No. 98-172

In the Supreme Court of the United States

OCTOBER TERM, 1997

BERING STRAIT SCHOOL DISTRICT, PETITIONER

v.

UNITED STATES OF AMERICA AND
UNITED STATES OF AMERICA EX REL.
NORTON SOUND HEALTH CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record
FRANK W. HUNGER
Assistant Attorney General
ROBERT S. GREENSPAN
EDWARD HIMMELFARB
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTION PRESENTED

Whether petitioner, a school district in an "unorganized borough" of Alaska, is a "State" within the meaning of the Indian Health Care Improvement Act, and therefore relieved of its statutory obligation to reimburse the United States and Indian tribal organizations for the reasonable expenses they incurred in providing free health care to petitioner's Alaska Native employees.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 138 F.3d 1281. The order of the court of appeals denying rehearing (Pet. App. 32a) is unreported. The opinion of the district court (Pet. App. 14a-31a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 12, 1998. The petition for rehearing was denied on May 4, 1998. (Pet. App. 32a). The petition for a writ of certiorari was filed on July 24, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1976, Congress enacted the Indian Health Care Improvement Act (Health Care Act), Pub. L. No. 94-437, 90 Stat. 1400, "to maintain and improve the health of the Indians" and to ensure that health service for Indians is "consonant with * * * the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people." 25 U.S.C. 1601(a). The Health Care Act declares it to be "the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy." 25 U.S.C. 1602(a). The Health Care Act seeks to ensure that sufficient manpower exists to provide Indians with proper health care and that adequate funding is available to construct modern hospitals and other health care facilities. However, in enacting the Health Care Act, "Congress did not view the federal government as the *exclusive* provider of Indian health care benefits"; it considered that to be a "shared responsibility" with the States. *McNabb* v. *Bowen*, 829 F.2d 787, 792 (9th Cir. 1987).

In 1988, Congress recognized that the federal government was providing free health care to Indians who were covered by the health insurance plans of their employers. It therefore added a new Section 206 to the Health Care Act to give the United States the right to recover the "reasonable expenses incurred by the Secretary * * * in providing health services, through the [Indian Health] Service," to eligible Indians and Alaska Natives to the same extent as the individual or a nongovernmental provider would be eligible for reim-

bursement if (1) the health care had been provided by a nongovernmental provider and (2) the individual had been required to pay for the care and had in fact paid. Indian Health Care Amendments of 1988, Pub. L. No. 100-713, § 204, 102 Stat. 4811 (codified at 25 U.S.C. 1621e(a)). That provision required a health insurer to reimburse the United States for health care provided by the federal government to Indians and Alaska Natives who were covered under the health insurance plan—just as that insurer would reimburse nongovernmental providers. Congress expressly preempted all provisions of state or local law, as well as all contract provisions, that would "prevent or hinder" the recovery of such reimbursements. *Ibid*. (codified at 25 U.S.C. 1621e(c) (1988)). An exception to liability provided in the 1988 version was that the United States had a right of recovery against "any State, or any political subdivision of a State," only to the extent the treated condition was covered under workers' compensation laws or a no-fault automobile insurance program. *Ibid*. (codified at 25 U.S.C. 1621e(b) (1988)).

In 1992, Congress amended Section 206 of the Health Care Act. Indian Health Amendments of 1992, Pub. L. No. 102-573, § 209, 106 Stat. 4551. It deleted the phrase "or any political subdivision of a State" in 25 U.S.C. 1621e(b), thus making political subdivisions fully liable for reimbursement of the cost of providing free health care to their Indian and Alaska Native employees. Only "any State" continues to have limited liability under Section 1621e(b).[1]

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[1] Health insurers are liable for reimbursement of the expenses incurred by Indian contractor facilities, not just by Indian Health Service facilities. 25 U.S.C. 1621e(a). The Act also authorizes Indian Tribes and tribal contractors to sue (as an alternative to

By the terms of the Health Care Act, all reimbursement funds recovered under Section 1621e(a) are to be retained by the Indian Health Service (IHS) or the tribal organization and to be made "available for the facilities, and to carry out the programs, of the [IHS] or [the] tribe or tribal organization to provide health care services to Indians." 25 U.S.C. 1621f(a). Moreover, the IHS is barred from offsetting these reimbursements obtained against funds already obligated; rather, all reimbursements are used to increase the availability of funds for Indian health care. 25 U.S.C. 1621f(b).

