
STATE OF MINNESOTA IN SUPREME COURT

Buddie Greene,

Petitioner/Appellant,

vs.

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

Respondents/Appellees.

APPELLANTS BRIEF AND APPENDIX

ANISHINABE LEGAL SERVICES
FRANK BIBEAU, ESQ.
Atty. Reg. No. 306460

MEGAN TREUER, ESQ.
Atty Reg. No. 349112

411 1st Street
P.O. Box 157
Cass Lake, MN 56633
(218) 335-2223 (Telephone)
(218) 335-7988 (Fax)

ATTORNEYS FOR PETITIONER

LORI SWANSON
Attorney General
State of Minnesota

MARGARET CHUTICH
Assistant Attorney General
Atty. Reg. No. 0157880

445 Minnesota Street, Suite 900
St. Paul, MN 55101-2127
(651) 296-2418 (Voice)
(651) 297-4139 (fax)

JAMES RATZ
Aitkin County Attorney
Courthouse West Annex
Aitkin, MN 56441
(218) 927-7347

ATTORNEYS FOR RESPONDENTS

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iv
I. QUESTIONS PRESENTED	1
II. STATEMENT OF THE CASE	1
1. Statement of the Proceedings Below	1
2. Statement of the Facts	2
III. STANDARD OF REVIEW	
IV. SUMMARY OF ARGUMENT	6
V. ARGUMENT	7
D) <u>Denying a tribal member state employment services received by all other citizens is impermissible discrimination in violation of the equal protection clause of the state and federal constitutions</u>	7
A) <u>Nothing in Minn. Stat. § 256J.645 or the contract allows Respondent County to deny state employment services to Appellant. Respondent County’s conduct of denying state employment services to Appellant and not the statute should, be reviewed to determine impermissible discrimination exists</u>	8
B) <u>Is saving money on welfare costs by sanctioning the benefits of an eligible recipient a legitimate or compelling governmental interest</u>	9
C) <u>The Court of Appeals improperly applied the rational basis standard of review to the classification by citing the Mancari and Kreuth decisions, which involve preferential treatment of tribal members, not discrimination against them</u>	11

D)	<u>As a United States Citizen, Appellant is entitled to protection under the equal protection clause of the state and federal constitutions</u>	13
E)	<u>As a United States Citizen, Appellant is entitled to protection under the equal protection clauses of the state and federal constitutions</u>	14
F)	<u>Strict scrutiny should be applied to Respondent County's practice of denying Appellant state employment services because the practice penalizes Appellant for exercising her fundamental right to travel, guaranteed to her by the privileges and immunities clause of the constitutions</u>	15
G)	<u>Strict scrutiny applies to Respondent County's denial of state employment services to Appellant because she is a member of a suspect class that does not fall under the trust doctrine</u>	16
H)	<u>State Discrimination against some Indians is impermissible whether Indian citizens live on or off a reservation, or excused or mitigated when a tribe is a paid party to the discriminatory practice.</u>	21
I)	<u>Does Greene stop being a person eligible for the constitutional and other federal advantages, rights and protections because she is an enrolled tribal member?</u>	25
J)	<u>Amicus Curie briefs supporting Respondents' arguments should necessarily explain their authority to circumvent tribal members' civil rights.</u>	29
VI. CONCLUSION.....		31

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES:</u>	
<i>Acosta v. County of San Diego</i> , 272 P.2d 92, 96-99 (1954)	7
<i>Blaine County v. Moore</i> , 568 P.2d 1216 (1977)	7
<i>City of Cleburne v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985).....	14, 17
<i>Erlandson v. Kiffmeyer</i> , 659 N.W.2d 724 (Minn. 2003)	13
<i>Fallon Paiute-Shoshone Tribe v. City of Fallon</i> , 174 F. Supp.2d 1088 (D.Nev.2001)	7
<i>Graham v Richardson</i> , 403 U.S. 365 (1971)	17
<i>Greene v The Commissioner of the Minnesota Department of Human Services</i> , 733 N.W.2d 490, 494-495 (2007).....	“passim”
<i>In re Estate of Turner</i> , 391 N.W.2d 767 (Minn. 1986).....	14
<i>Jefferson v. Commissioner of Revenue</i> , 631 N.W. 2d 391, 397 (Minn. 2001).....	14
<i>Kramer v Union Free School District No. 15</i> , 395 U.S. 621 (1969).....	15
<i>Kennerly v. District Court of Ninth Judicial Dist of Mont.</i> , 400 U.S. 423, 91 S. Ct. 480, 27 L. Ed.2d 507 (1971).	
<i>Krueth v. Indep. Sch. Dist No. 38</i> , 496 N.W.2d 829	"passim"
<i>Ladd v. Boeing Company</i> , 463 F.Supp.2d 516 (E.D. Pennsylvania 2006)	17
<i>Lamb v Village of Bagle</i> , 310 N.W.2d 508 (1981)	20
<i>McLaughlin v. Florida</i> , 379 U.S. 184 (1964)	17
<i>Morton v. Mancari</i> , 417 U.S. 535 (1974)	"passim"
<i>Piper v. Big Pine Sch. Dist</i> , 226 P. 926 (1924).....	7

<i>Shapiro, Commissioner of Welfare of the State of Connecticut v. Thompson</i> , 394 U.S. 618 (1969).....	"passim"
<i>Skinner v. Oklahoma ex rel. Williamson</i> , 316 U.S. 535 (1942).....	15
<i>St. Cloud Police Relief Ass'n v. City of St. Cloud</i> , 555 N.W.2d 318 (Minn. App. 1996).....	13
<i>St. Francis College v. Al-Khazra</i> , 481 U.S. 604 (1987).....	17, 18
<i>St. Paul Intertribal Housing Bd v. Reynolds</i> , 564 F.Supp. 1408 (D. Minn. 1983).....	12
<i>State v. Behl</i> , 564 N.W.2d 560 (Minn. 1997).....	13
<i>State v. Jones</i> , 729 N.W.2d 1, (Minn. 2007).....	26
<i>State v R.M.H.</i> , 617 N.W.2d 55, 60-63 (2000).	26
<i>Washington v. Washington State Commercial Passenger Fishing Vessel; Ass'n</i> , 443 U.S. 658 (1978).....	12, 17

CONSTITUTIONS:

U.S. Const. amend. XIV, § 1	"passim"
Minnesota State Constitution	"passim"
Revised Constitution of the Minnesota Chippewa Tribe, Minnesota	29

STATUTES:

<i>Minn. Stat.</i> § 256J.645 (2006).....	"passim"
<i>Minn. Stat.</i> § 256J.46, subd. 1 (2006).....	2, 3
8 U.S.C. § 1401(b) (2007)	14
<i>Minn. Stat.</i> § 126.501 (1990).....	11
Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-03)	"passim"

