

IN THE SUPREME COURT FOR THE STATE OF ALASKA

YVONNE ITO,)
)
 Appellant,)
)
 v.) Supreme Court Case No. S-17965
)
 COPPER RIVER NATIVE)
 ASSOCIATION,)
) Trial Court Case No.
 Appellee.) 3AN-20-06229 CI
)
 _____)

**BRIEF OF AMICUS CURIAE DENA' NENA' HENASH'
(TANANA CHIEFS CONFERENCE)**

**APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
HONORABLE DANI CROSBY**

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AUTHORITIES PRINCIPALLY RELIED UPON

25 U.S.C. § 5321. Self-Determination Contracts

....

(d) Tribal organizations and Indian contractors deemed part of Public Health Service

For purposes of [42 U.S.C. § 233], with respect to claims by any person, ... an Indian tribe, a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement under sections [2] 5321 or 5322 of this title is deemed to be part of the Public Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees ... are deemed employees of the Service while acting within the scope of their employment in carrying out the contract or agreement

25 U.S.C. § 5381. Definitions

....

(b) Indian tribe

In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on its behalf under this subchapter, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution or in this subchapter). In such event, the term "Indian tribe" as used in this subchapter shall include such other authorized Indian tribe, inter-tribal consortium, or tribal organization.

Interest and Identity of *Amicus Curiae* Tanana Chiefs Conference

Amicus Curiae Dena' Nena' Henash, better known as the Tanana Chiefs Conference or "TCC," is a Fairbanks based, Alaska Native non-profit inter-Tribal consortium charged with advancing tribal self-determination and enhancing regional Native unity.¹ TCC's region covers an area of 235,000 square miles in Interior Alaska, which is equal to 37% of the entire state and is just slightly smaller than the size of the state of Texas.

TCC provides a wide range of health care and social services in a way that balances traditional Athabascan and Alaska Native values with modern demands to forty-two Alaska Native Villages, including thirty-seven federally-recognized tribes in Alaska's vast Interior region.² TCC is a signatory to the Alaska Tribal Health Compact with the United States Secretary of Health and Human Services, and carries out federal programs for Alaska Natives, American Indians, and other eligible individuals, through funding agreements with the Indian Health Service and the Bureau of Indian Affairs, as authorized by, *inter*

¹ See generally Tanana Chiefs Conference, <https://www.tananachiefs.org/> (last visited May 19, 2021).

² The federally recognized tribes located in the Tanana Chiefs Conference region are as follows: Alatna Village, Allakaket Village, Anvik Village, Arctic Village, Beaver Village, Birch Creek Tribe, Chalkyitsik Village, Circle Native Community, Evansville Village (aka Bettles Field), Galena Village (aka Loudon Village), Healy Lake Village, Holy Cross Village, Hughes Village, Huslia Village, Koyukuk Native Village, Manley Hot Springs Village, McGrath Native Village, Native Village of Eagle, Native Village of Fort Yukon, Native Village of Minto, Native Village of Ruby, Native Village of Stevens, Native Village of Tanacross, Native Village of Tanana, Native Village of Tetlin, Native Village of Venetie Tribal Government, Nenana Native Association, Nikolai Village, Northway Village, Nulato Village, Organized Village of Grayling (a.k.a. Holikachuk), Rampart Village, Shageluk Native Village, Takotna Village, Telida Village, Village of Dot Lake, and Village of Kaltag. See Indian Entities Recognized by and Eligible To Receive Services from the United States Bureau of Indian Affairs, 86 Fed. Reg. 7554, 7554-58 (Jan. 29, 2021).

alia, the Indian Health Care Improvement Act,³ and Titles IV and V of the Indian Self-Determination and Education Assistance Act (“ISDEAA”).⁴ TCC is considered an Indian Tribe under the ISDEAA.⁵

TCC is directed by and accountable to its 42 Alaska Native Villages. TCC governance begins at the tribal level, with each member tribe electing a representative to TCC’s Board of Directors. The Board of Directors elects TCC’s officers, including the President, Vice-President, and Secretary/Treasurer. The Board of Directors is broken down into six (6) subregions. Each subregion designates a director to TCC’s Executive Board of Directors, which includes TCC’s officers. The Executive Board of Directors exercises the authority of TCC’s full Board of Directors in the management of TCC, except as limited in the bylaws.⁶

TCC has a long and storied commitment to obtaining adequate health care for Alaska Natives in our region. In 1915, the Traditional Chiefs of the Tanana Athabascan tribes famously met with United States District Judge James Wickersham, then Alaska’s delegate to the United States Congress, in Fairbanks. The conference with Judge Wickersham signified the beginning of a formal relationship between the Interior Athabascan tribes and the United States Government. At that meeting, the Traditional Chiefs negotiated with Judge Wickersham and firmly expressed their priorities: to sustain

³ 25 U.S.C. §§ 1601 *et seq.*, P.L. 94-437, as amended.

⁴ 25 U.S.C. §§ 5301 *et seq.*, P.L. 93-638, as amended.

⁵ *See* 25 U.S.C. § 5381(b).

⁶ Ex. 1: Affidavit of TCC General Counsel Natasha Singh (“Singh Aff.”) at ¶ 4.

their villages through employment, education, lands protection, access and management of Tribal hunting and fishing resources, and, importantly, health care.⁷

On the second day, the Traditional Chiefs asked that the federal government establish a trade school in the area at which their young people could learn modern skills and trades. This proposal resulted in a discourse between Judge Wickersham, Chief Alexander Williams, and interpreter Paul Williams:

Chief Alexander Williams, of Fort Gibbon, through Paul Williams, Interpreter, said: "If there is an industrial school started for the Indians, will you have a doctor there?"

Delegate Wickersham: "Do they need a doctor there?"

Paul: "Chief Alexander Williams says little as they get it they need the doctor just as bad as they need the schools."

Delegate Wickersham: "When their people get sick where do they go?"

Paul interpreting for Chief Alexander Williams: "Down at Gibbon there is a Government doctor, the army doctor, and they depend on him, but other places they go to the mission for medicine but there are places where there is no mission or Government doctor and anyway it is only those who have money who can go to the doctor."

Delegate Wickersham: "What do they do when they have no money and are sick?"

Paul: "Then they are helpless and can't do anything."

Delegate Wickersham: "Are there many who need doctors and can't get them?"

Paul: "Yes, lots of them."

⁷ Tanana Chiefs Conference, *Our History*, <https://www.tananachiefs.org/about/our-history/> (last visited May 19, 2021).

All the Indians answered that question promptly in the affirmative. . . . “They are very anxious to have three things, school, a doctor, and some labor.”⁸

The Rev. Guy H. Madara, an Episcopal missionary who oversaw the Fairbanks region, made the last remark of the day, focusing on the need for doctors for Alaska Natives throughout the Interior:

Rev. Guy H. Madara: “A suggestion in regard to the doctor. We have had so many Government officials in this country who don’t officiate, that I would like to make this statement right at the start. We have had Government officials here who were supposed to work, who were supposed to look after the preservation of game and of fur, and who stayed in Fairbanks. We do not need that kind of a doctor.

“If there could be a doctor appointed to look after the health and sanitation among these Indians it would be a great thing, but he would have to have an expense account large enough to allow him to make regular visits up and down along the river, so that he could go up and down the river and keep on moving at regular intervals from place to place, and not just have an office in Fairbanks and expect the Indians to come, because they can’t do it.” Unanimous approval from the Indians.⁹

In addition, Reverend Madara mentioned the efforts the Episcopal Church had made to provide the Interior Alaska Natives with health care services.¹⁰ And, on July 5, another Traditional Chief spoke to a promise by the government that it would send a doctor for the Interior Natives, again emphasizing the central importance of governmentally-provided health care to the Tanana Chiefs.¹¹

⁸ William Schneider & Natasha Singh, *The Tanana Chiefs: Native Rights and Western Law* xiii-xxvii, 37-48, 108-09 (Univ. of Alaska Press, 2018).

⁹ *Id.* at 111.

¹⁰ *Id.* at 100-02.

¹¹ *Id.* at 88.

Tanana Chiefs Conference has fought for health care for the Athabascan people of the Interior ever since. Health care was critically important to the Traditional Chiefs in 1915; and assuring adequate health care for tribal members has remained a central, critical, core governmental function of TCC's member tribes.¹² To that end, TCC built the state-of-the-art Chief Andrew Isaac Health Center in Fairbanks, a modern, fully accredited ambulatory health facility serving Indian Health Service beneficiaries from across the entire Interior Region under the ISDEAA.¹³ TCC provides primary care and other health care services at village clinics in the Alaska Native communities of Alatna, Allakaket, Bettles (Evansville), Chalkyitsik, Circle, Dot Lake, Eagle, Hughes, Huslia, Kaltag, Koyukuk, Galena, Manley Hot Springs, Minto, Nenana, Northway, Nulato, Rampart, Ruby, Stevens Village, Tanacross, Tetlin, and Tok.

