



LITIGATION AND REGULATORY UPDATE

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STATUTES AND REGULATIONS





COVID-19 (LEGISLATION)

CORONAVIRUS PREPAREDNESS AND RESPONSE SUPPLEMENTAL
APPROPRIATIONS ACT (MARCH 6)

FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) (MARCH 18)

CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT
(MARCH 27)



CORONAVIRUS PREPAREDNESS AND RESPONSE SUPPLEMENTAL APPROPRIATIONS ACT

MAINLY INVOLVED SUPPLEMENTAL APPROPRIATIONS FOR FEDERAL RESPONSE AND MITIGATION EFFORTS: CDC, NIH, DHHS, AS WELL AS US AID AND STATE DEPARTMENT FOR INTERNATIONAL EFFORTS.
SOME SUPPLEMENTAL DISASTER LOAN RELIEF FOR SBA



FAMILIES FIRST CORONAVIRUS RESPONSE ACT

ESTABLISHED MINIMUM FMLA AND SICK LEAVE REQUIREMENTS FOR EMPLOYERS WITH EMPLOYEES WHO:

HAVE TO TAKE TIME OFF BECAUSE THEY HAVE COVID-19
HAVE TO TAKE CARE OF A FAMILY MEMBER WITH COVID-19
HAVE TO TAKE CARE OF A CHILD WHOSE SCHOOL IS CLOSED DUE TO COVID-19



CARES ACT

ECONOMIC STIMULUS FUNDING: GENERALLY

\$1200 PAYMENTS TO INDIVIDUALS

PAYCHECK PROTECTION PLAN - FORGIVABLE LOANS TO SMALL
BUSINESSES

CORONAVIRUS RELIEF FUND (CRF) - GOVERNMENTAL ASSISTANCE



CARES ACT

ECONOMIC STIMULUS FUNDING: TRIBE

\$8 BILLION CRF MONEY FOR TRIBAL GOVERNMENTS

\$300 MILLION - INDIAN HOUSING (IHBG AND ICDBG)

\$222 MILLION - BUREAU OF INDIAN EDUCATION

\$1.032 BILLION - INDIAN HEALTH SERVICE



COVID-19 (REGULATORY ACTION)

OMB GUIDANCE (OVER A DOZEN SINCE MARCH 9, 2020)

HUD PIH GUIDANCE AND FAQs

CDC EVICTION MORATORIUM (SEPTEMBER 4)



OFFICE OF MANAGEMENT AND BUDGET

HAS ISSUED GUIDANCE TO FEDERAL AGENCIES REGARDING:

TELEWORK, TRAVEL

INTERAGENCY COORDINATION AND FLEXIBILITY

AUTHORIZATION FOR WAIVERS OF VARIOUS FEDERAL
ADMINISTRATIVE AND PROCUREMENT REQUIREMENTS

The background of the slide is a photograph of a traditional adobe building with a flat roof and several chimneys. The building is made of reddish-brown earth. In the foreground, there is a dirt courtyard with some wooden posts and a log. The sky is blue with some clouds. At the top of the slide, there are three horizontal bars: a dark teal bar on the left, a light teal bar in the middle, and a yellow bar on the right. A large, stylized quote mark is centered at the top of the text area. The text is white and set against a dark teal background.

HUD OFFICE OF PUBLIC AND INDIAN HOUSING

FOLLOWING CARES ACT AND OMB WAIVER AUTHORITY, ISSUED
GUIDANCE SETTING OUT:

DETAILED INSTRUCTIONS FOR USE OF CARES IHBG AND ICDBG
FUNDS.