OTHER AUTHORITIES:

Larry Leventhal, *The Trust Responsibility*,
8 Hamline Law Rev. 3, 626 (1985)..... 12, 17

Blacks Law Dictionary (8th ed. 2004) 12

David C. Williams, *THE BORDERS OF THE EQUAL
PROTECTION CLAUSE. INDIANS AS PEOPLES*,
38 U.C.L.A. L. Rev. 759, ____ (1991). 25

Cases in apposite:

Jefferson v. Commissioner of Revenue, 631 N.W. 2d 391, 397 (Minn. 2001)

Lamb v. Village of Bagle, 310 N.W.2d 508 (1981)

Morton v. Mancari, 417 U.S. 535 (1974)

Acosta v. County of San Diego, 272 P.2d 92, 96-99 (1954)

Statutes in apposite:

42 U.S.C. 1981 et seq

U.S. Const. amend. V and XIV, § 1

Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-03)

Minnesota Human Rights Act, Minn. Stat. § 191.932

I. QUESTIONS PRESENTED

I. Is denying a tribal member state employment services received by all other residents impermissible discrimination in violation of the equal protection clause of the state and federal constitutions.

II. Whether the statute, Minn. Stat. § 256J.645 (2006), which imposes a duty upon the county to make *referrals* to tribal employment services when a participant is deemed eligible and the contract, which prohibits tribe from refusing services to eligible participants authorizes or allows Respondent County to deny state employment services to Appellant.

III. Is there a compelling or legitimate governmental interest in saving money on welfare costs by denying benefits to an eligible applicant?

IV. Does denying Appellant state employment services amount to *preferential treatment* and warrant rational basis review in accordance with the *Mancari* and *Kreuth* decisions?

V. Should strict scrutiny should be applied to Respondent County's practice of denying Appellant state employment services because the practice penalizes Appellant for exercising her fundamental right to travel and access the public services where she lives?

VI. Should strict scrutiny be applied to Respondent County's denial of state employment services to Appellant because she is a member of a suspect class that does not fall under the protection of the Respondents' purported trust doctrine?

II. STATEMENT OF THE CASE

1. Statement of the Proceedings Below

This appeal stems from an amended order of the Commissioner of Human Services upholding a sanction imposed by Aitkin County (herein after Respondent County) that partially suspended the Minnesota Family Investment Program (MFIP) benefits received by Buddie Greene (Appellant). Appellant tried to access Respondent County's employment services and was denied. According to

Respondent County, Appellant could use only the tribal employment services because she is an enrolled of the Minnesota Chippewa Tribe (MCT) and sanctioned Appellant's benefits for failing to use the tribal employment services.

Appellant appealed the sanction, alleging that Respondent County's action denying her access to state employment services amounted to impermissible discrimination in violation of the equal protection clauses of the state and federal constitutions. The Court of Appeals affirmed, as did the district court, the commissioner's amended decision upholding the county-imposed sanction of Appellant's MFIP benefits based on her failure to participate in tribal employment services. The Court of Appeals held that denying Appellant state employment services and mandating her to use tribal employment services does not violate the equal protection clause because the classification is political rather than a racial.

The commissioner's order amended the initial decision by MFIP Appeal Referee Catherine Moore, which found in part that:

While the statute imposes a duty upon the county to make referrals to tribal employment services when a participant is deemed eligible, there is no requirement that an eligible participant utilize that service simply because they are eligible. Likewise, the fact that the tribal employment services programs cannot refuse to provide eligible participants services, does not in turn create a requirement that an eligible participant utilize those services. The appellant, like any other citizen of Aitkin County, should be able to access county employment services.

See Recommended Order of Appeal Referee Catherine Moore contained in Decision of State Agency on Appeal dated March 31, 2005.

2. Statement of the Facts

Appellant is a single mother who applied for Minnesota Family Investment Plan (herein after “MFIP”) benefits and assistance for her and her daughter from Aitkin County (herein after Respondent County) in July of 2004. MFIP is a state welfare reform program for low-income families with children. The program helps families by providing cash and food assistance. Pursuant to *Minn. Stat.* § 256J.09, subd. 1 (2006), an individual may seek MFIP benefits by applying through the county social service agency in the county where the person lives. *Minn. Stat.* § 256J.46, subd. 1 (2006), mandates that MFIP program participants comply with ongoing program requirements, including participation in employment and training services. Program participants who fail to comply with employment services may be sanctioned and lose MFIP benefits under *Minn. Stat.* § 256J.46, subd. 1, absent a showing of good cause under section 256J.57.

Within a week of applying for MFIP benefits, Respondent County issued Appellant a form that read, “Employment Services Referral to the MCT.” Moore’s Agency Record, Ex. 5. *See also* A. App. Ex 1, Tribal/Reservation Membership form. Because Appellant completed this form, Respondent County denied Appellant state employment services. While the form suggests you “can get” services from a Tribal program, nothing indicates that you will be denied state employment services if you complete it. *Id.* Appellant was receiving full MFIP benefits until December 21, 2004 when the benefits were “reduced by thirty percent as a sanction for failing to participate in [MCT] employment services, a mandatory requirement for benefits.” R. Brief at 2. According to Respondent

County, Appellant could use only the tribal employment services because she is an enrolled of the Minnesota Chippewa Tribe. See Affidavit of Cynthia B. Jahnke, dated July 19, 2005 (“Jahnke Aff.”), Ex. 4, Employment Services Referral noting “Date mandatory Status begins: 07/14/04 . . . Single Parent . . . under 20, w/o high school diploma or G.E.D. [and] Child under 6 years.”

Appellant repeatedly asked the Minnesota Chippewa Tribe for a referral to a county employment service provider. See A. App. Ex. 3. The MCT finally declined to refer Appellant in a letter dated, September 7, 2004; the letter stated that it “is mandated to provide you service and [we] cannot refer you elsewhere.” See Moore Agency Record, Ex. 4 MCT letter dated September 7, 2004. The reason the MCT could not refer Appellant elsewhere was because of a financial services delivery contract between the MCT and Aitkin County. *Id.*

Respondent County suggests that, “Appellant did not articulate any explanation that might qualify for good cause to be excused from work requirements.” Respondent County also suggests did not offer “any explanation for [her] refusal to work with the Tribe.” *Id.* at 4. This is not true. Appellant informed Respondent County in January of 2005 that she wanted to receive, “the MFIP Employment Services from Aitkin County as any *regular* Minnesota citizen is eligible to receive by applying[.]” See Referee Moore’s Agency Record to District Court dated July 19, 2000, Ex. No. 10, letter to Thomas Burke dated January 29, 2005. Appellant further informed Respondent County that denying her such Employment Services “violates the equal protection clauses of the U.S.

