

Supreme Court Decides in Favor of Tribal Nations in *Becerra v. San Carlos Apache Tribe*



Client Alert

By [Hon. Carol E. Heckman \(Ret.\)](#), [Michael G. Rossetti](#)

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The U.S. Supreme Court's June 6 decision is a victory for Tribal Nations, affording them new opportunities to recover contract support costs pertaining to healthcare programs.

In *Becerra v. San Carlos Apache Tribe*, the Court needed to determine whether Tribes that manage their own health care programs were entitled to receive funds from the Indian Health Service (IHS) to cover the costs associated with services covered by insurance.

The 1975 Indian Self-Determination Act (ISDA) authorizes Tribal Nations to contract with the IHS so that they may oversee their healthcare programs themselves instead of the IHS doing so on their behalf. In turn, the IHS must provide the Tribal Nations with the federal funding it would have used if it were overseeing the programs. In addition, the IHS must provide additional funds to cover "contract support costs" – administrative expenses that the Tribe incurs to run the programs.

For services provided, Tribes may bill their members' insurance (whether private insurance, Medicare, or Medicaid) and keep these insurance payments. These payments are considered "program income." However, Tribes are required by law to use that income to fund their healthcare programs. In doing so, they acquire additional contract support costs. The question before the Court in *Becerra v. San Carlos Apache Tribe* was whether the IHS must cover the costs associated with spending program income.

In the 5-4 decision, authored by Chief Justice John Roberts, the Court mandated that the IHS reimburse Tribal Nations for those costs associated with program income from third-party insurance payors. The Court opinion notes that the ISDA was passed to ensure that Tribes had "an effective voice in planning and implementation of programs responsive to the true needs of their communities." If IHS was not required to reimburse Tribes for those costs, it would inflict "a penalty on tribes for opting in favor of greater self-determination."

For further information on the impact of this recent Supreme Court decision or for questions regarding Tribal self-determination and sovereignty, contact practice team co-leaders Michael G. Rossetti (mrossetti@lippes.com) and Carol E. Heckman (heckman@lippes.com) or Kathryn Myrtle (kmyrtle@lippes.com).