

INDIAN COUNTRY ISSUES FOR ADVOCACY

REFUTING CONSTITUTIONAL CHALLENGES

USET SPF has consistently defended against attacks on the constitutionality of the United States' delivery on its trust and treaty obligations to sovereign Tribal Nations and Native people. Arguing the unconstitutionality of programs, laws, spending, and exemptions specific to Tribal Nations and Native people flies in the face of well-settled law that defines our relationship with the United States and our own people as political in nature and not based on race. Indian Country must remain vigilant and continue to challenge and oppose any efforts that seek to undermine the constitutionality of our relationship, our sovereignty, or delivery on trust and treaty obligations owed to us.

Many of the foundational principles of federal Indian law and policy are embedded in judicial decisions—including the United States' recognition of our inherent sovereignty and its own trust and treaty obligations to us. This means, not only is Indian Country at risk of congressional and executive acts that chip away at Tribal Nations' rights and authorities, but Indian Country is also at risk of the U.S. courts of the colonizer changing the underlying rules that shape federal Indian law to make them more harmful.

It is critically important that all of Indian Country recognize and appreciate the magnitude of current challenges and their broader implications. USET SPF continues to work with partners in order to ensure a strong, coordinated advocacy and litigation message from Indian Country, both for the short and long term. Together, we are working to ensure that the strong legal basis of our relationship with the United States is the focus of our argument.

RESTORATION OF TRIBAL HOMELANDS

Tribal Nations continue to work to reacquire title and jurisdiction over our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. Jurisdiction over a territorial land base is at the heart of sovereignty. In fulfillment of trust and treaty obligations to our Nations, the federal government must support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands and territorial land bases to all federally recognized Tribal Nations, as well as the legal defense of these acquisitions.

Indian Country been advocating for a fix to the U.S. Supreme Court's decision in *Carcieri v. Salazar*, since it was handed down in 2009. *Carcieri* has created a deeply inequitable 2-class system, in which some Tribal Nations have the ability to restore their homelands and others do not. This 2-class system serves to deny these Tribal Nations a critical component of the trust relationship, vital aspects of the exercise of inherent sovereignty, and the opportunity to qualify for several government programs. We continue to call for the immediate passage of a fix that contains the two features necessary to restore parity to the land-into-trust process: (1) a reaffirmation of the status of current trust lands; and (2) confirmation that the Secretary has authority to take land into trust for all federally recognized Tribal Nations.

RESTORING AND SUPPORTING TRIBAL JURISDICTION

Federal judicial decisions limiting Tribal Nations' exercise of criminal as well as civil and regulatory jurisdiction within our territories paired with serious underfunding of federal law enforcement measures on our lands has created a jurisdictional gap where criminals act with impunity. The United States must remove impediments it has placed on our exercise of criminal and other jurisdiction over all people and activities within our lands, including criminal activity and environmental regulation. And the federal government must properly fund Tribal and federal law enforcement, detention, and courts on our lands.

In addition, some Tribal Nations are subject to restrictive settlement acts (RSAs) that pose a constant threat to their sovereignty by limiting their rights and authorities. For example, some RSAs purport to prevent or limit Tribal Nations' exercise of jurisdiction over their land, some purport to provide jurisdiction to states or otherwise apply state law on Tribal land, and some purport to render certain federal laws related to jurisdiction inapplicable. These RSAs threaten the ability of the affected Tribal Nation to exercise its inherent sovereignty over its territory, and they are used against Tribal Nations to argue that beneficial federal statutes affecting state jurisdiction or otherwise predicated on Tribal territorial jurisdiction do not apply.

THE FEDERAL BUDGET

As Indian Country continues its advocacy for the fulfillment of the federal trust and treaty obligations, this includes full and mandatory funding for federal Indian programs.

Because of our history and unique relationship with the United States, the trust obligation of the federal government to Tribal Nations and Native people, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Inadequate funding to Indian Country needs to be viewed as unfilled treaty and trust obligations and should not be vulnerable to year to year “discretionary” decisions by appropriators, nor should it require Tribal resources necessary for appropriation advocacy each year. Federal spending in fulfillment of trust and treaty obligations is a form of repayment on debt and is not responsible for the federal deficit, and this spending must be held harmless as our nation seeks to reduce its debt to other foreign governments. We envision a future in which federal funding to Tribal Nations is no longer a discretionary choice up for annual debate.

In addition, many federal sources of funding contain unnecessary and inefficient limitations on their use, preventing Tribal Nations from directing the funding in ways that best address our circumstances and priorities. Many also contain burdensome reporting requirements that take away from resources to provide direct services to our communities. Federal funds must be provided to Tribal Nations without strings, as they are a repayment on debt made to a sovereign government, and the United States should use State Department foreign-aid spending as one potential model that better reflects diplomacy between nations. The United States must also provide mechanisms whereby Tribal Nations have the option to accept all funding directly and via a more streamlined and flexible channel, such as through self-determination contracts and self-governance compacts or PL 477-like vehicles.