WAIVERS OR EXTENSIONS OF VARIOUS ADMINISTRATIVE AND
PROCUREMENT REQUIREMENTS



HUD OFFICE OF PUBLIC AND INDIAN HOUSING

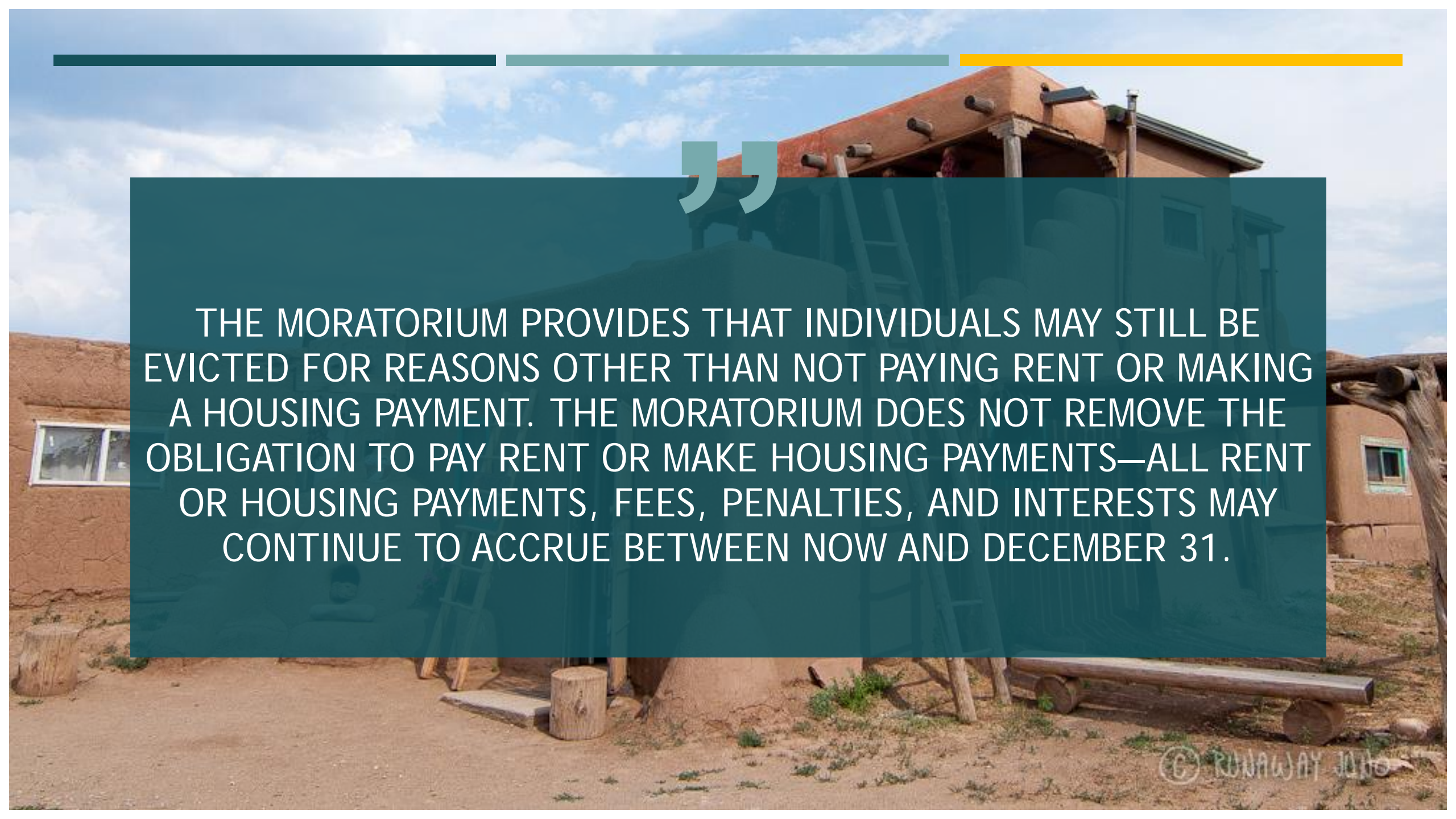
ISSUED A SERIES OF FAQs ADDRESSING CARES ACT AND
WAIVER/EXTENSION ISSUES

HUD ONAP CONDUCTED A SERIES OF CONFERENCE CALLS
ADDRESSING SAME



CDC SETS NATIONWIDE EVICTION MORATORIUM

ON SEPTEMBER 4, 2020, IN RESPONSE TO THE COVID-19 PANDEMIC, CDC PUBLISHED AN EVICTION MORATORIUM IN THE FORM OF AN AGENCY EMERGENCY ORDER. APPLIES NATIONWIDE. PROHIBITS ALL PRIVATE AND PUBLIC LANDLORDS AND PROPERTY OWNERS FROM EVICTING INDIVIDUALS FROM RESIDENTIAL PROPERTIES UNTIL DECEMBER 31, 2020 FOR FAILURE TO MAKE RENTAL OR HOUSING PAYMENTS, SO LONG AS TENANT SUBMITS A DECLARATION (IN THE FORM ATTACHED TO THE MORATORIUM ORDER).



THE MORATORIUM PROVIDES THAT INDIVIDUALS MAY STILL BE EVICTED FOR REASONS OTHER THAN NOT PAYING RENT OR MAKING A HOUSING PAYMENT. THE MORATORIUM DOES NOT REMOVE THE OBLIGATION TO PAY RENT OR MAKE HOUSING PAYMENTS—ALL RENT OR HOUSING PAYMENTS, FEES, PENALTIES, AND INTERESTS MAY CONTINUE TO ACCRUE BETWEEN NOW AND DECEMBER 31.



SAVANNA'S ACT (OCTOBER 10, 2020)

CLARIFIES FEDERAL, STATE, TRIBAL AND LOCAL LAW ENFORCEMENT RESPONSIBILITIES WITH RESPECT TO MISSING OR MURDERED INDIANS; AIMS TO INCREASE COMMUNICATION AND COORDINATION BETWEEN FEDERAL, TRIBAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES; IMPROVES TRIBAL ACCESS TO RESOURCES AND INFORMATION SUCH AS THE FEDERAL CRIMINAL INFORMATION DATABASES NEEDED TO RESPOND EFFECTIVELY TO MISSING AND MURDERED INDIAN CASES