2. The Indian Health Service, a federal agency within the Department of Health and Human Services (HHS), operates the Alaska Native Medical Center, a health care facility in Anchorage that serves Alaska Natives living in Alaska. Pet. App. 15a. The Norton Sound Health Corporation, a tribal organization controlled by the Alaska Native villages in the Bering Strait region of Alaska, provides comprehensive medical care free of charge to eligible Alaska Natives and also provides fee-for-service care to non-Natives within its service area, including Nome. *Ibid.* Norton Sound has operated the Norton Sound Regional Hospital in Nome and other out-patient and community health service facilities under the Alaska Tribal Health Compact and Annual Funding Agreement, pursuant to Title III of the Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203,

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relying on the United States to sue on their behalf) to recover the reimbursements owed under the statute. 25 U.S.C. 1621e(a); see also 25 U.S.C. 1621e(e)(1)(A). Finally, a new provision exempts self-insurance plans funded by Indian Tribes or tribal organizations from liability to the United States. 25 U.S.C. 1621e(f).

as amended, Pub. L. No. 100-472, § 209, 102 Stat. 2296 (codified at 25 U.S.C. 450f note). Pet. App. 6a.

Petitioner Bering Strait School District is a Regional Educational Attendance Area (REAA) near Nome in the "unorganized borough" of Alaska. Pet. App. 6a. Under Alaska state law, an REAA is a school district "operated on an areawide basis under the management and control of a regional school board," the members of which are elected by qualified voters of the communities served by the REAA. Alaska Stat. § 14.08.041 (Michie 1997).

Petitioner's employees include Alaska Natives eligible for free medical care at facilities run by the plaintiffs. Pet. App. 15a. Between 1976 and 1980, petitioner voluntarily participated in a group health insurance plan available to "governmental unit[s]" other than the State of Alaska, which has its own, separate health insurance plan under Alaska Stat. § 39.30.090 (Michie 1997). C.A. App. 38-46. From 1980 to 1987, petitioner provided its employees with health insurance under a group insurance plan with Great-West Life Assurance Co. C.A. App. 15. Beginning in 1987, petitioner has provided health insurance under a self-insurance plan administered by Great-West. *Ibid.* Petitioner's health insurance plan purports to exclude coverage for medical services provided "in a hospital owned or operated by the * * * Government of the United States unless the employee or dependent is required to pay for such services" and for "services rendered to the employee or to the dependent to which such person is entitled without charge pursuant to any law, or for which there is no cost to the employee or dependent except for the existence of insurance against such cost." C.A. App. 22.

When the Alaska Native Medical Center and Norton Sound submitted claims for medical services rendered

without charge to petitioner's Alaska Native employees, Great-West refused to pay. Petitioner took the position that coverage for free medical care was excluded under the policy language and that petitioner came within the statutory exception for "any State" under Section 1621e(b).

3. The United States and Norton Sound brought this action against petitioner in district court under Section 1621e(a) seeking to recover reimbursement of the reasonable expenses incurred by the Alaska Native Medical Center and Norton Sound's facilities in providing free medical care to petitioner's Alaska Native employees. Norton Sound also sought to recover on a contract theory for services provided for a fee to petitioner's employees in Norton Sound's facilities. In an amended complaint, the United States asserted the right on behalf of Norton Sound to reimbursement of the expenses that Norton Sound had incurred. The right of the United States to recover reimbursements on behalf of Indian contractors under Section 1621e(a) has not been disputed in this litigation.

Petitioner moved for partial summary judgment, arguing that petitioner is an "arm of the state" and exempt from liability under Section 1621e(b), which applies to "any State." The district court granted partial summary judgment in favor of petitioner, holding that the exception in Section 1621e(b) applies to it. Pet. App. 31a. The court rejected the government's argument that petitioner is a political subdivision and therefore outside the exception. *Id.* at 25a-28a. Instead, the court considered whether petitioner is an "arm of the state" under Eleventh Amendment principles, even though the amendment "is not at issue in the instant action." *Id.* at 28a. Relying on the factors set forth in *Belanger* v. *Madera Unified School Dis-*

trict, 963 F.2d 248, 250-251 (9th Cir. 1992), cert. denied, 507 U.S. 919 (1993), the court held that petitioner is an arm of the State. Pet. App. 28a-31a. The "predominant" factor (*Belanger*, 963 F.2d at 251) is whether a money judgment would be satisfied with State funds. Pet. App. 29a. The district court concluded that that factor was satisfied because petitioner receives 82% of its general operating income from the State, and under state law the state legislature provides the money necessary to operate REAAs. *Id.* at 30a.

