

Healthcare Shortages During a Pandemic: A Story Not Unfamiliar to Tribes

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ABSTRACT

Historically disadvantaged groups, like Native American tribes, faced a difficult time during the COVID-19 pandemic. This Blogpost seeks to bring attention to the difficulties Native American tribes face when accessing healthcare by focusing on the Acoma Pueblo tribe in New Mexico, which illustrates the need for better access to healthcare for Native American tribes in rural areas.

The Blogpost discusses the litigation case between the Acoma Pueblo and the Department of Health and Human Services and funding issues for the Acoma-Cañoncito-Laguna Hospital, while providing a historical background on the Acoma Pueblo. Furthermore, this Blogpost provides a similar healthcare access issue faced by a fellow New Mexico tribe, the Laguna Pueblo. The Laguna Pueblo's resolution illustrates an alternative for how funding of healthcare facilities for Native American tribes can be handled to the advantage of the Native American tribes who need healthcare facilities.

Keywords: Acoma Pueblo, Pueblo of Acoma, New Mexico Native American Communities, Laguna Pueblo, Native American Affairs, Healthcare Policy, American Indian Law, COVID-19 Healthcare Challenges, Native American Healthcare, Department of Health and Human Services

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INTRODUCTION

The COVID-19 pandemic has affected people across socioeconomic levels and geographic regions around the globe. However, historically disadvantaged groups,

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including economically, socially, politically, and a combination thereof, have seen themselves disproportionately affected. This Blogpost explains how a Native American Tribe, the Pueblo of Acoma, has fared during this difficult time. My experience working for a government agency in the Southwest before law school brought awareness about the Native American tribes in the region. I was aware of their vulnerable position prior to the pandemic, and I wanted to see how tribes in the Southwest fared during the acute period of the health crisis. The Acoma Pueblo are one example of the disadvantages and injustices Native American tribes faced during the crisis, and I am using their example to bring attention to them and inspire readers to look into how states treat tribes during crises. In addition, this Blogpost discusses ongoing litigation involving the United States Department of Health and Human Services (HHS) and Indian Health Service (IHS), hospital funding cuts, and diminished resources and staffing during the crisis.

This Blogpost invites readers to become familiar with the hardship the Acoma Pueblo faced during the pandemic. While this period of time was difficult across geographies and cultures, the Acoma Pueblo have a specific history of struggle, which is unfortunately familiar to Native American Nations in the United States. Among other tribes, the Navajo, Blackfeet, and Gros Vente faced similar limitations in access to healthcare. However, this Blogpost focuses on the Acoma Pueblo to analyze this issue in more detail. Governmental agencies and states should ensure tribes have access to healthcare and other necessities, because helping to preserve tribes and their unique heritages should be a priority.

In Part I, this Blogpost introduces the Acoma Pueblo and their access to health care, outlining the hospital funding and staffing cuts during the peak of the pandemic, which led to a lawsuit against HHS. Then, it goes over the colonization of the Acoma Pueblo and their historical background. Part II reviews the Acoma Pueblo's complaint and provides more detail on the unfair situation the Tribe faced by being deprived of appropriate healthcare access. Lastly, Part III returns to the healthcare funding issue and goes over possible solutions that would benefit the Acoma Pueblo.

I. A HISTORICAL PERSPECTIVE AND HOSPITAL CUTS DURING A HEALTHCARE CRISIS: THE ACOMA PUEBLO'S SUIT AGAINST THE DEPARTMENT OF HEALTH & HUMAN SERVICES

This section starts by introducing the reader to the healthcare access issue faced by the Acoma Pueblo, which prompted a lawsuit against HHS. The Pueblo of Acoma, or the Acoma Pueblo, is a rural community in Cibola County, New Mexico, about sixty miles from Albuquerque, with Sky City as the center of their settlement.¹ Their lands cover 411.5 square miles with a population of 2784.² 18% of the Acoma population are over fifty years old, and 20% of their senior citizens live below the poverty line.³ A federally recognized tribe, the Acoma Pueblo, historically had settlements over an estimated 5,000,000 acres.⁴ They have lived in the region for over 2000 years, making them one of

¹ Tonya M. Ortiz-Louis, *Pueblo of Acoma: Healthcare in a Post-COVID World*, NATIVE NEWS ONLINE (Dec. 1, 2020), <https://nativenewsonline.net/opinion/pueblo-of-acoma-healthcare-in-a-post-covid-world>.

