Nos. 20-543, 20-544

IN THE

Supreme Court of the United States

JANET L. YELLEN, SECRETARY OF THE TREASURY,
Petitioner,

v.

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, *et al.*,
Respondents.

ALASKA NATIVE VILLAGE CORPORATION ASSOCIATION, INC., *et al.*,
Petitioners,

v.

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR REPRESENTATIVE RAÚL M. GRIJALVA AS AMICUS CURIAE SUPPORTING RESPONDENTS

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INTEREST OF AMICUS CURIAE[1]

Amicus curiae Representative Raúl M. Grijalva has served as a Member of the U.S. House of Representatives from Arizona since 2003. Representative Grijalva is Chair of the House Committee on Natural Resources and has had a longstanding interest in legislating for the benefit of Native American communities, both in his district in southern Arizona and across the country.

Representative Grijalva is committed to ensuring that Indian tribes and peoples are provided the resources they need to respond to the COVID-19 pandemic, which has disproportionately burdened tribal communities across the country. As a Member of Congress, Representative Grijalva also has a strong interest in ensuring that laws are interpreted consistent with congressional intent.

SUMMARY OF ARGUMENT

In March 2020, bipartisan Members of Congress came together to pass a bill of unprecedented size, to address a crisis of unparalleled scope. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act allocated $2.2 trillion to provide emergency assistance to those affected by the coronavirus pandemic. Of that sum, Title V of the CARES Act appropriated $150 billion "for making payments to States, Tribal governments, and units of local government," with $8 billion of that amount reserved for "Tribal governments." 42

[1] No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for all parties consented to the filing of this brief.

U.S.C. § 801(a)(1), (a)(2)(B). This money was distinct from the other large sums the Act allocated to individuals, businesses, and other entities, and the text makes clear that it was set aside for governmental entities to address the unique shortfalls they faced.

This dispute concerns the Secretary of the Treasury's decision that these Title V funds appropriated for government bodies must also be shared with decidedly non-governmental entities: Alaska Native Corporations ("ANCs"), some of Alaska's largest for-profit corporations. The U.S. Court of Appeals for the D.C. Circuit correctly rejected this interpretation, concluding that Congress meant what it said: Title V funds were to be allocated to governmental entities, not for-profit corporations. The D.C. Circuit's decision best aligns with congressional intent, as demonstrated by the plain text of the CARES Act and the legislative record both before and after the Act was passed.

Representative Grijalva has a substantial interest in ensuring that Congress's choice to legislate for the benefit of federally recognized Indian tribes is not undermined, and that the tribes that have borne the brunt of the COVID-19 pandemic are provided the funds they need. Representative Grijalva believes that the text of the CARES Act is clear and ANCs are not eligible for Title V funds. This is further confirmed by contemporaneous evidence showing that Congress did not intend ANCs to be eligible. The judgment of the court of appeals should be affirmed.

ARGUMENT

I. CONGRESS HAS LONG RECOGNIZED A UNIQUE RELATIONSHIP WITH INDIAN TRIBES

Indian tribes have a "unique legal status" under federal law. *Morton* v. *Mancari*, 417 U.S. 535, 551 (1974). They are "'domestic dependent nations' that exercise 'inherent sovereign authority.'" *Michigan* v. *Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (quoting *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (1991)). And "the constitutional recognition of tribes as sovereigns in a government-to-government relationship with the United States has remained a constant in federal Indian law." *Cohen's Handbook of Federal Indian Law* § 4.01 (2019) (*Cohen's*). In line with that relationship, Congress has long used its "plenary power … based on a history of treaties and the assumption of a 'guardian-ward' status, to legislate on behalf of federally recognized Indian tribes." *Mancari*, 417 U.S. at 551. And it is "federally recognized Indian tribes," and federally recognized tribes alone, that the U.S. government treats as sovereign entities and that enjoy a government-to-government relationship with the United States. *See California Valley Miwok Tribe* v. *United States*, 515 F.3d 1262, 1263 (D.C. Cir. 2008) (explaining that "[t]o qualify for federal benefits" tribes must have "federal recognition, which is 'a formal political act confirming the tribe's existence as a distinct political society, and institutionalizing the government-to-government relationship between the tribe and the federal government'").

