



# USET

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**Testimony of United South and Eastern Tribes Sovereignty Protection Fund Submitted to the Senate Committee on Indian Affairs for the Record of the November 8, 2017 Legislative Hearing to Receive Testimony on S.1400, *The Safeguarding Tribal Objects of Patrimony Act of 2017* and S.465, *The Independent Outside Audit of the Indian Health Service Act of 2017***

**November 22, 2017**

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of its November 8, 2017 legislative hearing on S.1400, *The Safeguarding Tribal Objects of Patrimony (STOP) Act of 2017*, and S.465, *The Independent Outside Audit of the Indian Health Service Act of 2017*.

USET SPF is an intertribal organization comprised of twenty-seven federally recognized Tribal Nations, ranging from Maine to Florida to Texas<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.

### **Safeguarding Tribal Objects of Patrimony Act of 2017**

USET SPF registers our strong support for the STOP Act of 2017. The protection of our sacred cultural items is essential to the survival of our cultures. For too long, USET SPF Tribal Nations, and Tribal Nations across the country, have faced the ongoing theft and commercial sale of our sacred cultural objects. These sales have occurred both nationally and internationally, despite current federal law aimed at protecting items of cultural patrimony. The desecration of our cultural objects, which often include human remains, must stop, and these items must be returned to our people.

Stronger penalties are urgently needed to deter the illegal conduct by which these sacred items are obtained and sold. The STOP Act of 2017 would make necessary changes to existing federal law by increasing penalties, explicitly prohibiting exportation of cultural items, and providing immunity for the voluntary repatriation of cultural objects. Further, the STOP Act calls upon the federal government to form Tribal working groups to advise and help federal agencies fully understand the scope of these problems and how to solve them.

USET SPF believes that stronger penalties will discourage illegal conduct and even lead to a dialogue with the holders of these cultural objects that will enable their safe return home. The ability of Tribal Nations to rebuild and create a healthy future depends, in large part, on how we are able to understand our respective pasts. Our cultural and sacred items provide a vital link to our history, our ceremonies, and our way of life.

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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), 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), 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).

USET SPF commends Senator Martin Heinrich, and cosponsors, for the introduction of the STOP Act and calls upon Congress for its swift passage.

### **Independent Outside Audit of the Indian Health Service Act of 2017**

The manager's amendment to S.465, *The Independent Outside Audit of the Indian Health Service Act of 2017*, would require the Inspector General (IG) of the Department of Health and Human Services (HHS) to conduct an assessment of IHS' health care delivery systems and financial management processes at IHS direct-care facilities. If the IG does not conduct the assessment after 180 days, then HHS would be required to enter into one or more contracts with an independent, private entity to conduct the assessment. The assessment would focus on several issue areas including: the demographics and health care needs of the patient population, health care capabilities and resources, staffing levels and productivity health care providers, and information technology strategies, among others.

USET SPF appreciates Senator Rounds' and SCIA's efforts to address the ongoing health care delivery issues within the Great Plains Area and understands that S. 465 is a response to this crisis. However, we have a number of concerns with both the legislation as introduced and the Senator's proposed manager's amendment. USET SPF feels a broad, one-size-fits-all approach to addressing these problems is unwarranted. S. 465 seems to be a national response to regional, Area-specific concerns. Not all twelve IHS Areas are experiencing these same types of failures, and there are lessons to be learned from the best practices they employ. Yet, S. 465 does not examine best practices across the IHS system, and many of the issues the bill seeks to examine are currently being reviewed or have previously been reviewed by the Government Accountability Office (GAO) and other entities.