² *Id.*

³ *Id.*

⁴ BARRY M. PRITZKER, *A NATIVE AMERICAN ENCYCLOPEDIA: HISTORY, CULTURE, AND PEOPLES* 8 (1998).

the oldest continuously inhabited communities in the United States, together with the Hopi.⁵ However, fewer than fifty tribal members remain year-round in what remains of Sky City.⁶ They tend to San Estévan del Rey Mission, a historical landmark that Spaniard missionaries and colonizers founded in their tribal land.⁷ The remaining tribal members live outside Sky City in Anzac, Acomita, and McCarty's villages.⁸ The tribe's land passed from Mexico to the United States under the Treaty of Guadalupe Hidalgo in 1848.⁹ Throughout their interactions with Spanish, Mexican, and American governments, the Pueblo of Acoma have remained a sovereign Indian nation.¹⁰

When the COVID-19 pandemic started in 2020, the travel requirements for the tribe members, together with their health, population size, and age, made the Acoma Pueblo particularly vulnerable to the virus. The isolation of the tribe can be perceived as an advantage during a situation like a pandemic. However, the community's isolation ended up making the community more susceptible to the virus once it found its way into the community. In a way, they were "trapped" with it.

Many tribe members live and work outside the central area of the reservation but return to the reservation for communal traditions. Thus, they risked contracting the virus by interacting with people outside the tribe, which increased the spread of COVID-19 within the tribe. The Acoma Pueblo population is approximately 18% over the age of fifty, which is an age group more susceptible to illness and other medical conditions.¹¹ Furthermore, 20% of Acoma Pueblo senior citizens live under the poverty line, which is not surprising given statistics showing that rural populations are generally poorer and suffer from higher rates of chronic illness.¹² These factors together are enough to raise concern about any isolated rural population.

The Acoma-Cañoncito-Laguna (ACL) Hospital is the reservation's only IHS unit, assisting the 9100 tribal citizens in the region as their local health services provider.¹³ Outside of this facility, the next available one is sixty miles away and can only be reached by driving. The hospital found itself with a budget shortfall on an already tight budget as the public health crisis of the pandemic began, and available beds dwindled when the number of cases rose in November 2020.¹⁴ The financial shortfall caused the hospital to cut seventy-six of its 135 full-time employees, the inpatient critical care unit, the emergency room, and women's services.¹⁵ As a result, the hospital turned patients

⁵ LAURIE J. EDWARDS, UXL ENCYCLOPEDIA OF NATIVE AMERICAN TRIBES 1175 (3rd ed. 2012).

⁶ *Acoma Pueblo (Sky City)*, N.M. TOURISM DEP'T, <https://www.newmexico.org/places-to-visit/native-culture/acoma-sky-city/> (last visited Apr. 15, 2021).

⁷ *Id.*

⁸ *Id.*

⁹ Deborah A. Rosen, *Acoma v. Laguna and the Transition from Spanish Colonial Law to American Civil Procedure in New Mexico*, 19 LAW & HIST. REV. 513, 514 (2001).

¹⁰ *Acoma Tribal Court*, PUEBLO OF ACOMA, <https://www.puebloofacoma.org/departments/acoma-tribal-court/> (last visited Oct. 25, 2022).

¹¹ *Acoma Pueblo*, CENSUS REP. (2021), <https://censusreporter.org/profiles/25200US0010R-acoma-pueblo/>.

