



# 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

November 3, 2017

The Honorable Darrell Issa  
Chairman  
House Subcommittee on Courts, Intellectual Property, and the Internet  
2138 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Issa,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to register our strong opposition to any Congressional attempts to abrogate Tribal sovereign immunity, including in cases related to intellectual property. As Congress reviews and considers amendments to the America Invents Act, PL 112-119, it must preserve Tribal sovereign immunity in parity with state sovereign immunity.

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.

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. When Tribal Nations exercise our sovereign immunity rights, we are invoking the same authorities successfully employed by the federal government and state governments (including through public universities).

Sovereign immunity is a foundational aspect of self-government, not a 'loophole', as some have suggested. 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. We urge the Subcommittee to ensure this foundational doctrine is upheld, and reject any actions that would undermine our sovereign rights and authorities.

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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).

Should you have questions or require further information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (202) 624-3550 or by e-mail at [lmalerba@usetinc.org](mailto:lmalerba@usetinc.org).

Sincerely,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director

CC: Members of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Enclosure: USET SPF Resolution SPF 2018:007



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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*