

ALASKA STATE LEGISLATURE
JOINT MEETING
SENATE SPECIAL COMMITTEE ON WORLD TRADE, TECHNOLOGY AND
INNOVATION
HOUSE SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT, INTERNATIONAL
TRADE AND TOURISM

October 26, 2009
11:11 a.m.

JULIE KITKA, President
Alaska Federation of Natives (AFN)

POSITION STATEMENT: Presented the history of ANSCA and Native participation in 8(a) contracting.

[11:18:27 AM](#)

JULIE KITKA, President, Alaska Federation of Natives (AFN), expressed appreciation for the Legislature's interest in the issue. The preservation of government contracting opportunities and the 8(a) provision is of critical importance to Alaska Natives and the state of Alaska, she said.

MS. KITKA said before she gives a history of ANSCA and Native participation in the 8(a) program, she wants the Legislature to know that there are things it can do to support economic development in the rural areas of the state. This is the notion of setting up economic ecosystems and corridors of activity that merge research and development of the university, energy, technology, and high speed telecommunications. We'd like to explore ideas at some future time, she said.

[11:21:38 AM](#)

MS. KITKA said her testimony today speaks to the legal and equitable basis of the Small Business Administration 8(a) program and its importance to the Native people of Alaska. Providing background, she explained that the Alaska Federation of Natives (AFN) is Alaska's largest statewide Native organization. It represents more than 25,000 Alaska Natives that reside in the state and more than 120,000 Alaska Natives living in other states, making it probably the third largest Native group in the U.S. AFN is a membership organization that was organized in 1966 to advocate with one voice primarily for a fair settlement of aboriginal land claims. This culminated in the Alaska Native Claims Settlement Act (ANCSA) of 1971.

AFN today is governed by a 37 member board of directors representing both federally recognized tribes and ANCSA village corporations - 12 regional tribal consortiums and 13 regional

ANCSA corporations. The AFN convention is the largest annual gathering of Native people within the United States. Delegates are selected on the basis of population, with one delegate for every 25 in the population. The AFN mission is to enhance and promote the cultural, economic and political voice of Alaska Natives. She expressed hope that the hearing today would provide a broader basis for understanding the background and nature of the contracting status of Native American tribes and Alaska Native corporations.

MS. KITKA explained that the 1971 Alaska Native Claims Settlement Act embodies most of the economic and relational agreements with the federal government for which the Alaska Native people relinquished valid legal claims to land and resources of their homelands. This settlement freed the State of Alaska to receive Alaska Native lands, and the federal government to manage those lands.

U. S. citizens and the federal government received a bargain in the ANCSA, but for the Native people and the Native corporations the land conveyance process dragged on year after year. "Our economies have struggled and we were, by any measure, an economically disadvantaged group, and clearly a minority," Ms. Kitka said. The laws enacted by Congress that provide legal status under the 8(a) program simply recognize these facts.

[11:25:35 AM](#)

MS. KITKA highlighted that the world-class discovery of oil in Prudhoe Bay and the need for a clear title to build an oil pipeline across Alaska in order to meet the energy needs of the country, created a sense of urgency and a historic opportunity for a settlement of Alaska Native land claims. In December of 1971, after years of effort by members of the U.S. Congress and Alaska Native leadership, the Alaska Native Claims Settlement Act was signed into law by President Richard Nixon.

For extinguishing their aboriginal claims, Alaska Natives were allowed to retain fee simple title to 44 million acres of land and to receive \$962.5 million for lands that were transferred to the state, federal government, and private interests. ANCSA created 13 regional for-profit corporations and more than 200 village corporations to receive and oversee these land and monetary entitlements. It took decades to implement the promises made in ANCSA.

MS. KITKA clarified, "It is critically important to understand ANCSA was a land settlement and the ability to retain our

homelands and our identity and culture were and continue to be paramount." The structure of the corporations established under ANCSA was a secondary issue to the Alaska Native people. Protecting the land and our traditional way of live was as critically important then as it is today, she stated.

[11:27:14 AM](#)

MS. KITKA said that since ANCSA was signed into law in 1971 it has been amended over 19 times. Alaska Native people consider it living law that is intended to reflect their needs. She continued to state:

We have maintained an ongoing working relationship with all the committees that have jurisdiction over our land claims and have advanced amendments in clarifying and [making] even major substantive changes in our land claims every Congress since the signing of the original bill. That's important to know because that is part of the ongoing relationship that Alaska Natives have with the Congress and the federal government. The 8(a) treatment of Alaska Natives is part of ANCSA literally.

MS. KITKA related that, on behalf of the AFN, she worked on a package of amendments called the 1991 amendments, of which 8(a) was a part. This ANCSA modification addressed fundamental land protections, inclusion of young Alaska Natives, a legal ability to provide special benefits to Native elders, and major changes to the Native corporate structure. One major provision eliminated the statutory requirement that in 1991 all Native corporation stock would be recalled and resold on the public market. Had ANCSA remained as originally enacted, the Alaska Native people would lose their corporations and all their lands and resources.

