

OFFICE OF  
APPELLATE COURTS

SEP - 9 2008

STATE OF MINNESOTA  
IN SUPREME COURT

FILED

Buddie Greene,  
Appellant,

Respondents.

vs.

## PETITION FOR REHEARING

Commissioner of the Minnesota  
Department of Human Services  
and Aitkin County Health and  
Human Services,

CASE NUMBER: A06-804

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To: Clerk of Appellate Courts, Minnesota Judicial Center, 25 Rev Dr Martin  
Luther King, Jr. Blvd, St. Paul, MN 55155.

Pursuant to Minn. R. App. P. 140 the above named Appellant, by and through her attorney, Chris Allery of Anishinabe Legal Services, does respectfully file this Petition for Rehearing for the above captioned matter which was decided August 28, 2008 with a 4-3 split. This Petition for Rehearing is based upon the following:

1. The primary principal of law overlooked was considering whether Greene, "Is denying a tribal member state employment services received by all other citizens impermissible discrimination in violation of the equal protection clause of the state and federal constitutions" See Brief question 1, p 1. The Court appears to have only considered whether an Indian as a political classification, not as a United States citizen. All Indians were made U.S. citizens by an Act of Congress in 1924. See Snyder Act of 1924.
2. The Dissent argued that this case could easily be resolved on statutory grounds, and both the Majority and Dissent provided detailed analysis for Minn. Stat. 256J.645, yet subd. 2 received little attention. Subd. 2 (2) clearly requires that

The Indian Tribe must: (2) operate its employment services

program *within a geographic service area not to exceed the counties within which a border of the reservation falls.*

In reviewing the State of Minnesota Reservation Grant Contract, Section I(C)2, the MCT is contracted to provide its Tribal program in

the Minnesota Counties of **Aitkin**, Becker, Beltrami, **Benton**, Carlton, Cass, Clearwater, Cook, **Crow Wing**, Hubbard, Itasca, Koochiching, Mahnomen, Mille Lacs, **Morrison**, **Norman**, Pine, **Polk**, and St. Louis

(Emphasis added to counties in which a border of the reservation does not appear to fall). (See A-7 in Appellant's Brief and Appendix). Here, a contract was made which appears to defy Minn. Stat. 256J.645 subd. 2(2) on its face. Certainly, Legislatively created limits should be a controlling statute, which was overlooked.

3. The Decision asserts that "Greene has not made a showing of 'good cause' under section 256J.57. However, the panel has misconceived or misapplied the concept. The Decision recognizes 13 types of *good cause* but all 13 items are related to the inability to attend program with assistance and remedies noting that

Good cause exists when:

- (1) appropriate child care is not available;
- (2) the job does not meet the definition of suitable employment;
- (3) the participant is ill or injured;
- (4) a member of the assistance unit, a relative in the household, or a foster child in the household is ill and needs care by the participant that prevents the participant from complying with the employment plan;
- (5) the participant is unable to secure necessary transportation;
- (6) the participant is in an emergency situation that prevents compliance with the employment plan;
- (7) the schedule of compliance with the employment plan

conflicts with judicial proceedings;  
(8) a mandatory MFIP meeting is scheduled during a time that conflicts with a judicial proceeding or a meeting related to a juvenile court matter, or a participant's work schedule;  
(9) the participant is already participating in acceptable work activities;  
(10) the employment plan requires an educational program for a caregiver under age 20, but the educational program is not available;  
(11) activities identified in the employment plan are not available;  
(12) the participant is willing to accept suitable employment, but suitable employment is not available; or  
(13) the participant documents other verifiable impediments to compliance with the employment plan beyond the participant's control. The job counselor shall work with the participant to reschedule mandatory meetings for individuals who fall under clauses (1), (3), (4), (5), (6), (7), and (8).

Id. Here, the statute contemplates hardships for the participant, but the Court has misapplied the concept of good cause as Appellant Greene desired equal treatment and equal services from the County provider and was denied. The statute does not actually address the circumstances or provide a remedy for Greene and would have been futile and likely ended up with the same result by agency.

