

SUPREME COURT

Justices asked to weigh how Congress defined 'Indian tribe'

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The U.S. Supreme Court. Francis Chung/E&E News

A Supreme Court fight over the allocation of federal COVID-19 aid is spotlighting Congress' definition of a tribal government.

Alaska Native corporations, or ANCs, are arguing they should be eligible to receive a portion of the \$8 billion in emergency aid designated for tribal governments under last year's Coronavirus Aid, Relief and Economic Security (CARES) Act.

Along with the Treasury Department, ANCs are challenging a September ruling by the U.S. Court of Appeals for the District of Columbia Circuit that excluded the private companies from an unspecified portion of aid.

The decision centered on how lawmakers defined "Indian tribe" under the Indian Self-Determination and Education Assistance Act (ISDEAA), which Congress had cited in its explanation of which tribes qualified for CARES Act funding.

Led by the Confederated Tribes of the Chehalis Reservation, tribes contended the corporations shouldn't have been eligible to apply for already limited aid because they don't bear the same responsibility for members' welfare.

In an opening brief of their appeal to the high court yesterday, the Alaska Native Village Corporation Association argued lawmakers had intended to include regional and village ANCs in its definition of eligible recipients.

Congress had addressed the inclusion of ANCs when the self-determination law was enacted in 1975 to provide federal benefits, just a few years after lawmakers had created the corporations under the Alaska Native Claims Settlement Act in 1971.

"Congress answered that question in the affirmative by expressly including 'any ... regional or village corporation ... established pursuant to the Alaska Native Claims Settlement Act' in ISDEAA's definition of 'Indian tribe,'" the ANC group **wrote**.

The association noted that the 9th U.S. Circuit Court of Appeals had affirmed that reading more than a decade later in 1987 and that lawmakers did not change the law's definition when it reenacted the measure in 1988.

The challengers also rebutted the argument that the corporations, many of which have significant fossil fuel investments, operated like an ordinary private business and should not be eligible for the funds.

"Whereas a typical corporation exists to maximize shareholder value for a constantly shifting set of shareholders, ANCs are distinctly Native entities ... that exist to provide benefits and services to promote Natives' welfare and to manage lands and funds provided in exchange for the settlement of Native land claims," the association wrote.

The group warned that the ruling could have far-reaching consequences outside of the emergency aid package, noting that "Congress has incorporated ISDEAA's ANC-inclusive definition of 'Indian tribe' into dozens of federal statutes whenever it has wanted to include ANCs among the eligible participants."

"And Congress did so again last year in the Coronavirus Aid, Relief, and Economic Security (CARES) Act."

The challengers also rejected the "sorely misplaced" confidence of the D.C. Circuit's suggestion that either the state government or the Department of Health and Human Services would "be able to fill the void" of not getting CARES Act funds.

There was no way for the Treasury to transfer designated funds, and Alaska had said it would not be able to take on the role filled by ANCs for the last four decades.

"Affirming the decision below would thus leave thousands of Alaska Natives out in the cold with nowhere to turn," the association wrote.

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