and Minnesota Constitutions.” *Id.* Nearly two years ago, Appellant’s attorney notified Respondent County that, “Ms. Greene’s Appeal request of January 11, 2005 is very clear, she wants to opt out from receiving state MFIP services via the MCT.” See the “complete record of proceedings” provided to Aitkin County Court Administrator by Cover letter of Catherine Moore, Appeals Referee dated July 19, 2005, Exhibit No. 10, letter to Thomas Burke, Director Aitkin County Health and Human Services dated January 29, 2005. Respondent County were further notified that, “Ms. Greene desires to receive and comply with the same program services via Aitkin County”. *Id.*

Appellant was hoping to find suitable employment near her home in the Malmo-Aitkin area. Appellant resides 17 miles from Aitkin just outside Malmo, off-reservation, where the County’s MFIP employment services are available to all other residents, citizens, and taxpayers. The MCT service provider locations are: Cass Lake, Duluth, Virginia, Cloquet and Bemidji. R. App. Ex 2 (last page). Of the five (5) MCT Tribal employment office locations, Cloquet appears to be closest location, approximately 70 miles from the Malmo area where Appellant lives.

Respondent County prolonged the sanction imposed against Appellant. Appellant informed Respondent County that she “want[ed] to keep getting benefits until the appeal decision” when she completed the Appeal to State Agency form. Appellant further stated that her reason for appealing was that she wanted “to use state service.” *Id.* Ex. 2, Appeal to State Agency dated January 3, 2005.

Respondent County, ignored all requests and did in fact impose the 30% financial sanction against Appellant in January of 2005. Jahnke Aff. Ex. 3 at 1. The MFIP Notice of Decision's, Appeal Rights provided that "If you don't agree with the action taken on your case, you can appeal. To keep your benefits until the appeal, you must appeal: within 10 days or before the first day of the month when the action takes place." *Id.* at 2. The Notice is dated December 20, 2004, just 5 days before Christmas, with an abbreviated appeal period considering mail time, holidays and weekends. The form was unclear on how to determine when the 10 days lapsed if they fell upon a holiday. Respondent County should have erred on the side of caution and allowed Appellant to continue receiving the much needed MFIP benefits in the winter while this matter was under appeal.

Even after Appellant filed her District Court Appeal on June 2, 2006, Respondent County continued to financially coerce Appellant by stating in a letter, dated June 7, 2005, "one way for you to receive a full grant is to get into compliance . . . using services from the Chippewa Tribe." See A. App. Petitioner's Memorandum's Ex. 2, letter from Aitkin County Health and Human Services dated June 7, 2005, which also recognizes that Appellant is represented by legal counsel.

III. STANDARD OF REVIEW

The Appellate Court in Greene recites the standard of review for

[t]he constitutionality of a statute is a question of law, which is reviewed de novo. *Granville v. Minneapolis Sch. Dist., Special Sch. Dist. No. 1*, 716 N.W.2d 387, 391 (Minn. App. 2006), review

granted (Minn. Sept. 19, 2006). Minnesota statutes are presumed to be constitutional, and the power to declare a statute unconstitutional is “exercised with extreme caution and only when absolutely necessary.” *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). The party challenging the constitutionality of a Minnesota statute bears the burden of establishing beyond a reasonable doubt that the statute violates a constitutional provision. *Id.*

Greene v. The Commissioner of the Minnesota Department of Human Services, 733 N.W.2d 490, 494-495 (2007). Appellant Greene challenges the constitutionality of the statute as applied, in conjunction with the Service Agreement between Respondents and tribal providers, and the MFIP Tribal/Reservation Membership form used by Respondents to identify and deny some Indians or tribal members, arbitrarily and capriciously.

IV. SUMMARY OF THE ARGUMENT

- I) Denying a tribal member state employment services received by all other citizens is impermissible discrimination in violation of the equal protection clause of the state and federal constitutions.
 - A) Nothing in *Minn. Stat.* § 256J.645 or the contract allows Respondent County to deny state employment services to Appellant. Respondent County’s conduct of denying state employment services to Appellant and not the statute should, be reviewed to determine impermissible discrimination exists.
 - B) Saving money on welfare costs by sanctioning the benefits of an eligible recipient is not a legitimate or compelling governmental interest.
 - C) The Court of Appeals improperly applied the rational basis standard of review to the classification by citing the Mancari and Kreuth decisions, which involve preferential treatment of tribal members, not discrimination against them.
 - D) Strict scrutiny should be applied to Respondent County's practice of denying Appellant state employment services because the practice

penalizes Appellant for exercising her fundamental right to travel, guaranteed to her by the privileges and immunities clause of the constitutions.

- E) Strict scrutiny applies to Respondent County's denial of state employment services to Appellant because she is a member of a suspect class that does not fall under the trust doctrine.
- F) Strict scrutiny should be applied to Respondent County's practice of denying Appellant state employment services because the practice penalizes Appellant for exercising her fundamental right to travel, guaranteed to her by the privileges and immunities clause of the constitutions.
- G) Strict scrutiny applies to Respondent County's denial of state employment services to Appellant because she is a member of a suspect class that does not fall under the trust doctrine.
- H) State Discrimination against some Indians is impermissible whether Indian citizens live on or off a reservation, or excused or mitigated when a tribe is a paid party to the discriminatory practice.
- I) Does Greene stop being a person eligible for the constitutional and other federal advantages, rights and protections because she is an enrolled tribal member?
- J) Amicus Curie briefs supporting Respondents' arguments should necessarily explain their authority to circumvent tribal members' civil rights.

V. ARGUMENT

- I) Denying a tribal member state employment services received by all other citizens is impermissible discrimination in violation of the equal protection clause of the state and federal constitutions.

Courts have long held state discrimination against Native Americans violates the equal protection clause of the U.S. Constitution. In *Acosta v. County of San Diego*, 272 P.2d 92, 96-99 (1954), the California Fourth District Court of

Appeal ruled that the state must treat a tribal member who had lived on a reservation within San Diego County since birth, as they would any other state resident for purposes of welfare benefits. In *Acosta*, the Court decreed that denying welfare benefits, based on status as a Native American, violated the Equal Protection clause. *Id.* Prohibiting Native Americans from attending public schools was held to be an impermissible equal protection violation in *Piper v. Big Pine Sch. Dist.*, 226 P. 926 (1924). Denying Native Americans indigents' health services was likewise held to be an impermissible equal protection violation in *Blaine County v. Moore*, 568 P.2d 1216 (1977). Similarly in *Fallon Paiute-Shoshone Tribe v. City of Fallon*, 174 F. Supp.2d 1088 (D.Nev.2001), the Court held that a state may not refuse to supply sewer services to Native Americans because they lived on a reservation. The above line of cases demonstrates that states may not discriminate against tribal members. To uphold the decision of the Court of Appeals and allow Respondent County to deny Appellant state employment services would weaken legal principles that protect Native Americans from state discrimination.

