



# ALASKA

## Native group has no tribal immunity

**■ SUPREME COURT:** Lawsuit will go ahead, but the ruling upholds village sovereignty.

By SHEILA TOOMEY  
 Anchorage Daily News

Two Bethel families who say their children were injured at a Head Start program have a legal right to sue the organization running the program, even though all 56 villages that make up that organization have sovereign immunity, the Alaska Supreme Court ruled Friday.

The villages' immunity does not extend to the Association of Village Council Presidents, the court said.

The decision is sure to throw gas on the fire surrounding questions of tribal status in Alaska that is being fought out in state and federal courts.

AVCP is a nonprofit organization incorporated in 1969 to administer government and social service programs, including Head Start, for the Native villages around Bethel. It was sued several years ago by two Native families.

One said its child was sexually abused by another child at Head Start due to negligence and poor teacher training. Another said its child's finger got sliced by a door at the Head Start building, also due to negligence.

But sovereigns usually can't be sued without their permission. Relying on a 1999 Alaska Supreme Court decision called *John v. Baker*, which recognizes tribal sovereignty, a Bethel judge threw out the lawsuits, saying AVCP was covered by the villages' immunity. The families appealed.

Friday's ruling overturns the judge and reinstates the suits.

"Preventing judgments from depleting state treasuries" is a key reason for the constitutional immunity granted to states by the U.S. Constitution, and for that held by sovereign tribes, the Supreme Court said. However, AVCP has a corporate structure

and an insurance policy that keeps AVCP money problems from spilling over to the villages.

Since none of the tribes in AVCP can't use the tribes' immunity.

At first blush, Friday's decision, which exposes a large tribal organization to potentially costly claims, might seem like a defeat for pro-sovereignty forces. But it's just the opposite, said lawyers on both sides of the case.

In plain, unequivocal language, the unanimous opinion, written by Justice Dana Fabe, reaffirms the existence and sweep of tribal sovereignty in Alaska.

"Indian tribes are distinct, independent political communities," the decision says.

"Although Alaska no longer contains Indian country, its Native villages retain those fundamental attributes of sovereignty" unless Congress takes them away. "Each of AVCP's member tribes is therefore protected by tribal sovereign immunity."

"Indian tribes enjoy immunity because they are sovereigns predating the Constitution, and because immunity is thought necessary to promote the federal policies of tribal self-determination."

See Page B-2, IMMUNITY

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B-2 Saturday, January 31, 2004

HOMETOWN / COVER STORIES

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Adults and youths gathered Jan. 15 at the offices of the American Cancer Society for a National Mentoring Month celebration. Pictured from left are: front row, Jessale Lawrence, Kayli Nielson, Brandy Peterson, Vanessa Salinas, Brittany Huff, Alicia Bremness, Grace Sneider and Ron Canady; back row, Twanda Wilson, Jim Cunningham, Ed Wicher, Timothy Jones, Lt. Col. Arturo A. Ayala, Braxton Bundick, Kady James, Stephanie Abrego, Sharon Abrego, Sandra Abrego and Paul Kelson.

## Role models win praise for efforts

## IMMUNITY: Tribal right

*Continued from B-1*

nation, economic development and cultural autonomy. ... Tribal sovereign immunity ... is also motivated in significant part by the need to ensure that tribal assets are used as the tribe wishes without threat from litigation," the decision says.

In a footnote, the justices pointedly declined an invitation by the Legislative Council "to revisit *John v. Baker*." In that case, the justices said tribal sovereignty exists in Alaska but did not broadly define what powers it carries, ruling only that tribes could handle some child-custody disputes involving tribe members.

The Legislative Council joined the Bethel appeal as a friend of the court. Council attorney Don Mitchell filed a brief denying the existence of any kind of tribal sovereignty in Alaska and urging the court to change its mind on the question.

Instead, the court restated its original opinion in even stronger language.

"I just think for the member organizations that form AVCP this is just wonderful," attorney Patrick McKay said. And he's the losing lawyer in the case.

McKay said the decision was "bittersweet" for him because he believes village immunity does extend to AVCP.

The tribes do have a financial stake in the litigation, he said. If AVCP goes under because of a big judgment, the villages would have to create a new organization to run its programs, he said. He attributed the decision to the justices' concern that injured people might be left with no remedy.

On the other hand, McKay said, he's pleased to see the strong language endorsing the sovereignty of AVCP's village members.

"This is the Supreme Court acknowledging what the villages have always known existed," McKay said.

"It's very good," Heather Kendall Miller said of the decision. She represented the Alaska Inter-Tribal Council, another friend of the court, and is also technically a losing lawyer in the case.

"It affirms the whole idea of tribal sovereignty," she said happily.

The winning attorney, former Alaska Attorney General Charles Cole, could not be reached Friday for comment. Cole argued before the high court in September on behalf of the two families.

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See Page B-2, IMMUNITY

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