SAVANNA'S ACT (OCTOBER 10, 2020)

THE ACT ALSO DIRECTS THE ATTORNEY GENERAL TO DEVELOP GUIDELINES ON INTER-JURISDICTIONAL COOPERATION, BEST PRACTICES IN CONDUCTING SEARCHES FOR MISSING INDIVIDUALS, DATA COLLECTION AND REPORTING, LAW ENFORCEMENT RESPONSE RATES, AND ENSURING ACCESS TO CULTURALLY APPROPRIATE VICTIMS' SERVICES.



NOT INVISIBLE ACT (OCTOBER 10, 2020)

ESTABLISHES A JOINT COMMISSION ON REDUCING VIOLENT CRIMES AGAINST INDIANS OF LOCAL, TRIBAL, AND FEDERAL STAKEHOLDERS FROM DIVERSE GEOGRAPHIC AREAS THAT WILL MAKE PUBLICLY AVAILABLE RECOMMENDATIONS TO THE DEPARTMENTS OF INTERIOR AND OF JUSTICE ON BEST PRACTICES BOTH DEPARTMENTS CAN TAKE TO COMBAT DISAPPEARANCES, MURDER, TRAFFICKING, AND OTHER VIOLENT CRIMES AGAINST NATIVE AMERICANS AND ALASKA NATIVES



PROGRESS ACT (OCTOBER 21, 2020)

AMENDS INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT (ISDEAA) TO ENHANCE SELF-GOVERNANCE FOR TRIBES, IMPROVE ADMINISTRATIVE EFFICIENCIES. ALLOWING TRIBES TO CARRY OUT COMPACTS WITH BOTH DEPARTMENT OF THE INTERIOR (DOI) AND THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) UNDER A SIMILAR STATUTORY FRAMEWORK. MANY SELF-GOVERNANCE TRIBES MANAGE PROGRAMS WITHIN BOTH THE INDIAN HEALTH SERVICE (IHS) AND DOI, AND THE PROGRESS ACT WILL RECONCILE DIFFERENCES.
NEXT STEP: NEG REG.