- A) Nothing in Minn. Stat. § 256J.645 or the contract allows Respondent County to deny state employment services to Appellant. Respondent County's conduct of denying state employment services to Appellant and not the statute should, be reviewed to determine impermissible discrimination exists.

The contract and statute do not require Appellant to use the tribal employment services much less only the tribal employment services. Respondent

County, none the less, forced Appellant to use only the tribal employment services or be sanctioned. The Court of Appeals presumed in its opinion, that the contract and statute require that, “once individuals are referred to the tribe, the individual must use employment services provided by the tribe.” *Greene v. The Commissioner of the Minnesota Department of Human Services*, 733 N.W.2d 490, 494-495 (2007). The contract requires Respondent County to “implement the method of referring appropriate recipients” to use the tribal employment services but nothing in the contract permits Respondent County to deny MFIP employment services to an eligible recipient who does not want to use the tribal program, or can not use it. *See* the contract, pg. 4, Article II.A, State’s Duties. The statute states, in relevant part:

Indian tribal members receiving MFIP benefits and residing in the service area of an Indian tribe operating employment services under an agreement with the commissioner *must be referred* by county agencies in the service area to the Indian tribe for employment services.

Minn. Stat. § 256J.645 subd. 4. The statute requires Respondent County to refer tribal members to the program. It does not allow them to deny MCT members employment services. The Court of Appeals erred in interpreting the contract and statute. The MCT did not agree to force their members to use the tribal program.

This Court should uphold the original decision of MFIP Appeal Referee Catherine Moore, on March 31, 2005, which found in part that,

While the statute imposes a duty upon the county to make referrals to tribal employment services when a participant is deemed eligible, there is no requirement that an eligible participant utilize that service simply because they are eligible. Likewise, the fact that the tribal

employment services programs cannot refuse to provide eligible participants services, does not in turn create a requirement that an eligible participant utilize those services. The appellant, like any other citizen of Aitkin County, should be able to access county employment services.

See Recommended Order of Appeal Referee Catherine Moore contained in Decision of State Agency on Appeal dated March 31, 2005. This initial Agency Decision recognized the absence of language in both *Minn. Stat.* § 256J.645, subd. 4 and the MCT Contract, that mandated Appellant to use only tribal employment services; or in other words, no language authorizes Respondent County to deny Appellant state employment services. *Id.*

- B) Saving money on welfare costs by sanctioning the benefits of an eligible recipient is not a legitimate or compelling governmental interest.

Regardless of the appropriate standard of review, the classification denying Appellant state employment services does not survive even the rational basis test. The Court below apparently misunderstood what classification Appellant challenges. It ruled that the statutory classification in *Minn. Stat.* § 256J.645 does not violate the equal protection clause because it is rationally related to a “legitimate state interest of protecting and promoting tribal sovereignty.” *Greene*, 733 N.W.2d at 496. The Court of Appeals further held that the classification in *Minn. Stat.* § 256J.645 is rationally related to protecting and promoting tribal sovereignty because it provides the MCT with a “greater responsibility for self-government” by allowing the MCT to provide employment services programs for its members. *Id.* Appellant does not challenge the classification in *Minn. Stat.* §

256J.645, which allows the MCT to provide employment services to tribal members. She challenges Respondent County's established practice of denying her employment services. Once again, nothing in the law or contract allows Respondent County to deny anyone who is otherwise eligible such services. Perhaps, *Minn. Stat.* § 256J.645 "promotes and protects tribal sovereignty" by allowing the MCT to provide employment services programs for its members, but that is not what is at issue. This case only concerns Respondent County denying state employment services to Appellant, a citizen of Aitkin County, who would otherwise be eligible for the services. Respondent County offered a justification for denying Appellant employment services, which the Court of Appeals did not address in its opinion. Respondent County stated that mandating Appellant to use only tribal employment services "enables the system of funding to function effectively." R. Brief at 21. Respondent County further explained that, without mandating the use of only tribal employment services, some "counties may have been reluctant to assist tribes." *Id.* That is, without the mandatory requirement, Respondent County would have to share base MFIP allocations with the MCT and perhaps still provide MFIP services to MCT members who wish to use state employment services. Apart from saving money, there is no legitimate or compelling governmental interest in depriving Appellant services. Saving money on welfare costs by denying benefits to Indians has long been held unconstitutional. *Shapiro, Commissioner of Welfare of the State of Connecticut v. Thompson*, 394 U.S. 618 (1969). *Acosta*, 272 P.2d 96-99. In fact, saving money

on welfare costs by denying benefits to anyone otherwise entitled to them is unconstitutional. *Shapiro*, 394 U.S. 618. Because there is no legitimate or compelling governmental interest in depriving Appellant services, whether or not the classification is narrowly tailored or rationally related to serve an interest, is a moot point.

- C) The Court of Appeals improperly applied the rational basis standard of review to the classification by citing the Mancari and Kreuth decisions, which involve preferential treatment of tribal members, not discrimination against them.

The Court of Appeals improperly applied the rational basis standard of review to this specific classification. The Court of Appeals applied the rational basis standard of review to Respondent County's denial of denying state employment services to Appellant under *Morton v. Mancari*, 417 U.S. 535 (1974) and *Krueth v. Indep. Sch. Dist. No. 38*, 496 N.W.2d 829. *Greene*, 733 NW.2d at 595. In *Mancari*, 417 U.S. at 538-539, non-Indian employees of the Bureau of Indian Affairs (BIA) challenged an employment preference for qualified Indians in the BIA as provided by the Indian Reorganization Act. The Supreme Court stated that preferences for American Indians are not racial but political when the preferences apply to members of federally recognized tribes and the treatment can be rationally tied to the federal government's trust responsibility. *Id.* at 553-555.

Like *Mancari*, the *Krueth* case upheld an employment preference for Native American members of federally recognized tribes. *Krueth*, 496 N.W.2d at 831-832. In *Krueth*, non-Indian teachers challenged a decision of the Red Lake school

district placing them on unrequested leave while less senior American Indian teachers were retained pursuant to the American Indian Education Act, *Minn. Stat.* § 126.501 (1990). *Id.* The Minnesota Court of Appeals held that the classification in *Kreuth* was political rather than racial and applied the rational basis standard of review. *Id.*

The classification here differs from the political classifications in *Mancari* and *Kreuth*. Those cases were brought by non-Indians to challenge employment preferences that were a true benefit to the Indians involved. The Court below held that, "state action for the benefit of Indians can also fall under the trust doctrine and therefore be protected from challenge under the equal protection clause or civil rights statutes." *Greene*, 733 N.W.2d at 497 (citing *Krueth*, 496 N.W.2d at 836, *St. Paul Intertribal Housing Bd. v. Reynolds*, 564 F.Supp. 1408, 1411 (D. Minn. 1983)). The question is whether the state action truly benefits Appellant. In order for the classification to receive protection under the trust doctrine, the state must act in a fiduciary capacity for the interests of the beneficiary Indians. *Washington v. Washington State Commercial Passenger Fishing Vessel; Ass'n*, 443 U.S. 658 (1978). See also Larry Leventhal, *The Trust Responsibility*, 8 *Hamline Law Rev.* 3, 626 (1985). Therefore, unless the classification protects and enhances Appellant's interests it cannot evade strict scrutiny review.

