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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 April 18, 2018 Committee Oversight Hearing on, “The 30th Anniversary of Tribal Self-Governance: Successes in Self-governance and an Outlook for the Next 30 Years”

May 2, 2018

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we are pleased to provide the Senate Committee on Indian Affairs with the following testimony for the record of the Committee’s oversight hearing, “The 30th Anniversary of Tribal Self-Governance: Successes in Self-governance and an Outlook for the Next 30 Years,” held on April 18th, 2018.

USET SPF is an intertribal organization comprised of twenty-seven federally recognized Tribal Nations, ranging from Maine to Florida to Texas¹. 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.

USET SPF appreciates the Committee’s efforts to commemorate a milestone anniversary of the passage of the 1988 Amendments which introduced a new phase in the evolution toward Tribal self-governance under the Indian Self-Determination and Education Assistance Act (ISDEAA). Tribal Nations are distinct, independent, political communities exercising powers of self-government by virtue of their own inherent sovereignty. The Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that in return for ceding the millions of acres that comprise the United States, the federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. However, for hundreds of years, federal policymaking undermined our sovereignty, instead treating Tribal Nations as incompetent “wards.” The landmark passage of ISDEAA and its subsequent amendments represented a fundamental change in federal policy and approach to Tribal Nations. It re-acknowledged that Tribal Nations are governments, fully capable of managing our own affairs and destiny. Below, USET SPF provides recommendations on how Congress must continue to improve and expand Tribal self-governance to meet the federal trust obligation, as well as provides an overview of the impact self-governance has had within the USET SPF region.

Importance of Tribal Self-Governance

Since time immemorial, Tribal Nations have engaged in sophisticated and established forms of self-government. This was initially recognized by the founders of the United States, although the federal government later moved on to an approach based upon the notion of domestic dependency and plenary

¹ 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).

authority. To this day, Tribal Nations have demonstrated that we are best-positioned to deliver essential government services to our citizens, including through the assumption of federal programs and services. This is because Tribal Nations are directly accountable to the people we represent, acutely aware of the problems our communities face, and can respond immediately and effectively to changing circumstances. Since 1968, every Congress and President has recognized that Tribal governments are the entities best suited to meet the needs of their communities, working to reject previous antiquated assumptions from the 19th century that Indian people were incompetent to handle their own affairs and that Tribal Nations would eventually become obsolete. Passage of the ISDEAA 30 years ago was a further recognition and partial restoration of our inherent sovereignty and self-determination.

The success of self-governance under the ISDEAA is reflected in the significant growth of Tribal self-governance programs over the years. A majority of USET SPF Tribal Nations engage in self-governance compacting or contracting to provide essential government services including providing vital services such as education, housing, health care, and public safety. For example, our member Tribal Nations operate in the Nashville Area of the Indian Health Service, which contains 36 IHS and Tribal health care facilities, of which 22 are Tribally-operated through contracts and compacts. Through exercising this self-governance authority under ISDEAA, USET SPF Tribal Nations have greater flexibility and control over federally funded programs to more efficiently and effectively utilize funding to meet the unique conditions within our Tribal communities. ISDEAA provides a fiduciary model that acknowledges the inherent rights and self-governance authorities of Tribal Nations.

Expansion of Tribal Self-Governance to all Federal Programs and Funding

Despite the success of Tribal Nations in exercising authority under ISDEAA, the goals of self-governance have not fully been realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. USET SPF, along with Tribal Nations and organizations, has consistently urged that all federal programs and dollars be eligible for inclusion in self-governance contracts and compacts. We urge the Committee and Congress to draft and approve legislation that would initiate this expansion. We must move beyond piecemeal approaches directed at specific functions or programs and start ensuring Tribal Nations have real decision-making in the management of their own affairs and assets. It is imperative that Tribal Nations have the expanded authority to redesign additional federal programs to serve best their communities as well as have the authority to redistribute funds to administer services among different programs as needed. The Committee and Congress must modernize the current self-governance model in manner that is consistent with Tribal self-determination in the 21st century and rooted in retained sovereign authority.