ECONOMIC DEVELOPMENT

Economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. Rebuilding our Tribal Nations includes rebuilding our Tribal economies as a core foundation of healthy and productive communities. Federal action is necessary on a number of barriers to economic development in Indian Country, including access to capital, lack of parity in the tax code, and the indeterminate status of trust lands.

TAXATION

Indian Country remains focused on the advancement of tax reform that would address inequities in the tax code and eliminate state dual taxation. Revenue generated within Indian Country continues to be taken outside its borders or otherwise falls victim to a lack of parity. Similarly, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. We continue to press Congress for changes to

the U.S. tax code that would provide governmental parity and economic development to Tribal Nations.

ADVANCING TRIBAL HEALTH AND WELLNESS

By nearly every measure and indicator, Tribal Nations and our citizens face a lower quality of life than do others in the United States. These rates are caused and exacerbated by the chronic underfunding of the federal trust and treaty obligations, including for healthcare, education, housing, and critical infrastructure, as well as centuries of hostile acts and a failure to adequately prioritize our economic health, public health, and environmental interests. The Administration and Congress must work with Tribal Nations to promote a holistic approach to community wellness throughout Indian Country. This includes not only physical wellness, such as through increased investment in the Indian Health Service, but also mental, economic, and environmental wellness. Tribal Nations and Native people must have better access to quality education, pristine lands, waters, and air, and economic opportunity, so that we may thrive.

MARSHALL PLAN FOR TRIBAL NATIONS AND INFRASTRUCTURE DEVELOPMENT

Centuries of the United States' failure to adequately pay its debt to Tribal Nations for the resources the United States took from us have compounded year after year, resulting in the many shameful and unacceptable health, social, and economic disparities that exist for Native people. This failure has further resulted in the kinds of infrastructure deficiencies for Tribal Nations that are often only seen in the developing world. The United States' investment in European nations after World War II through the Marshall Plan offers a diplomatic example of a time when the United States understood that investment in rebuilding nations that were damaged, in part, by its own actions was favorable to its own interests. USET SPF has urged the United States to make an investment in nation rebuilding in Indian Country that is similar to its Marshall Plan investment in rebuilding Europe.

At the same time, as interests outside of Indian Country seek the expedited deployment of new technologies and other infrastructure across the United States, USET SPF maintains that any buildout cannot come at the expense of Tribal consultation, sovereignty, sacred sites, cultural resources, or public health. USET SPF remains committed to protecting vital Tribal historic, cultural, and environmental reviews, as well as Tribal consultation requirements, as streamlined federal permitting processes are being considered. This includes working toward a model that seeks Tribal Nation consent for federal action in recognition of sovereign equality.

CLIMATE CHANGE

Tribal Nations are uniquely impacted by climate change because of our profound connection to the land. Many Tribal cultures, food sources, ceremonies, and economies are heavily reliant on the ecosystems for resources such as the use of fish, wildlife, and native plants. Tribal Nations further face unique social, health-related, and environmental challenges which compound the challenges faced by climate change. For instance, additional environmental impacts from dams, mining, and pollution have only made it more difficult for Tribal homelands and ecosystems to be resilient to the impacts of climate change. Tribal Nations are facing an increasing number of climate change-related events, including heavy precipitation leading to subsequent flooding, erosion, and decreases in water quality. In addition, Tribal Nations located in coastal areas are most at risk for impacts from sea level rise. In fulfillment of the trust obligation, the federal government has an inherent responsibility to ensure the protection of the environmental and cultural resources that support the health and wellness of Tribal communities, as well as to support Tribal sovereignty and self-determination. Therefore, it is critical that Tribal Nations have access to the necessary resources to address the effects of climate change within our communities and as sovereign governments, to be full partners in climate change adaptation and planning efforts.

Successful adaptation for Tribal Nations will rely on use of Indigenous knowledge, resilient and robust social systems and protocols, and a commitment to principles of self-determination. However, it will also require additional action from the federal government to address the institutional barriers Tribal Nations face today in adapting to Climate Change. Ultimately, it will be important for the United States to meet its trust and treaty obligations to Tribal Nations through ensuring accessible, flexible long-term funding for Tribal Climate Change adaptation.

SOVEREIGN MANAGEMENT OF NATURAL AND CULTURAL RESOURCES

Tribal Nations have made gains when it comes to the protection and management of natural and cultural resources on and off Tribal lands, including mechanisms providing for “treatment as a state” (TAS) in the regulation of some resources and co-management of federal lands. As the federal government considers rolling back or changing environmental or cultural regulations, Indian Country is working to ensure the continued promotion of Tribal sovereignty and self-determination, as well as additional opportunities to extend the TAS designation.