This is not a case of preferential treatment. This is a case of discrimination where Respondent County deprives a single mother the MFIP benefits she and her child depend upon. Discrimination is defined as the, "effect of a law or

established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or handicap." *Blacks Law Dictionary* (8th ed. 2004). Preference is defined as "the act of favoring one person or thing over another." *Id.* Preferential treatment, therefore, would involve receiving an advantage or benefit and Appellant received no such thing. The classification did not provide more opportunities or benefits for her. It did not make more employment services available to her, or make it easier for her to receive MFIP benefits. The classification instead forced Appellant to either travel fifty-three (53) extra miles to access tribal employment services, when she did not have a car, or have her MFIP benefits sanctioned by 30%. The classification created a hardship for Appellant, as a tribal member, and strict scrutiny therefore, applies. The classification must involve a compelling governmental interest and be narrowly tailored to serve it.

D) As a United States Citizen, Appellant is entitled to protection under the equal protection clause of the state and federal constitutions.

The Equal Protection Clause of the Fourteenth Amendment provides, in relevant part, "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." *U.S. Const. amend. V and XIV, § 1.* "The guarantee of equal protection of the laws requires that the state treat all similarly situated persons alike." *State v. Behl*, 564 N.W.2d 560, 568 (Minn. 1997). See also Revised Const. of MCT. Minnesota. "An essential element of an equal protection claim is that the persons claiming disparate treatment must be similarly situated to

those to whom they compare themselves.” *St. Cloud Police Relief Ass’n v. City of St. Cloud*, 555 N.W.2d 318, 320 (Minn. App. 1996), *review denied* (Minn. Jan. 7, 1997).

The Court of Appeals held that, "there is no dispute that identified members of the MCT are treated differently under the statute; the dispute concerns the level of scrutiny to be applied." *Greene*, 733 N.W.2d at 495, citing *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 733 (Minn. 2003) (stating that to determine whether a statute violates equal protection, this court first examines “whether the challenged classification must satisfy strict scrutiny or merely the rational basis standard.”). Strict scrutiny applies to legislatively created classifications in two situations: (1) when they impermissibly limit a fundamental right; or (2) when they involve a suspect classification. *Krueth*, 496 N.W.2d at 835 (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985)). “Strict scrutiny requires the classifications to be necessary or narrowly tailored to a compelling governmental purpose.” *Id.* When the classifications do not involve a suspect class or infringe upon a fundamental right, the legislation is subject to review under the rational basis standard. *See id.* Under this standard, if the classification is rationally related to a legitimate governmental purpose, it does not violate the equal protection clause. *In re Estate of Turner*, 391 N.W.2d 767, 769 (Minn. 1986).

- E) Appellant, an enrolled member of the Minnesota Chippewa Tribe, is a taxpaying citizen of the United States.

The *Indian Citizenship Act*, which was passed in 1924, made all Indians or tribal members United States citizens. 43 Stat. 253, 8 U.S.C. § 1401 (b).

Appellant, an enrolled tribal member, is therefore a citizen of the United States and Minnesota.

Appellant, as a citizen, pays both state and federal taxes. When Appellant applied for the MFIP benefits and requested to use the Aitkin County services, she did not live on a reservation. She was a resident of Aitkin County. In the past, this Court has held that Indians living off a reservation should be treated like all other tax paying individuals. *Jefferson v. Commissioner of Revenue*, 631 N.W. 2d 391, 397 (Minn. 2001). In *Jefferson*, this Court held that Minnesota could tax an Indian's per capita payment as income when received when the tribal member was not living on-reservation because "government's right to impose tax on its residents is justified by the **advantages, rights and protections it bestows in return.**" *Id.* at 395. (Emphasis added). The *Jefferson* Court went on to note that, "[b]y taxing Indians who live outside Indian country, the state is not singling them out based on race, but is treating them like every other individual within its taxing jurisdiction." *Id.* at 397. In this case, the same rule should apply. Presumably the advantages, rights and protections are equal to all other resident, citizen taxpayers. Appellant should be treated like every other taxpaying resident in Aitkin County and be allowed to use Aitkin County's employment services.

- F) Strict scrutiny should be applied to Respondent County's practice of denying Appellant state employment services because the practice penalizes Appellant for exercising her fundamental right to travel.

guaranteed to her by the privileges and immunities clause of the constitutions.

In *Shapiro*, 394 U.S. 618, the U.S. Supreme Court held that Connecticut's statutory prohibition of welfare benefits to residents of less than a year amounted to invidious discrimination denying them equal protection of the laws. The Court ruled that the state's prohibition of benefits to residents of less than a year impermissibly penalized them for exercising their constitutional right to travel. *Id.* at 631-632. The right to travel stands for the principle that all U.S. citizens are free to travel throughout the "length and breadth of our land uninhibited by statutes, rules or regulations, which unreasonably burden or restrict this movement[.]" *Id.* at 629. The right to travel is guaranteed by the privileges and immunities clause of the constitution. *Id.* at 630. In *Shapiro*, the Court analyzed the statute under the strict scrutiny standard of review because the classification penalized the exercise of the constitutional right to travel. *Id.* at 634. Anytime the classification impinges on a personal right protected by the constitution, strict scrutiny must be applied. See *Kramer v. Union Free School District No. 15*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942).

In this case, mandating that Appellant use only tribal employment services penalizes her for exercising her fundamental right to travel and have equal access to public services where she lives. The classification should be examined under strict scrutiny review, in accordance with *Shapiro*. Appellant resides seventeen

(17) miles from Aitkin, just outside Malmo, beyond the boundaries of any of the MCT reservations. Aitkin is where the County's MFIP employment services are available to all other county residents. The MCT service provider locations are in: Cass Lake, Duluth, Virginia, Cloquet and Bemidji. R. App. Ct. Br. App. Ex 2 (last page). Of the five (5) MCT Tribal employment office locations, Cloquet appears to be the closest location, approximately seventy (70) miles from the Malmo area where Appellant lives. Appellant was blocked from accessing Aitkin's employment services by Respondent County. This made it more difficult for her to find a job and do business in the area where she lived. The mandate gave Appellant and ultimatum, either go seventy (70) miles away to obtain employment (and do business), or have her MFIP benefits sanctioned. The mandate unreasonably burdened Appellant's efforts to utilize the public services to obtain employment. The mandate unreasonably burdened Appellant to travel to a tribal office location where she would be allowed to access their employment services and receive full MFIP benefits. Restricting Appellant's access to the Aitkin community and forcing her to use a community seventy (70) miles away instead infringed on her right to travel. Sanctioning Appellant's MFIP benefits for attempting to use Aitkin's employment services penalized her for exercising her constitutional and fundamental rights. The use of this classification must, therefore, be reviewed under strict scrutiny.

