

## Arizona v. Blaze Construction Company

Arizona could tax a contractor of the Bureau of Indian Affairs for a road project on a reservation. There was no discussion of the definition of Indian Country. The Court looked exclusive at the status of a federal contractor on federal land.

**Alaska v. Native Village of Venetie Tribal Government, No. 96-1577 (1998)**

**Argued December 10, 1997**

**Decided February 25, 1998**

### CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

#### Syllabus

In 1943, the Secretary of the Interior created a reservation for the Neets'aii Gwich'in Indians on approximately 1.8 million acres surrounding Venetie and another tribal village in Alaska. In 1971, Congress enacted the Alaska Native Claims Settlement Act (ANCSA), which, inter alia, revoked the Venetie Reservation and all but one of the other reserves set aside for Native use by legislative or executive action, 43 U.S.C. Sec. 1618(a), completely extinguished all aboriginal claims to Alaska land, Sec. 1603, and authorized the transfer of \$962.5 million in state and federal funds and approximately 44 million acres of Alaska land to state-chartered private business corporations to be formed by Alaska Natives, Secs. 1605, 1607, 1613. Such corporations received fee simple title to the transferred land, and no federal restrictions applied to subsequent land transfers by them. Sec. 1613. In 1973, the two Native corporations established for the Neets'aii Gwich'in elected to make use of an ANCSA provision allowing them to take title to former reservation lands in return for forgoing the statute's monetary payments and transfers of nonreservation land. See Sec. 1618(b). The United States conveyed fee simple title to the land constituting the former Venetie Reservation to the corporations as tenants in common; thereafter, they transferred title to respondent Native Village of Venetie Tribal Government (the Tribe). In 1986, Alaska entered into a joint venture with a private contractor to construct a public school in Venetie. After the contractor and the State refused the Tribe's demand for approximately \$161,000 in taxes for conducting business on tribal land, the Tribe sought to collect in tribal court. In the State's subsequent suit to enjoin collection of the tax, the Federal District Court held that, because the Tribe's ANCSA lands were not "Indian country" within the meaning of 18 U.S.C. Sec. 1151(b), the Tribe lacked the power to impose a tax upon nonmembers of the Tribe.

The Ninth Circuit disagreed and reversed.

Held: the Tribe's land is not "Indian country." Pp. \_\_\_\_.

(a) As here relevant, "Indian country" means "all dependent Indian communities within the . . . United States . . ." Sec. 1151(b). "[D]ependent Indian communities" refers to a limited category of Indian lands that are neither reservations nor allotments (the other categories of Indian country set forth in Sec. 1151), and that satisfy two requirements — first, they must have been set aside by the Federal Government for the use of the Indians as Indian land; second, they must be under federal superintendence. See *United States v. Sandoval*, 231 U.S. 28, 46, *United States v. Pelican*, 232 U.S. 442, 449, and *United States v. McGowan*, 302 U.S. 535, 538-539. Those cases held that these two requirements were necessary for a finding of "Indian country" generally before Sec. 1151 was enacted, and Congress codified these requirements in enacting Sec. 1151. Section 1151 does not purport to alter the cases' definition of Indian country.

Section 1151(b)'s text, moreover, was taken virtually verbatim from Sandoval, supra, at 46, which language was later quoted in McGowan, supra, at 538. The legislative history states that Sec. 1151(b)'s definition is based on those cases, and the requirements are reflected in Sec. 1151(b)'s text: the federal set-aside requirement ensures that the land in question is occupied by an "Indian community"; the federal superintendence requirement guarantees that that community is sufficiently "dependent" on the Federal Government that the Government and the Indians involved, rather than the States, are to exercise primary jurisdiction over the land. Pp. \_\_\_\_.

(b) The Tribe's ANCSA lands do not satisfy either of these requirements. The federal set-aside requirement is not met because ANCSA, far from designating Alaskan lands for Indian use, revoked all existing Alaska reservations "set aside by legislation or by Executive or Secretarial Order for Native use" save one. 43 U.S.C. Sec. 1618(a) (emphasis added). Congress could not more clearly have departed from its traditional practice of setting aside Indian lands. Cf. Hagen v. Utah, 510 U.S. 399, 401. The difficulty with the Tribe's argument that the ANCSA lands were set apart for the use of the Neets'aiti Gwich'in, "as such," by their acquisition pursuant to Sec. 1618(b) is that ANCSA transferred reservation lands to private, state-chartered Native corporations, without any restraints on alienation or significant use restrictions, and with the goal of avoiding "any permanent racially defined institutions, rights, privileges, or obligations," Sec. 1601(b); see also Secs. 1607, 1613. Thus, Congress contemplated that non-Natives could own the former Venetie Reservation, and the Tribe is free to use it for non-Indian purposes. Equally clearly, ANCSA ended federal superintendence over the Tribe's lands by revoking all existing Alaska reservations but one, see Sec. 1618(a), and by stating that ANCSA's settlement provisions were intended to avoid a "lengthy wardship or trusteeship," Sec. 1601(b). Although ANCSA exempts the Tribe's land, as long as it has not been sold, leased, or developed, from adverse possession claims, real property taxes, and certain judgments, see Sec. 1636(d), these protections simply do not approach the level of active federal control and stewardship over Indian land that existed in this Court's prior cases. See, e.g., McGowan, supra, at 537-539. Moreover, Congress' conveyance of ANCSA lands to state-chartered and state-regulated private business corporations is hardly a choice that comports with a desire to retain federal superintendence. The Tribe's contention that such superintendence is demonstrated by the Government's continuing provision of health, social, welfare, and economic programs to the Tribe is unpersuasive, because those programs are merely forms of general federal aid, not indicia of active federal control. Moreover, the argument is severely undercut by the Tribe's view of ANCSA's primary purposes — namely, to effect Native self-determination and to end paternalism in federal Indian relations. The broad federal superintendence requirement for Indian country cuts against these objectives, but this Court is not free to ignore that requirement as codified in Sec. 1151. Whether the concept of Indian country should be modified is a question entirely for Congress. Pp. \_\_\_\_.

101 F. 3d 1286 reversed.

THOMAS, J., delivered the opinion for a unanimous Court.