

[Supreme Court Agrees with Tribes that Indian Self Determination Act Requires Reimbursement of Contract Support Costs for Third-Party Expenses](#)

Category: Policy Blog

written by Chelsea Gutierrez | June 21, 2024

On June 6, 2024, the Supreme Court released their opinion in [Case No. 23-250](#), *Becerra v. San Carlos Apache* (consolidated with [Case No. 23-235](#), *Becerra v. Northern Arapaho Tribe*). The Justices ruled 5-4 in favor of the Tribes and the majority opinion was authored by Chief Justice Roberts. The National Council of Urban Indian Health (NCUIH) applauds this decision, and has been in support of Tribes in this case, [signing on](#) to the amicus brief filed by the National Indian Health Board (NIHB). NCUIH appreciates that the court supports self-determination and its importance in furthering the health and well-being of American Indian and Alaska Native people.

[Read the Court's Opinion here.](#)

The question presented in this case was whether under the Indian Self Determination Act (ISDA), a Tribe is entitled to recover contract support costs for expenses it incurs when spending third-party revenue to operate its healthcare program. During [Oral Argument](#), on March 25, 2024, the Justices aimed their questions at how ISDA should be interpreted, and whether the spending of third-party revenue collected by Tribes is governed by ISDA contracts. At that time, concerns were raised over impacts the court's decision would have if found in favor of the opposing party. For the Tribal respondents, they argued that Tribes would then be fully responsible for costs associated with third-party expenditures. For the federal government, they argued that there would be unavoidable impacts on IHS funding.

Summary of the Court's Holding

The court found that self-determination contracts between Tribes and IHS require spending and collection of third-party revenue, therefore, by doing so and incurring administrative costs, IHS is then required to reimburse for those contract support costs. Statutory language provided in ISDA, specifically Section 5325(a), identifies that contract support costs are requirements of a self-determination contract. The court then infers that this extends to third-party revenue because Tribes incur these costs to be in compliance with the terms of their contract with IHS. The court also addresses the limitations of ISDA found in Section 5326 but does not find that they would preclude payment of contract support costs incurred by spending of third-party revenue under a self-determination contract.

In response to arguments raised by the federal government, the court does not find any support within the language of ISDA. There is no language that suggests contract support costs are limited to programs funded by the Secretarial amount. Additionally, the court disagrees with the federal government stating that tribes should not be able to spend third-party revenue on a broader range of activities than IHS can. The differences raised by the federal government do not survive scrutiny, as the court does not see substantial differences between Tribes and IHS in providing services to non-Indians or requirements to "first" use Medicare and Medicaid proceeds to be in compliance with the

programs. The court also finds no merit in the argument that Tribes are able to use third-party revenue to construct facilities, since IHS would not be required to pay contract support costs for new programs.

An impactful and meaningful aspect of the court's opinion comes from the recognition that reading ISDA differently would be a harsh penalty on Tribes who pursue self-determination. The court recognizes the detrimental impacts to Tribes and the financing of their healthcare programs and services. If IHS was not required to cover contract support costs for third-party revenue, Tribes would be responsible and would have to divert income from other areas or pay out of pocket. This is contrary to the purpose of contract support costs, which are designated by Congress to fill the funding gap between Tribes and IHS.

Impact on Urban Indian Organizations

While this case has no strong relation to Urban Indian Organizations, there will be impacts to the IHS budget and how funds are allocated. UIOs receive funds through the urban health line item, but as they are only 1% of the entire IHS budget, it is not likely that these funds will be affected by budget allocation changes. NCUIH included the Tribal request to reclassify Contract Support Costs in its written testimony to Congress and will continue to advocate for Congress to honor this request. In discussing the financial impact, it is important to note that the amount suggested by the federal government of an additional \$2 billion per year was not supported by any evidence. The appropriations process will be where the increased obligation for contract support costs will be addressed, which could take Congress several years, potentially not until FY2026. Even though contract support costs are an indefinite appropriation, there is still a limit to the amount of funds that can be provided. Avoiding decreases to line items outside of contract support costs would be most effective through shifting contract support costs from discretionary to mandatory funding. This is supported by the Biden Administration and was included in the [President's FY2025 Budget Proposal](#), classifying contract support costs as mandatory beginning in 2026.