



# USET

SOVEREIGNTY PROTECTION FUND

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## USET SPF Resolution No. 2018 SPF:018


### **REFUTING STATEMENTS REGARDING CONSTITUTIONALITY OF FEDERAL INDIAN LAW**


- 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,** recent statements made by Administration officials and arguments pursued by litigating plaintiffs indicate either a profound misunderstanding of or a desire to reevaluate the constitutionality of United States actions intended to carry out the United States' trust responsibility to American Indians and Tribal Nations, specifically as they relate to the equal protection clause under the Constitution; and
- WHEREAS,** to find that United States actions targeted at American Indians and Tribal Nations violate the Constitution's equal protection clause would have drastic impacts on the United States' ability to carry out its trust responsibilities to Tribal Nations and would be entirely inconsistent with well-settled law; and
- WHEREAS,** Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty they possess as self-governing Nations predating the founding of the United States, and since its founding, the United States has recognized them as such and entered into treaties with them on that basis; and
- WHEREAS,** through treaty-making and its general course of dealings, the United States has taken on a special and unique trust responsibility and obligation to American Indians and Tribal Nations; and
- WHEREAS,** the Constitution recognizes that Tribal Nations have a unique status stemming from their sovereignty and relationship with the United States, and it contains provisions specifically directed at American Indians and Tribal Nations that give the United States the tools necessary to carry out the trust responsibility and obligations; and
- WHEREAS,** in 1974, the Supreme Court in *Morton v. Mancari* affirmed that the United States can lawfully treat American Indians and Tribal Nations differently from other groups in carrying out its trust responsibility and obligations without running afoul of Constitution's equal protection clause; and
- WHEREAS,** the Court explained that such treatment is not directed at a suspect racial classification, but rather, at a unique and non-suspect class recognized and provided for within the Constitution, where such recognition arises from the United States' political relationship with Tribal Nations as separate sovereigns; and

- WHEREAS,** the Court went on to mandate that, as long as the United States' action furthers its "unique obligation toward the Indians," it will survive review under the Constitution's equal protection clause; and
- WHEREAS,** since *Morton v. Mancari*, courts have continuously upheld the principle that United States actions directed at American Indians and Tribal Nations in furtherance of its trust responsibility do not unconstitutionally target a racial classification, including the Supreme Court and every United States Circuit Court of Appeals that has discussed the issue; and
- WHEREAS,** since federal agencies may act to aid in carrying out the United States' trust responsibility, courts have applied the equal protection principles affirmed in *Morton v. Mancari* to uphold as constitutional federal agencies' acts directed at American Indians and Tribal Nations in furtherance of the trust responsibility, and they have not required the agencies to be acting under a specific statute targeted at American Indians or Tribal Nations; and
- WHEREAS,** similarly, since states may act to aid in carrying out the United States' trust responsibility, courts have applied the equal protection principles affirmed in *Morton v. Mancari* to uphold as constitutional states' acts directed at American Indians and Tribal Nations in implementing federally funded programs; and
- WHEREAS,** since statutes that prohibit race-based discrimination, such as the Civil Rights Act, incorporate equal protection jurisprudence regarding suspect classifications, United States actions directed at American Indians and Tribal Nations in furtherance of the trust responsibility do not qualify as statutorily prohibited race-based discrimination; and
- WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations 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 refutes in the strongest possible terms the notion that any federal Indian program implicates the equal protection clause of the United States Constitution and this is a fact upheld in federal law, policy, and caselaw; and, be it further
- RESOLVED** the USET SPF Board of Directors calls upon the Administration and Congress to ensure all policy making, statements, and other federal actions reflect the indisputable constitutionality of United States actions aimed at carrying out the trust responsibility and obligations owed to American Indians and Tribal Nations.

#### CERTIFICATION

This resolution was duly passed at the USET SPF Impact Week Meeting, at which a quorum was present, in Arlington, VA, February 8, 2018.

  
Chief Kirk E. Francis, Sr., President  
United South and Eastern Tribes  
Sovereignty Protection Fund

  
Chief Lynn Malerba, Secretary  
United South and Eastern Tribes  
Sovereignty Protection Fund

*Because there is Strength in Unity*