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LITIGATION



U.S. SUPREME COURT: CHANGING OF THE GUARD?

LIBERAL ICON RUTH BADER GINSBURG PASSED AWAY IN SEPTEMBER 2020.

IN OCTOBER 2020, JUST PRIOR TO THE ELECTION, THE SENATE APPROVED THE APPOINTMENT OF PRESIDENT TRUMP'S NOMINEE, AMY CONEY BARRETT, A CONSERVATIVE JURIST.



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MCGIRT V. OKLAHOMA, 591 U.S. _____, (2020)

IN 1997, A JURY IN WAGONER COUNTY OK FOUND JIMCY MCGIRT GUILTY OF THREE COUNTS OF SEX CRIMES. HE WAS SENTENCED TO 500 YEARS IN PRISON WITHOUT POSSIBILITY OF PAROLE.

MCGIRT ULTIMATELY APPEALED TO THE U.S. SUPREME COURT, ARGUING THE OKLAHOMA COURTS LACKED JURISDICTION TO HEAR HIS CASE BECAUSE HE WAS A TRIBAL MEMBER AND HIS CRIMES OCCURRED IN “INDIAN COUNTRY”.



MCGIRT V. OKLAHOMA, 591 U.S. _____, (2020)

THE SUPREME COURT, IN A 5-4 DECISION, HELD THAT THE BOUNDARIES OF THE MUSCOGEE (CREEK) NATION'S RESERVATION REMAIN INTACT. BECAUSE THE RESERVATION REMAINED INTACT, THE RESERVATION LAND WAS INDIAN COUNTRY FOR PURPOSES OF THE FEDERAL CRIMES AND AS SUCH, OKLAHOMA LACKED CRIMINAL JURISDICTION OVER MCGIRT'S CRIMES. "AT THE END OF THE TRAIL OF TEARS WAS A PROMISE."



MCGIRT V. OKLAHOMA, 591 U.S. _____, (2020)

JUSTICE GORSUCH, WHO WROTE THE OPINION, NOTED THAT THE US HAD BROKEN MANY PROMISES TO THE TRIBE. BUT THE TREATY WITH THE CREEK NATION CREATED A RESERVATION, AND DESPITE THE CHANGES WROUGHT, ONLY CONGRESS CAN DIMINISH OR DISESTABLISH A RESERVATION. MUST DO SO EXPRESSLY, NOT BY IMPLICATION. RESERVATION STILL EXISTS AND STILL CONSTITUTES INDIAN COUNTRY. AS A RESULT, THE STATE OF OKLAHOMA COULD NOT LEGALLY TRY A CREEK CITIZEN FOR CRIMINAL CONDUCT IN STATE COURT.



CALIFORNIA V. TEXAS, NO. 19-840 (ARGUED NOV. 10):

CONSTITUTIONAL CHALLENGE TO THE INDIVIDUAL MANDATE PROVISION OF THE AFFORDABLE CARE ACT (ACA OR “OBAMACARE”), WHICH BY EXTENSION, CHALLENGES THE VALIDITY OF THE ENTIRE LAW. THE INDIAN HEALTH CARE IMPROVEMENT ACT (IHCA) AND OTHER INDIAN-SPECIFIC PROVISIONS OF THE ACA ARE AMONG MANY OTHER PROVISIONS OF THE LAW THAT ARE UNRELATED TO THE INDIVIDUAL MANDATE YET ARE THREATENED BY THE SWEEPING RELIEF REQUESTED.



