



## The Navajo Nation Office of the President and Vice President

CONTACTS:

Jared Touchin, Communications Director  
(928) 274-4275

Crystalyne Curley, Sr. Public Information Officer  
(928) 274-2758

[nnopvp.communications@gmail.com](mailto:nnopvp.communications@gmail.com)

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### FOR IMMEDIATE RELEASE

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## U.S. District Court of Appeals rules in favor of federally-recognized tribes in CARES Act litigation

**WINDOW ROCK, Ariz.** – On Friday, the U.S. Court of Appeals for the District of Columbia Circuit determined that Alaska Native Corporations (ANCs) are not “tribal governments” under the CARES Act and are not eligible for CARES Act funds.

The Court’s ruling is a significant victory for the tribal plaintiffs, including the Navajo Nation. However, the defendants in the case are expected to petition for rehearing, or will seek to appeal to the U.S. Supreme Court.

“We thank the U.S. Court of Appeals for the District of Columbia Circuit today’s ruling, which supports the Navajo Nation’s position that the \$8 billion that was included in the CARES Act to help fight COVID-19, is allocated for federally-recognized tribes only and not for-profit Alaska Native Corporations that generate billions of dollars in revenue. Federally-recognized tribes stood strong to oppose the actions of the Department of the Treasury in their attempt to undermine the first citizens of this country, but our voices were heard and Indigenous people prevailed. As this matter moves forward to appeal, as we anticipate, we will continue to fight for what rightfully belongs to federally-recognized tribes,” said Navajo Nation President Jonathan Nez.

Approximately \$500 million in CARES Act funding remains for “tribal governments.” How that will be disbursed among tribes, if the tribal plaintiffs ultimately prevail, is yet to be determined.

“The Navajo Nation is moving forward with using the current CARES Act funds for water, electricity, and other critical projects for the Navajo people. We continue to advocate for an extension of the CARES Act dollars also to allow for adequate planning and implementation of additional projects and relief. We commend Navajo Nation Attorney General McPaul, Asst. Attorney General Paul Spruhan, and the rest of their team for their tremendous commitment to this case,” stated Vice President Myron Lizer.

“While we recognize the unique nature of Native entities in Alaska, the DC Circuit upheld the important distinction between tribal governments and other entities, such as tribal organizations or corporations, that may otherwise serve tribal members,” said Attorney General Doreen N. McPaul. “Today’s decision

is a win for tribal sovereignty, and the Navajo Nation will fight to keep it in effect and ensure tribal governments receive all Title V funds they so greatly need to address the COVID-19 pandemic."

Congress passed the CARES Act on March 27, 2020, which provided \$8 billion for tribal governments to address the COVID-19 pandemic. The CARES Act defined "Tribal governments" as "the recognized governing body of an Indian Tribe," with "Indian Tribe" being given the term's meaning under the Indian Self-Determination Education and Assistance Act.

On April 13, 2020, the Department of the Treasury published a form seeking tribal data to be able to apportion Title V funds. The form suggested that ANCs would be eligible for Title V funds, asking for total number of "shareholders." Treasury later confirmed its position that ANCs were eligible to receive Title V funds.

Three separate groups of federally-recognized Indian tribes, including Navajo Nation, sued the federal government in the U.S. District Court for the District of Columbia. The Court consolidated the cases and a number of ANCs intervened as defendants in the case. The tribes sought declaratory and injunctive relief to prevent Title V funds from going to ANCs, arguing that ANCs did not fall under the definition of "Tribal governments" in the CARES Act, as they neither fall under ISDA's definition of "Indian Tribe" nor have "recognized governing bodies."

The tribes also highlighted the negative implications that would follow a ruling in favor of the defendants, including not only that a smaller measure of CARES Act funds would go to actual tribal governments, but further that the defendants' interpretations would lead to a host of other entities competing with tribes for Indian Self-Determination Education and Assistance Act funding.

The tribes filed for a preliminary injunction, which the district court granted. However, the same court reversed course in its decision on the merits, finding that ANCs fell under the definition of "Tribal governments" and were eligible for Title V funds, and granting summary judgment in their favor. The tribes immediately appealed to the D.C. Circuit Court of Appeals. The decision issued today by the appellate court reverses the district court's ruling and grants summary judgment in favor of the tribes.

The Navajo Nation received over \$714 million in CARES Act funds: \$600 million on May 6, \$86 million on June 16, and \$27 million on June 18. Approximately \$537 million in CARES Act funds has been approved and signed into law, leaving a remaining amount of \$176 million, which the Nez-Lizer Administration is proposing to use these funds to directly help Navajo students, elders, families, and others impacted by the COVID-19 pandemic through Legislation No. 0209-20.

The Navajo Nation is represented by the Navajo Nation Department of Justice's Litigation Unit, under the direction of Asst. Attorney General Paul Spruhan.

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