

Recognition of Alaska Tribes

House Tribal Affairs Committee

Alaska State Legislature

March 30, 2021

Joy Anderson, General Counsel

Association of Village Council Presidents

Natasha Singh, General Counsel

Tanana Chiefs Conference

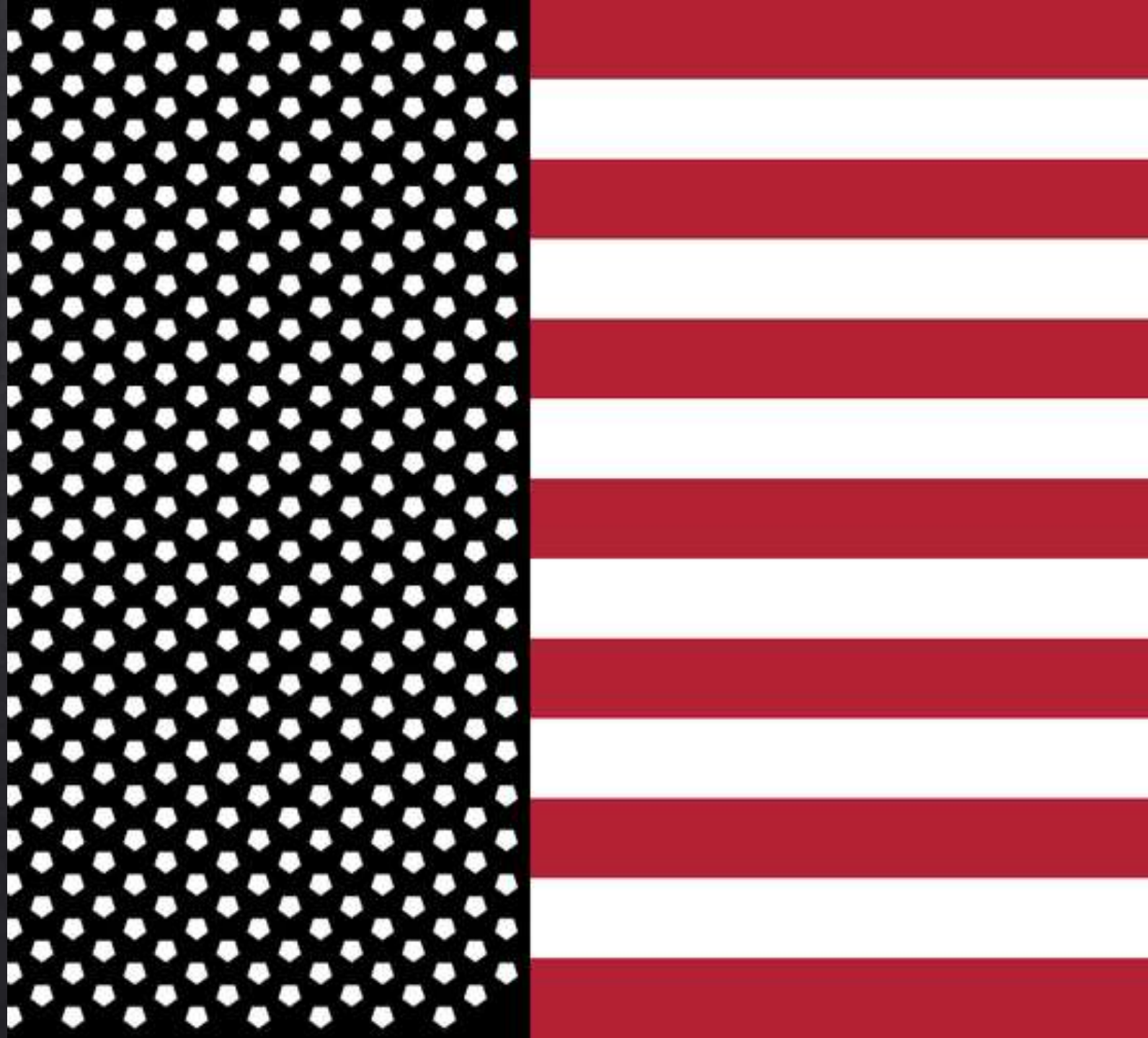
Native peoples and Tribes have existed in the
Americas from time immemorial.

“Before the coming of the Europeans, the tribes were
self-governing sovereign political communities.”
-John v. Baker, Alaska Supreme Court

What are Tribes?