Examinations into expanding Tribal self-governance administratively have encountered barriers due to the limiting language under current law, as well as the misperceptions of federal officials. USET SPF stresses to the Committee that if true expansion of self-governance is only possible through legislative action, the Committee and Congress must prioritize legislative action on the comprehensive expansion of Tribal self-governance. This will modernize the federal fiduciary responsibility in a manner that is consistent with our sovereign status and capabilities. As an example, in 2013, the Self-Governance Tribal Federal Workgroup (SGTFW), established within the Department of Health and Human Services (HHS), completed a study exploring the feasibility of expanding Tribal self-governance into HHS programs beyond those of IHS and concluded that the expansion of self-governance to non-IHS programs was feasible but would require Congressional action. However, despite efforts on the part of Tribal representatives to the SGTFW to attempt to move forward in good faith with consensus positions on expansion legislation, these efforts were stymied by the lack of cooperation by federal representatives. USET SPF urges the Committee and

Because there is Strength in Unity

Congress to use its authority to work to legislatively expand Tribal self-governance to all federal programs where Tribal Nations are eligible for funding, in fulfillment of the unique federal trust responsibility to Tribal Nations.

Support for the PROGRESS for Indian Tribes Act

USET SPF supports the enhancement of Tribal self-governance by making the DOI self-governance program consistent with its IHS counterpart in Title IV, which is included within S.2515, the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2018 (or PROGRESS for Indian Tribes Act). USET SPF also supports the goals and provisions within the legislation that seeks streamline the self-governance process within the Department of the Interior and provide greater flexibility to Tribal Nations to administer federal programs to the needs of our communities. The introduction of the PROGRESS for Indian Tribes is a step in the right direction when it comes to upholding the sovereign status of Tribal Nations and USET SPF encourages the Committee to continue to take these necessary steps to expanding these authorities to all federal programs under ISDEAA.

Reporting Requirements do not Reflect Sovereign Status

Further, USET SPF strongly recommends the Committee consider modifications to reporting requirements under ISDEAA and other methods of funding distribution. The administrative burden of current reporting requirements under ISDEAA including site visits, “means testing,” or other inapplicable standards developed unilaterally by Congress or federal officials are barriers to efficient self-governance and do not reflect our government-to-government relationship. Because funding for federal Indian affairs is provided in fulfillment of clear legal and historic obligations, those federal dollars should not be subject to these extraneous standards. USET SPF points out that federal funding directed to foreign aid and other federal programs are not subject to the same scrutiny. We reiterate the need for the federal government to treat and respect Tribal Nations as sovereigns as it delivers upon the fiduciary trust obligation, as opposed to grantees.

Promoting Inter-Agency Transfers through Contracting and Compacting

As Congress works to ensure all federal dollars are contractible and compactable, USET SPF calls upon the members of this Committee to ensure legislation fully supports inter-agency transfers through self-governance contracts and compacts. This is an opportunity to take steps toward self-governance within other federal agencies. For example, the Environmental Protection Agency (EPA) has a long track record of collaborating successfully with Tribal Nations and Tribal organizations, dating back at least to the agency’s 1984 Indian Policy. This includes routinely collaborating with the Bureau of Indian Affairs, so that funding may be received through ISDEAA mechanisms. However, as USET SPF recently sought to utilize this model for the development of a Tribal risk and sustainability tool, there were differences in opinion between various agencies and operating divisions involved as to whether this was permitted. USET SPF urges that clarity be provided to ensure the use and promotion of this model in support of the continued expansion of self-governance.

Conclusion

Though the recognition of Tribal self-governance through the passage and implementation of ISDEAA was a major advancement in the recognition of our sovereign status, USET SPF strongly encourages the Committee to move beyond its current limitations. Congress must recognize the inherent right of Tribal Nations to fully engage in self-governance and expand the authority of Tribal governments, so we may exercise real decision-making in the management of our own affairs and services provided to our citizens. USET SPF reminds the Committee that Tribal Nations each have unique capabilities, goals, and concerns, and when Tribal Nations serve our own communities, these objectives are addressed in a more targeted

and efficient manner. We urge the Committee to explore opportunities to better recognize and promote Tribal self-governance and self-determination, and stand ready to assist to ensuring sovereignty is exercised to its fullest extent. 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 or 202-624-3550.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director