Relatedly, Tribal lands often sit atop energy resources from which the United States could benefit and Tribal Nations could derive revenue. Tribal Nations must have

the flexibility to choose to develop those resources without federal limitations. At the same time, development must not occur without Tribal consultation—or better, consent—whether on or off Tribal lands.

EDUCATION SOVEREIGNTY FOR STRENGTHENED TRIBAL COMMUNITIES

There is no more vital resource to the continued existence and integrity of Tribal Nations than our children. Yet, Native education is in a state of emergency, as our students lag far behind their peers on every educational indicator, from academic achievement to high school and college graduation rates. Tribal Nation participation in education must be strengthened. Tribal Nations and our education agencies are in the best position to address the unique needs of Native America children. As such, Tribal Nations should have the authority and funding to manage education programs in parity with states and school districts.

INCREASING TRIBAL HOUSING INFRASTRUCTURE

Robust Tribal Housing programs are essential to the health, social, and economic well-being of Tribal communities. Given the restrictive nature of many federal housing funds, we advocate for flexibility under Tribal housing laws, as well as funding mechanisms that reflect the unique circumstances facing Tribal Nations.

SUPPORTING TRIBAL HOMELAND SECURITY AND EMERGENCY SERVICES

As sovereign governments, Tribal Nations, and our first responders, have a responsibility to build, sustain, and improve capabilities to prepare for, protect against, respond to, recover from and mitigate all hazards. The federal government has an obligation to support Tribal Nations in these efforts. However, a failure to fully recognize and support our sovereignty leaves Tribal Nations without robust homeland security and emergency services infrastructure. There are glaring disparities and eligibility restrictions for Tribal Nations, as compared to states, in funding across an array of federal programs. We continue to advocate for Tribal Nation parity in homeland security and emergency management, including in access to disaster response resources.

TRANSPORTATION INVESTMENTS TO IMPROVE QUALITY OF LIFE AND DELIVERY OF SERVICES

Transportation infrastructure is vital to the health, safety and economic prosperity of Tribal Nations and our citizens. However, the chronic underfunding and neglect of Tribal Nation infrastructure leaves many without sufficient roads and other modes of transportation. Indian Country

continues to seek increased access to resources for Tribal transportation programs.

ADVOCATING FOR OUR VETERANS

The federal government has a dual obligation to Native American veterans who have pre-paid for federal services, both through the cession of Tribal homelands and resources, as well as the defense of our nation. Barriers in access to critical services for Native American veterans are a violation of this obligation. There is still much progress to be made when it comes to fully delivering upon promises to Native American veterans. Central to the success of federal efforts to honor obligations to our warriors is ongoing collaboration with Tribal Nations.

PROTECTION OF SACRED SITES

While the practice of spiritual and ceremonial traditions and beliefs varies significantly among Tribal Nations, our spirituality is often place-based—each Tribal Nation has specific places and locations that we consider sacred. These places are often the sites of our origin stories, our places of creation. As such, we believe that we have been in these places since time immemorial. Through these sites, we are inextricably linked to our spirituality, the practice of our religions, and to the foundations of our cultural beliefs and values. Our sacred sites are of greatest importance as they hold the bones and spirits of our ancestors, and we must ensure their protection, as that is our sacred duty. As our federal partner in this unique government-to-government relationship, it is incumbent upon all branches of the U.S. government to ensure the protection of these sites.

UPHOLD AND RESPECT TRIBAL NATION SOVEREIGN DECISION-MAKING

Tribal Nations must have a seat at the table for all federal decision-making, including about energy development, that may affect our cultural resources, public health, or sovereignty—whether located on or off lands we currently hold. Just as the United States endeavors to respect states' and other countries' sovereign interests, it must respect those of Tribal Nations. True respect involves not merely consultation, but seeking Tribal consent when taking actions that affect our interests.

TRUTHFUL NARRATIVES FOR INDIAN COUNTRY

It is time for this country to acknowledge the complete and truthful history of Native people and Tribal Nations. Despite our great story of perseverance and strength as well as the invaluable contributions Tribal Nations have made to the U.S., public perception of Tribal Nations and Native people remains biased, inaccurate, and harmful, with a lack of education on our history and contemporary life contributing to the marginalization and stereotyping of Native people and cultures. Because of these deeply held misperceptions, Native experiences and voices are largely invisible or fundamentally misrepresented in public discourse. We remain a forgotten people in our homelands. We must ensure an honest depiction of Native people and Tribal Nations are portrayed and demanded for greater respect, inclusion, and social justice for Native peoples.