



USET

SOVEREIGNTY PROTECTION FUND

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Submitted via email to:
krobinson@uniformlaws.org

Katie Robinson
Senior Director for Strategy & Communications
Uniform Law Commission

Re: USET SPF Comments on Whether Uniform Law Commission Should Pursue Uniform or Model ICWA State Law

Dear Ms. Robinson,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to provide comments to the Uniform Law Commission Study Committee on Indian Child Welfare Act (ICWA) Issues. We understand the ULC is considering whether to draft a uniform or model state law that would include the protections of ICWA and clarify and improve upon it. These written comments respond to the ULC's Dear Tribal Leader Letter dated August 21, 2023, requesting Tribal input.

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 in assisting its membership in dealing effectively with public policy issues.

First and foremost, we appreciate the ULC's consideration of a uniform or model state ICWA law. Many Tribal Nations do not have the capacity or resources required for drafting and advocating for such legislation. Further, some states that are home to Native children do not have a Tribal Nation presence that is able to advocate in that space. We believe that a carefully crafted uniform or model state ICWA law would help address these issues.

However, USET SPF stresses the importance of the ULC deferring to Tribal Nations regarding the need for, content, and advocacy around any uniform or model state ICWA law. Unlike other stakeholders the ULC

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), Mi'kmaq Nation (ME), 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

may work alongside, Tribal Nations are inherently sovereign political entities possessing on-the-ground knowledge regarding family law best practices for our own people. Tribal Nations have also experienced centuries of laws imposed upon us, almost always to our detriment. We must have a seat at the table and decision-making control over any new law that will affect us or our people. The ULC has demonstrated that it is taking Tribal Nation involvement seriously by including key tribal advocates in leadership roles and consulting early and often with Tribal Nations, and we encourage the ULC to continue this approach.

Additionally, it is imperative that any uniform or model state ICWA law be designed with ongoing constitutional attacks in mind. The very foundations of federal Indian law have been challenged in two recent ICWA cases before the U.S. Supreme Court, and we must be mindful not to add any fuel to those legal arguments. We know the ULC is well aware of these attacks, and we encourage the ULC to proceed with caution and an eye toward strengthening Indian Country's litigating position. We recommend the ULC engage with federal Indian law attorneys arguing in these cases.

Should the ULC decide to move forward in drafting a uniform or model state ICWA law, we look forward to engaging with you on its substance. We hope any uniform or model state ICWA law better reflects the need for state child welfare agencies to work closely with Tribal Nations once a child is determined to be Native.

We look forward to the opportunity to provide further comments as the initiative proceeds. 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. Thank you for your attention to this important matter.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director