¹² DAVID HARTZBAND & FEYGELE JACOBS, RCHN CMTY. HEALTH FOUND., POPULATION HEALTH APPROACHES TO IMPROVING RURAL HEALTH (2018), <https://www.rchnfoundation.org/wp-content/uploads/2018/04/Pop-Health-Approaches-to-Improving-Rural-Health.pdf>.

¹³ Mark Walker, *Native Americans Reliant on Hospital Feel Abandoned by U.S. During Pandemic*, N.Y. TIMES (Oct. 8, 2021), <https://www.nytimes.com/2021/01/03/us/politics/indian-health-service-hospital.html>.

¹⁴ *Id.*

¹⁵ *Id.*

away, directing them to drive sixty miles to Albuquerque or wait for ambulance transportation.¹⁶ The poverty prevalent in the tribe¹⁷ means that not all Acoma Pueblo people possess the means to travel such distance. The long drive required also increases safety risks because a higher percentage of vehicle accidents and fatalities occur in rural areas.¹⁸ Further, driving while sick or during an emergency exacerbates the risk of an accident, as medical conditions can impair the cognitively complex task of driving.¹⁹

Since the 1970s, the Acoma Pueblo and other tribes in the vicinity have relied on the ACL Hospital for most healthcare needs.²⁰ The services offered are all-encompassing including dental, pharmaceutical, internal medicine, and optometry departments.²¹ The ACL was a one-stop-shop for tribal members in the area, which mitigated the travel burden for medical and preventive services. In addition, this arrangement importantly served their populations at risk due to their isolation in rural communities and significant poverty.

Unfortunately, funding for the ACL Hospital was inadequate during the critical time of 2020. This shortcoming stems from IHS, which operates the ACL Hospital. IHS covers medical bills for services offered in their facility with federal funding.²² IHS operates as part of HHS, carrying out relevant statutes and treaty obligations and providing healthcare services to eligible tribal members.²³ Throughout history, the federal government has approved statutes to create a legal obligation to provide adequate healthcare services to American Indians and Alaska Natives.²⁴ At the ACL Hospital alone, IHS serves approximately 126,000 patient visits each year.²⁵ Despite this volume of patients and longstanding service to the community, IHS is underfunded, overcrowded, unsafe, and outdated when it comes to medical equipment and facilities.²⁶ In their 2020 budget request, the National Congress of American Indians, a civil rights organization, stated that appropriations have never been adequate to meet patient needs and that the healthcare provided in their units is akin to "third-world conditions."²⁷ The organization accused the federal government of inaction, chronically underfunding IHS facilities, and failing to uphold their legal obligations under their treaties to tribes throughout the United States.²⁸

¹⁶ *Id.*

¹⁷ *Acoma Pueblo*, *supra* note 11.

¹⁸ *Local and Rural Road Safety Program*, U.S. DEP'T OF TRANSP., FED. HIGHWAY ADMIN. (Oct. 5, 2022), <https://highways.dot.gov/safety/local-rural>.

¹⁹ Patricia C. Dischinger, Shiu M. Ho, & Joseph A. Kufera, *Medical Conditions and Car Crashes*, 44 ANN. PROCS. ASS'N FOR ADVANCEMENT AUTO. MED. 335, 335–48 (2000).

²⁰ Walker, *supra* note 13.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Basis for Health Services*, INDIAN HEALTH SERV. (Jan. 2015), <https://www.ihs.gov/newsroom/factsheets/basisforhealthservices/>.

²⁵ *Id.*

²⁶ Nora Mabie, *Native American Tribes Have Been Hit Harder By COVID-19. Here's Why.*, GREAT FALLS TRIB.: NEWS (Aug. 17, 2020, 3:02 PM), <https://www.greatfallstribune.com/story/news/2020/08/05/why-native-americans-impacted-harder-covid-19-montana-united-states/5573737002/>.