Because of evidence that Alaska Native corporations were excluded from the 8(a) program, amendments to the Small Business Administration (SBA) 8(a) program were included in the 1991 amendments. Congress in 1987 unanimously passed the 1991 amendments and they were signed into law. In 1992 the 8(a) amendments again were considered by Congress, passed without opposition, and were signed by the President. These 8(a) amendments provided contracting opportunities to all Native American tribes, not just Alaska Native corporations.

MS. KITKA pointed out that there is a basis for *the laws distinguishing between* Native American relationships and others.

In many cases when Native Americans entered into treaty and statutory agreements relinquishing ownership and use and occupancy of their lands, an agreement was embedded in those treaties and statutes for differential treatments under federal law. Thus, Congress can properly distinguish between Native American and non-Native American contracting opportunities. This authority comes from the unique status of Indian tribes under federal law and the plenary power of Congress to legislate on behalf of federally recognized tribes and Alaska Native corporations.

MS. KITKA cited *Morton v. Mancari* as an example in which the Supreme Court upheld legislation that singles out Native Americans for special treatment. The Court stated that as long as the special treatment can be rationally tied to the fulfillment of Congress's unique obligation to Indians, then legislation regulating commerce with Indian tribes will not be disturbed. This is a very important component of federal Indian law.

MS. KITKA said it would not be just or fair to now seek to separate the economic treatment of Alaska Natives from the settlement of aboriginal claims. Even today, 39 years later, not all the lands that were promised to the Alaska Native people and corporations have been conveyed. "What is the net present value of the lost use of our land, the development of our resources, [and]...the litigation...to try to advocate and protect and get what is our right?" she asked.

To refer to ANCSA as an economic development statute is like calling the Civil Rights Act a community development law or the Voting Rights Act a polling statute. Those two laws are fundamental to the relationship that the federal government has with minority groups and should not be minimalized or disparaged. To the Alaska Native people ANCSA is nearly as important because it recognizes and validates Alaska Native claims to lands and waters in Alaska where their people have resided for thousands of years. "To pull out pieces now and examine them out of context would be wrong," Ms. Kitka said.

MS. KITKA said that ANCSA corporations are more than just for-profit corporations. They are stewards of the Native homeland, sponsors of education and training opportunities, and employers of first resort for Alaska Native people. The lands that are held by these corporations are key to our heritage, culture, and future, she said. Just as Congress intended, these corporations were formed under a requirement not applied anywhere else in

aboriginal land settlements, and perhaps not any other corporations in America.

11:33:20 AM

MS. KITKA said that Native leadership followed the law in setting up these new corporations. In many cases they struggled to overcome social and economic disadvantages of operating in what the business world deemed "remote Alaska," but they did persevere and run the corporations as Congress intended. Our corporations are key to our heritage, our land, and our economic base; they are essential to our well-being, she said.

As these corporations began to succeed, the indicators of a healthy society begin to improve. Life expectancy for Alaska Native men and women has increased, infant mortality has decreased, and poverty has been reduced from over 60 percent to 20 percent. An AFN commissioned report shows a dramatic improvement in positive indicators and a dramatic decrease in negative indicators. It also found "a continuing thread of disparity between Alaska Native population and non-Alaska Native population both in Alaska and the United States in all indicators." Although AFN does not assert that Native corporations are the source of the improvements, they are a part of it. The actions of the state Legislature, the state government, and the federal government are part of this success. "Collectively over the last 30 years we have done remarkable things," Ms. Kitka said.

MS. KITKA said it may be tempting to look at the recent great success of Alaska Native corporations and forget where these corporations started. Please don't skip over that part. She continued:

We live and work in what is to most business people the most remote corner of America, in one of the harshest climates in the world, with a history of extreme prejudice and discrimination against our people, a history of wariness towards a people who in many great cases literally spoke a different language than most business people in America, a history of exclusion from genuine business opportunities, and a history of no business history with mainstream large economies in America.

Is this not a case study of an economically disadvantaged minority business? Ms. Kitka asked. This is why ANCSA and the

Small Business Act were amended to provide economic opportunities for Alaska Native corporations.

[11:36:18 AM](#)

MS. KITKA said that SBA 8(a) contracting created the benefits it was intended to create. As a result, Alaska Native corporations built up a previously nonexistent capacity to provide employment to their shareholders, scholarships, and training to their young people so that they learn what it takes to succeed in a modern America. Just as intended, these corporations have built managerial and business expertise that can carry forward. They helped create economic stability where none previously existed. "It is an accomplishment to behold, one which is worth understanding in full for its roots, path and basis in law, including a Native American law," Ms. Kitka stated.

MS. KITKA stated her view that one success of the SBA program is the great value that Alaska Native people and Alaska Native corporations are providing to the federal government through contracting. "This is not a handout; this is providing services to the government in value, under budget, on time, or you're not doing it," she added. The current trend is for developing countries to use more contracting so it is significant that Alaska Native people are involved in this. Clearly we need to protect that economic opportunity and continue to grow that capacity because that is the wave of the future, Ms. Kitka said.