

NEWS RELEASE- FOR IMMEDIATE RELEASE

Ute Tribe and Other Federally Recognized Tribes Prevail in COVID Relief Funding Suit.

Ft. Duchesne, UT September 25,2020

On September 25, 2020, the United States Court of Appeals for the District of Columbia ruled that the federally recognized tribes should receive approximately \$533,000,000 more in relief under Title V of the Coronavirus Aid Relief and Economic Security Act (CARES Act). The Court of Appeals' decision was issued in a consolidated case from three appeals, *Ute Indian Tribe of the Uintah and Ouray Reservation v. Mnuchin*, App. Ct. case. 20-5204; *Confederated Tribes of the Chehalis Indian Reservation, et al v. Mnuchin*, App. Ct. case. 20-5205; and *Cheyenne River Sioux Tribe et al v. Mnuchin*, App. Ct. case. 20-5209.

In the CARES Act, Congress authorized expenditure of 2.2 trillion dollars. Most of that money was allocated to businesses and individuals under Titles I-IV of the CARES Act, while Title V provided funds for tribal, state, and local governments. Section 5001 allocated 8 billion dollars, §5001(a)(2)(B) to the “recognized governing bodies of Indian tribes,” §5001(g)(5), to be used solely for previously unbudgeted tribal governmental expenses incurred in response to COVID, §5001(d). There are 574 federally recognized Indian tribes and recognized governing bodies of Indian tribes, including 229 tribes in Alaska. 85 Fed. Reg. 5462 (Jan. 30, 2020); bia.gov/tribal-leaders-directory.

Although the clear language of section 5001 of the CARES Act shows that Congress allocated the 8 billion dollars to the recognized tribes, Department of the Interior Assistant Secretary of Interior for Indian Affairs Tara Sweeney advocated that Treasury give much of that money to Alaska Native Corporations (ANCs), and the Department of Treasury went along with her preference. Ms. Sweeney is a shareholder and former highly paid executive officers in one of the largest ANCs, and her husband is a registered lobbyist for an ANC.¹

In its decision, the Court of Appeals held that ANCs are not federally recognized tribes. ANCs are for-profit corporations organized under Alaska state law, and they include some of the largest and most profitable corporations in Alaska. They have annual revenue in excess of 10 billion dollars, and include nearly half of the 49 largest corporations in Alaska. AKRDC.org/Alaska-native-corporations. ANCs have both Indian and non-Indian shareholders. Because ANCS are corporations, ANCs already received millions of dollars under the provisions of the CARES Act that provided relief to corporate entities. *E.g.*, <https://projects.propublica.org/coronavirus/bailouts/loans/states/AK> (listing ANCs and their numerous subsidiaries as recipients of Paycheck Protection Program (PPP) money, and showing that ANCs were some of the largest recipients of PPP money in Alaska).

¹ Ms. Sweeney is now under investigation by the Department of the Interior's Office of Inspector General and by Congress for her actions. www.tomudall.senate.gov/imo/media/doc/05082020-OIG_Data_Ethics_Investigation%20.pdf

The Ute Indian Tribe brought one of the three suits in the United States District Court for the District of Columbia, seeking an order that none of the 8 billion dollars could be given to a for-profit ANC. On motions for preliminary injunction, the District Court agreed with the tribes' arguments, but it then reversed itself on summary judgment, and held that it would defer to Secretary Mnuchin's decision to give \$533,000,000 to the for-profit ANCs.

All three groups of tribes appealed from that decision.

On appeal, the Ute Indian Tribe argued that that funding under section 5001 of the CARES Act was based upon the government-to-government trust relationships between the United States and each of the federally recognized tribes; and that therefore those funds could only be provided to the federally recognized Tribes. The Tribe joined with other like-minded tribes to present briefs to the court of appeals, and it provided oral argument for all of those tribes to the Court of Appeals. It is gratified to now see that the Court of Appeals has agreed with the Tribes' argument.

The decision is a momentous win for all federally recognized tribes for two reasons.

First, the federally recognized tribes will now be able to use the additional infusion of \$533,000,000 to cover governmental costs which the recognized tribes are incurring to combat COVID. The Ute Tribe and other tribes have taken actions to slow the spread of COVID in their communities, including instituting and enforcing a Stay-at-Home Order and other public health measures, providing emergency assistance to Tribal Members to meet necessary health needs, and keeping Tribal employees paid and supported during the pandemic.. Despite tribal efforts which generally have exceeded those in the surrounding states, the number of COVID cases and COVID deaths among federally recognized Indians is believed to be many times greater than the rate among non-Indians.² On the Ute Reservation, the currently unmet need for COVID assistance is staggering, and the additional funding will meet the most urgent (and only the most urgent) of those needs.

Second, the Court of Appeals held that when Congress allocated funds to the "recognized governing bodies of Indian tribes," Congress plainly intended that the money would go solely to the governing bodies of the 574 federally recognized Indian tribes; and that ANCs therefore do not qualify for any of that money.

² The publicly available databases kept by the United States do not include COVID cases or deaths among members of federally recognized tribes, but the best available statistics show COVID rates among those who are ethnically Indians are 3.5 times higher than among non-Hispanic whites, and hospitalizations are 4.7 times higher. https://www.nihb.org/covid-19/wp-content/uploads/2020/09/FINAL_-September-2020-COVID-health-letter.pdf (citing CDC data).

About the Ute Indian Tribe-The Ute Indian Tribe resides on the Uintah and Ouray Reservation in northeastern Utah. Three bands of Utes comprise the Ute Indian Tribe: the Whiteriver Band, the Uncompahgre Band and the Uintah Band. The Tribe has a membership of more than three thousand individuals, with over half living on the Uintah and Ouray Reservation. The Ute Indian Tribe operates its own tribal government and oversees approximately 1.3 million acres of trust land which contains significant oil and gas deposits. The Tribal Business Committee is the governing council of the Tribe.