4. The court of appeals reversed. It rejected the district court's reliance on the Eleventh Amendment, noting that the question is one of statutory interpretation and of Congress's intent in using the phrase "any State." Pet. App. 7a. The court considered it unlikely that Congress intended that phrase to be understood in terms of the Eleventh Amendment, which has no application in suits brought by the United States. *Ibid.* The district court's reliance on the "arm of the state" doctrine was misplaced, the court of appeals explained, because the statutory exemption depends on whether the entity is a "State," and not whether it is an "arm of the state." The court of appeals concluded that the plain meaning of "State" does not include a school district or a regional education attendance area. *Id.* at 8a. "[A] local government unit, though established under state law, funded by the state, and ultimately under state control, with jurisdiction over only a limited area, is not a 'State.'" *Ibid.*

The dissent disputed the majority's reliance on petitioner's "jurisdiction over only a limited area," Pet. App. 10a, reasoning that the important issue is the amount of control exercised by the State over the entity. The dissent believed that Alaska exercises "a

high degree of control" over a school district like petitioner. *Id.* at 11a.

ARGUMENT

This is the only case that has decided the statutory question presented here, and the decision of the court of appeals is correct. Further review is not warranted.

1. a. The meaning of "State" under the Health Care Act is a question of statutory interpretation. The court of appeals correctly concluded that the ordinary meaning of "State" is one of the 50 States of the Union. Pet. App. 8a; see also *The Random House Dictionary of the English Language* 1860 (2d ed. unabridged 1987) ("(*sometimes cap.*) any of the bodies politic which together make up a federal union, as in the United States of America"); *Webster's Third New International Dictionary of the English Language Unabridged* 2228 (1986) ("*often cap*: one of the bodies politic or component units in a federal system that is more or less independent and sovereign over internal affairs but forms with the other units a sovereign nation <the United *States* of America>").

The context in which Congress used the term "State" in the Health Care Act confirms that the term should be given its ordinary meaning. Congress intended the Health Care Act to meet the national goal of assuring "the highest possible health status for Indians * * * and to provide all resources necessary to effect that policy." 25 U.S.C. 1602(a). Section 1621e(a) gives the United States (or Indian contractor) a right to recover from a health insurer the reasonable expenses incurred in providing health care to an Indian or Alaska Native covered under the employer's policy. That provision aims to "preserve scarce financial resources for [Indian and Alaska Native] health care by precluding insurers

from collecting premiums only to deny coverage for medical services provided at federal institutions that were not billed to their Native American or Alaska Native beneficiaries." *Yukon-Kuskokwim Health Corp.* v. *Trust Ins. Plan for Southwest Alaska*, 884 F. Supp. 1360, 1367 (D. Alaska 1994). All funds recovered through suits for reimbursement under Section 1621e(a) are added to the appropriated funds available for Indian health care. 25 U.S.C. 1621f. Thus, except when the entity is the "State" itself, the United States is entitled to recover from a health insurer under the Health Care Act.

b. Petitioner contends (Pet. 9) that the decision of the court of appeals "penaliz[es]" Alaska for "its chosen method of providing education to its school aged children," and thereby "intrudes on Alaska's ability to carry out its constitutionally preserved sovereign function." According to petitioner, when State authority is in issue, Congress must make clear its intent to "preempt the historic powers of the States." *Ibid.* That argument is misplaced. The statutory issue here has little to do with state sovereignty.[2]

The Health Care Act authorizes the United States to sue to recover the reasonable expenses incurred in providing free health services to eligible Indians and Alaska Natives. There is no basis for construing the exception for "any State" as broadly as petitioner seeks. First, the Eleventh Amendment, upon which petitioner relied below, plainly has no application in a suit by the United States under Section 1621e(a). *Seminole Tribe* v. *Florida*, 517 U.S. 44, 71 n.14 (1996).

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[2] The State of Alaska has not sought to intervene in this lawsuit to protect any State interests, nor has it thus far filed any brief *amicus curiae* expressing its views.