Federal recognition is the keystone of the federal government's relationships with Indian tribes. "'Recognized' is more than a simple adjective; it is a legal

term of art. It means that the government acknowledges as a matter of law that a particular Native American group is a tribe by conferring a specific legal status on that group, thus bringing it within Congress' legislative powers." H.R. Rep. No. 103-781, at 2 (1994). Federal recognition "permanently establishes a government-to-government relationship between the United States and the recognized tribe as a 'domestic dependent nation,'" and it "institutionalizes the tribe's quasi-sovereign status." *Id.* While the recognition process has changed over time, today, all tribes that are formally recognized—*i.e.*, all tribes with which the United States acknowledges a government-to-government relationship—are included in an annual list published pursuant to the Federally Recognized Indian Tribe List Act of 1994 (the "List Act"), Pub. L. No. 103-454, 108 Stat. 4791.

This dispute concerns the status of Alaska Native Corporations ("ANCs"), which all parties agree are *not* federally recognized tribes. As has been catalogued ably in other briefs, the Alaska Native Claims Settlement Act ("ANCSA") extinguished aboriginal land claims in Alaska and established ANCs to receive land and cash in settlement of those claims. *Cohen's* § 4.07. While ANCs have their own special status under the law, they currently differ from federally recognized Indian tribes in a fundamental way: they are not government entities. *See id.* ("The Native regional and village corporations are chartered under state law to perform proprietary, not governmental, functions."); *see also Pearson* v. *Chugach Gov't Servs. Inc.*, 669 F. Supp. 2d 467, 476 (D. Del. 2009) (holding that ANCs were not exempt from Title I of the ADA because any such exemption extended only "to tribal organizations functioning in a governmental role," while ANCs were "for-profit

tribal corporations operating in the ordinary course of interstate commerce").

Instead, in areas where ANCs are active, Alaska Tribes perform the governmental functions for the community. There are 229 federally recognized Tribes in Alaska, and these "[t]ribal governments, as opposed to regional and village corporations, are the only Native entities that possess inherent powers of self-government." *Cohen's* § 4.07. Alaska Tribes are also the only entities in Alaska that maintain a government-to-government relationship with the United States. *See, e.g.*, 58 Fed. Reg. 54,364, 54,365 (Oct. 21, 1993) ("expressly and unequivocally acknowledging that the Department has determined that the [Alaska] villages and regional tribes listed below are distinctly Native communities and have the same status as tribes in the contiguous 48 states"); 86 Fed. Reg. 7554, 7557 (Jan. 29, 2021) (listing Alaska Tribes that are "acknowledged to have the immunities and privileges available to federally recognized Indian Tribes by virtue of their government-to-government relationship with the United States"). And, unlike ANCs, Alaska Tribes are included in the annual lists issued under the authority of the List Act. *See* 86 Fed. Reg. at 7557.

II. THE CARES ACT WAS INTENDED TO FURTHER THE FEDERAL GOVERNMENT'S RELATIONSHIP WITH INDIAN TRIBES

As explained, Congress has long treated federally recognized tribes uniquely, and the CARES Act is no exception. When Congress directed funds to "Tribal governments," it intended that those funds go to federally recognized tribes. Petitioners' arguments to the contrary are belied by both text and legislative history.

A. American Indian And Alaska Native Peoples Have Been Disproportionately Harmed By The COVID-19 Pandemic

American Indian and Alaska Native peoples have long faced lower life expectancies, disproportionate disease burdens, and disproportionate poverty.[2] "Historically, pandemics tend to be particularly hard on American Indians and Alaska Natives."[3] For example, during the 2009 H1N1 influenza pandemic, American Indian and Alaska Native peoples suffered mortality rates "four times higher than the general population."[4] And during the 1918 Spanish flu, "Alaska Natives represented 80% of the state's death toll."[5]

This trend has unfortunately persisted over the last year as well, with American Indian and Alaska Native communities bearing the brunt of the COVID-19 pandemic. A CDC report from last year found that American Indian and Alaska Native persons made up 0.7% of the U.S. population, but 1.3% of COVID-19 cases—meaning that there were nearly twice as many COVID-19 cases among American Indian and Alaska Native persons as one would expect based on their population size.[6] The CDC also found that American

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[2] *See, e.g.*, Indian Health Service, *Indian Health Disparities* (Oct. 2019).