²⁷ *Id.*

²⁸ *See id.*

The Acoma Pueblo is not the only Native American tribe severely affected by these inadequacies during the pandemic. Local medical units in Montana similarly lacked appropriate medical resources for tribal members, requiring them to drive over an hour to the nearest IHS facility.²⁹ As a result, the over 500 tribes the Montana facility serves struggled with the limited resources to manage healthcare needs during the pandemic.³⁰ For the Navajo, the intervention of Pfizer C.E.O., Dr. Albert Bourla, and Dr. Anthony Fauci was a significant contributor to vaccine access within the reservation.³¹ Both Bourla and Fauci attended town hall meetings to answer questions about the virus and the vaccine.³² In addition, their support was crucial for decreasing vaccination hesitancy and the tribe reaching more than 88,000 vaccinations in their enrolled members.³³ In Montana, the Budget & Policy Center proposed solutions to the federal government, including allocation of CARES Act funds for the affected tribes,³⁴ but the federal government did not make a concrete action based on the proposal.

Before the pandemic, IHS did not provide the support required for appropriate medical services. Consequently, the pandemic only worsened IHS service. However, the Native American population in our country is small compared to other demographic groups, which should indicate a manageable population when it comes to addressing healthcare needs. That this has not been the case should be alarming, and even more so during the pandemic when their already small populations are at risk of continuing to dwindle at a faster rate. In addition to losing lives, there is a risk of losing cultures and traditions. As of 2021, Native Americans have died at twice the rate of white Americans due to the pandemic, and the elders have been the group more at risk throughout demographics.³⁵ Since Native traditions respect the elders as holders of language and traditions, their deaths have brought unrecoverable gaps within tribes that place these unique cultural elements at risk of being lost to history, especially with the prevalence of oral tradition throughout Native American tribes.³⁶

In a conference meeting with the Indian Affairs Committee held in December 2020, the Acoma Pueblo governor shared how the pandemic affected the Tribe beyond health necessities.³⁷ He identified the language as the "adhesive" that keeps their culture, traditional, and religious beliefs together and helps pass them on to future generations.³⁸ The Indian Affairs Committee Chair, Senator Brian Schatz, urged the Committee to help

²⁹ *Id.*

³⁰ Mychael Schnell, *Navajo Nation President: Disparities in Health Care System Contribute to COVID-19's Impact on Indigenous Americans*, HILL: SUNDAY TALK SHOWS (Apr. 4, 2021, 12:37 PM), <https://thehill.com/homenews/sunday-talk-shows/546377-navajo-nation-president-disparities-in-health-care-system/>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Preston Parish, *The Coronavirus Pandemic Demands State Investment in Indian Country*, MONT. BUDGET & POL'Y CTR. (June 2020), <https://montanabudget.org/report/pandemic-demands-investment-indian-country>.

³⁵ Benjamin Din, *'Race Against Time': Pandemic Propels Fight to Save Native American Languages*, POLITICO: CONG. (Apr. 13, 2021, 12:55 PM), <https://www.politico.com/news/2021/04/13/pandemic-native-american-languages-481081>.

³⁶ *See id.*

³⁷ *Id.*

³⁸ *Id.*

with cultural preservation efforts, which suffered from the continuous deaths of tribal elders.³⁹ Yet, the IHS issue remained the elephant in the room when the provision of \$10 million for cultural preservation was granted.⁴⁰ The usefulness of the funds is doubtful given how there is no concrete action on helping the tribes. The lack of plans of action takes away opportunity to properly spend the funds in a useful way for the tribes. The available funds can only be spent on the subject they are approved, leaving the tribes unable to allocate funds to other issues, like the healthcare shortages.