Second, while a State is generally excepted from the statutory right of recovery, the exception expressly *permits* recovery against "any State" if the health services provided were covered by either workers' compensation or no-fault automobile insurance. 25 U.S.C. 1621e(b)(1) and (2). Third, Congress expressly preempted all laws of any State or political subdivision (along with all contract provisions) that "prevent or hinder the right of recovery" of the United States or Indian contractor. 25 U.S.C. 1621e(c). Congress, therefore, carefully considered how extensively a State's interests would be accommodated under the Act and concluded that political subdivisions of a State should be required to reimburse the federal government for health care costs incurred by Native Americans who are covered by the health insurance of those subdivisions.

Petitioner also contends (Pet. 10-12) that the court of appeals erred in its understanding of the status of REAAs under Alaska law. Even if that were the case —and it is not[3]—a misinterpretation of a state law in

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[3] Petitioner contends (Pet. 11) that under the Alaskan Constitution an REAA is "a constituent part of the state government—a wholly subordinate instrumentality." But, as the court of appeals understood, the statutory question here is not whether petitioner is an instrumentality of the State; it is whether petitioner is the "State." Pet. App. 8a. Moreover, "the REAA's are not simply successors to the [Alaska State Operated School System]; they are independent entities which have been given broad powers to run their individual school districts as they see fit. *Northwest Arctic Reg'l Educ. Attendance Area* v. *Alaska Public Serv. Employees, Local 71*, 591 P.2d 1292, 1298 (Alaska 1979), overruled on other grounds, *Alaska Commercial Fishing & Agric. Bank* v. *O/S Alaska Coast*, 715 P.2d 707, 709 n.5 (Alaska 1986)." Pet. App. 9a. The independence of REAAs is also manifest in a very practical way: In Alaska, REAAs and the State of Alaska regularly engage

connection with a straightforward case of federal statutory construction does not warrant review by this Court.

Finally, petitioner's reliance (Pet. 13-14) on *Ngiraingas* v. *Sanchez*, 858 F.2d 1368 (9th Cir. 1988), aff'd, 495 U.S. 182 (1990), is misplaced. That case addressed whether an entity is an instrumentality of a State, an issue not raised under the terms of the Health Care Act, which uses the term "State." An instrumentality of the State is treated as the State only when Eleventh Amendment principles apply, and petitioner appears to

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in litigation with each other. See, *e.g.*, *Southwest Region Sch. Dist.* v. *Department of Educ.*, 723 P.2d 636 (Alaska 1986); *Meiners* v. *Bering Strait Sch. Dist.*, 687 P.2d 287 (Alaska 1984); *State* v. *Bering Strait Regional Educ. Attendance Area Sch. Dist.*, 658 P.2d 784 (Alaska 1983). Alaska statutes delineate the separation between the State and REAAs. Janet Parker, a deputy director with the Department of Administration, testified in her deposition in this case that under state law Bering Strait is "not * * * the State" for health insurance purposes:

> Q * * * Based on everything we've talked about and your experiences as deputy director of the Division of Retirement and Benefits, does the department treat Bering Strait School District as part of the State of Alaska?
>
> A Under our statutes, we treat them as a separate employer.
>
> Q Do you treat them as a political subdivision?
>
> A We treat them as—we call them different things in different programs; sometimes they're called a governmental unit, sometimes they're called a political subdivision, sometimes a school district. I—but under the statutes, they are not—under our statutes, they are not a State—the State.

C.A. App. 47-48.

have abandoned its reliance on that Amendment in construing the Health Care Act.

2. The decision of the court of appeals does not conflict with the decision of any other court. This case is only the second action ever brought under Section 206 of the Indian Health Care Improvement Act and the first to have interpreted the statutory exception for "any State."[4] Given the correctness of the court of appeals' decision and the absence of a conflict, that issue of statutory interpretation does not warrant the Court's attention.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General
FRANK W. HUNGER
Assistant Attorney General
ROBERT S. GREENSPAN
EDWARD HIMMELFARB
Attorneys

SEPTEMBER 1998

[4] The other case, *Yukon-Kuskokwim Health Corp.* v. *Trust Ins. Plan for Southwest Alaska*, 884 F. Supp. 1360 (D. Alaska 1994), did not involve the statutory exception for "any State."