Tribal sovereign immunity is of paramount importance to TCC because of our duty to protect our member tribes' limited and vital health care funds and to perform the services that they have directed us to provide. Sovereign immunity is a key threshold factor that TCC considers when making important decisions that will have a significant financial impact on our organization. A ruling that sovereign immunity does not apply to Copper River Native Association (CRNA) will have immediate consequences on TCC's business

¹² Singh Aff. at ¶ 3.

¹³ Tanana Chiefs Conference, *Chief Andrew Isaac Health Center*, <https://www.tananachiefs.org/services/health/chief-andrew-isaac-health-center/> (last visited May 19, 2021).

operations, organizational planning, and risk management policies. Thus, TCC has a great interest in the outcome of this case.

Summary of Argument

The central issues in this case are (1) whether CRNA has tribal sovereign immunity under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5381(b); (2) whether CRNA has tribal sovereign immunity under federal common law;¹⁴ (3) whether the Superior Court correctly applied controlling Alaska precedent, *Runyon ex rel. B.R. v. Association of Village Council Presidents*;¹⁵ and (4) whether this Court should modify or overrule *Runyon*.

Argument

I. Introduction

TCC fully agrees with all of the arguments that CRNA makes in its answering brief and believes that it possesses tribal sovereign immunity through federal statute and common law, and under *Runyon*. However, TCC's focus for this *amicus curiae* brief is to inform the Court (1) why it is important to either modify or overrule *Runyon* and take a more holistic view of the relationship between tribal consortia and their member tribes when determining whether sovereign immunity bars suit against consortia and (2) how sovereign immunity protects limited funding needed to provide critical services to Alaska Natives.

¹⁴ See *White v. University of California*, 765 F.3d 1010, 1025 (9th Cir. 2014).

¹⁵ See 84 P.3d 437, 439 (Alaska 2004).

II. *Runyon's* “Real Party in Interest” Analysis Excludes Relevant Information and Evidence that Alaska Courts Need to Make Informed Decisions.

Runyon's single factor “real party in interest” analysis looks at whether a judgment against entities formed by tribes (“consortia”) will reach the tribes’ assets or will bind or obligate the tribes’ funds.¹⁶ If the answer is no, the tribes are not the real party in interest and sovereign immunity does not bar suit against the consortia. If the answer is yes, the tribes are the real party in interest and sovereign immunity bars suit against the consortia.¹⁷ *Runyon* also recognized, but failed to refine, two factors—the amount of control a tribe exerts and whether the consortia’s work is commercial or governmental, that may assist in determining whether the tribes are the real party in interest.¹⁸

But *Runyon's* single factor analysis does not provide Alaska courts with the relevant information and evidence needed to thoughtfully determine whether consortia formed by tribes are entitled to assert the tribes’ sovereign immunity against unconsented suit. Although *Runyon* acknowledged two factors that “*may assist*” in determining whether consortia possesses sovereign immunity, its exclusive focus ignores the nuances and intricacies that make entities like CRNA and TCC distinguishable from state chartered, non-tribal, organizations and other corporate entities.¹⁹ Before Alaska courts decide whether tribally formed consortia possess sovereign immunity, they should have the

¹⁶ *Runyon*, 84 P.3d at 440-41.

¹⁷ *Id.*

¹⁸ *Id.* at 441.

¹⁹ *Id.* at 441 (emphasis added).

opportunity to review all relevant information needed to make informed decisions. As explained in CRNA’s answering brief, the federal *White* factors provide a better framework for courts to use when analyzing the relationship between tribal consortia and their member tribes. The *White* factors provide courts the opportunity to look at not only the financial relationship between tribal entities and their member tribes—like the test outlined in *Runyon*—but also their method of creation; their purpose; the structure, ownership, and management including the amount of control tribes exert over the entities; and the member tribes’ intent with respect to sharing their sovereign immunity.²⁰

Runyon’s limitations are evident in this case. On appeal, Appellant argues that the Superior Court’s analysis was improperly “fixated on factors that were irrelevant to, or even in tension with, *Runyon*.”²¹ The factors Ito believes irrelevant are whether a consortium was organized to provide health care to its tribal members, whether the consortium receives federal funds that otherwise would flow to its member tribes, and whether tribal assets would be obligated to satisfy a judgment against the consortium even if the member tribes would not be obligated to pay that judgment.²²

However, these factors are relevant and, indeed, critically important to the analysis because they allow courts to more fully examine the relationship between a tribal consortium and their member tribes. TCC joins CRNA in respectfully requesting that this Court modify or overrule *Runyon*.

²⁰ *White*, 765 P.3d at 1025.

²¹ Br. of Appellant Yvonne Ito at 7-8.

²² *Id.*

A. The services that a consortium provides are relevant when determining whether it is an “arm of tribe” entitled to assert tribal sovereign immunity.

A major flaw in *Runyon’s* single factor analysis is that it gives little to no consideration to the type of services that tribal consortia provide. It is vital that courts consider whether a consortium provides core governmental service to tribal members. For consortia like TCC and CRNA, providing health care services is a core governmental function that constituent tribes have elected to carry out via inter-tribal consortia.

The United States has long recognized its responsibility to provide health care to Native Americans because of its “historical and unique legal relationship with, and resulting responsibility, to the American Indian people.”²³ The federal government has assumed this responsibility for Alaska Natives since Alaska was purchased from Russia in 1867, with varying degrees of success.

Early efforts in the late 1860’s to provide health care to Alaska Natives were uncoordinated and fragmented among a number of federal agencies, with most of the service provided by various military branches.²⁴ For example, in 1868 an Army hospital treated Alaska Natives in Sitka, in the late 1870’s surgeons on U.S. Navy ships provided various health care services, and from 1878 into the 1900’s surgeons from the U.S. Revenue and Marine Service made regular trips to the Aleutian Islands and the Bering Strait.²⁵

²³ 25 U.S.C. § 1601(1).

²⁴ David S. Case & David A. Voluck, *Alaska Natives and American Laws* 288 (3rd ed. 2012) at 229.

²⁵ *Id.* at 229-30.

The first Native hospital in Alaska opened in 1912 in Juneau, but closed shortly thereafter due to a lack of funding.²⁶ Then, in 1915, Congress appropriated \$25,000 for the construction of a twenty-five bed Native hospital in Juneau and between 1915 and 1930 the Bureau of Education (BOE) converted classroom space into small medical facilities throughout the Alaska territory.²⁷ By 1925, the BOE was providing dental services to Alaska Natives in southeastern Alaska, and by 1930 it operated seven hospitals, a clinic boat, and sixteen health stations.²⁸ In 1931, the BOE's responsibilities were transferred to the Bureau of Indian Affairs and eventually to the Alaska Native Service, and as a result, federal Native health care appropriations increased from \$168,000 to nearly \$500,000 by 1940.²⁹

In 1955, responsibility for Native health care was transferred again, this time to the Indian Health Service.³⁰ This transfer established a "relatively coordinated and professional health delivery system administered by the federal government."³¹ With the passage of the ISDEAA in 1975, and its subsequent amendments, responsibility for operating the Alaska Native Health System was transferred to Alaska tribes and their authorized tribal organizations.³² Both CRNA and TCC are such organizations.

²⁶ *Id.* at 229.

²⁷ *Id.*

²⁸ *Id.* at 230.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

Today, Alaska tribes and tribal organizations provide health services to 174,990 Alaska Natives.³³ Approximately 99% of the Indian Health Service's (IHS) Alaska Area budget is allocated to Alaska Native tribes and tribal organizations under the ISDEAA's authority.³⁴ IHS funds seven tribally managed hospitals, fifty-eight tribal health centers, one hundred sixty tribal community clinics, and five residential substance abuse treatment centers.³⁵ In addition, the Alaska Native Medical Center in Anchorage offers comprehensive medical services and acute, specialty, primary, and behavioral health care to Alaska Natives and American Indians.³⁶

The federal government's responsibility of providing health care to Alaska Natives has not diminished. Under the ISDEAA, TCC, CRNA, and the other consortia perform the federal government's responsibilities to provide health care to Alaska Natives.³⁷ Alaska tribes and tribal consortia have taken on this core governmental function pursuant to Congress's intent in passing the ISDEAA to foster tribal self-determination. A consortium providing services pursuant to an ISDEAA compact, "is not simply a business entity that happens to be run by a tribe or its members, but rather, occupies a role quintessentially

³³ U.S. Dep't of Health & Human Servs., Indian Health Serv., *Alaska Area*, <https://www.ihs.gov/alaska> (last visited May 19, 2021).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Alaska Native Med. Ctr., *Services*, <https://anmc.org/services/> (last visited May 19, 2021).

