



National Congress of American Indians



ALASKA NATIVE TRIBAL HEALTH CONSORTIUM

National Indian Health Board



Southcentral Foundation



February 4, 2022

The Honorable Brian Schatz
Chairman, Senate Indian Affairs Committee
U.S. Senate
838 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Lisa Murkowski
Vice Chair, Senate Indian Affairs Committee
U.S. Senate
838 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Jeff Merkley
Chair, Subcommittee on Interior,
Environment and Related Agencies
Committee on Appropriations
S-128 Capitol Building
Washington, D.C. 20510

The Honorable Lisa Murkowski
Ranking Member, Subcommittee on Interior,
Environment and Related Agencies
Committee on Appropriations
S-128 Capitol Building
Washington, D.C. 20510

Re: Urgent Request to Amend the Indian Self-Determination Act CSC Provisions

Dear Chairman Schatz, Chair Merkley, and Vice Chairman and Ranking Member Murkowski,

On behalf of the undersigned American Indian/Alaska Native (AI/AN) organizations, we urgently call upon Congress to swiftly amend the Indian Self-Determination Act (ISDA) to reverse a judicial interpretation that threatens to wipe out most tribal contract support cost reimbursements. Congress must swiftly restore the status quo and make plain it opposes the elimination of contract support costs to Tribes simply because the agency would normally have similar costs.

For decades the Indian Health Service (IHS) has reimbursed tribal contract support expenses to cover costs like management and planning; financial, procurement, personnel, records and property management; data processing and IT services; facility costs; utility costs, building and grounds costs; janitorial services; and general support services. These are the core of tribal indirect cost reimbursements. When IHS also includes some of these costs in the “Secretarial amount” funding program operations, IHS gets a credit for whatever it paid and the difference is reimbursed to the Tribe as contract support costs.

But under a new decision from the D.C. Circuit Court of Appeals (*CITC v Dotomain*), if IHS would “normally” incur these costs, IHS is categorically barred from reimbursing a tribal contractor anything. Under this new ruling, if facility costs are higher for a tribe than for IHS, the Tribe is forced to cover the difference by diverting scarce program dollars. The same can be said for all the other costs listed earlier, as well as health insurance and retirement costs. Tribes don’t enjoy the Federal government’s enormous economies of scale, and until now contract

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support costs have covered the difference. If those higher fixed costs must now be covered with program dollars, literally hundreds of millions of dollars will be drained from tribal programs.

This is not what Congress intended when it rewrote the ISDA's contract support cost provisions in 1994. And it is not what the IHS or BIA have ever understood the ISDA to mean. Yet, loose language in section 106(a)(2) has now been seriously misconstrued by the courts, and already the consequences are hitting a second major tribal organization.

This serious misinterpretation of the ISDA that has been applied to one tribal organization resulting in a 90% reduction of contract support costs reimbursement threatens tribal self-governance and self-determination. The federal government has trust responsibilities and legal obligations to AI/AN people that includes supporting Tribal Self-Determination and Self-Governance. Please take immediate action to restore the status quo by making clear that when agency funding paid to a tribe for program operations is insufficient for contract and compact administration, contract support costs will remain available to cover the difference. This has always been the rule.

Time is of the essence: the threat of massive contract reductions is enormously destabilizing on Indian health program operations, all the more so in the middle of a worldwide pandemic that is hitting American Indian/Alaska Native communities with particular cruelty. Please immediately reverse the *CITC* interpretation of section 106(a)(2) of the ISDA by replacing the word "but" with the words "including activities."

Respectfully,

Affiliated Tribes of Northwest Indians
Alaska Native Health Board
Alaska Native Tribal Health Consortium
Albuquerque Area Indian Health Board
California Rural Indian Health Board
Great Plains Tribal Chairmen's Health Board
National Congress of American Indians
National Indian Health Board
Northwest Portland Area Indian Health Board
Rocky Mountain Tribal Leaders Council
Self-Governance Communication & Education Tribal Consortium
Southcentral Foundation
Southern Plains Tribal Health Board
United South and Eastern Tribes Sovereignty Protection Fund

cc: Secretary Xavier Becerra, HHS
Acting Director Fowler, IHS