- G) Strict scrutiny applies to Respondent County's denial of state employment services to Appellant because she is a member of a suspect class that does not fall under the trust doctrine.

A suspect classification exists when a statute classifies a group or person by race, alienage, or national origin. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. at 440.; citing *McLaughlin v. Florida*, 379 U.S. 184, 192, 85 S.Ct. 283, (1964); *Graham v. Richardson*, 403 U.S. 365, 91 S.Ct. 1848, (1971). The question here is whether the classification is based on race, alienage, or national origin.

Native Americans who are challenging a classification that does not protect their best interests pursuant to the trust responsibility, are a suspect class because they are being classified as an identifiable class of persons due to their outward appearance, ancestry or ethnic characteristics, not their political status.

Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n, 443 U.S. 658. See also Larry Leventhal, *The Trust Responsibility*, 8 Hamline Law Rev. 3, 626 (1985). In *Ladd v. Boeing Company*, 463 F.Supp.2d 516, 524-525 (E.D. Pennsylvania 2006) citing *St. Francis College v. Al-Khazra*, 481 U.S. 604 (1987), the Defendant claimed that the Plaintiff, a Native American, could not sue them for racial discrimination under Section 1981. The Defendant argued that the Plaintiff's identity or status as a Native American was better "conceptualized as one of national origin rather than race" and the Plaintiff could not sue them for racial discrimination. *Id.* at 525 (also explaining that national origin is not a protected under Section 1981). The Court rejected the Defendant's contention and held that the Plaintiff, a Native American, was protected from racial discrimination under § 1981 because Native Americans, as a class of persons,

could be classified based on their outward appearance, ancestry and/or ethnic characteristics. In *St. Francis College v. Al-Khazra*, 481 U.S. at 613, the Supreme Court held that the Plaintiff, who was born in Iraq, had a cognizable racial discrimination claim under § 1981. The Court further explained that discrimination against an identifiable classes of persons who are subjected to intentional discrimination because of their outward appearance, ancestry or ethnic characteristics, “is racial discrimination.” *Id.*

H) State Discrimination against some Indians is impermissible whether Indian citizens live on or off a reservation, or excused or mitigated when a tribe is a paid party to the discriminatory practice.

In 1981, the Minnesota Supreme Court found racial discrimination in *Lamb v. Village of Bagley* where “(1) racial epithets . . . coupled with disparate treatment, . . . amounted to impermissible discrimination as matter of law, and (2) police chief's own American Indian background did not excuse or mitigate this unfair discriminatory practice.” (Id. 310 N.W.2d 508). The *Lamb* court recognized that

In *Danz v. Jones*, 263 N.W.2d 395 (Minn. 1978), we held, consistent with *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), that the complainant has the initial burden of establishing a prima facie case of discrimination. *Danz*, 263 N.W.2d at 399. This prima facie case is established upon a showing of unequal treatment. Discriminatory intent need not be proved at this stage. The burden then shifts to the defendant to articulate some legitimate nondiscriminatory reason for disparity in treatment. If the defendant comes forward with sufficient proper rebuttal evidence, the complainant must then carry the ultimate burden of persuasion to show, by a preponderance of the evidence, that the legitimate reasons offered by the defendant are not so, but

only a pretext for discrimination. In carrying the burden of persuasion, the complainant may succeed either by persuading the trier of fact that it is more likely the defendant was racially motivated or that the defendant's proffered explanation is unworthy of credence.

Lamb at 510.

The discrimination Appellant Greene faces is being disguised and protected by state laws¹, being presumed constitutional by the state law, by the State that made the law, and which is applying this law to Indians or tribal members. Via a financial arrangement or contract between the State of Minnesota and Aitkin County governments and another political entity, the Minnesota Chippewa Tribe, the contracting parties agree to deny *some Indians* in *some counties*², the equal access to public services under MFIP, as virtually every other resident, taxpayer citizen. Instead, the contracting parties make the impoverished MCT tribal members seeking welfare assistance, only be allowed to use the MCT tribal provider or be financially sanctioned like Greene. There is no due process notice or opportunity to Greene, she is mandated.

Unlike in *Lamb* where the racial epithets were admittedly made, here Greene is being singled out because she is an enrolled member of the MCT. However, Greene does not reside on any reservation. *Id.* Here, the racial epithets are more subtle, *mandating* Greene to the separate but equal Indian program,

¹ See Minn. Stat. § 256J.645, subd. 4. Whereby "Indian tribal members . . . must be *referred* to the by the county agencies in the service area to the Indian tribe for employment services." (Emphasis added, because legislated statute appears to be passive using the term *referred* but when Respondent County applies the statutory term referred to actually means mandated, so the legislation would logically pass scrutiny on a prima facie review.

² See App A - _____, See copy of completed form DHS-3048 (5-02), signed and dated by Petitioner Buddie Greene July 16, 2004, attached as Exhibit 1 in the Appendix.

allegedly because the contracting parties have “the shared interest in delivering *culturally appropriate* and effective employment services to tribal members so they may successfully participate in the MFIP program. (See R. App. Ct. Br. at 25)(Emphasis added). Epithets here may not be derogatory, but the result is government employees checking to see if they are Indian, and then how much, enrolled and from where, and if you are the wrong type of Indian, you cannot use the public services like any other resident taxpaying citizen. It seems that when Respondents want Indian’s income taxed for revenue, the justification is because of “the advantages, rights and protections it bestows in return.” (Compare *Jefferson v. Minn. Comm. Rev* at 395. But when a resident taxpaying citizen Indian residing off-reservation comes to Respondents for public MFIP benefits, the benefit of the *Jefferson* bargain evaporates with the poverty of the Indian? Must Indians continually pay for the advantages, rights and protections to enjoy them or have the benefits available when needed? Or are Indians on and off the reservations citizens with full time rights?