³⁷ *See* 25 U.S.C. §§ 5301 *et seq.*

related to self-governance.”³⁸ Thus, the services consortia provide and the purpose behind those services are relevant and needed in order for courts to make informed decisions. By not always considering this information, courts make judgments based on incomplete records and injustice can result.

B. Courts must consider all aspects of the financial relationship between consortia and their member tribes when determining if the consortia are operating as an “arm of the tribe.”

Runyon, unlike the *White* factors, does not permit courts to fully examine the financial relationship between tribes and the consortia they form. Although tribal consortia may be organized the same way as other entities under Alaska law, the financial relationship between consortia and their member tribes can be vastly different from how state chartered organizations and corporate entities are financed by their members and owners. These differences must be taken into consideration, especially when consortia perform core governmental services under the ISDEAA.

In passing the ISDEAA in 1975, Congress found that “prolonged domination of Indian service programs” hindered the progress of Native people and that self-determination was the best policy for tribal nations.³⁹ Self-governance is the right of tribes to assume the responsibility, and associated funding, to carry out programs, functions, services and activities (PSFAs) that the United States government would otherwise be

³⁸ *Matyascik v. Arctic Slope Native Ass’n, Ltd.*, No. 2:19-CV-0002-HRH, 2019 WL 3554687, at *2 (D. Alaska Aug. 5, 2019) (quoting *E.E.O.C. v Karuk Tribe Hous. Auth.*, 260 F.3d 1071, 1080 (9th Cir. 2001)).

³⁹ 25 U.S.C. §§ 5301-5302.

obliged to provide to American Indians and Alaska Natives.⁴⁰ In other words, self-governance allows flexibility to use and redesign federal dollars associated with assumed PSFAs to meet local community service needs and tribally-driven priorities. Examples of such services include health care, education, road construction, and social services.⁴¹

On October 1, 1994, Alaska tribes and tribal organizations entered into the Alaska Tribal Health Compact (ATHC) with the United States to ensure that all Alaska Natives would have access to a comprehensive, integrated, and tribally-controlled healthcare delivery system.⁴² The ATHC is a self-governance compact—a legally binding and mutually enforceable written agreement that affirms the government-to-government relationship between a tribe or tribal organization and the United States.⁴³ Included in each self-governance compact is a funding agreement that must contain the following:

Each funding agreement required under subsection (a) of this section shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding, including tribal shares of discretionary Indian Health Service competitive grants (excluding congressionally earmarked competitive grants), for all programs, services, functions, and activities (or portions thereof), that are carried out for the benefit of Indians because of their status as Indians without regard to the agency or office of the Indian Health Service within which the program, service, function, or activity [“PFSA”] (or portion thereof) is performed.⁴⁴

⁴⁰ Geoffrey D. Strommer, Stephen D. Osborne, *The History, Status, and Future of Tribal Self-Governance Under the Indian Self-Determination and Education Assistance Act*, 39 Am. Indian L. Rev. 1, 4, (2015).

⁴¹ *Id.*

⁴² Singh Aff. at ¶¶ 6, 9.

⁴³ 42 C.F.R. § 137.30.

⁴⁴ 25 U.S.C. § 5385(b)(1).

Under the ATHC, tribes may either provide federal PSFAs themselves or through tribal organizations.⁴⁵ If a tribe decides to participate in an inter-tribal consortium, the tribe must pass a written resolution authorizing the consortium to enter the ATHC on the tribe's behalf.⁴⁶ The consortium is then responsible to provide the PSFAs and to receive the funds that the authorizing tribe would have received had it entered into the ATHC itself.⁴⁷

The reason for this is straight forward; many of TCC's member tribes are located in villages that are small and scattered throughout the Interior. By joining together, our member tribes are able to provide more and higher quality health care services than any one individual tribe could provide on their own.⁴⁸ The ATHC compact funding mechanism demonstrates that federal funds which would otherwise flow to a consortium's individual tribes—their "tribal shares"—would be used to pay a judgment against a consortium even if the judgment would not be directly entered against the tribe.⁴⁹

⁴⁵ Singh Aff. at ¶¶ 5-9.

⁴⁶ Singh Aff. at ¶ 8.

⁴⁷ Singh Aff. at ¶¶ 8, 9.

⁴⁸ Singh Aff. at ¶ 7.

⁴⁹ See 25 U.S.C. § 5388(a) (transfer of federal funds to tribes and tribal organizations pursuant to Compact and Annual Funding Agreements), (c) ("The Secretary shall provide funds under a funding agreement under this subchapter in an amount equal to the amount that the Indian tribe would have been entitled to receive under self-determination contracts under this subchapter."). If the member tribes did not authorize CRNA and TCC to receive their "tribal shares," the tribes would receive these funds either directly from the federal government or in the form of services from the IHS. See also, U.S. Dep't of Health & Human Servs., Indian Health Serv., *Tribal Self-Governance*, <https://www.ihs.gov/newsroom/factsheets/tribalselfgovernance/> (last visited May 19, 2021).

TCC's position as a consortium highlights the importance of evaluating not only what services a consortium provides, but also where our assets originate (i.e. are they "tribal shares" fulfilling the federal government's trust responsibilities towards Alaska Native peoples). Courts must take a broader view of the financial relationship between a consortium and their member tribes. *Runyon's* "real party in interest" analysis ignores the broader realities of how tribal governments decide to allocate their funds and should be modified or overruled to better reflect the realities on the ground.

III. Sovereign Immunity Protects Critical Health Care Funding for Alaska Natives.

For every lawsuit that entities like TCC and CRNA have to defend, limited resources are diverted from programs that address preventative care, treat diseases, combat behavioral health disorders, and prevent suicide. The Indian Health Service (IHS) is "chronically underfunded" and "the efforts of the federal government have been insufficient to meet the promises of providing for the health and wellbeing of Tribal citizens, as a vast health disparity exists today between Native Americans and other population groups."⁵⁰

These gross health disparities were acknowledged in the U.S. Commission on Civil Rights' (the Commission) 2003 report, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, which evaluated budgets and spending of federal agencies that sponsor Native American programs, and were reconfirmed in the Commission's 2018 updated

⁵⁰ U.S. Comm'n on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall For Native Americans* 65-66 (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

report *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*.⁵¹

The Commission's 2018 Report specifically addressed how underfunded the tribal health care system is compared to the actual need. The findings of a Tribal Budget Workgroup, which TCC was a part of, estimated that \$48 billion is required to fully fund IHS based on the health care need for Fiscal Year 2022.⁵² However, it is highly unlikely that IHS will be funded at the recommended level given that the agency was only appropriated \$6 billion in FY 2020.⁵³ The Commission called IHS funding "inequitable and unequal" and cited the following contributing factors:

1. IHS expenditures per capita remain well below other federal health care programs, and overall IHS funding covers only a fraction of Native American health care needs, including behavioral health needs to address the suicide epidemic in Indian Country.
2. IHS funding was subject to the across-the-board full sequestration in 2013, although other federal health care programs such as Medicaid and Veterans Affairs programs were not.

⁵¹ *Id.* ("The life expectancy for Native peoples is 5.5 years less than the national average. Native Americans die at higher rates than those of other Americans from chronic liver disease and cirrhosis, diabetes mellitus, unintentional injuries, assault/homicide, intentional self-harm/suicide, and chronic lower respiratory diseases. According to one study, Native American women are 4.5 times more likely than non-Hispanic white women to die while pregnant or 'within 42 days of the termination of pregnancy, irrespective of the duration and site of the pregnancy or its management, but not from accidental or incidental causes.' The Center for Disease Control (CDC) found that, between 2005 and 2014, every racial group experienced a decline in infant mortality, except for Native Americans. Native Americans experience infant mortality rates 1.6 times higher than non-Hispanic whites and 1.3 times the national average." (citations omitted)).

⁵² Alaska Native Health Bd., News, *National Tribal Budget Formulation Workgroup FY2022 IHS Budget Recommendations*, <https://www.anhb.org/national-tribal-budget-formulation-worgroup-fy2022-recommendations/> (last visited May 19, 2021).

⁵³ U.S. Dep't of Health & Human Servs., Indian Health Serv., *IHS Profile*, <https://www.ihs.gov/newsroom/factsheets/ihsprofile/> (last visited May 19, 2021).