[3] Burki, *COVID-19 Among American Indians and Alaska Natives*, The Lancet (Mar. 2021).

[4] *Id.*

[5] *Id.*

[6] *See* Hatcher et al., *COVID-19 Among American India and Alaska Native Persons – 23 States, January 31–July 3, 2020*, Morbidity & Mortality Weekly Rep. (Aug. 28, 2020).

Indian and Alaska Native persons have faced disproportionate mortality rates from COVID-19—being 1.8 times more likely to die from a COVID-19 infection than non-Hispanic Whites.[7] More recent data suggests the numbers are even worse than they initially appeared, with American Indian and Alaska Native persons having COVID-19 case rates 1.7 times higher than non-Hispanic Whites, and death rates 2.4 times higher than non-Hispanic Whites.[8]

It was against this troubling background that Congress chose to include funds in the CARES Act specifically to benefit tribal governments. As then-Vice Chair of the Senate Committee on Indian Affairs Senator Tom Udall said at the time, "[o]ur legislative response must close the unacceptable funding gaps and lift the institutional barriers facing Indian Tribes," and do so in a way that "uphold[s] our trust and treaty responsibilities to Tribes."[9]

B. The Text Of Title V Makes Clear That It Was Intended To Assist Governmental Entities, Rather Than For-Profit Corporations

While multiple provisions of the CARES Act provided funds to assist Tribes and American Indian and Alaska Native communities, this case concerns only

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[7] Arrazola et al., *COVID-19 Mortality Among American Indian and Alaska Native Persons – 14 States, January – June 2020*, Morbidity & Mortality Weekly Rep. (Dec. 11, 2020).

[8] Centers for Disease Control and Prevention, *Hospitalization and Death by Race/Ethnicity* (Mar. 12, 2021).

[9] Senate Committee on Indian Affairs, *Udall Statement on Indian Country Priorities for Coronavirus Phase 3 Package* (Mar. 19, 2020).

those funds allocated under Title V of the Act. And the text of that portion of the statute makes clear that Title V funds were intended exclusively for *governments*—expressly including tribal governments—and not other, non-governmental entities such as ANCs.

Specifically, Title V directs $150 billion to "States, Tribal governments, and units of local government." 42 U.S.C. § 801(a)(1), (d). Pursuant to Title V, funds would be disbursed to each type of entity—state governments, local governments, and tribal governments—which could then distribute the funds to other individuals or entities as they saw fit, so long as the funds were for "necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19)." *Id.* § 801(d)(1). The Act defines "Tribal government" to mean "the recognized governing body of an Indian Tribe," *id.* § 801(g)(5), with "Indian Tribe" then further defined as having "the meaning given that term in section 5304(e) of title 25," *id.* § 801(g)(1), the Indian Self-Determination and Education Assistance Act ("ISDA"). And in ISDA, "Indian Tribe" is defined to include:

> 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 (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

25 U.S.C. § 5304.

The respondents and other amici have thoroughly and persuasively explained why the ISDA definition of

"Indian Tribe" is most sensibly read to apply only to federally recognized tribes. *See, e.g.*, Chehalis Resp. Br. 18-25. In short, the entities listed in the ISDA definition—"any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation"—only qualify as "Indian Tribe[s]" if they satisfy the definition's "recognition clause." That clause requires entities, as a prerequisite to qualifying as an Indian Tribe, to be "*recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians*." *Id.* (emphasis added). Nearly identical language is used in the List Act, which requires the annual publication of "a list of all Indian tribes which the Secretary *recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians*." 25 U.S.C. § 5131(a) (emphasis added). "This Court does not lightly assume that Congress silently attaches different meanings to the same term in the same or related statutes." *Azar* v. *Allina Health Servs.*, 139 S. Ct. 1804, 1812 (2019). And it is undisputed that ANCs are not federally recognized and do not appear on the annual list published pursuant to the List Act. Accordingly, ANCs are not Indian Tribes under ISDA, and therefore also do not qualify as Indian Tribes for purposes of the CARES Act. This reading also makes the most sense in the Title V context, which directed funds to governmental entities, including recognized tribes with which the federal government has a government-to-government relationship.