The unfortunate situation of the Acoma Pueblo during the pandemic is sadly a new episode of harm after colonization. Since their first encounter with Spanish conquistadores, the Acoma Pueblo have been subjected to violence and forced to comply with colonial rule.⁴¹ From the invasion led by Juan de Zaldivar in 1598 that destroyed homes and the Acoma Massacre in 1599 to the trials in New Spain for resisting Spanish conquest, the Spanish forced the Acoma Pueblo to accept mistreatment by a foreign government that never had their best interests in mind.⁴²

After the New Spain conquest, the Acoma Pueblo made constant complaints of abuse of power to the government in Mexico.⁴³ Franciscans intended to help them, and New Spain's government allowed them to remain independent to a certain degree by allowing them to elect governors after 1620.⁴⁴ However, the Crown and the Church interfered significantly in Acoma Pueblo affairs and controlled their culture, taking away the tribe's promised autonomy.⁴⁵ Forced to accept the Spanish language and Catholic traditions, the Acoma Pueblo established amicable relationships with the invaders on their land.⁴⁶ This compromise led to a primarily isolated existence in Sky City and the then-newly established San Estevan del Rey Mission Church.⁴⁷ The Acoma Pueblo remained on Sky City away from the Spaniard colonizers' settlements, interacting only with the missionaries and government representatives.⁴⁸

Once railroads and the emerging United States reached the Acoma Pueblo in the 1900s, a foreign force once again dominated the tribe and stripped them of land through the Pueblo Lands Act, forcing them to assimilate.⁴⁹ In this new scenario, the Acoma Pueblo were forced to learn English and their children placed into boarding schools and taught the Natives Protestant Christianity.⁵⁰ The change in power from New Spain to the United States left the Acoma Pueblo with similar outcomes: the diminishment of their population and land and the suppression of their culture and language. Moreover, while the country modernized, the government failed to provide the Acoma Pueblo with

³⁹ *Id.*

⁴⁰ *See id.*

⁴¹ *Archaeology and Legend: How Old Is Acoma?*, PUEBLO OF ACOMA, <https://www.puebloofacoma.org/about-us/archaeology-and-legend/> (last visited May 6, 2021).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ PRITZKER, *supra* note 4, at 8.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 8–9.

essential services, such as running water, sewage, and electricity.⁵¹ We must note that while the current U.S. government forced the Acoma Pueblo to adapt to their culture and lifestyle, they kept the Acoma Pueblo at a distance from mainstream American culture and society. A third-party observer can say it is out of respect for their autonomy. However, history shows that the apathy towards Native American tribes has been prevalent throughout the country's conquest.⁵²

II. LITIGATION

The Acoma Pueblo, frustrated, turned to a lawsuit to seek redress for their unjust treatment during the pandemic. Litigation began after the revelation in January 2021 that IHS planned to turn the ACL hospital into an urgent care facility with limited hours and no emergency room or inpatient services beginning February 1, 2021.⁵³ In response to this downsizing, thirty doctors and nurses quit ahead of the announcement because they feared being fired and left unemployed.⁵⁴ This decision was the opposite of what the Acoma Pueblo wanted when they requested support from IHS. The Acoma inquired what prompted such a disadvantageous decision,⁵⁵ and IHS responded that the neighboring tribe, Pueblo of Laguna, prompted the decision to redirect ACL Hospital funding to a new clinic they intended to operate autonomously.⁵⁶

Fed up with poor management at the ACL Hospital, the Pueblo of Laguna Tribe decided to take the matter into their own hands to better serve their community.⁵⁷ Also known as Laguna Pueblo, they are a Tribe based forty-five miles west of Albuquerque.⁵⁸ The Laguna Pueblo, exhausted by the inadequate health care provided at ACL decided to create their facility back in 2015 with approval from IHS under the Indian Self-Determination Act of 1975.⁵⁹ Since the Pueblo of Laguna funding for the ACL diminished due to the creation of the new Pueblo of Laguna clinic, the administration notified staff at ACL Hospital of impending changes.⁶⁰ Staff started leaving out of fear of layoffs, which led to further service closures like the inpatient unit.⁶¹ The Laguna Pueblo governor, Wilfred Herrera, Jr., denounced IHS accusations that blamed the Laguna

⁵¹ Becky Pemberton, *Welcome to Sky City! Tiny Settlement in New Mexico that has been Home to the Same Tribe for 800 years Still Doesn't Have Running Water or Electricity (and is Reached by a Staircase Cut Out of Rock)*, DAILY MAIL (Mar. 29, 2016, 7:43 AM), https://www.dailymail.co.uk/travel/travel_news/article-3509559/Inside-oldest-continuously-inhabited-settlement-s-home-tribe-800-years-doesn-t-running-water-electricity.html.