3. IHS budgets do not receive advance appropriations (funding for future fiscal years), making it difficult for IHS and Tribal health care providers to engage in long-term planning and budgeting. Other federal health care programs such as the Veterans Health Administration receive advance appropriations.
4. The budget for urban Indian health care has not kept pace with inflation and the growing urban Indian population, and meets only a fraction of this population's needs.
5. Federal funding for the construction and maintenance of healthcare facilities has increased recently, but is still insufficient to cover the backlog of required maintenance of facilities.
6. The Affordable Care Act permanently reauthorized the Indian Health Care Improvement Act, which has great potential to reduce health disparities between Native Americans and other groups; however, many provisions of the law remain unfunded.⁵⁴

CRNA, TCC, and other tribal health consortia must operate under these dire financial restraints. We struggle to provide the highest quality patient care and to recruit and retain health care professionals, particularly to rural locations; account and plan for the additional administrative burdens and costs associated with federal funding; and conduct “business as normal” during events that cause financial uncertainty such as government shutdowns, recurring continuing resolutions, and now the COVID-19 pandemic.

Given the financial challenges that Alaska tribal health consortia must overcome, sovereign immunity is critical to ensuring that tribal health care funds are used for health care activities. This is the exact purpose of sovereign immunity:

Sovereign immunity is intended to protect what assets the Indians still possess from loss through litigation. That has been the settled doctrine of the government from the beginning. If any other course were adopted, the Tribes would soon be overwhelmed with civil litigation

⁵⁴ U.S. Comm'n on Civil Rights, *supra* note 50, at 209.

and judgments. If Tribal assets could be dissipated by litigation, the efforts of the United States to provide the Tribes with economic and political autonomy could be frustrated.⁵⁵

Over the last three years, TCC has raised sovereign immunity as a defense to either threatened or actual litigation multiple times. Cumulatively across those matters, over two million dollars was demanded. Nearly every such lawsuit was meritless. In each of these cases, TCC was forced to spend scarce tribal health care funds on legal fees and costs to defend ourselves; those funds could have—and should have—been used on critically needed patient health care services.

In addition, time and human resources are diverted from TCC's Legal Division, Human Resource Division, and Health Services Division to focus on actual or threatened litigation instead of working on issues that improve patient care. This means that attorneys cannot spend time negotiating agreements for systems that would improve health care quality, human resource technicians cannot focus on onboarding new health care providers, and health care providers must see less patients while assisting with a legal matter (which has an even bigger snowball effect on health care operations such as less patient appointments, longer waiting lists, hardships for patients traveling to and from rural communities, and loss of staff morale).

Any fears that TCC or other tribal health consortia would raise sovereign immunity as a shield to the torts we commit or to avoid contractual obligations are baseless. Medical malpractice and other negligence claims against consortia contracting or compacting with

⁵⁵ *Cogo v. Cent. Council of Tlingit & Haida Indians of Alaska*, 465 F. Supp. 1286, 1288 (D. Alaska 1979) (internal quotations and citations omitted).

the federal government under the ISDEAA are covered by the Federal Tort Claims Act (FTCA).⁵⁶ To start a FTCA claim, a plaintiff must file an administrative federal tort claim with the Department of Health and Human Service's Office of the General Counsel.⁵⁷ Claims must be filed within two years of the incident or knowledge of the alleged injury.⁵⁸ Once a claim is filed, the government has six months to review the claim.⁵⁹ If within the six months the government denies the claim or after six months the government has not respond to the claim, the plaintiff may file suit against the government.⁶⁰ Thus, *bona fide* plaintiffs have always had a recovery route for medical malpractice and other negligence claims.

As for contractual obligations, using the sovereign immunity defense as a cynical tool to avoid our agreements would only harm tribal consortia like TCC and CRNA. For example, TCC is a sophisticated health care provider and understands that we cannot self-perform everything that our organization needs. TCC does not have a design and construction division to build new buildings, cannot self-finance all of our capital projects, nor do we have a software division to build new electronic health records systems. TCC relies on businesses, lenders, vendors, and other third parties to accomplish the tasks that we cannot self-perform. TCC well understands that others will not enter into agreements

⁵⁶ 25 U.S.C. § 5321(d); 25 C.F.R. § 900.180.

⁵⁷ 25 C.F.R. §§ 900.190, 900.201.

⁵⁸ 25 C.F.R. § 900.184.

⁵⁹ 25 C.F.R. § 900.185.

⁶⁰ *Id.*

and conduct business with us if we have a reputation and history of breaching our agreements. Limited waivers of sovereign immunity and insurance requirements are common in our commercial transactions. Through careful crafting of waivers in agreements with our contractors and various insurance policies, we are able to manage TCC's financial risks while assuring contractors that we are a responsible commercial partner, will pay what is owed, and will honor our obligations.

We find time and again that federal health care funds that could have been used for critical health care services are diverted for litigation defense of meritless claims. Sovereign immunity is an essential, critical element of preserving TCC's resources for the purpose they are intended: providing health care for tribal members.

CONCLUSION

The Superior Court's decision should be affirmed and this Court should modify or overrule *Runyon* for the reasons stated above and by appellee CRNA.

RESPECTFULLY SUBMITTED this 24th day of May, 2021.

DENA' NENA' HANESH

/s/ Nicholas Gasca

Nicholas Gasca, Alaska Bar No. 1506052

Deputy General Counsel

Tanana Chiefs Conference

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IN THE SUPREME COURT FOR THE STATE OF ALASKA

YVONNE ITO,)	
)	
Appellant,)	
)	
v.)	Supreme Cour No. S-17965
)	
COPPER RIVE NATIVE)	Trial Court Case No. 3AN-20-06229CI
ASSOCIATION,)	
)	
Appellee.)	

AFFIDAVIT OF NATASHA SINGH

Natasha Singh, being first duly sworn, states and affirms that:

1. I am the General Counsel of the Tanana Chiefs Conference (TCC) and have served in that role since 2012 and have been with TCC since 2008. As part of my current job, I am responsible for the general supervision, management, and control of the day-to-day operations of TCC's legal division and manage TCC's corporate governance affairs in accordance with our governing documents.

2. I also serve as the Co-Lead Negotiator for the Tribal Health Organizations who are signatories (Co-signers) to the Alaska Tribal Health Compact with the Indian Health Service. I have intimate knowledge of the Alaska Tribal Health Compact and TCC's associated Funding Agreement with the United States Government. The Co-Signers agree to negotiate in common and have delegated me authority as Co-Lead Negotiator to speak on the caucus's behalf during common negotiations, terms or conditions that apply to all Co-Signers such as compact language, funding agreement

changes requested by IHS because of change in law, regulation or policy or funding agreement changes requested by Co-Signers which may affect all Co-Signers. Co-Signers recommend to the Area Director internal distribution methodologies for most types of routine and ongoing program increases received through the compact on an annual basis such as pay act increases, population increases, purchase and referred care increases, Indian health care improvement fund increases, and ongoing program expansions. In making their recommendation, the Co-Signers work collaboratively to address the unique characteristics of the Alaska Tribal Health System and to develop local solutions in resource distribution and other issues that address this uniqueness and support desirable characteristics and values statewide. This includes adjustments for historic tribal share distribution issues. I work on several associated committees of the Co-signers including the Ground rules committee which seeks to continually improve the negotiations process.

3. TCC predates statehood. It began in 1915 at a meeting of the Traditional Chiefs of the Athabascan Tribes of the Alaska Interior. TCC incorporated as a nonprofit corporation in 1962 “[t]o secure the Alaska Native people of the region of the Tanana Chiefs Conference the rights and benefits to which they are entitled under the laws of the United States and the State of Alaska,” “[t]o promote the common welfare of the Natives of Alaska and their physical, economic, and social well-being,” “[t]o seek an equitable adjustment and settlement of Native affairs and the land claims of the Native people of said region,” and “[t]o promote good government,” among other purposes. TCC is “the historic successor to the Tanana Chiefs Conference, the traditional consultative and governing

assembly of the Athapascan people of Interior Alaska, from time immemorial, and shall have all of the rights, duties, powers, and privileges of this historic assembly.”¹

4. TCC is directed by and accountable to its 42-member Alaska Native Villages, 37 of which are federally-recognized Indian tribes. TCC governance begins at the village level, with each member electing a representative to TCC’s Board of Directors.² Representatives must be Alaska Native members of the village that they represent. The Board of Directors elects TCC’s officers, including the President, Vice-President, and Secretary/Treasurer. The Board of Directors is broken down into six (6) subregions. Each subregion designates a director to TCC’s Executive Board of Directors, which includes TCC’s officers. The Executive Board of Directors exercises the authority of TCC’s Board of Directors in the management of TCC, except as limited in the bylaws. The Board of Directors appoints a Traditional Chief responsible for calling to order all TCC functions and meetings.³

5. The United States Government provides health, education, economic and social services to Alaska Natives and American Indians through the Indian Health Service (IHS), part of the U.S. Department of Health and Human Services, and the Bureau of Indian Affairs (BIA), part of the U.S. Department of Interior. The IHS and BIA traditionally managed and delivered these services directly, but now contract on a government-to-

¹ Ex. A, TCC Articles of Incorporation.