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UNITED STATES V. COOLEY, NO. 20-543 (CERT GRANTED
NOVEMBER 23, 2020)

DISTRICT COURT SUPPRESSED EVIDENCE GATHERED BY TRIBAL POLICE OFFICER WHO DETAINED AND SEARCHED NON-INDIAN ON A PUBLIC RIGHT-OF-WAY WITHIN RESERVATION. 9TH CIRCUIT AFFIRMED. ARGUMENT IS THAT THE LOWER COURTS' DECISIONS ERRONEOUSLY DIMINISHED THE INHERENT SOVEREIGN AUTHORITY OF INDIAN TRIBES AND WILL IMPEDED THE ENFORCEMENT OF STATE AND FEDERAL LAW ON-RESERVATION



MNUCHIN V. CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, PETITION FOR CERT. PENDING, NO. 20-543

ARE ALASKA NATIVE REGIONAL AND VILLAGE CORPORATIONS (ANCS) ARE "INDIAN TRIBES" FOR PURPOSES OF RECEIVING CRF. SUIT SEEKS TO PROHIBIT TREASURY FROM DISTRIBUTING ANY OF THE \$8 BILLION SET ASIDE FOR TRIBAL GOVERNMENTS FROM THE CORONAVIRUS RELIEF FUND TO ANCS. DISTRICT COURT FOUND THAT ANCS ARE ELIGIBLE TO RECEIVE CARES ACT TRIBAL GOVERNMENT RELIEF FUNDS. THE D.C. CIRCUIT COURT OF APPEALS REVERSED, HOLDING ANCS NOT ELIGIBLE CRF.



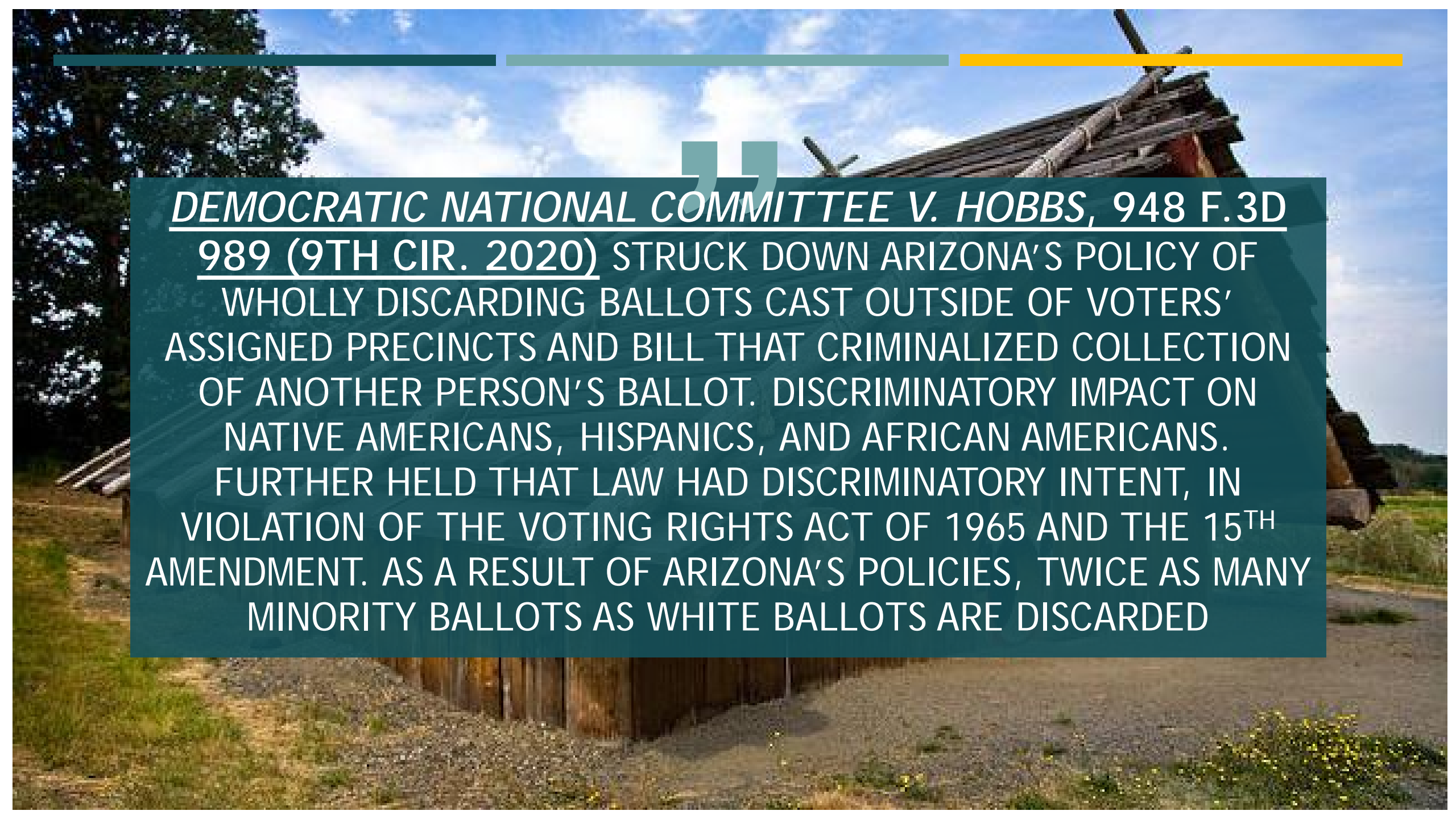
FMC CORPORATION V. SHOSHONE-BANNOCK TRIBES,
PETITION FOR CERT. PENDING, NO. 20-543