- ◆ Domestic Dependent Nations
- ◆ Inherent powers and authorities with self-governance of internal affairs, e.g. type of government; tribal membership
- ◆ Tribes exercise all powers, unless those powers have been expressly limited by Congress.
- ◆ Regulate matters pertaining to tribal members, e.g. taxes, property, members' conduct
- ◆ Immune from lawsuits
- ◆ Tribes are not state or local governments; political subdivisions or agencies or instrumentalities of the federal or state governments; tax exempt organizations

Brief History of
the Relationship
Between Tribes
and the United
States
Government



Federal Indian Policy Periods

Colonial
1492 - 1820

Removal /
Relocation
1820-1850

Reservation /
Treaty
Making 1850-
1887

Allotment &
Assimilation
1887-1934

Indian Self-
Government
1934-1953

Termination
1953-196?

Self
Determination
196?-Present



Domestic Dependent Nations

... a weaker power **does not surrender** its independence – its right to self-government – by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state.

The Marshall Trilogy

- ❖ **Aboriginal land claims:** Aboriginal people retain the rights of use and occupancy, that only the United States government can settle aboriginal land claims, and that the U.S. has a legal duty to protect aboriginal title until land claims are officially settled.
- ❖ **Tribal Authority:** Tribes are nations with the authority to govern themselves. The source of their authority to govern is “inherent”, meaning that it comes from tribes being self-governing long before explorers and settlers came to the Americas.
- ❖ **Federal Trust Responsibility:** The Federal Government has a responsibility to protect Indian lands and resources, and to provide essential services to Indian people. This comes from the fact that the federal government took away the vast majority of Indian lands, and in return promised to provide these things.

The Alaska Purchase

The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.

-Treaty of Cession aka The Alaska Purchase



The U.S. Government's Control over Tribes

Congress shall have the power [. . .]
To regulate Commerce with foreign
Nations and among the several
States, and with the Indian Tribes.

Article I, Section 8, Clause 3 of the
United States Constitution (aka the
Commerce Clause)



Self-Determination

- ◆ The only policy that has worked to make significant progress in reversing otherwise distressed social, cultural, and economic conditions in Native communities.
- ◆ The policy of self-determination reflects a political equilibrium which has held for four decades and which has withstood various shifts in the party control of Congress and the White House.
- ◆ The first major piece of legislation, Public Law 93-638, the Indian Self-Determination Act of 1975.
 - ◆ Tribes identify federal government services that they wish to provide to their own tribal members and contract for the federal funding to provide those services themselves.

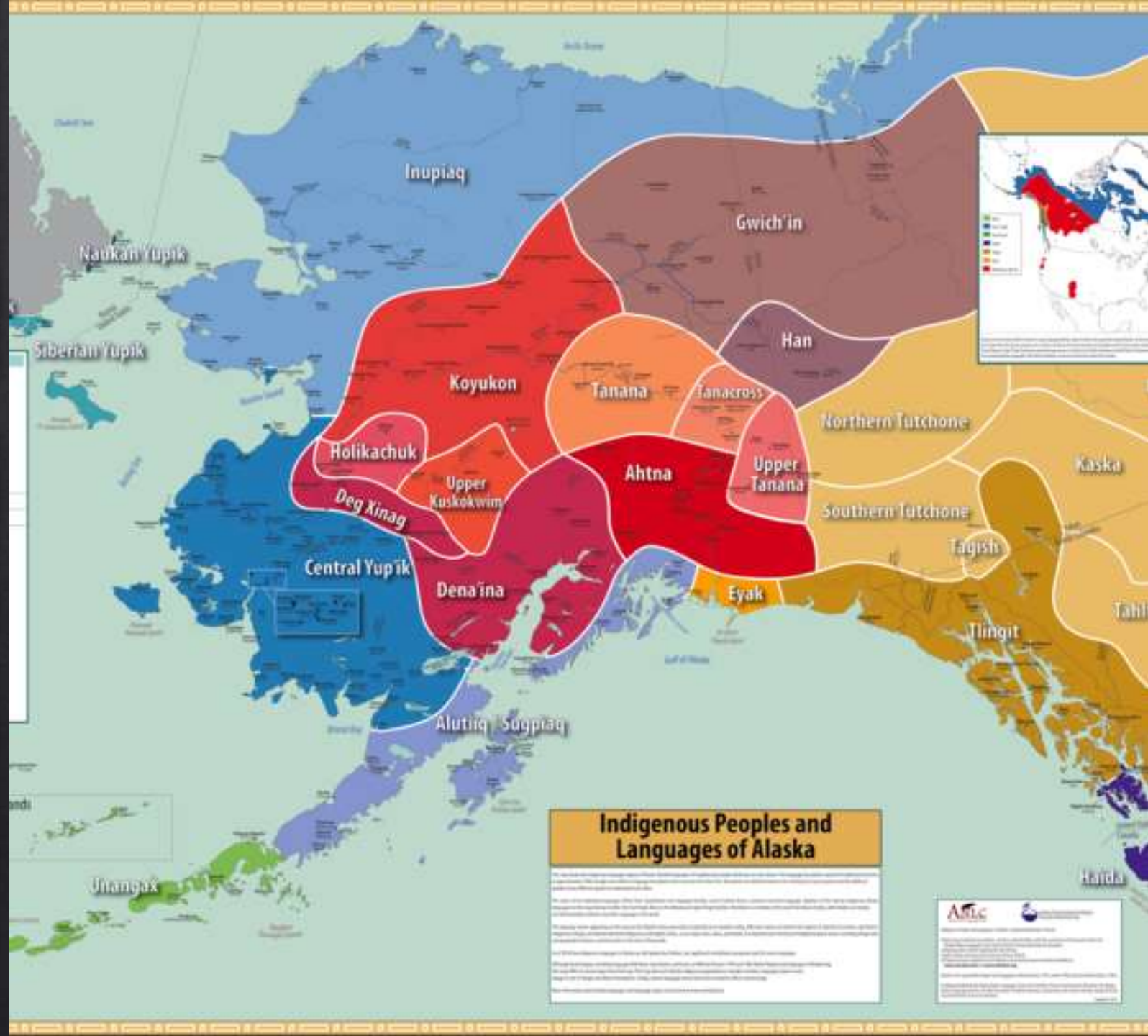
Executive Order 13175 (2000)