² Ex. B, TCC Bylaws.

³ Exs. A, B.

government basis with TCC and other federally-recognized tribes and tribal consortia to provide many of those services pursuant to P.L. 93-638, the Indian Self-Determination and Education Assistance Act (ISDA), 25 U.S.C. §§ 5301-5423. Providing these services is a core governmental function of TCC's villages, and TCC takes its responsibilities to provide these services very seriously.

6. On October 1, 1994, Alaska tribes and tribal organizations entered into the Alaska Tribal Health Compact (ATHC) with the United States to assure that all Alaska Natives would have access to a comprehensive, integrated, and tribally controlled healthcare delivery system.


7. Smaller tribal communities generally have a difficult time contracting with the BIA and IHS for services alone. Alaska's geography, climate, and transportation infrastructure make access to health care particularly difficult in rural areas and expensive to deliver for individual tribes and villages. As a result, the vast majority of Alaska tribal governments have joined together in P.L. 93-638 regional tribal consortiums. TCC's member villages are no exception. Our villages are small and scattered throughout the Interior. By banding together, our tribal governments are able to provide more and higher quality health care services than any of our individual tribal governments could do on their own.

8. TCC is the P.L. 93-638 regional tribal consortium for the Interior region of Alaska. Each of the governing bodies for TCC's member villages has passed a government resolution authorizing TCC to receive and/or manage its BIA and/or IHS program funds for the good of its tribal citizens. TCC operates health care clinics throughout most of the

region, including the Chief Andrew Isaac Health Center in Fairbanks, and provides a wide variety of health, education, economic, and social services to Alaska Natives and American Indians in our villages. TCC's budget is substantially based on federal funds received from IHS and the BIA as a P.L. 93-638 organization.

9. TCC is signatory to the Alaska Tribal Health Compact, which is the 1994 umbrella agreement between Alaska's tribes and tribal health organizations and the Secretary of the United States Department of Health and Human Services. Under the Compact, TCC and the other signatories operate federal health and health-related programs for the benefit of Alaska Natives, American Indians, and other beneficiaries. The Compact sets forth the terms of the government-to-government relationship between the Government and the Alaska tribes and tribal organizations.

DATED this 20th day of May, 2021, at Fairbanks, Alaska.




Natasha Singh

STATE OF ALASKA)
)ss.
FOURTH JUDICIAL DISTRICT)

Subscribed and sworn before me, a Notary Public for the State of Alaska, on the date and at the place above noted.





Notary Public for the State of Alaska
My Commission Expires: 9/25/2024

**Articles of Incorporation and
Bylaws of Dena' Nena' Henash**
ADOPTED BY THE FULL BOARD OF DIRECTORS

MARCH 2019



Tanana
Chiefs
Conference

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RESTATED
ARTICLES OF INCORPORATION
OF
DENA' NENA' HENASH

These restated Articles of Incorporation correctly set out the provisions of the Articles of Incorporation of Dena' Nena' Henash, as amended, have been adopted as required by law, and supersede the original Articles of Incorporation and all prior amendments thereto. The Restated Articles of Incorporation of Dena' Nena' Henash are as follows:

"The undersigned, acting as incorporators of a corporation under the Alaska Non-Profit Corporation Act, adopt the following Articles of Incorporation for such corporation:

FIRST: The name of the corporation is Dena' Nena' Henash, and the name of the corporation in the English language is the Tanana Chiefs Conference.

SECOND: The period of its duration is perpetual.

THIRD: The purpose or purposes for which the corporation is organized are:

- a) To secure to the Alaska Native people of the region of the Tanana Chiefs Conference the rights and benefits to which they are entitled under the United States and the State of Alaska.
- b) To enlighten public towards a better understanding of the Native People of Alaska.
- c) To preserve the customs, folklore, art and cultural values of the Native People of the region of the Tanana Chiefs Conference.
- d) To seek an equitable adjustment and settlement of Native affairs and land claims of the Native People of said region

- e) To promote the common welfare of the Natives of Alaska and their physical, economic, and social well-being.
- f) To foster continued loyalty and allegiance of the Natives of Alaska to the United States and the State of Alaska.
- g) To promote pride on the part of the Natives of Alaska in their heritage and traditions.
- h) To discourage and overcome racial prejudice.
- i) To promote good government.
- j) Notwithstanding any other provision of these Articles, this corporation is organized exclusively for religious, charitable, scientific, literary or education purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code.

FOURTH: The Corporation's principal place of business shall be Fairbanks

FIFTH: Provisions for the regulation of the internal affairs of the corporations, including provisions for the distribution of assets on dissolution or final liquidation, are:

- a). **Membership.** Membership in this corporation is limited to Native villages of the region claimed by the Dena'Nena'Henash, being, in general, the Middle Yukon and Upper Yukon drainages, the Koyukuk and Tanana drainages, and the Upper Kuskokwim drainage, but including Mentasta and Cantwell, and to urban Native Groups consisting of Athapascans of one-quarter blood or more, all as more fully defined in the by-laws. Villages of Native groups seeking membership shall make application to the Board of Directors at least thirty (30) days prior to annual meeting. Villages and Native Groups shall be admitted upon two-thirds (2/3) vote of the Board of Directors.

b). Officers. The principal officers of the corporation are the President, the Vice- President, and the Secretary/Treasurer. The President, Vice-President, and Secretary/Treasurer shall be elected by the Board of Directors to serve three-year terms at the regular annual meeting. No person who has been elected President for two full three (3) year successive terms shall be again eligible to hold that office until one full term has intervened. These officers shall manage the affairs of the corporation. They shall be ex-officio members of the Board of Directors.

c) Directors. Each member village or group shall elect one director. The Board of Directors shall elect nine directors to serve as an Executive Committee of the Board of Directors as provided in the Bylaws. The presiding officer of the Board of Directors shall be the Chairman of the Board who shall be a member of the Executive Board and elected by the Board of Directors.

d) By-laws. The Board of Directors shall adopt and may amend the by-laws for the corporation.

e) Amendments. These articles may be amended in the manner prescribed by law. Written notice to intention to amend the Articles of Incorporation must be mailed to each member at least thirty (30) days before the meeting of the members in which the action shall take place.

f). Historic Succession. The corporation is the historic successor to the Tanana Chiefs Conference, the traditional consultive and governing assembly of the Athapascan people of Interior Alaska, from time immemorial, and shall have all of the rights, duties, powers, and privileges of this historic assembly.

g). Dissolution. Upon the winding up and dissolution of the corporation, after

paying or adequately providing for the debts and obligations of the organization, the remaining assets shall be distributed to a non-profit fund, foundation, or corporation which has establish tax exempt status under Section 501 (c) (3) of the Internal Revenue Code.

h). Debt. The highest amount of indebtedness to which the corporation may be subject shall be two hundred (200) million dollars.

SIXTH: The address of the initial registered office of the corporation is P.O. Box 348, Fairbanks, Alaska (street address 527 4th Avenue), and the name of its initial registered agent at such address is Barry W. Jackson.

SEVENTH: The number of directors constituting the initial Board of Directors of the corporation is 25, and the names and addresses of the persons who are to serve as the initial directors are:

<u>Name</u>	<u>Address</u>
Eddie Bergman, Jr.	Allakaket
Thomas Wood	Anvik
Gideon James	Arctic Village
Winston James	Birch Creek
Frank Tobuk	Bettles
Henry Peters	Cantwell
Moses Peters	Chalkyitsik
Allen John	Circle
Horace Biederman	Eagle
Andrew Isaac	Dot Lake

Larry Peterson	Fort Yukon
Amy Nelson	Galena
Joe Mailelle, Jr.	Grayling
Susie Williams	Hughes
Edwin Simon	Huslia
Walter Andre	Kaltag
Andrew Dayton	Koyukuk
Melvin Charlie	Minto
Jessie Brown	Nenana
Fred Stickman	Nulato
Sally Hudson	Rampart
Hamilton Hamilton	Shageluk
Gilbert Stevens	Stevens Village
Donald Joe	Tetlin
Tim Wallis	Fairbanks

EIGHTH: The name and address of each incorporator is:

Name	Address
Alfred R. Ketzler	102 Lacey Street, Fairbanks, AK
Ruby John	102 Lacey Street, Fairbanks, AK
Tim Wallis	102 Lacey Street, Fairbanks, AK

NINTH: No part of the net earnings of the corporation shall inure to the

benefit of, or be distributed to, its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Three hereof. Notwithstanding any other provision of these articles, this corporation shall not except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation.