⁵² David S. Jones, *The Persistence of American Indian Health Disparities*, AM. J. PUB. HEALTH 2122–34 (Dec. 2006).

⁵³ Emma Whitford, *NM Tribe Sues IHS for Hospital Downsizing amid Pandemic*, LAW360 (Jan. 28, 2021, 6:02 PM), <https://www.law360.com/articles/1349602/nm-tribe-sues-ihs-for-hospital-downsizing-amid-pandemic> [hereinafter *NM Tribe Sues IHS*].

⁵⁴ Walker, *supra* note 13.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Pueblo of Laguna: Laguna, New Mexico*, NAT'L PARK SERV., https://www.nps.gov/nr/travel/route66/pueblo_laguna.html (last visited Oct. 25, 2022).

⁵⁹ Walker, *supra* note 13; see Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203 (codified as amended in scattered sections of 25 U.S.C. and 42 U.S.C. § 2004b).

⁶⁰ Walker, *supra* note 13.

⁶¹ *Id.*

Pueblo for the budget deficit. He stated that IHS's inability to correctly maintain and staff the facilities led to the current closing.⁶² However, the ACL never informed the Laguna Pueblo that their eventual redirection for the clinic would create a budget deficit situation.⁶³ Otherwise, they would need to close services in the ACL facility.⁶⁴ However, attracting staff in the middle of a pandemic was not feasible due to preexisting staffing shortages and isolation in rural New Mexico.⁶⁵

The Acoma Pueblo eventually needed to take legal action due to the lack of healthcare access. IHS skipped the one-year notice and Congressional evaluation required by the Indian Health Care Improvement Act.⁶⁶ Therefore, the Acoma Pueblo sought declaratory and injunctive relief against HHS and IHS for the closure of the ACL hospital.⁶⁷ The Acoma Pueblo claimed failure to follow the notice requirement and the determination requirement from the Indian Self-Determination and Education Assistance Act, which requires consultation and discussion with the tribe before making a drastic change like downsizing a healthcare facility.⁶⁸ On January 28, 2021, the tribe listed grievances, including specific instances of tribal members not receiving care or being turned away from the ACL Hospital in the middle of the pandemic and an acknowledgment by IHS that Native Americans require special medical attention because the pandemic affects their health at a greater rate than other groups.⁶⁹ For relief, the Tribe requested IHS to maintain the hospital's operations at the current level of service and declare that IHS's downsizing of the hospital violated the Acts mentioned above.⁷⁰

In response, IHS stated that "safety concerns" warranted closure without notice, which the Indian Health Care Improvement Act otherwise requires.⁷¹ The Acoma Pueblo challenged this defense by bringing up how this self-inflicted safety concerns should not have affected the facility to the point of drastic downsizing.⁷² IHS commented publicly that they strive to provide quality healthcare to Native Americans.⁷³ However, the agency failed to sustain these public statements, as evidenced by the lack of healthcare support to the Acoma Pueblo and other minor tribes in the area during the pandemic. Nevertheless, they could not find funding to keep the ACL Hospital open.⁷⁴

On February 1, 2021, the D.C. District Court granted the Acoma Pueblo's request for a temporary restraining order that lasted until March 19 to prevent IHS from closing or reducing the services at the facility.⁷⁵ The outcome of the decision resulted in the ACL Hospital remaining open until February 2022; after February 2022, the facility

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Complaint for Declaratory & Injunctive Relief at 2, Pueblo of Acoma v. Cochran, No. 1:21-cv-00253-BAH (D.D.C. Jan. 28, 2021) [hereinafter Complaint for Declaratory & Injunctive Relief].

