



# USET

SOVEREIGNTY PROTECTION FUND

Nashville TN Office  
711 Stewarts Ferry Pike, Ste. 100  
Nashville TN 37214  
P: (615) 872-7900  
F: (615) 872-7417

Washington DC Office  
400 North Capitol St., Ste. 585  
Washington DC 20001  
P: (202) 624-3550  
F: (202) 393-5218

## **USET SPF Testimony for the Record of the House Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions Hearing on, "H.R. 986, "Tribal Labor Sovereignty Act of 2017"**

**April 12, 2017**

United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the House Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions with testimony for the record of its March 29th hearing on, "H.R. 986, "Tribal Labor Sovereignty Act of 2017." USET SPF strongly supports H.R. 986, legislation that respects and upholds Tribal sovereignty and self-determination by ensuring that Tribal governments, like state and local governments, are able to determine their own labor practices.

USET SPF is a non-profit, inter-tribal organization representing 26 federally recognized Tribal Nations from Texas across to Florida and up to Maine<sup>1</sup>. 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. This includes advocating for the full exercise of inherent Tribal sovereignty.

In recognition of Tribal sovereignty, it is imperative that Tribal governments achieve parity with state and local governments in all areas, including employment. To that end, we urge this Committee and this Congress to approve the *Tribal Labor Sovereignty Act*.

The National Labor Relations Act (NLRA) generally exempts state, local, and territorial governments from its application. For nearly 70 years, the National Labor Relations Board included Tribal governments in this exemption.

In 2004, however, the National Labor Relations Board (NLRB) reversed decades of its own precedent and established "a new standard for determining the circumstances under which the Board will assert jurisdiction over Indian owned and operated enterprises." *San Manuel Indian Bingo*, 341 NLRB No. 138 (May 28, 2004). Absent Tribal consultation or new regulations, the NLRB ruled that Tribal governments are subject to the NLRA when acting more "commercially" than "governmentally," a distinction and classification that the NLRB has never applied to state and local governments operating enterprises, liquor stores, lotteries, and providing other goods and services in the marketplace.

Like other governments, Tribal governments are responsible for the provision of essential governmental services to their citizens, including health care, education, law enforcement, housing, and social services.

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<sup>1</sup> 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), 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), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), 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).

And as with other governments, these services are delivered through the generation of governmental revenue, the operation of enterprises, and the provision of goods and services in the marketplace. As the federal trust responsibility continues to be severely and chronically underfunded, and Tribal Nations are left without a tax base due to inequities in the tax code, we depend upon our enterprises to uphold our obligations to our citizens.

The *Tribal Labor Sovereignty Act* simply restores parity to NLRB's approach to its application of the NLRA to sovereign governments across the United States by amending the law to expressly exempt Tribes. It promotes and acknowledges Tribal sovereignty, recognized by the Constitution, the courts, and numerous laws, by respecting a Tribe's ability to self-govern within its own jurisdiction.

In the spirit of governmental parity, USET SPF urges the House Committee on Education and the Workforce to expedite its consideration of H.R. 986, which passed the House with strong bi-partisan support in the 114<sup>th</sup> Congress, and to work towards its swift passage. 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](mailto:lmalerba@usetinc.org) or (202)-624-3550.