- ◆ Established regular and meaningful consultation and collaboration with tribes in the development of federal policies that have tribal implications.
- ◆ Recognizes that the United States has a unique legal relationship with Indian tribal governments as set forth in the U.S. Constitution, treaties, statutes, Executive Orders, and U.S. Supreme Court decisions.
- ◆ Confirms that the U.S. recognizes Indian tribes as “domestic dependent nations under its protection.”

Executive Order 13175 (2000)

- ◆ Recognizes a trust relationship with Indian tribes.
- ◆ Recognizes the right of Indian tribes to self-government, tribal authority and self-determination.
- ◆ All federal agencies are to respect Indian tribal self-government and authority.

Brief History of the Relationship Between the State of Alaska and Tribes



Previous Alaska Position: Tribes Did Not Exist

- ◊ *Native Vill. Of Stevens v. Alaska Mgmt. & Planning* (Alaska 1988) – “**There are not now and never have been tribes of Indians in Alaska** as that term is used in federal Indian law.”
- ◊ Alaska Admin. Order No. 125 (1991) – “**The State of Alaska opposes expansion of tribal governmental powers** and the creation of ‘Indian Country’ in Alaska.”

Federal Government Response

- ◆ **Department of Interior (DOI) – The “Sansonetti Opinion” (1993)**
disagreed with the Alaska Supreme Court’s historical analysis in *Stevens Village*, observed that for over fifty years Congress and the DOI treated Alaska Natives as members of tribes, and concluded there were federally recognized tribes in Alaska. Nine months later, DOI issued a list of federally recognized tribes in Alaska.
- ◆ **Congress - Federally Recognized Tribe List Act of 1994 (1994 List Act)**
directed the BIA to publish lists of recognized tribes which included Alaska Tribes. The list is published annually, and all subsequent lists of the List Act have continued to include Alaska Tribes.

Current Position of the State of Alaska on Recognition of Tribes:

- ◆ **Alaska Supreme Court** – “If Congress or the Executive Branch recognizes a group of Native Americans as a sovereign Tribe, we ‘must do the same.’” *John v. Baker* (1999)
- ◆ **State of Alaska’s Executive Branch** – “[W]e will improve government-to-government relations with Alaska Tribes [...].” Alaska Admin. Order No. 300 (2018). *See also* Alaska Department of Law 2017 Opinion – Legal status of tribal governments in Alaska (“[T]here are no unresolved legal questions regarding the legal status of Alaska Tribes as federally recognized tribal governments.”)

HB 123

- ◆ Will bring the Alaska State Legislature in-line with the other two branches of State government regarding the status of Alaska Tribes.
- ◆ Will modernize the policy towards Alaska Native tribes by officially moving the State legislature out of the Termination Era and into the Self-Determination Era.
- ◆ Create the potential for the State of Alaska to lead the country in creation of State-tribal relations.

Ana Bassee

Quyana