Dated: 5/17/11, 2011.

1st Jenny Rose
President

1st Pat McCall
Secretary

VERIFICATION

STATE OF ALASKA)
) ss.
FOURTH JUDICIAL DISTRICT)

I, Paul Mayo Jr, a Notary Public, hereby certify that on the 17th day of May, 2011, personally appeared before me Jenny Rose, Pat McCall who being by me duly sworn, severally declared that they are the persons who signed the foregoing document as incorporators and that the statements therein contained are true.



Paul Mayo Jr
Notary Public for Alaska
My Commission expires: 11/22/12

BYLAWS
OF
DENA' NENA' HENASH
(Tanana Chiefs Conference)

ARTICLE ONE

Offices

The principal office of the corporation in the State of Alaska shall be located in the city of Fairbanks. The corporation may have such other offices, either in or outside the State of Alaska, as the Board of Directors may determine or as the affairs of the corporation may require from time to time.

The corporation shall have and continuously maintain in the State of Alaska a registered office, and a registered agent whose office is identical with such registered office, as required by the Alaska Nonprofit Corporation Act. The registered office may be, but need not be; identical to the principal office in the State of Alaska, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE TWO

Members

Section 1. CLASSES OF MEMBERS. The corporation shall have one class of members. The designation of such class and the qualification and rights of the

members of such class shall be as follows:

- (a) Each Alaska Native Village located in the geographic area as described in the Alaska Native Claims Settlement Act of 1971 represented by or claimed by the people of Dena' Nena' Henash (Tanana Chiefs Conference).
- (b) The Fairbanks Native Association and Tok Native Association and Native villages recognized as member villages of Tanana Chiefs Conference.

Section 2. ADMISSION OF MEMBER VILLAGES. Additional villages may be admitted as members by the Board of Directors of the Tanana Chiefs Conference. An affirmative vote of two-thirds (2/3) of the directors present at an annual meeting shall be required for admitting a new member.

Section 3. VOTING RIGHTS

- (a) Meetings of the Member villages. At a general meeting of the member villages, each member village delegate and each member of the Board of Directors of Denakkanaaga shall be entitled to one vote on each matter submitted to the member villages.
- (b) Meetings of the Board of Directors. Each member shall elect one member to the Board of Directors of Tanana Chiefs Conference, who shall have one vote on each matter submitted to the Board of Directors. A director may represent no more than one (1) member village.

Section 4. RESIGNATION OF A MEMBER VILLAGE. A member village may resign its membership in the Tanana Chiefs Conference by filing a written resignation with the Secretary upon adoption of a resolution of resignation adopted at a general meeting of the village.

Section 5. REINSTATEMENT. Upon a written request submitted by a former member

village and filed with the Secretary, the Board of Directors may, by the affirmative vote of two-thirds (2/3) of the members present, reinstate such former member village to membership upon such terms as the Board of Directors may deem appropriate.

ARTICLE THREE

Meetings of the Members

Section 1. ANNUAL MEETING. An Annual Meeting of the member villages shall be held in the Tanana Chiefs Conference region at a place and day designated by the Chairman of the Board with approval of the Executive Board of Directors for the purpose of transacting such business as may come before the meeting.

Section 2. SPECIAL MEETINGS. Special meetings of the member villages may be called by or at the request of the Chairman of the Board or any twelve or more Directors, consisting of Directors representing at least two villages of the corporation from at least four sub-regions. The person or persons authorized to call special meetings of the Board may fix any place for holding any special meeting of the Board called by them.

Section 3. NOTICE OF MEETINGS. Written or printed notice stating the place, day, and hour of any meeting of the member villages shall be delivered, either personally or by mail not less than ten (10) days nor more than thirty (30) days before the date of a meeting, by or at the direction of the Chairman of the Board, or the Secretary, or the officers or member villages calling the meeting.

In the case of a special meeting or when required by statute or by these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice, provided that any other matter may be considered with the consent of two-thirds (2/3) of the votes of the represented member villages.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the U.S. mail addressed to a member village at its address as it appears on the records of the corporation, with postage thereon paid. General notice of the meeting shall also be given to the member villages by radio announcement, where feasible.

Any member village may waive notice of any meeting. The attendance of a delegate of a member village at any meeting shall constitute a waiver of notice of such meeting, except where the delegate attends a meeting for the express purpose of objecting to the transaction of business because the meeting was not lawfully called or convened. Neither the business to be transacted at nor the purpose of any meeting of the member villages need be specified in the waiver of the notice of such meeting, unless specifically required by law or by these bylaws.

Section 4. ACTION. In addition to power vested in the membership by law, the member villages may adopt resolutions which do not infringe on the right of the Board of Directors to manage the corporation and may adopt resolutions directed to other corporations, governments, and persons.

Section 5. INFORMAL ACTION BY MEMBER VILLAGES. Any action required to be taken at a meeting of the member villages, or any action which may be taken at a meeting of the member villages, may be taken without a meeting if a written consent, setting forth the action so taken, is signed by all of the member villages entitled to vote with respect to the subject matter thereof.

Section 6. QUORUM. The member villages holding two-thirds (2/3) of the votes which may be cast at any meeting constitute a quorum.

Section 7. PLACE OF MEETING. The Board of Directors may designate any place within the State of Alaska as the place of meeting for any special meeting called by the Board of Directors. If no designation is made or if a special meeting is otherwise called, the place of meeting

shall be in the Fairbanks North Star Borough at a place designated by the Chairman of the Board, but if all the member villages shall meet at any time and place within the State of Alaska and consent to the holding of a meeting, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

ARTICLE FOUR

Board of Directors

Section 1. GENERAL POWERS. The affairs of the corporation shall be managed by its Board of Directors. Directors must be residents of the State of Alaska, and Alaska Native members of member villages of the corporation.

Section 2. NUMBER, TENURE, AND QUALIFICATIONS. The number of Directors shall be equal to the number of member villages plus three officers, the President, the Vice-President, and the Secretary/Treasurer. Each member village shall be entitled to elect one Director. Directors must be residents of the State of Alaska and Alaska Native members of member villages of the corporation. Except for the President, full-time employees of the corporation shall not be eligible to serve as directors or officers of the corporation. Each elected director shall hold office during the period of one annual meeting to another and each elected principal officer shall hold office between three annual meetings or until his successor shall have been elected elsewhere proved and accepted by these bylaws.

Section 3. REGULAR MEETINGS. A regular annual meeting of the Board of Directors shall be held without other notice than by the Bylaws, immediately after, and at the same place as the annual meeting of the member villages. The Board of Directors may provide by the resolution the time and place, within the State of Alaska, for the holding of additional regular meetings of the Board without other notice than such resolutions.

Section 4. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board or any twelve or more Directors, consisting of Directors representing at least two villages of the corporation from at least four sub-regions. The person or persons authorized to call special meetings of the Board may fix any place for holding any special meeting of the Board called by them.

Section 5. NOTICE OF MEETINGS. Written or printed notice stating the place, day, and hour of any meeting of the board of directors shall be delivered, either personally or by mail, not less than ten (10) days nor more than thirty (30) days before the date of such meeting or as many as 33 days to prevent the open period from ending on a weekend or holiday, by or at the direction of the Chairman of the Board, or the Secretary/Treasurer, or the Directors calling the meeting.

In case of a special meeting or when required by statute or by these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice, provided that any other matter may be considered with the consent of two-thirds (2/3) of the votes of the Directors present.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the U.S. mail addressed to a member village at its address as it appears in the records of the corporation, with postage thereon paid. General notice of the meeting shall also be given to the member villages by radio announcement, where feasible. Any director may waive a notice of any meeting.

The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any meeting of the directors need to be specified in the waiver of the notice of such meeting, unless specifically required by law or by these bylaws.

Section 6. QUORUM. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board; but if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time

without further notice.

Section 7. MANNER OF ACTIONS. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law, by the Articles of Incorporation, or by these bylaws. Resolutions passed by the Board of Directors shall be enacted and carried out by the President or by such other officer or employee of the corporation as may be directed by the resolution.

Section 8. VACANCIES. Any vacancy occurring in the Board of Directors either by resignation, failure to attend meetings or by removal through majority vote of the member village and any directorship to be filled by an increase in the number of directors, shall be filled by the member village entitled to elect the director concerned.

Section 9. COMPENSATION. Directors, as such, shall not receive any stated salaries for their services, but by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board. The employment of an elected Director as an officer (other than a principal officer) or full-time employee of the corporation shall create a vacancy which shall be filled by the member village concerned.

