the fundamentally incorrect Supreme Court decision in *Carcieri v. Salazar*.
- ✓ Prioritize and facilitate a robust trust land acquisition program that provides a streamlined and equitable process to establish and increase Tribal land bases.

Remove Barriers to Economic Development

Economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. Rebuilding of our Tribal Nations involves rebuilding of our Tribal economies as a core foundation of healthy and productive communities. Through inequities in the tax code as well as state dual taxation, revenue generated within Indian Country continues to be taken outside its borders or otherwise falls victim to a lack of parity. Moreover, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code.

- ✓ Confirm the exclusive authority of Tribal governments to assess taxes on all economic activities occurring within our borders.
- ✓ Bring parity to the U.S. tax code that reflects the governmental status of Tribal Nations.

Invest in and Rebuild Tribal Infrastructure

For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country's infrastructure. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure, such as running water and passable roads. According to a report released in 2017 by National Congress of American Indians, there exists at least \$50 billion in unmet infrastructure obligations across Indian Country. The United States must commit to rebuilding the sovereign Tribal Nations that exist within its domestic borders while ensuring that any infrastructure build-out, in Indian Country and beyond, does not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

- ✓ Commit to a Marshall Plan-like investment in Indian Country in recognition of the fact that our current circumstances are directly attributable to shameful U.S. policy.
- ✓ Reform the infrastructure permitting process by requiring Tribal *consent* for projects that significantly impact or threaten Tribal interests.

Promote Truthful Narratives About Tribal Nations and Native People

Despite the invaluable contributions Tribal Nations continue to make to the United States and our great story of perseverance and strength, public perception of Tribal Nations and Native people remains biased, inaccurate, and harmful to our progress. Because of these deeply held misperceptions, Native experiences and voices are largely invisible or fundamentally misrepresented in public discourse. We are a forgotten people in our homelands. These misconceptions are rooted in a failure of the United States to confront its own shameful history, including the atrocities committed against our ancestors and the theft of our lands and resources. It is time for this country to acknowledge and reconcile the complete and truthful story of our relationship—starting with our elected leaders.

- ✓ Ensure all official communications offer an honest depiction of Tribal Nations, Native people, and U.S.-Tribal Nation relations.
- ✓ Educate all federal employees on the history of U.S.-Tribal Nation relations and the federal trust obligation.