Essentially the contracting parties, who are governments presumably restrained by the U.S. Constitution and Bill of Rights and/or the Indian Civil Rights Act of 1968 (hereinafter ICRA), are have common interests in jointly depriving some Indians their multiple civil rights to access public services. See also 42 U.S.C 1981 et seq. There was no notice ever contemplated or issued to the affected, individual Indians by any of the governmental contracting parties. The assumption appears to be that Respondents do not have to tell individual, citizen

Indians anything--until after applying for MFIP services, and then the message for some Indians is you cannot use the public services, go away to the MCT.

The contracting parties' assumption appears to follow the same logic the *Lamb* court overturned. Here, Appellant Greene is politely being told "you are the wrong kind of Indian, living in the wrong place and you cannot use Respondents' public services." These implied comments may not seem derogatory or racially rude to most people in a 95% Caucasian state. Often times, implied comments may be much easier for a person of color to recognize. The parallel to *Lamb* is obvious as it appears that Respondents' suggest that because of the financial contract with the MCT, it is not discriminatory to individual, resident, taxpaying citizens as *the Indian tribe is a party to the discrimination, so how can it be discrimination?* In *Lamb*, the Court clearly announced that the Police Chief's

own American Indian background in no way excuses or mitigates unfair discriminatory practices. On that basis the hearing examiner defused LaRoque's racial slurs to the level of only "an expletive." But one minority member has no privilege under the Minnesota Human Rights Act to slur racially another, where, as here, the comments are intended to be demeaning and are not clearly offered and perceived as made in jest. Moreover, the weight placed by the hearing examiner on his finding that [the Police Chief] was over one-half Indian should be discounted. He apparently looked only to [the Police Chief's] genetic background.

Lamb at 511. Just as in *Lamb*, the discrimination Appellant Greene faced is not excused or mitigated simply because a political entity in the form of an Indian tribe has entered into a financial agreement with Respondents.

- D) Does Greene stop being a person eligible for the constitutional and other federal advantages, rights and protections because she is an enrolled tribal member?

Minn. Stat. § 256J.09 outlines how to apply for assistance under MFIP.

“To apply for assistance a person must submit a signed application . . . in the county where that person lives.” Id. at subd. 1. The same law also provides that “the county agency must . . . explain how to contact the agency if a person’s application information changes and how to withdraw the application;” Id. at Subd. 3(6). The only legal issue or question Appellant presented to the Court of Appeals was

[i]s Buddie Greene (an Indian tribal member and a life-long, Minnesota, tax-paying resident living off reservation) considered a person under the Minnesota and United States Constitution and protected against racially discriminatory laws by a heightened scrutiny review under the Equal Protection clauses?

See Appellant’s Brief to Court of Appeals, Legal Issue. Here, Minn. Stat. § 256J.09 describes what the county agency must do with a person, which apparently is not the same thing Respondents do with some Indians’ “when member access is channeled to the tribal service program rather than the [public] program for all non-member[Indians and all non-Indians].

The Court of Appeals misunderstands *Mancari* when it “agree[s] with respondent that the issue is controlled by *Morton v Mancari*, 417 U.S. 535, 94 S. Ct. 2474 (1974). In the lower Court’s ruling in *Greene*, it argues “that *Mancari* found the American Indian classifications were not racial but political since they were limited to members of federal recognized tribes.” *Greene* at 9. *Mancari* is

an employment preference case, with a very express limit of application of the preference by Congress, only within the Bureau of Indian Affairs, applying only to those particular federally recognized Indians who individually chose to apply for BIA employment. A 1991 Law Review explains that

[t]he Supreme Court . . . did not intend to argue that “Indian” can never be a racial term. Rather, the Court carefully distinguished between the two usages of the term—racial and political. Mancari, for example, opposed a “ ‘racial’ group consisting of ‘Indians’ ” to a category that included only “members of ‘federally recognized’ tribes” and excludes “many individuals who are racially to be classified as ‘Indians’ ” . . .

See David C. Williams, THE BORDERS OF THE EQUAL PROTECTION CLAUSE: INDIANS AS PEOPLES, 38 U.C.L.A. L. Rev. 759, ____ (1991).

In *Mancari* when Congress uses the term Indians it means any and all enrolled members of the 562 federally recognized tribes. Here in *Greene* the Appellate Court has over broadly applied *Mancari* to mean American Indian classifications in Minnesota legislation, law and agreements cannot be racial even in the face of Respondents denying public access and mandatory referral *Greene* to a separate but culturally appropriate employment program. Respondents have provided no legislative intent for culturally appropriate services, which MCT members must need and the other 561 tribes’ Indians must not, and which can only be served by culturally appropriate, tribal providers—provided if/when a tribe chooses to contract with Respondents, on a county by county, year by year basis. However, the Appellate Court announced that

[t]he public has determined a benefit for the MCT, a tribal entity, in every respect in accord with its wishes, and this classification of administrative service programs does not become racial rather than political when member access is channeled to the tribal service program rather than the program provided for non-members.

The Court continues by noting that

Under a rational basis standard of review, the statute passes constitutional muster. The statutory scheme was enacted to provide the MCT with a greater responsibility for self-government.

Id. This is true because the statute only uses the permissive term *refer*, **not mandate** with exclusion from public services all other resident tax payers enjoy.

The Court finally suggests that

the statute allows tribes that seek such tribal responsibility to assume ongoing interactions with their own members to ensure that tribal members receive employment services in the best and most effective way possible. This supports the legitimate state interest of protecting and promoting tribal sovereignty.

Id. However, in the recent *Jones* decision, the tribal sovereignty argument took a back seat to Minnesota's "exceptional circumstances" to impose its jurisdiction. See *State v. Jones*, 729 N.W.2d 1, Minn.,(2007). (Majority Concurrence Justice G. Barry Anderson). Similarly, in *State v R.M.H.* the State found it had jurisdiction to enforce its speeding and driver's license laws against tribal member who committed these offenses on a state highway located on reservation of an Indian tribe of which he was not an enrolled member; granting State jurisdiction over traffic offenses did not threaten the federal interest in encouraging tribal self-government and did not unduly impinge on tribe's economic development and self-sufficiency, and federal government had not imposed a detailed scheme of

traffic regulations on tribal reservations and demonstrated little interest in enforcement of traffic laws on state-operated and maintained highways. See *State v R.M.H.*, 617 N.W.2d 55, 60-63 (2000). Yet, in *Jones*, Justice Page (dissenting) gave notice that

the entire question will soon be a solution in search of a problem. In July 2006, Congress passed and the President signed the Adam Walsh Child Protection and Safety Act of 2006. Pub.L. No. 109-248, 120 Stat. 587 (to be partially codified at 42 U.S.C. §§ 16901-16991). The Adam Walsh Act, like its predecessor the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, requires registration of sex offenders, but specifically requires registration “in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.” Adam Walsh Act § 113(a), 120 Stat. at 593.^{FN3} Significantly for this case, the Adam Walsh Act explicitly brings federally recognized Indian tribes within its jurisdiction, § 111(10)(H), 120 Stat. at 593, and requires those tribes to either maintain a registry of offenders or delegate the registration requirement “to another jurisdiction or jurisdictions within which the territory of the tribe is located.” § 127(a)(1), 120 Stat. at 599-600. A tribe that does not elect, within one year of passage of the Adam Walsh Act, to maintain its own registry of offenders is deemed to have elected to delegate that function to another jurisdiction. § 127(a)(2), 120 Stat. at 600. Also significant is the fact that the Adam Walsh Act authorizes the attorney general to make the act applicable to sex offenders convicted before passage of the Adam Walsh Act or its implementation in a particular jurisdiction. § 113(d), 120 Stat. at 594.