⁶⁷ *Id.* at 3, 15–16.

⁶⁸ *Id.* at 14–15.

⁶⁹ *Id.*

⁷⁰ *Id.* at 15.

⁷¹ *NM Tribe Sues IHS*, *supra* note 53.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Emma Whitford, *NM Tribal Health Clinic Opens Amid Fight to Save Hospital*, LAW 360 (Mar. 2, 2021, 10:36 PM), <https://www.law360.com/articles/1360399?scroll=1&related=1>.

transitioned to a federally-operated accredited ambulatory health center.⁷⁶ As of May 2021, the Acoma Pueblo's website continued to rally for support to maintain the ACL Hospital, requesting letters to support their request.⁷⁷ By 2022, the effort stopped, showing an uncertainty and unfortunate conformity with the turn of events that appear intertwined with the tribe's continuous unfair treatment. The lack of a successful outcome in the litigation, the halted website efforts, and the unfair treatment are all blows against the Acoma Pueblo, defeating them in a fight for fairness they should not be losing.

III. LOOKING OVER THE ISSUE OF FUNDING AND POSSIBLE SOLUTIONS

Given the issue of funding for healthcare access at the ACL Hospital, some of the possible solutions explored in this section include providing control to the tribe over the healthcare facility, following consultation directly with the Acoma Pueblo, and increasing funding. The pandemic placed many groups of people in precarious situations. Uncertainty over how long the pandemic would last may have led organizations and individuals to make difficult decisions, especially in the healthcare field. However, by looking closely at marginalized groups of people, we find a pattern: minorities do not have access to essential services they are entitled to and are left to their own devices. This has been the case with several Native American tribes,⁷⁸ as discussed earlier in the paper. The unprecedented times⁷⁹ argument seems to be used chiefly as an excuse by those in power to get away with minimal effort or dismiss issues that need attention. The federal government provided grants to preserve languages, which demonstrates they have funds. Federal funding's failure to prioritize healthcare services through IHS is an unacceptable gap.

One solution is to request emergency funding to keep ACL Hospital operating at a broader level. The federal government continuously approved COVID relief packages throughout the pandemic, demonstrating an ability to fund these kinds of initiatives. However, even if tribes obtain funding, maintaining a hospital at a service level that is not humane for its patients is an inadequate solution. More than making healthcare services available, they need to be responsible and show care towards those who help fund it—the Native American Nations. These injustices, not only against the Acoma Pueblo but also to tribes in general, are disconcerting. The federal government continues to treat Native Americans as a burden through their actions and lack of care.

Moreover, this mistreatment goes beyond not respecting laws and providing adequate services. The Indian Self-Determination and Education Assistance Act touches upon the sovereignty of Native American Nations and how the government should

⁷⁶ *Acoma-Canoncito-Laguna Indian Health Center*, INDIAN HEALTH SERV., <https://www.ihs.gov/albuquerque/healthcarefacilities/acoma-canoncito-laguna-indian-health-center/> (last visited Feb. 13, 2023).

⁷⁷ *Call to Action*, PUEBLO OF ACOMA, <https://web.archive.org/web/20210512005242/https://www.puebloofacoma.org/>.

⁷⁸ Liz Mineo, *For Native Americans, COVID-19 is 'the Worst of Both Worlds at the Same Time'*, HARV. GAZETTE: NAT'L & WORLD AFFS. (May 8, 2020), <https://news.harvard.edu/gazette/story/2020/05/the-impact-of-covid-19-on-native-american-communities/>.