Section 10. CHAIRMAN OF THE BOARD. The President shall serve as the Chairman of the Board of Directors. The Chairman of the Board shall be known as the Presiding Chief of Dena' Nena' Henash and Tanana Chiefs Conference. The Chairman of the Board shall preside at all meetings of the member villages, the Board of Directors, and the Executive Board of Directors, and perform all other duties provided in these bylaws. In the absence of the Chairman, a Chairman Pro-Tem designated by the Executive Board shall fulfill the function of the Chairman.

Section 11. ALTERNATE DIRECTORS. A member village may elect any person eligible to serve as a Director to serve as an Alternate Director. An Alternate Director shall fulfill the duties of the specified Director in the absence or incapacity of such Director. In the case of an Executive Board member designated by a Subregional Advisory Board, a Subregional Advisory Board may designate any

Director or Alternate Director from such Subregion to serve as the Alternate Executive Board member for the Subregion.

Section 12. ADVERTISEMENT OF VACANT SEATS. Tanana Chiefs Conference must advertise up-coming vacancies for any TCC office or the advisory board to all member villages in a timely manner. There will be an open period of thirty (30) days during which candidacy for any TCC office or advisory board must be declared with the termination of that open period occurring ten (10) days before the scheduled date of the next TCC Annual Meeting of the full board. To prevent the 30-day open period from ending on a weekend or holiday, the open period may end as early as fourteen days before for the Annual Meeting. The slate of declared candidates shall be distributed to the member villages not less than five (5) days before the Annual Meeting.

ARTICLE FIVE

Officers

Section 1. OFFICERS. The officers of the corporation shall be a President, a Vice-President, and a Secretary/Treasurer, which are the principal officers, and such other officers as may be elected in accordance with the provisions of this Article. The Board of Directors may elect or appoint such officers as it shall deem necessary. Such officers shall have the authority to perform the duties prescribed, from time to time, by the Board of Directors of the member villages. Principal Officers must be Alaska Native members of a member village of the corporation and eligible to be selected as a Director of a member village.

Section 2. ELECTION AND TERM OF OFFICE. The President, Vice-President, and Secretary/Treasurer shall serve three-year terms. The elections of the principal officers shall be staggered such that one such officer shall be elected at each regular Annual Meeting of the Board of Directors. Ex-officio members shall not have a vote at such election. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as

conveniently may be. New offices may be created and filled at any meeting of the Board of Directors. Each officer shall hold office until his successor shall have been duly elected and shall have been qualified. An officer must physically reside in Alaska during his term. Election of a Director as President shall create a vacancy in the directorship, which shall be filled by the member village concerned.

No person elected President for two full successive terms shall be again eligible to hold that office until one full term has intervened.

Section 3. REMOVAL. Any officer elected may be removed by two-thirds (2/3) of the votes of Board of Directors whenever, in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer removed; further, any officer that is absent from three (3) unexcused, consecutive Executive Board meetings may be removed as an officer. In the event that such does occur, the Board of Directors shall by majority vote of the quorum present appoint a successor to serve the unexpired term of the officer removed.

Section 4. VACANCIES. A vacancy in office because of death, removal, resignation, disqualification, or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. PRESIDENT. The President shall be the principal executive officer of the corporation and shall, in general, supervise and control all of the business and affairs of the corporation. The President may sign, with the Secretary or any other proper officer of the corporation, authorized by the Executive Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Executive Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Executive Board of Directors or by these bylaws or by statute to some other officer or

agent of the corporation. The President shall perform all duties incident to the office of president and such other duties as may be prescribed by the Executive Board of Directors from time to time.

The President is not authorized to make any new purchases of real estate, or to construct any new buildings, in Fairbanks without the express prior authorization of the majority of the Board of Directors.

Section 6. VICE-PRESIDENT. In the absence of the President, or in the event of an inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-President shall perform such other duties as from time to time may be assigned to him by the President or by the Executive Board of Directors.

Section 7. TREASURER. If required by the Executive Board of Directors, the Treasurer shall give bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Executive Board of Directors shall determine. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation, receive and give receipts for monies due and payable to the corporation from any source whatsoever, and deposit all such monies in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provision of Article VIII of these bylaws, and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Executive Board of Directors. The Chief Corporate Financial Officer of the corporation shall discharge the administrative duties of the Treasurer.

Section 8. SECRETARY. The Secretary shall keep the minutes of the Executive Board of Directors in one or more books provided for that purpose, see that all notices are duly given in accordance with the provision of these bylaws or as required by law; be custodian of the corporate

records and of the seal of the corporation and see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provision of these bylaws; keep register of the post office address of each member; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the President or by the Executive Board of Directors. The Executive Secretary shall discharge the administrative duties of the Secretary. The rights and duties of the Secretary and Treasurer shall be held by the same person. Such person shall have the title and office of the Secretary/Treasurer.

Section 9. CADASTRAL SURVEY PROGRAM. All architectural, engineering, or land surveying activities in the State of Alaska will be made by the architect, engineer, or land surveyor in responsible charge, or other registered architects, engineers, or land surveyors under the direction or supervision of the architect, engineer, or land surveyor in responsible charge. The Executive Board shall specify such architect, engineer, or land surveyor by resolution.

ARTICLE SIX

Traditional Chief

Section 1. TRADITIONAL CHIEF. There will be a Traditional Chief of the Tanana Chiefs Conference region. The Traditional Chief will be a lifetime Chief. There will be a Second Traditional Chief who shall be elected as provided in these bylaws.

Section 2. DUTIES. The Traditional Chief will call to order all Tanana Chiefs Conference functions and meetings. If the Traditional Chief is incapacitated, the Second Traditional Chief will fulfill the duties of the Traditional Chief.

Section 3. ELECTION. Upon the death of the Traditional Chief, the Second Traditional Chief will assume the office of Traditional Chief. If the office of Second Traditional Chief is vacant for any reason, the Board of Directors of Denakanaaga, Inc., will convene a meeting of

each subregion of Tanana Chiefs Conference. The Subregional meetings may select nominees for Second Traditional Chief. The Denakkanaaga, Inc., Board of Directors will convene a meeting and select the Second Traditional Chief from the group of nominees.

The President of Tanana Chiefs Conference will introduce the new Second Traditional Chief at next annual meeting of the Board of Directors.

Section 4. EXPENSES. The Tanana Chiefs Conference shall compensate the Traditional Chief and the Second Traditional Chief for travel and per diem when they are acting for the Tanana Chiefs Conference.

ARTICLE SEVEN

Committees of the Board of Directors

Section 1. EXECUTIVE BOARD OF DIRECTORS. The Board of Directors may designate an Executive Committee, known as the Executive Board of Directors, which shall have and exercise the authority of the Board of Directors in the management of the corporation – provided, however, that such Executive Board of Directors shall not have the authority of the Board of Directors in reference to amending, altering, or repealing these bylaws or the Articles of Incorporation; electing, appointing, or removing any member of the Executive Board of Directors or any Director or officer of the corporation; adopting a plan of consolidation with another corporation; authorizing the sale, lease, or mortgage of all or substantially all of the property and assets of the corporation; authorizing the voluntary dissolution of the corporation or revoking proceedings therefore; or amending any resolution of the Board of Directors unless provided for by the Board of Directors or the member villages.

The Executive Board of Directors shall consist of the three principal officers, in their capacity as ex-officio directors, and six other directors or alternate directors to be selected by the

Subregional Advisory Board Committees as provided in these bylaws and one Elder Advisor, and one Youth Advisor.

The Executive Board of Directors shall meet upon the call of the Chairman of the Board or five (5) other members of the Executive Board of Directors.

If a vacancy occurs on the Executive Board of Directors for any reason, such vacancy shall be filled through election provided in these bylaws for filling vacancies of officers. Persons filling vacancies shall serve until the next Full Board of Directors meeting of the Tanana Chiefs Conference.

Section 2. REGIONAL HEALTH BOARD. The Regional Health Board's purpose is to ensure Alaska Native participation and determination in every phase of TCC's health service delivery. The Regional Health Board has the authority to approve policies specific to the Health Department. The Regional Health Board provides advice to the Executive Board in decisions which will impact the management of the corporation.

The Regional Health Board shall consist of five members or alternates to be selected by the Subregional Advisory Board Committees including the 1) Upper Tanana, 2) Yukon Flats, 3) Yukon-Tanana, 4) Yukon-Koyukuk and 5) Upper-Kuskokwim, and three ex-officio members selected by their respective tribe or organization including 1) Upper Tanana, 2) Yukon Flats, 3) Yukon-Tanana, 4) Yukon-Koyukuk and 5) Upper-Kuskokwim, and three ex-officio members selected by their respective tribe or organization including 1) the Fairbanks Native Association, 2) the Tanana IRA Tribal Council, and 3) Village of Anaktuvuk Pass. The Regional Health Board may adopt additional rules for its own governance in the Board's "Rules of Order" that are not inconsistent with these bylaws or with rules adopted by the Board of Directors.