4. The Majority relies upon *Morton v. Mancari*, 417 U.S. 535 (1974), and disagrees with relying on *Jefferson v. Commissioner of Revenue*, 631 N.W.2d 391 (Minn. 2001). However, the Court has relied upon *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973) for *Jefferson* and *Brun*, where the U.S. Supreme

Court observed, however, that “tribal members ‘going beyond Reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.’ ” *Brun v. Commissioner of Revenue*, 549 N.W.2d 91, 92 (Minn.1996).

Here, the Court suggests that because *Brun* and *Jefferson* is a tax case, it does not relate, but the U.S. Supreme Court was clear that tribal members are generally held to nondiscriminatory state law, which is not the case here, as special law whether for Indians as a race or political class has been created and is therefore not nondiscriminatory.

When the Court relies on *Morton v Mancari*, it misunderstands and misapplies the principles of federal Indian law when the word “Indians” means all Indians or any tribe, not just the MCT in Minnesota.

Moreover, the case really only applies to federal employment with the Bureau of Indian Affairs. This Court has misapplied *Morton v Mancari* to achieve a results oriented decision which defies the Constitutional rights of a U.S. Citizen.

This error is compounded due to this Court’s decision in *State v. R.M.H.*, 617 N.W. 2d 55, 66 (Minn. 2000), which violates the Congressional Act known as the Duro Fix. If Minnesota truly wanted to improve self-governance of tribes it would stop infringing on sovereign rights and recognize current Congressional Acts not just

Public Law 280(a). Clearly, the MFIP scheme only pertains to SOME Indians which is the point where Minnesota leaves the concepts of *Morton* behind for its own misapplication.

5. Because this Court misapplies *Morton*, Minnesota is actually discriminating amongst the political class of Indians, in its application under federal Indian law. This Court also misunderstands and misapplies *United States v. Antelope*, 430 U.S. 641, 646 (1977) which is criminal case in a non-Public Law 280 state. Similarly this Court misunderstands and misapplies *Fisher v. Dist. Ct. of the Sixteenth Jud. Dist. of Mont.*, 424 U.S. 382, (1976), which involves all, on-reservation tribal members, like *Antelope*, and therefore neither case is analogous to off-reservation tribal members.
6. This is really a Third Party Beneficiary Contract, yet the law is being applied politically as determined by the DHS Commissioner rather than the Administrative Law Judge. If this Court is correct, then the Minnesota Legislature doesn't need to say the County must refer eligible tribal members, as this Court now declares the Legislature may compel, direct and order tribal members, as a political class, without regard to rights of citizenship and residency, whenever and wherever it chooses.
7. Out of fairness to Minnesota Courts, Petitioner would prefer to correct this decision in Minnesota rather than in the U.S. Supreme Court.

8. Exhaustion of remedies in Minnesota is appropriate before Petition to the U.S. Supreme Court.

**WHEREFORE** Petitioner respectfully prays for this Court to grant a Rehearing of this case due to conflicts with controlling state statutes, conflicts with the principles of federal Indian law, misapplied and misconceived U.S. Supreme Court cases relating to federal Indian law, failing to consider with a citizen (instead of Indian as political class off-reservation) has a right to equal access to public services under equal protection deserving strict scrutiny review and any other relief deemed fair, equitable and in the interests of justice.

Dated: 9/8/2008



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STATE OF MINNESOTA )  
 ) SS.  
COUNTY OF CASS )

**AFFIDAVIT OF SERVICE**

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I, **Carol White**, being first duly sworn on oath, swear that on **September 8, 2008** I served a true and accurate copy of Petitioner's Petition for Rehearing to the Minnesota Supreme Court with respect to the matter entitled Greene v. Commissioner of the Minnesota Department of Human Services and Aitkin County Health and Human Services, Appellate Court File No. A06-0804, by delivering the same via first class U.S. Mail from a post office on:

Kevin Goodno, Commissioner  
Minn. Dept. of Human Services  
C/O Margaret Chutich  
Assistant Attorney General  
445 Minnesota Street, Suite 900  
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Affiant, Carol White

Subscribed and sworn to before me  
this 8<sup>th</sup> day of September 2008.

  
Notary Public