FN3. The Adam Walsh Act also broadens the definition of “sex offense” such that those convicted in tribal courts are explicitly deemed sex offenders. § 111(1), (5), (6), 120 Stat. at 591-92.

Under the Adam Walsh Act, therefore, sex offenders who are members of federally recognized Indian tribes will be required to register, regardless of where they reside. If they reside on the reservation, they will be required to register with the tribe (or with the state, if the tribe has delegated, either explicitly or implicitly, its

registry to the state). If they reside on the reservation but work or go to school off the reservation, they will be required to register with the state as well.

State v. Jones, 729 N.W.2d 1, 19, Minn., Mar. 22, 2007, dissenting Page J., and Anderson, Russell A., C.J. Here, the dissent recognized that Congress had preempted Minnesota's need and/or authority under the Supremacy clause to find jurisdiction when they created the Adam Walsh Act.

Compare to *R.M.H.* where the Minnesota Supreme Court concluded that the

Federal government had not imposed a detailed scheme of traffic regulations on tribal reservations and demonstrated little interest in enforcement of traffic laws on state-operated and maintained highways.

Id. In *Jones*, Congress had imposed a very detailed scheme to require tribes to track sex Indian sex offenders on and off the reservations, or after a specified period of time, states will have the right to assert their jurisdiction for that purpose. The split majority in *Jones* did not seem concerned about preemption and express congressional law on the very issue.

J) Amicus Curie briefs supporting Respondents' arguments should necessarily explain their authority to circumvent tribal members' civil rights.

Amicus Curie briefs may be submitted by the Minnesota Chippewa Tribe and one of its constituent bands, the Leech Lake Reservation. Under the Revised Constitution of the Minnesota Chippewa Tribe, Minnesota

All members of the Minnesota Chippewa Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, and *no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States, including but not limited to freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law.*

See Revised Constitution of the Minnesota Chippewa Tribe, Minnesota, Art. XIII.

Enrolled members of the MCT *shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States* which includes the rights of state citizenship, and the advantages, rights and protections without regard to the *Jefferson* bargain. Questions any amicus brief should address include: (1)

What authority allows the MCT to deprive MCT members of their *constitutional rights or guarantees enjoyed by other citizens of the United States* which are secured by the MCT Const. and which the MCT is restrained from infringing? (2)

What due process notice and opportunity did the MCT give members before subjecting U.S. citizens to deprivation of several federal, state and ICRA civil rights? See 42 U.S.C. § 1981 et seq., (3) When a tribe/band allows a state to exert state jurisdiction and consequences which harm tribal members, does that tribe or band need to get the consent of the tribal members affected before submitting tribal members to newly acquired jurisdiction? See *Kennerly v. District Court of Ninth Judicial Dist. of Mont.*, 400 U.S. 423, 91 S. Ct. 480, 27 L. Ed.2d 507 (1971).

(4) Is the MCT restrained by the ICRA? Indian Civil Rights Act of 1968 (25 U.S.C. §§ 1301-03) whereby

No Indian tribe in exercising powers of self-government shall . . .

8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

Id. ICRA, 25 U.S.C. §1302 (8). There are too many federal laws protecting Indians and tribal members civil rights for Respondents to just assume they are not preempted and prevented from depriving some Indian citizens of their several civil rights. In particular the 14th Amendment and Minnesota's State Constitution restrain Minnesota government from denying ALL CITIZENS' civil rights, anywhere anytime. This Court needs to remind Respondent actors and the Minnesota Legislature, Indians are citizens with civil rights that cannot be ignored under a so-called rational basis analysis.

VI. CONCLUSION

Respondents have deprived Appellant Greene of her various civil rights to access and use any public service, anywhere in the United States. (See U.S., Minnesota, MCT constitutions and the Indian Civil Rights Act. The Court of Appeals appears to have declared that the civil rights of some Indians' or tribal members' are subordinate to the tribe and can be bartered away, and that some Indians or tribal members can be channeled away from the public service to only the tribal service program. Whether the parties contractual agreement provides separate but equal services or provides culturally appropriate employment services, it is disparate treatment and impermissible discrimination, based on

arbitrarily and capriciously singling out some Indians and mandating them to go to only the MCT MFIP Employment Service Program.

Indians, like everyone else have no choice where we are born, when we are born or what ethnic group or nation origin we may belong. Tribal enrollment is basically a census tool for the federal government to allocate tribal funding for programs or other benefits to reservation governments. Tribal enrollment is often more like vaccinations or baptism in that it often happens when we are very young and have no choice. For Respondents to assume they can identify tribal members as non-persons, without the same rights to public service as every other citizen, is contemptuous of human and civil rights in the 21st Century.

Certainly Appellant Greene purchased Minnesota's extended civil rights "advantages, rights and protections" in *Jefferson Bargain* when she was employed and paid taxes to the State. Certainly, when Indians were made citizens of the United States in 1924, they were made citizens of the several states at the same time. If respondents believe they can simply contract with a tribe to evade citizens' civil rights and heightened scrutiny then Minn. Stat. § 256J.645, subd. 4. should be clearly revised to give actual meaningful notice to the public and Indians and expressly and legally command that *some Indian tribal members will be denied public access to the county agencies depending on if a contract has been made in that county, that year, by a particular tribe, and if so, some tribal members will be mandated use only tribal employment services or face sanctioning.* This Agreement is really a third party beneficiary contract, with

simple short statute language, coupled with a financial incentive contract for a tribe and a secret form to identify Indians and their tribal affiliation. Appellant Greene is not a signatory to the agreement. The original agency decision by the Referee Catherine Moore must be upheld and the Appellate Court reversed to prevent more civil rights abuses to Minnesota's Indian citizens yesterday, today and tomorrow.

Dated: Sept 20, 2007

ANISHINABE LEGAL SERVICES, INC.

By: Frank Bibeau

Frank Bibeau, Esq. (ID# 306460)

Megan Treuer, Esq. (ID# 349112)

Attorneys for Appellant

P.O. Box 157

Cass Lake, MN 56633

(218) 335-2223