#### Effect on Self-Governance Facilities and Indian Health System

We acknowledge the Senator's work in responding to concerns with S. 465 by issuing a manager's amendment clarifying the assessment would apply only to IHS-run facilities. However, it is important to note that regardless of the assessment's scope, it has the potential to impact the entire Indian Health System. For example, all Tribal Nations utilize the Purchased/Referred Care (PRC) Program for the purchase of care outside of IHS and Tribal facilities. Both the bill and the manager's amendment seek a review of the authorities under which outside care is furnished. GAO is currently reviewing this program and providing its recommendations to IHS' PRC Workgroup. It is unclear, then, whether the review prescribed by S. 465 is necessary and what effect it might have on the implementation of GAO recommendations occurring at the time of passage. In addition, the Senator has indicated this bill is designed to lay the groundwork for additional legislative action reforming IHS. Resulting legislation that seeks changes in funding levels, formulas, or management processes is unlikely to be limited to Direct Service units.

#### Assessment of the Indian Health Service

While USET SPF fully agrees that the devastating failures of the Great Plains IHS Area must be accounted for and fully addressed, an assessment of this magnitude, whether internal or external, is likely to divert much needed funding and/or attention away from patient care, a violation of the federal trust responsibility. IHS witness, Elizabeth Fowler, included this concern in her written testimony. Vital healthcare resources must be not be redirected to provide information that, in many cases, has already been provided to Congress and the public. We agree with IHS that 180 days is an insufficient timeframe for an internal assessment.

Additionally, we continue to have concerns that an external entity may not have experience with the Indian Health System, a requirement to interpret any data collected. The Indian Health System, while in some ways similar to Veteran's Affairs, is the only federal health care system operating in

fulfillment of a legal and moral trust responsibility to its patients. Its purpose, goals, and processes reflect the unique nature of this responsibility. USET SPF contends that a majority of outside entities will not have the knowledge or perspective required to properly assess IHS. The language of S. 465 and its manager's amendment must reflect the need for any outside entity to have expertise in Indian Health.

#### Continued Need for Tribal Consultation

In addition, it is problematic that this bill was introduced without broad Tribal consultation. Legislation that attempts to address issues within IHS through Congressional action, or otherwise, must be accomplished through extensive Tribal consultation. It is similarly troubling that neither the bill as written nor the manager's amendment requires consultation with Tribal Nations during the assessment/audit process or prior to the issuance of the resulting report. Tribal Nations, the recipients of care provided by IHS, must provide guidance during the assessment and have the opportunity to comment on the results of any assessment. We must have the ability to dictate how the information in the report will be presented and utilized.

#### Chronic Underfunding Contributes to Failures

Further, although USET SPF supports innovative legislative solutions to improve the quality of service delivered by IHS, we continue to underscore the obligation of Congress to meet its trust responsibility by providing full funding to IHS. Any deficiencies that could be identified within IHS through an assessment are, at least in part, a direct result of the chronic underfunding of the Indian Health System. Providing quality healthcare can only be accomplished when programs within the Indian Health System are fully funded. USET SPF is deeply concerned by continued rhetoric suggesting that increased appropriations to IHS will not address problem areas. We continue to assert that it is disingenuous to fund a health system at just under 60% of identified obligation and expect that system to operate properly.

The U.S. has a legal and moral trust responsibility to Tribal Nations that has been reaffirmed time and time again and are the result of millions of acres of land and resources ceded to the U.S. to provide benefits and services in perpetuity to AI/ANs. The most recent reaffirmation of this trust responsibility was articulated in 2010 through the permanent reauthorization of the Indian Health Care Improvement Act when, "Congress declare[d] that it is the policy of this nation, in fulfillment of its special trust responsibilities and legal obligations to Indians to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy." Until Congress fully funds the IHS, the Indian Health System will never be able to fully overcome its challenges and fulfill its trust obligations. At a minimum, S. 465 should examine how the underfunding of IHS contributes to its operational shortcomings.

USET SPF acknowledges the efforts of the Committee seeking to address the long-standing challenges at IHS. However, we believe that S. 465 is duplicative of current, governmental efforts and would redirect vital funding to private entities and away from patient care. While we stand with our brothers and sisters who are experiencing failures in health care delivery, we ask that the Committee strongly consider the national consequences of S. 465 and work with Tribal Nations to come to a resolution that is beneficial for all IHS Areas. USET SPF maintains that until Congress fully funds the IHS, the Indian Health System will never be able to fully overcome its challenges and fulfill its trust obligations.