



USET

SOVEREIGNTY PROTECTION FUND

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USET SPF Resolution No. 2020 SPF:015

CONDEMNING THE DECISION OF THE FEDERAL DISTRICT COURT LIMITING THE SOVEREIGN AUTHORITY OF THE WAMPANOAG TRIBE OF GAY HEAD (AQUINNAH)

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty (30) 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,** sovereignty of Tribal Nations pre-dates the United States, with prior and treaty protected rights to self-government and to our Tribal lands; and
- WHEREAS,** the United States Constitution, through the Treaty, Commerce, and Apportionment Clause, recognizes the sovereignty of Tribal Nations as governments established prior to the United States; and
- WHEREAS,** in *California v. Cabazon* (1987) the Supreme Court of the United States reaffirmed the inherent right of Tribal Nations to conduct Indian gaming as an essential element of self-government, free from state interference; and
- WHEREAS,** in 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA) to affirm the inherent authority of Tribal governments to conduct Indian gaming, to strengthen Tribal governments, and foster Tribal economic self-sufficiency; and
- WHEREAS,** Congress established the National Indian Gaming Commission (NIGC) to oversee Class II gaming, to ensure the public's health and safety, approve Tribal gaming ordinances, review background checks, and review financial audits; and
- WHEREAS,** for more than 40 years, Tribal Nations have successfully utilized gaming revenues to rebuild Tribal communities, governments, and economies, thereby fulfilling the goals and intent of the IGRA; and
- WHEREAS,** in 1987, following prolonged litigation, Congress passed the Massachusetts Indian Land Claims Settlement Act settling the land claims of the Wampanoag Tribe of Gay Head (Aquinnah) ("Tribal Nation"); and
- WHEREAS,** in November 2011, the Massachusetts General Court passed the Massachusetts Expanded Gaming Act legalizing commercial gaming within the Commonwealth of Massachusetts; and
- WHEREAS,** following the NIGC approval of its Gaming Ordinance and a positive Indian Lands Determination issued by the Department of Interior (DOI), the Tribal Nation began pursuing Tribal gaming on its existing Settlement lands held in trust by the United States; and

- WHEREAS** the Town of Aquinnah (“Town”), the Commonwealth of Massachusetts (“Commonwealth”) and the Aquinnah/Gay Head Community Association (AGHCA) sued the Tribal Nation claiming that the Tribal Nation had no right to conduct gaming on its Indian Lands and could not move forward with the construction of its gaming facility without receiving approvals from the Town; and
- WHEREAS,** in July 2015, the Town, the Commonwealth, and the AGHCA were granted an injunction against the Wampanoag Tribe of Gay Head which prohibited the Tribal Nation from building a Class II gaming facility on its Settlement Lands without obtaining a Town building permit and complying with Town and Commonwealth building codes; and
- WHEREAS,** the Tribal Nation appealed to the First Circuit Court of Appeals arguing that the IGRA preempted the Settlement Act and, in April 2017 the First Circuit Court of Appeals agreed with the Tribal Nation granting judgment in favor of the Tribal Nation and remanding the case to the District Court, ordering it to reverse its decision and enter final judgment in favor of the Tribal Nation; and
- WHEREAS,** the Town, AGHCA, and the Commonwealth filed a Petition for Certiorari to the Supreme Court of the United States and the Petition for Certiorari was denied in January 2018; and
- WHEREAS,** in 2019 the Tribal Nation began developing its Class II gaming facility on its Trust Lands; and
- WHEREAS,** despite the direction of the First Circuit Court of Appeals, the District Court never entered the final judgment in favor of the Tribal Nation, and on April 4, 2019, the Town and the AGHCA filed a Motion for Entry of Final Judgment, however they requested that the order contain a provision which would preserve the injunction and require the Tribal Nation to obtain a building permit from the Town for the construction, occupation operation of gaming, and force the Tribal Nation to comply with all Town and Commonwealth building codes, and grant the Town enforcement authority over the construction and operation of the Tribal gaming facility; and
- WHEREAS,** the Tribal Nation opposed the entry of the judgment as proposed by the Town; arguing that because the IGRA preempts the Settlement Act and because the IGRA specifically grants the NIGC the exclusive authority to ensure the public’s health and safety with regard to Class II gaming facilities on Indian lands, and to regulate the construction and operation of Tribal gaming facilities, and that the Town and Commonwealth are preempted from regulating and enforcing Town and Commonwealth laws over the construction, occupancy and operation of the Tribal Nation’s Class II gaming facility; and
- WHEREAS,** on June 19, 2019, the District Court issued an order in favor of the Town, which threatens the Tribal Nation’s sovereignty and its joint jurisdiction with the NIGC over the construction, operation and occupancy of its Class II gaming facility, leading the Tribal Nation to file an appeal to the First Circuit Court of Appeals; and
- WHEREAS,** the Town’s attempt to regulate the construction, occupancy and operation of a Tribal Class II gaming facility disregards the intentions of Congress and the DOI in affirming the inherent right of Tribal Nations to conduct Indian gaming as an essential element of

Tribal self-government, free from state interference; and

WHEREAS, any potential Federal Circuit Court decision affirming this District Court's decision to allow a state or town government to interfere with a Tribal Nation's right to self-governance over its building, occupancy and operation of its Class II gaming facility on its Indian Lands has far reaching implications for all of Indian Country and the ability of Tribal Nations to promote Tribal sovereignty and self-government through their exercise of sovereignty through gaming; and

WHEREAS, the affirmation of such a disastrous decision not only would undermine a Tribal Nation's right to determine, adopt and enforce its own public safety standards, building codes and regulations, and could potentially affect Tribal Nations' negotiating leverage with regard to Class III compact negotiations, and

WHEREAS, any negative court determination that affects one Tribal Nation, affects all Tribal Nations; and

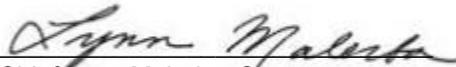
WHEREAS, in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it

RESOLVED that USET SPF condemns the holding of the District Court and calls upon that court and/or the First Circuit to reverse this faulty decision and affirm the sovereign right of the Wampanoag Tribe of Gay Head (Aquinnah) to fully exercise their sovereignty and powers of self-governance over their Tribal lands.

CERTIFICATION

This resolution was duly passed at the USET SPF Annual Meeting held on the Sovereign Territory of the Mississippi Band of Choctaw Indians at which a quorum was present on November 7, 2019.


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