⁷⁹ Will Hayward, *Please can We Stop Using the Word 'Unprecedented' to Describe Things that have Repeatedly Happened Before*, WALESONLINE (APR. 22, 2020, 9:29 PM), <https://www.walesonline.co.uk/news/news-opinion/coronavirus-unprecedented-government-covid-excuses-18130261>.

consult tribes before effecting changes. The issue of not respecting tribes' sovereignty has been constant throughout the decades, disrespecting tribes as sovereign groups. In the Acoma Pueblo case, the services provided through ACL are owed, at least, to the tribal members that are descendants of those who suffered more enormous atrocities throughout history.

The issue here goes beyond the hospital closure. It would have been acceptable if the government offered something else in return, such as mobile clinics, to replace the closures, but the government agency did not even provide this suggestion. The Acoma Pueblo should find their hospital open and running at its full potential, with improvements post-pandemic. In addition, the current decline in population in the state should provide incentives to its government to attract the workforce to the state.⁸⁰ Both the state and the tribes served by the ACL Hospital can collaborate to discuss the needs of workers in the area to attract the necessary talent. Incentives through governmental programs could help with this situation by funding possible incentives to attract and keep healthcare workers in the area.

The Laguna Pueblo's actions should inspire the Acoma Pueblo to exercise their rights as a sovereign tribe. The Acoma Pueblo should take their funding back and operate the hospital for their people independently. Of course, this solution has practical problems, but should the situation be this complicated? Perhaps the Laguna Pueblo made the best decision under the circumstances, as they know better their healthcare needs and can efficiently provide services tailored to those needs. If the Acoma Pueblo follow their example, they can demonstrate that they do not need a federal agency to manage the funding they provide. Additionally, the Laguna Pueblo and Acoma Pueblo facilities should welcome smaller tribes to receive services as a display of solidarity. Smaller tribes could contribute to funding these emerging healthcare facilities, so the services become fully funded by the tribes for themselves, ideally.

On April 29, 2021, IHS agreed to keep the hospital open for another year until officials determine what resources could work for the surrounding communities, a step IHS forgot to take before they announced closure.⁸¹ Acoma Pueblo governor, Brian Vallo, shared that it was unfortunate they needed to sue the agency to reach this negotiation step,⁸² and his stance is correct; the tribe should not need to use litigation to access essential services they are entitled to. However, Governor Vallo remains optimistic, as IHS agreed to make their "best efforts" to maintain staff for operations.⁸³ While this course of action seems to be more respectful of the sovereignty and human dignity of the tribe, it is still not a concrete solution. The Acoma Pueblo lawyers correctly stated this unfortunate situation is another example of a transgression that takes away

⁸⁰ Morgan Lee, *Study Says Future of New Mexico May Include Fewer People*, AP NEWS (Apr. 29, 2021), <https://apnews.com/article/nm-state-wire-new-mexico-health-coronavirus-census-2020-245e6a215c1e45f5463beb5c7b7604f7>; *New Mexico to Encourage Unemployed to Return to Work*, AP NEWS (Apr. 29, 2021), <https://apnews.com/article/michelle-lujan-grisham-new-mexico-health-coronavirus-business-5685db85c32b9c3b6bef31658827e55d>.

⁸¹ Susan Montoya Bryan, *New Mexico Tribe, US Agency Reach Agreement over Hospital*, AP NEWS (Apr. 29, 2021), <https://apnews.com/article/new-mexico-coronavirus-government-and-politics-health-03f911b80bf8b9756fa0a5c215701a72>.

⁸² *Id.*

⁸³ *Id.*

much-needed health care from the tribes they are supposed to serve.⁸⁴ Giving the agency another chance may be the most diplomatic response. However, if the federal government cannot provide for them, perhaps it is time for the Acoma Pueblo to be allowed more agency in addressing their needs, respecting their sovereignty in the process. A federal agency should not limit how a tribe allocates funds to address needs like basic access to health care.

⁸⁴ See generally Complaint for Declaratory & Injunctive Relief, *supra* note 66.