



USET

SOVEREIGNTY PROTECTION FUND

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USET SPF Resolution No. 2018 SPF:007

SUPPORT FOR THE ASSERTION OF TRIBAL SOVEREIGNTY AND SELF-DETERMINATION IN ECONOMIC DEVELOPMENT MATTERS

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-seven (27) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** Tribal sovereignty is an inherent authority exercised by all federally-recognized Tribal Nations and has existed continuously since before European contact; and,
- WHEREAS,** the United States (U.S) Constitution, U.S. Supreme Court decisions, and hundreds of treaties, federal statutes, and regulations all recognize that Tribal Nations are distinct governments with inherent rights, powers, privileges, and authorities; and
- WHEREAS,** Tribal Nations have a unique government-to-government and trust relationship with the U.S.; and,
- WHEREAS,** each Tribal Nation that is a member of USET SPF provides essential services to its citizens including education, housing, health care, and public safety, raising Tribal governmental revenue for these services through the operation of enterprises including the provision of goods and services in the marketplace; and
- WHEREAS,** sovereign immunity from suit is the right of all governments in the U.S., including federal, state and Tribal governments. The purpose is to provide protection against loss of assets held in common for many people for the performance of vital government functions. The federal government has a longstanding obligation under the Constitution, treaties, and hundreds of court cases to protect Tribal self-government. Any federal abrogation of Tribal immunity runs sharply counter to this obligation, and would substantially interfere with Tribal self-governance, and place Tribal assets and funds at risk; and
- WHEREAS,** in 2014, the U.S. Supreme Court reaffirmed the validity of the broad and sweeping doctrine of Tribal sovereign immunity from suit [*Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024 (2014)]; and
- WHEREAS,** Tribal Nations also have the inherent right to conduct economic development activities for the purpose of raising revenues for the benefit of the Tribal Nation and their citizens, in order to achieve the dual goals of self-determination and self-governance; and
- WHEREAS,** in furtherance of these goals, USET SPF member Tribal Nation, the Saint Regis Mohawk Tribe (SRMT), recently entered into a transaction pursuant to which SRMT has gained

ownership of certain patents in exchange for a lump sum and annual royalty payments that will be used for essential governmental purposes; and

WHEREAS, the SRMT has asserted its sovereign immunity from suit in a pending action regarding the validity of the acquired patents in inter partes review (“IPR”) proceedings before the U.S. Patent Trial and Appeal Board; and

WHEREAS, unlike recent successful assertions of sovereign immunity by state entities in the IPR proceedings, there has been considerable press coverage and reaction by members of Congress to SRMT transaction and use of sovereign immunity as a defense to IPR proceedings; including requests for an investigation, scheduling of Congressional hearings, and introduction of legislation that would abrogate Tribal sovereign immunity; and

WHEREAS, in December 2010, the U.S. recognized the rights of its First Peoples through its support of the United States Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it

RESOLVED the USET SPF Board of Directors strongly opposes any legislative attempt to abrogate Tribal sovereign immunity in any proceeding or forum; and, be it further

RESOLVED the USET SPF Board of Directors urges Congress, as part of its review of the America Invents Act, Public Law 112-29, and issues surrounding sovereign immunity from inter partes review or other Patent Trial and Appeal Board proceedings, to preserve Tribal sovereign immunity in parity with state sovereign immunity in any future amendments to America Invents Act; and, be it further

RESOLVED the USET SPF Board of Directors will take all steps necessary and appropriate to oppose any legislation or effort to modify or abrogate Tribal sovereign immunity.

CERTIFICATION

This resolution was duly passed at the USET SPF Annual Meeting, at which a quorum was present, in Cherokee, NC, October 12, 2017.



Chief Kirk E. Francis, Sr., President
United South and Eastern Tribes, Inc.



Chief Lynn Malerba, Secretary
United South and Eastern Tribes, Inc.

Because there is Strength in Unity