



USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted Electronically
To todd.kim@usdoj.gov*

December 14, 2021

Mr. Todd Kim
Assistant Attorney General
Environment and Natural Resources Division
Office of Associate Attorney General
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Re: Call to Appeal Harmful Decision in Seminole Tribe of Florida's Compact Litigation

Dear Mr. Kim,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to urge the Department of Justice to appeal the November 22, 2021 decision of the United States District Court for the District of Columbia regarding the Seminole Tribe of Florida's 2021 Compact. This decision purported to vacate the Department of the Interior's deemed approval of the 2021 Compact based on the District Court's faulty conclusion that the Compact's online sports betting provisions do not comport with the Indian Gaming Regulatory Act (IGRA). The federal government has a trust obligation to the Seminole Tribe of Florida and to Tribal Nations more broadly to defend the 2021 Compact, and thereby promote and uphold Tribal sovereignty. USET SPF calls on the Department of Justice to carry out this trust obligation by immediately appealing the District Court's decision.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and assisting its membership in dealing effectively with public policy issues. The Seminole Tribe of Florida is an integral member of USET SPF.

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), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), 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), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

The 2021 Compact is an important example of a Tribal Nation exercising its Tribal sovereignty so that it may fully participate in the gaming industry, a necessary source of Tribal government revenue. As a direct result of U.S. policies, including those that have created complicated jurisdictional challenges, Tribal governments, unlike other governments, do not generally have a tax base to fund essential services for our citizens. Due to this lack of tax revenue as well as failed trust and treaty obligations, Tribal Nations must look elsewhere to supplement government funding. For many Tribal Nations, economic development (which may include revenue from gaming enterprises) provides the financial base necessary to achieve Tribal self-governance, revitalize our communities, and fund essential government functions, such as social service programs and infrastructure development.

Tribal Nations have—and have always had—the sovereign authority to engage in economic development, including gaming. See Letter from Bryan Newland, Principal Deputy Assistant Secretary – Indian Affairs, Department of the Interior, to Marcellus Osceola, Jr., Chairman, Seminole Tribe of Florida (Aug. 6, 2021), at 7. In 1988, Congress, through IGRA, codified this right in the context of Tribal gaming, recognizing that Tribal gaming revenue serves as necessary Tribal government funding. Through IGRA, Congress authorized Tribal Nations and states to engage in a flexible compacting process for regulation of Class III Tribal gaming—looking to the compacting parties to exercise their own governmental powers to determine how best to regulate the gaming covered under their compact according to their unique factual circumstances.

As Assistant Secretary – Indian Affairs (AS-IA) Bryan Newland recognized in his letter explaining the Department of the Interior’s reasoning for the 2021 Compact’s deemed approval, the gaming industry is ever-changing due to new and emerging technology. See Newland Letter at 6. This is especially true with the expansion of sports betting and online gaming throughout the country today. While IGRA has facilitated a successful means of economic development for many Tribal Nations, we must be able to adapt to these changes or risk losing what for many is our primary source of Tribal government funding.

The 2021 Compact is an example of an historic agreement between a Tribal Nation and a state to allow a Tribal Nation to offer online sports betting under IGRA’s unique regulatory framework designed specifically for Tribal gaming. The need for this kind of agreement between Tribal Nations and states is a reality of the modern digital age. Through this cooperative approach, a Tribal Nation can regulate its internet gaming under one seamless regulatory structure and do so for the purpose of providing Tribal government funding, just as Congress intended in enacting IGRA.

The federal government’s interpretation of IGRA—both through the Department of the Interior’s deemed approval and through the Department of Justice’s merits arguments in the litigation—carries forth its trust obligation to Tribal Nations to interpret federal statutes in the light most favorable to the full exercise of Tribal Nations’ inherent sovereignty. As AS-IA Newland stated in the deemed approval letter, “[t]he Department [of the Interior] must apply the law in a manner that ensures tribes are not hindered from utilizing new technology in an evolving industry.” Newland Letter at 6. And, as set forth in the Department of Justice’s litigation brief, the federal government interpreted IGRA to allow a Tribal Nation and a state to utilize a “hybrid approach” to authorize and regulate the Tribal Nation’s online gaming under state law and IGRA.

The District Court’s decision striking this hybrid approach down has very real consequences for Indian Country. The District Court’s decision concerning the 2021 Compact threatens to erode Tribal sovereignty by forcing Tribal Nations to restrict our online gaming operations to patrons located on our geographically limited Indian lands. It could be read to effectively bar Tribal Nations and states from agreeing to include online gaming in a compact, even when that gaming is authorized by state law. Thus, if the decision stands, Tribal Nations would not be able to compete with the evolving gaming industry. The District Court’s decision would also reduce states’ access to an important source of revenue from which they and their communities

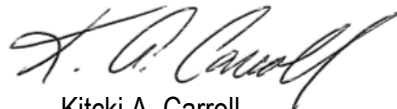
benefit, and it would limit their regulatory authority. The District Court's decision is not required or supported by the text of IGRA or existing precedent. Its decision is also contrary to the determinations of three separate sovereigns—the Seminole Tribe, the State of Florida, and the federal government—that the online sports betting provisions in the 2021 Compact are legal.

We thank you for your time and consideration on this matter, and we encourage you to act quickly to fulfill the federal government's trust obligation by mounting a robust appeal in defense of IGRA and Tribal sovereignty. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Francis', written over a horizontal line.

Kirk Francis
President

A handwritten signature in black ink, appearing to read 'K. A. Carroll', written in a cursive style.

Kitcki A. Carroll
Executive Director