Section 3. SUBREGIONAL ADVISORY BOARD COMMITTEES. The Board of Directors shall have six (6) Subregional Advisory Board Committees including the 1) Upper Tanana, 2) Yukon Flats, 3) Yukon-Tanana, 4) Yukon-Koyukuk, 5) Upper-Kuskokwim, and 6)

Lower-Yukon. Such committees shall advise the Executive Board of Directors on the affairs of the corporation which affect the delivery of services to their respective subregions.

The members of each committee shall be the directors representing member villages within the respective subregion. Each committee shall elect, by majority vote, one (1) of their members to the Executive Board of Directors during the Annual Meeting of the Board of Directors. Such director shall serve on the Executive Board of Directors for a three-year term, or until a successor is elected. The election of the subregional directors to the Executive Board of Directors shall be staggered such that two such directors are elected at each regular Annual Meeting of the Board of Directors. Each committee may adopt rules for its own governance not inconsistent with these bylaws or with rules adopted by the Board of Directors. Three (3) unexcused absences by a Subregional Representative to the Executive Board of Directors shall be grounds for removal, such representatives may be removed from the Executive Board of Directors by a majority vote of the respective Subregional Advisory Board Committee.

Section 4. ELDER ADVISOR AND YOUTH ADVISOR.

There will be an Elder Advisor to serve on the TCC Executive Board of Directors. The Elder Advisor shall be a resident of the State of Alaska, and an Alaska Native tribal member 55 years or older. The Elder Advisor may not be a full-time employee of TCC. The term for Elder Advisor is three years. On an election year, tribal councils shall nominate an elder for the position of Elder Advisor by submitting a letter of intent to the TCC Executive Secretary at least 7 days before the start of the Denakkanaaga Annual Conference. The nominees shall be presented to the delegates at the Denakkanaaga Annual Conference and the Denakkanaaga delegates will elect the Elder Advisor.

There will be a Youth Advisor to serve on the TCC Executive Board of Directors. The Youth Advisor shall be a resident of the State of Alaska, and an Alaska Native tribal member between the ages of 18-21, when the term begins. The Youth Advisor may not be a full-time

employee of TCC. The term for Youth Advisor is three years. On an election year, tribal councils shall nominate a youth for the position of Youth Advisor by submitting a letter of nomination to the TCC Executive Secretary during the 30-day period described in Article Four, Section 12. The nominees shall be presented to the TCC Emerging Leaders and the Emerging Leaders will elect the Youth Advisor.

Advisors may be removed from the Executive Board of Directors by a majority vote of the voting members of the Executive Board.

Section 5. OTHER COMMITTEES. The Chairman of the Board shall have the authority to appoint persons to serve on committees as deemed necessary. Any persons appointed to a committee may be removed by the Chairman of the Board when in his judgment the persons are not serving in the best interests of the Tanana Chiefs Conference. Each committee may adopt rules for its own governance not inconsistent with these bylaws or with rules adopted by the Board of Directors.

ARTICLE EIGHT

Contracts, Checks, Deposits, and Funds

Section 1. CONTRACTS. The Board of Directors may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances as authorized by the Board of Directors.

Section 2. CHECKS, DRAFTS, ETC. All checks, drafts, or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the corporation and in

such manner as shall from time to time be determined by the Board of Directors, such instruments shall be signed by the Treasurer and countersigned by the President or Vice-President of the corporation, or their designee.

Section 3. DEPOSITS. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

Section 4. GIFTS. The Board of Directors may accept on behalf of the corporation any contribution, gifts, bequest, or device for the general purpose or a special purpose of the corporation.

Section 5. DISSOLUTION. Upon the dissolution of the Tanana Chiefs Conference (Dena' Nena' Henash), the disposition of net proceeds from charitable gaming conducted under AS 05.15 will go to a permittee that is authorized to conduct an activity under AS 05.15.

ARTICLE NINE

Books and Records

The corporation shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of the TCC annual membership meeting, Board of Directors and the Executive Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the member villages entitled to vote. All books and records of the corporation may be inspected by any member village, or its agent or attorney for a proper purpose at any reasonable time.

ARTICLE TEN

Fiscal Year

The fiscal year of the corporation shall begin on the first day of October and end on the last day of September.

ARTICLE ELEVEN

Voluntary Contributions

The Board of Directors may determine from time to time the amount of annual voluntary contributions requested for the corporation from each member.

ARTICLE TWELVE

Seal

The Board of Directors shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words, "Seal of Dena' Nena' Henash (Tanana Chiefs Conference), From Time Immemorial, Incorporated, 1971."

ARTICLE THIRTEEN

Waiver of Notice

Whenever any notice is required to be given under any provision of the Alaska Nonprofit Corporation Act or under the provisions of the Articles of Incorporation or these bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE FOURTEEN

Amendments of Bylaws

These bylaws may be altered, amended, or repealed, and new bylaws may be adopted by a majority of the Directors present at any regular meeting or special meeting, if at least thirty (30) days written notice is given by certified mail or as many as 33 days to prevent the open period from ending on a weekend or holiday, of intention to alter, amend, or repeal, or to adopt new bylaws at such meeting.

ARTICLE FIFTEEN

DBA Name

Dena' Nena' Henash, Inc., is also known as and may do business as the Tanana Chiefs Conference.

ARTICLE SIXTEEN

Insurance and Indemnity

The corporation may insure and indemnify its officers and directors against any claim for actions taken in good faith on behalf of the corporation.

ARTICLE SEVENTEEN

Executive Director's Conflict of Interest

Section 1. A member of the Executive Board of Directors, including principal officers of TCC (hereafter "executive director"), shall be considered to have a conflict of interest in the following situations:

- a) where the executive director or a member of the executive director's

immediate family (immediate family members include, whether by birth, adoption, marriage, or domestic partnership, the spouse, partner, father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half -brother, or half -sister) (hereafter "related group"), directly or through an agent or nominee, has an economic interest in a transaction which is the subject of proposed action by TCC;

- b) where the executive director's economic interest, or that of the related group, in an action being considered by TCC, is potentially adverse or competitive to the interest of TCC;
- c) where the executive director or a member of the related group is a member or significant stockholder of another corporation or holds a significant interest in another entity, which other corporation or entity is the subject of action by TCC or TCC's Executive Board (or other governing body) or an officer or manager of another corporation or other entity, which other corporation or entity is the subject of action by TCC.

Section 2. No executive director or the agent of an executive director shall participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would include when the executive director or the agent of an executive director, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any executive director or the agent of an executive director, has a financial or other interest in the firm selected for an award. No executive director or the agent of an executive director shall solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Section 3. Where a conflict of interest exists as set forth above, the executive director shall notify the Executive Board of all material facts concerning the nature of the conflict prior to the Executive Board's consideration of the matter with respect to which the actual or potential conflict exists and the existence of a conflict shall be recorded in the minutes of the meeting of the Executive Board which records the Executive Board's consideration of the matter.

Section 4. An executive director with a conflict of interest may participate in the

discussion of the matter but shall abstain from voting on the matter with respect to which the conflict arises. The presence of such an executive director at the meeting considering the conflicting matter may be counted for the purpose of determining a quorum of the Executive Board.

ARTICLE EIGHTEEN

IRHA Commissioners

INTERIOR REGIONAL HOUSING AUTHORITY AUTHORIZATION AND ORGANIZATION. Tanana Chiefs Conference recognizes that there is a shortage of housing within the Tanana Chiefs Conference region and hereby authorizes the Interior Regional Housing Authority to address this acute housing shortage on behalf of the Tanana Chiefs Conference. The Board of Directors shall appoint the Board of Commissioners of the Interior Regional Housing Authority.

The Executive Board of Directors shall fill any vacancy occurring in the Board of Commissioners of the Authority to serve until the next Annual Meeting of the Board of Directors. Commissioners of the Interior Regional Housing Authority must be eligible to serve on the Tanana Chiefs Conference, Board of Directors. Employees of the Tanana Chiefs Conference or of the Interior Regional Housing Authority shall not be eligible to serve as Commissioners of the Interior Regional Housing Authority.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify:

- (1) that I am the duly appointed Secretary of Dena' Nena' Henash (Tanana Chiefs Conference), an Alaska non-profit corporation; and
- (2) that the foregoing Bylaws constitute the Bylaws of the corporation and were duly adopted at a meeting of the Board of Directors thereof, held on March 15, 1972, and most recently amended March 17, 2016.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the corporation.



Secretary