Insights: Alerts

# Supreme Court Says Alaska Native Corporations Are Tribal Governments Entitled to CARES Act Funds

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Like the emergency relief funding provided to state and local governments during the height of the COVID-19 pandemic last year, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act of 2020 allocated an unprecedented $8 billion to "Tribal governments" to compensate for unbudgeted expenditures made in response to COVID-19. The question before the Court in *Yellen v. Confederated Tribes of the Chehalis Reservation* was whether Alaska Native Corporations ("ANCs") are eligible to receive any of the $8 billion allocated to "Tribal governments" in the CARES Act. By a vote of six to three—with an unusual alignment of justices on either side of the decision—the U.S Supreme Court held that ANCs are eligible for CARES Act relief funds because they represent "Indian tribes" under the Indian Self-Determination and Education Assistance Act ("ISDA").

The CARES Act defines a "Tribal government" eligible for relief funds as the "recognized governing body of an Indian tribe" as defined in the ISDA. The ISDA, in turn, defines an "Indian tribe" as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act ("ANCSA"), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

As the federal agency responsible for allocating the $8 billion in CARES Act funds among "Tribal governments," the Treasury Department determined that ANCs were eligible for CARES Act funds because ANCs satisfied the definition of an "Indian tribe" under the ISDA, even though ANCs are not "federally recognized tribes." In response to Treasury's determination, several federally recognized Indian tribes sued Treasury. The District Court entered summary judgment for the Treasury Department and the ANCs, but the D.C. Circuit Court of Appeals reversed.

Justice Sotomayor, who was joined by Chief Justice Roberts and Justices Breyer, Kavanaugh, and Barrett, and in part by Justice Alito, delivered the opinion of the Court. In ruling in favor of the ANCs, the majority of the Court made clear that it affirmed what the Federal Government has maintained for almost half a century: ANCs are Indian tribes under the ISDA, and for that reason, ANCs are Indian tribes eligible for CARES Act funds. Justice Gorsuch filed a dissenting opinion, in which Justices Thomas and Kagan joined.

In beginning its analysis, the Court pointed out that all but one of the Respondent Tribes agree that ANCs are eligible to receive CARES Act funds if they are Indian tribes for ISDA purposes. Based on this consensus, the Court then reasoned that the primary question was whether ANCs satisfy the ISDA's definition of "Indian tribe." The ANCs

primarily argued that they fell under the plain meaning of ISDA's definition of “Indian tribe.” In contrast, the Respondent Tribes urged the Court to adopt a term-of-art construction of the ISDA's definition of “Indian tribe” that equates being “recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians” with being a “federally recognized tribe.”

The Court first looked to the plain meaning of the ISDA, concluding that ANCs represent Indian tribes under the ISDA's plain meaning. The Court noted that ANCs are “established pursuant to” ANCSA and thereby “recognized as eligible” for ANCSA benefits, which represented a special program provided by the United States to “Indians.” The Court reasoned that the eligibility of ANCs for ANCSA benefits—the only statute the ISDA's “Indian tribe” definition specifically mentions by name—satisfies the ISDA's “recognized-as-eligible” clause, and ANCs therefore represent “Indian tribes” eligible for CARES Act funds allocated for Tribal governments.

The Court rejected the Respondent Tribes' term-of-art argument, refusing to read ISDA's “Indian tribe” definition as referring only to federally recognized Indian tribes. The Court also concluded that even if ANCs did not satisfy the ISDA's “recognized-as-eligible” clause, ANCs still satisfied the ISDA's definition of an “Indian tribe.”

The Court finished its decision by stating that almost everyone agrees that if ANCs are Indian tribes under ISDA, ANCs are eligible for CARES Act funding. If Congress did not want to make ANCs eligible for CARES Act funds, the Court pointed out, Congress' decision to incorporate ISDA's “Indian tribe” definition into the CARES Act would be inexplicable. The Court reasoned that had Congress wished to limit CARES Act funding to federally recognized Indian tribes, Congress could simply have referenced the List Act instead, as Congress has done in numerous statutes before (and as it did in the subsequent American Rescue Plan of 2021). Instead, Congress invoked a definition that expressly included ANCs, and the Court explained that its ruling merely gave effect to that Congressional decision.

The Court took great care, however, to limit its holding to the allocation of CARES Act funds to ANCs. The Respondent Tribes warned that finding ANCs were Indian tribes could have extreme consequences, particularly for the Executive Branch and its administration of the ISDA.

First, after concluding that ANCs are Indian tribes—regardless of whether they are also federally recognized tribes—the Court specifically noted that in so holding, the Court does not open the door to other Indian groups that have not been federally recognized becoming Indian tribes under the ISDA. The Court explained that even if such groups qualify for certain federal benefits, that does not make those groups similarly situated to ANCs because ANCs constituted *sui generis* entities created by federal statute and granted an enormous amount of special federal benefits as part of a legislative experiment tailored to the unique circumstances of Alaska and recreated nowhere else. The Court further observed that no entities other than ANCs are expressly included by name in ISDA's “Indian tribe” definition. Second, in rejecting the Responding Tribes' term-of-art argument, the Court clarified that it did not decide whether the language of the recognized-as-eligible clause has been used as a term of art in other statutes subsequent to the ISDA's enactment. The Court finished by stating that its decision does not vest ANCs with new and untold tribal powers as the Respondent Tribes had feared; rather, the Court clarified, its decision merely confirms the powers Congress expressly afforded ANCs and that the Executive Branch has long understood ANCs to possess.

The Court remanded the case for further proceedings. On remand, Treasury will likely allocate among ANCs the approximately $500 million of CARES Act funding it previously set aside.