

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

NORTHERN ARAPAHO TRIBE,

Plaintiff-Appellant,

No. 15-8099

v.

ALEX M. AZAR II, Secretary of Health and
Human Services, et al.,

Defendants-Appellees.

ABEYANCE STATUS REPORT

On January 17, 2019, plaintiff Northern Arapaho Tribe filed an abeyance status report asking this Court to continue to hold this appeal in abeyance. On January 18, 2019, this Court issued an order continuing the abeyance during the lapse in appropriations funding the Department of Justice. This Court further ordered the Department to provide its position on the points raised in the tribe's January 17, 2019 status report within five days following the end of the appropriations lapse. This report is in response to that order.

This case concerns whether the employer shared responsibility tax provision, 26 U.S.C. § 4980H, that was enacted as part of the Patient Protection and Affordable Care Act of 2010, applies to Native American tribes. *See Order, Northern Arapaho*

Tribe v. Burwell, No. 14-CV-00247-SWS, Dkt. No. 41. The central issue on appeal is whether the tribe's suit is jurisdictionally barred by the Anti-Injunction Act, 26 U.S.C. § 7421(a), as the district court concluded.

With respect to the tribe's January 17, 2019 status report, the Department takes no position on the likelihood of future legislation that would moot this case, and the Department stands ready to litigate this appeal.

Respectfully submitted,

/s/Gerard Sinzdak
ALISA B. KLEIN
GERARD SINZDAK
CIVIL DIVISION
DEPARTMENT OF JUSTICE
950 Pennsylvania Ave., NW, Rm. 7242
Washington, D.C. 20530
202-514-0718

Attorneys for Appellees

JANUARY 2019

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2019, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

/s/ Gerard Sinzdak
Gerard Sinzdak