FMC CORPORATION STORED RADIOACTIVE WASTE ON FEE LAND WITHIN RESERVATION FOR OVER 50 YEARS. FMC AGREED TO PAY \$1.5 MILLION PER YEAR FOR A TRIBAL USE PERMIT ALLOWING STORAGE OF THE HAZARDOUS WASTE, BUT STOPPED PAYING IN 2002. TRIBE FILED SUIT AND WON IN TRIBAL COURT. 9TH CIRCUIT HELD TRIBE AND TRIBAL COURT HAD JURISDICTION UNDER BOTH *MONTANA* EXCEPTIONS.



*FMC CORPORATION V. SHOSHONE-BANNOCK TRIBES,
PETITION FOR CERT. PENDING, NO. 20-543*

9TH CIRCUIT HELD TRIBAL JURISDICTION OVER NONMEMBERS IS ESTABLISHED WHENEVER A *MONTANA* EXCEPTION IS MET. AT ODDS WITH 7TH AND 8TH CIRCUITS (COURT MUST ALSO DETERMINE WHETHER THE EXERCISE OF TRIBAL JURISDICTION RESULTS FROM A TRIBE'S INHERENT AUTHORITY).



DEMOCRATIC NATIONAL COMMITTEE V. HOBBS, 948 F.3D 989 (9TH CIR. 2020) STRUCK DOWN ARIZONA'S POLICY OF WHOLLY DISCARDING BALLOTS CAST OUTSIDE OF VOTERS' ASSIGNED PRECINCTS AND BILL THAT CRIMINALIZED COLLECTION OF ANOTHER PERSON'S BALLOT. DISCRIMINATORY IMPACT ON NATIVE AMERICANS, HISPANICS, AND AFRICAN AMERICANS. FURTHER HELD THAT LAW HAD DISCRIMINATORY INTENT, IN VIOLATION OF THE VOTING RIGHTS ACT OF 1965 AND THE 15TH AMENDMENT. AS A RESULT OF ARIZONA'S POLICIES, TWICE AS MANY MINORITY BALLOTS AS WHITE BALLOTS ARE DISCARDED

QUESTIONS?



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