C. The Exclusion Of ANCs Also Best Aligns With Congressional Intent

Because the text of the CARES Act is clear that ANCs do not qualify as Indian Tribes since they have not been formally recognized as such, that should be the end of it. *See National Federation of Independent Business* v. *Sebelius*, 567 U.S. 519, 544 (2012) ("How [statutes] relate to each other is up to Congress, and the best evidence of Congress's intent is the statutory text.") But if there were any doubt, statements from Members of Congress before and after the passage of the CARES Act confirm that this plain-language interpretation accords with congressional intent that Title V funds go to the governments of federally recognized tribes, not ANCs.

1. Throughout debate over the CARES Act, Members acknowledged that relief was needed across the economy—to individuals and families, businesses and corporations, healthcare providers, and state, local, and tribal governments. That ambition and wide reach was reflected in the final text of the Act. But in discussing the funds allocated under Title V, Members made clear that they were intending to address government-specific shortfalls. Senator Chuck Schumer explained that the Act allocated $150 billion for governmental entities, including $8 billion for tribal governments, because "local governments are hurting. They are spending more money than they have ever spent and at the same time their tax revenues have declined. So we must help our local governments, and we will in this legislation." 166 Cong. Rec. S2026 (daily ed. Mar. 25, 2020). Representative Betty McCollum similarly discussed the exceptional revenue challenges facing state, local, and tribal governments, explaining that the bill "will provide $150 billion to state, local, and

tribal governments to assist them with their public health response and short-term spending shortages." 166 Cong. Rec. H1859 (daily ed. Mar. 27, 2020).

Most directly, on March 25, 2020, the same day the CARES Act passed the Senate, Senator Udall spoke about Title V's "$8 billion set-aside for Tribal governments and their enterprises." 166 Cong. Rec. at S2041-S2042. As Senator Udall explained, "This Tribal Relief Fund will provide the *574 federally recognized Indian Tribes* with flexible resources—resources they need during the COVID-19 response, and I am glad we found bipartisan agreement on this." *Id.* (emphasis added). As Senator Udall—then Vice Chair of the Senate Committee on Indian Affairs—understood it, the $8 billion set aside for tribal governments by Title V was intended for the 574 federally recognized tribes, a set that does not include ANCs. *See* 85 Fed. Reg. 5462, 5462 (Jan. 30, 2020) ("publish[ing] the current list of 574 Tribal entities recognized by and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes," which does not include ANCs).

While my colleagues from Alaska now argue that they always understood and intended Title V to cover ANCs, there is nothing in the legislative record—from the Alaska delegation or anyone else—supporting that view. On the contrary, soon after the CARES Act was enacted, Senator Murkowski and Representative Young joined a bipartisan, bicameral group of 18 senators and 12 representatives in sending a letter to President Trump that suggests the opposite, *i.e.*, that the CARES Act's focus on Indian tribes was a focus on *fed-*

erally recognized Indian tribes.[10] In that letter, Members requested that "federal resources be deployed expeditiously to Indian Country in a manner consistent with" (1) "The federal government's trust and treaty responsibilities"; (2) "Respect for Tribal sovereignty"; and (3) "The principles of meaningful government-to-government consultation."[11] None of these principles would have applied to funds being disbursed to ANCs, which are not recognized and do not enjoy a government-to-government relationship with the United States.

2. In addition, as soon as the Treasury Department indicated that it intended to make Title V funds available to ANCs, Members of Congress promptly objected, explaining how that decision was contrary to both the text of the Act and their intent in passing the Act. On April 14, 2020, for example, Senator Udall wrote to Treasury Secretary Mnuchin and Interior Secretary Bernhardt "to clarify congressional intent regarding allowable uses and distribution of the Tribal portion of the [Coronavirus Relief Fund] to Tribal governments."[12] The letter continued:

> Title V of the CARES Act limits eligibility for the Tribal portion of the [Coronavirus Relief Fund] specifically to Tribal governments to ensure parity between states, territories, and Tribes. A Tribal government is the recognized

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[10] Senate Committee on Indian Affairs, *Udall Leads Bipartisan, Bicameral Push for Swift, Effective Implementation of Tribal Provisions of the CARES Act* (Apr. 1, 2020).

[11] *Id.*

[12] Letter from Sen. Udall to Secretary Mnuchin and Secretary Bernhardt (Apr. 14, 2020).

