



October 27, 2021

The Honorable Joseph R. Biden
 President of the United States
 The White House
 1600 Pennsylvania Ave., NW
 Washington, D.C. 20500

The Honorable Deborah Haaland
 Secretary of the Interior
 U.S. Department of the Interior
 1849 C Street N.W.
 Washington, DC 20240

The Honorable Xavier Becerra
 Secretary of Health and Human Services
 200 Independence Ave., N.W.
 Washington, D.C. 20201

The Honorable Merrick Garland
 Attorney General of the United States
 U.S. Department of Justice
 950 Pennsylvania Ave., NW
 Washington, D.C. 20530

**Re: *Rosebud Sioux Tribe v. U.S.*,
 Request For U.S. Not to Appeal Decision**

Dear President Biden, Secretary Haaland, Secretary Becerra and Attorney General Garland:

We write on behalf of the sovereign Tribal nations we represent to request that you uphold and ***not appeal***, to the U.S. Supreme Court, the Eighth Circuit Court of Appeals holding in *Rosebud Sioux Tribe v. U.S.*, No. 20-2062 (8th Cir. 2021). The Court affirmed the lower court’s decision, which held the Rosebud Sioux Tribe has a treaty right to competent physician-led health care.

The Biden Administration has firmly stated: “**Health care is a right, not a privilege.**” That’s true even more so for Native Americans.

Tribal nations secured these rights to health care for their people in treaties between the United States and Indian Tribal nations in exchange for peace between the nations and millions of acres of land. As the Eighth Circuit Court of Appeals recognized, these treaties are still the supreme law of the land and enforceable in court. The Court further found that Congress has acknowledged these promises in subsequent laws, including the *Snyder Act* and the *Indian Health Care Improvement Act* (IHCIA) as part of the overall trust and treaty obligations due to Tribal Nations.

Unfortunately, in violation of these treaty and trust obligations, Native Americans have been subjected to some of the worst health care in America. As an example, Indians in the Great Plains area suffer the lowest life expectancy in America at only 47 years for a Sioux man. The Center for Disease Control reports that Native Americans suffer hospitalization, serious injury, and mortality from the COVID-19 virus at the highest rate of any population in America, a rate 2.5 times the White population.¹

Many Tribal nations’ *health care delivery systems*, as provided through the Indian Health Services (IHS), an agency within the U.S. Department of Health and Human Services, are the most poorly funded in America. On average, the health care services are funded at one-third the rate of Medicaid and Medicare. Moreover, it is unconscionable when the United States further fails to provide adequate *health care facilities* in Tribal communities. According to the Indian Health Service, at current funding levels, it would take **400 years** to replace health care facilities. Some Tribal communities may never receive a facility at all.

The Court further highlighted the persistent deficiencies in the delivery of that health care which prompted this lawsuit. Yet, the United States disregarded the treaty and fought against the Rosebud Sioux Tribe and improving the health care system.

The suffering must end.

We call upon you to honor the solemn and binding promises of the United States of America set forth in treaties and further supported by the sacred trust obligations due to Tribal Nations. President Biden, you campaigned on the promise to “ensure that every Native American has access to quality, affordable health care and ***honor the federal government’s treaty and trust responsibility to provide health care services to Native Americans.***”² This case is an opportunity to uphold your promise to Tribal nations by not appealing the *Rosebud* decision and for the Biden Administration to truly honor Tribal treaties through the provision of competent health care to Tribal communities.

¹ Center for Disease Control, Hospitalization and Death by Race/Ethnicity, September 7, 2021.

² [Biden-Harris Plan for Tribal Nations - Joe Biden for President: Official Campaign Website](#) (emphasis added) (last reviewed Oct. 5, 2021).

In addition, it is particularly noteworthy that these treaty promises are reinforced by Congress in the IHCA which was permanently reauthorized in the *Affordable Care Act*, a key legacy of the Obama-Biden Administration. We call upon the Biden Administration to uphold that legacy by not appealing the *Rosebud* decision and support the implementation of the IHCA.

The United States and the Biden Administration must honor and recognize its treaty and trust obligations and fulfill those promises of health care secured by Tribal nations. Upholding the *Rosebud* decision would be a significant step reflecting the Biden Administration's commitment to honoring those treaties and trust obligations by providing adequate health care services to American Indians and Alaska Native people.

We urge the Biden Administration to not appeal the *Rosebud* decision to the U.S. Supreme Court. Thank you for your consideration in this matter.

Sincerely,

National Indian Health Board
National Congress of American Indians
National Indian Gaming Association
Great Plains Tribal Chairmen's Association
Great Plains Tribal Leaders' Health Board
United South and Eastern Tribes Sovereignty Protection Fund
Affiliated Tribes of the Northwest
Intertribal Association of Arizona
Midwest Alliance of Sovereign Tribes
All Pueblo Council of Governors
Native American Rights Fund
Native American Financial Officers Association
Association on American Indian Affairs
Confederated Tribes of Siletz Indians
Cheyenne River Sioux Tribe
Oglala Sioux Tribe
Pechanga Band of Luiseno Indians