> governing body of a federally-recognized Indian Tribe that has a political relationship with the federal government; the law acknowledges this sovereign status and refers to Tribal governments alongside states and other units of local government throughout Title V. Thus, the letter and the spirit of Title V's purpose—to provide economic stabilization of state, local, territorial, and Tribal governments impacted by COVID-19 so that they can continue essential government services—supports this conclusion.[13]

Senator Udall acknowledged that "[n]on-governmental Tribal entities may well warrant relief under other CARES Act programs," but emphasized that when it came to Title V, the funding "was intended for Tribal governments and should not be diverted."[14]

Two days later, on April 16, 2020, a group of twelve Members of Congress wrote to Secretaries Mnuchin and Bernhardt with a similar message: that Title V was intended "to provide relief to units of government, not to corporations or other non-governmental entities."[15] As these Members explained, "[t]his section was included precisely to ensure parity between the relief the federal government was providing for state and local governments and the relief available to governing bodies of federally-recognized Indian Tribes."[16]

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[13] *Id.*

[14] *Id.*

[15] Letter from Rep. McCollum et al. to Secretary Mnuchin and Secretary Bernhardt (Apr. 16, 2020).

[16] *Id.*

More pointedly, on May 1, 2020, House Natural Resources Committee Chair Grijalva and the relevant subcommittee chairs requested that the Interior Department's Office of Inspector General conduct an investigation into the agency having "recommended a dubious interpretation of the CARES Act language that would make Alaska Native Corporations (ANCs) eligible for the $8 billion" allocated in Title V.[17] The letter also noted that, "[u]nlike federally recognized tribal governments, ANCs are for-profit companies that continue to receive revenue during the pandemic and are eligible to apply for funding under other legislative provisions."[18]

In sum, contrary to the Alaska delegation's assertions, the legislative record does not support a conclusion that Congress "used the [ISDA] definition of 'Indian tribe' in the CARES Act, Title V, to include ANCs as eligible recipients of tribal relief." Murkowski Br. 35. Quite the opposite: the text of the statute and contemporaneous statements by Members of Congress from when the CARES Act was debated and passed show that Congress intended no such thing.

3. The fact that Title V funding was limited to governmental entities does not mean ANCs were precluded from receiving any COVID-related relief. Indeed, ANCs qualified for *and received* relief under other provisions of the Act. For example, ANCs and their subsidiaries received tens of millions of dollars in Paycheck Protection Program (PPP) loans under Title I

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[17] Letter from Rep. Grijalva et al. to Inspector General Greenblatt (May 1, 2020).

[18] *Id.*

of the CARES Act.[19] That ANCs were some of the top recipients of PPP loans in the State of Alaska reflects the fact that ANCs are among "Alaska's largest businesses."[20]

And Alaska Natives are themselves eligible for CARES Act funds and services in other ways. Most obviously, Title V funds have already been disbursed to Alaska's 229 federally recognized tribes, whose memberships overlap significantly with ANCs.[21] The State of Alaska also received $1.25 billion in Title V funds, which it used on COVID-19-related health expenses for

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[19] *See* Ruskin, *Wealthy and Well-Connected Alaska Firms Among Those Gaining Most from PPP*, Alaska Public Media (July 8, 2020) ("A dozen Alaska companies got $5 million to $10 million apiece. Half of them are subsidiaries of Alaska Native Corporations."); Brooks, *State Businesses Received $1.2B in PPP Loans*, Alaska J. Commerce (July 8, 2020) ("Several Alaska Native regional and village corporation subsidiaries are at or near the top of the list. Six Tyonek Native Corp. branches received between $13.05 million and $28 million. Calista Corp. subsidiaries are listed as receiving more than $10 million. Tatitlek Native Corp. subsidiaries received at least $7.35 million.").

[20] *Triumphant Journeys: The Alaska Business 2020 Top 49ers*, Alaska Business (Oct. 2020) (listing ANCs as nine out of the ten largest businesses in Alaska in 2020).

[21] U.S. Dep't of Treasury, *The CARES Act Provides Assistance for State, Local, and Tribal Governments* (noting that "Treasury has completed making payments to Tribal governments, other than amounts that have not been paid to Alaska Native corporations pending litigation on that issue"); U.S. Dep't of Treasury, *Coronavirus Relief Fund – Payments to Tribal Governments* (Apr. 23, 2020) (announcing that ANCs will be eligible for Title V funding and explaining that "[i]n determining the appropriate allocation of payments to Tribal governments, Treasury intends to take steps to account for overlaps between Alaskan Native village membership and Alaska Native corporation shareholders or other beneficiaries").

all residents (including Alaska Natives), as well as support for small businesses, housing, and local governments.[22] Other provisions of the CARES Act also provided targeted relief for American Indian and Alaska Native peoples, including $1.032 billion for Indian Health Services funding, $400 million for Bureau of Indian Affairs Operation of Indian Programs, and $125 million in CDC funding for "tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes."[23]

Because of the funding that has already been distributed to the State of Alaska, federally recognized tribes in Alaska, and other government agencies, Petitioners' doomsday scenarios about Alaska Native peoples being denied COVID relief have (thankfully) not come to pass. To date, ANCs have not received any funding under Title V, and yet Alaska's response to the pandemic has been held up as a model for other states.[24]

Representative Grijalva acknowledges ANCs' success in the management of their businesses, and the benefits they are able to provide their shareholders. And to the extent a tribal government—or the State of Alaska—wishes to contract with an ANC or its subsidiary to provide any services, it is free to do so. But

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[22] State of Alaska, *COVID-19 Response Funding* (Apr. 21, 2020).

[23] Congressional Research Service, *The CARES Act: Implications for Tribes*, Congressional Research Service (Apr. 9, 2020).

[24] *See, e.g.*, Baumgaertner, *How Alaska Achieved One of the Highest COVID-19 Vaccination Rates in the U.S.*, L.A. Times (Mar. 17, 2021); Hollander, *Alaska's Rate of COVID-19 Hospitalization and Death in 2020 Was Far Below National Averages*, Anchorage Daily News (Jan. 29, 2021).

ANCs are not tribal governments, and only tribal governments were eligible for Title V funds. Congress's decision—as reflected in the statutory text—to make ANCs eligible for money under some CARES Act provisions but not others has not resulted in the extreme negative consequences hypothesized by the other side.

D. Subsequent Legislation Has Eliminated Any Ambiguity As To Congress's Intent To Provide Relief Only To Federally Recognized Tribes Under Title V Of The CARES Act

As explained, congressional intent is clear on the face of Title V that the $8 billion allocated by Congress for Indian Tribes go to federally recognized tribal governments, not ANCs. The CARES Act was drafted to achieve that outcome, as confirmed by the D.C. Circuit. That said, Amicus Representative Grijalva is not blind to the reality that the language used has sparked debate and raised questions about congressional intent—so much so that this case is now before the Supreme Court.

As soon as it became apparent that ANCs were asserting eligibility for funding as Indian Tribes under Title V of the CARES Act, and to foreclose any such argument in the future, Congress acted to remove any perceived ambiguity from subsequent legislation. On May 6, 2020, the Co-Chairs of the Congressional Native American Caucus wrote to the Chair and Ranking Members of the House Committee on Appropriations, asking that any subsequent COVID-relief legislation incorporate the List Act definition, rather than the ISDA definition, in order "to clarify Congressional intent

regarding the eligibility of the prior $8 billion tribal set-aside for 'tribal governments' within Title V."[25]

Consistent with that desire, the American Rescue Plan Act of 2021 ("ARP") enacted in March 2021 incorporated the List Act definition for tribes, not the ISDA definition. Most notably, Subtitle M of the ARP allocates $219.8 billion "to States, territories, and Tribal governments to mitigate the fiscal effects stemming from the public health emergency with respect to the Coronavirus Disease," with $20 billion of that amount reserved specifically for Tribal governments. H.R. 1319 § 9901. "Tribal Government" is then defined to mean "the recognized governing body" of tribes "individually identified (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to section 104 of the [List Act]." *Id.* Because ANCs are not federally recognized, they are not eligible for the ARP funds that, like in Title V of the CARES Act, were intended for governmental entities.

Again, Representative Grijalva believes the text of the CARES Act clearly reflects congressional intent that ANCs are not eligible for the funds that Title V earmarked exclusively for government entities. The ARP continues this congressional commitment to providing pandemic relief to federally recognized tribes; its use of the List Act definition clarifies what Congress intended to accomplish in the CARES Act but which others sought to misconstrue.

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[25] Letter from Reps. Haaland and Cole to Reps. Lowey and Granger (May 6, 2020).

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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