

No. A06-804

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STATE OF MINNESOTA  
IN SUPREME COURT

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Buddie Greene,

Appellant,

vs.

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

Respondents.

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**JOINT *AMICUS CURIAE* BRIEF OF THE MINNESOTA CHIPPEWA TRIBE  
AND LEECH LAKE BAND OF OJIBWE IN SUPPORT OF RESPONDENTS**

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## LEGAL ISSUE

The *Amici* Minnesota Chippewa Tribe and Leech Lake Band of Ojibwe (the “*Amici*”) incorporate in full the legal issue as stated by Respondent Commissioner of the Minnesota Department of Human Services (the “Respondent”).<sup>1</sup>

## STATEMENT OF THE CASE

The *Amici* incorporate in full the Statement of the Case as stated by Respondent.

## FACTS

The *Amici* incorporate in full the Facts as stated by Respondent, and offer the following additional facts.

### **I. Further Details Regarding the State-Tribal MFIP Agreement.**

Once they receive a referral from a county, the *Amici* have always treated the tribal provision of services under the MFIP agreements as mandatory, both for the MCT and for tribal members. *See* Minn. Stat. § 256J.645 subd. 4. The mandate in the statute matches the referral requirement in the standard form of agreement in place with both MCT and Leech Lake, and it states that the tribes “*shall provide*” MFIP services to eligible tribal members. R. Add. at 1; A. App. at A-6 - A-7, ¶ I.C.1 (emphasis added). This is an absolute condition of the MFIP agreement and is a condition to continue receiving funds from the state. *Id.*; *see also* A. App. at A-10 (preserving State’s right to cancel grant immediately if it has “reasonable cause to believe that the [MCT] has breached a material term of the grant”).

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<sup>1</sup> Pursuant to Minn. R. Civ. App. Proc. 129.03, counsel for the parties in this case did not author this brief either in whole or in part, and no one besides the *Amici* made a monetary contribution to the preparation or submission of the brief.

The MCT provides, on a regular basis, employment services through the Aitkin Workforce Center, based upon the needs of members.<sup>2</sup> *See Buddie Greene v. Comm'r. of Minn. Dept. of Human Servs.*, 733 N.W.2d 490, 493 (Minn. Ct. App. 2007), R. App. 16. The Appellant concedes she did not attempt to find out the extent of the tribal employment services, but merely refused to use them. *See* R. App. 44-45 (transcript of Greene's testimony.) Had the Appellant informed the MCT of her needs, it would have offered to have tribal service employees travel to meet her in Aitkin or elsewhere, as the Court of Appeals noted. *See* R. App. 16. In fact, it is possible that more flexible services are available through the MCT than a county program (as the Respondent notes). *See* R. Br. at 31. Moreover, the *Amici* reiterate that there is no restriction in the program on *where* an MFIP recipient may look for work.

While the *Amici* are not obligated, as sovereign tribal nations, to consult members before entering state-tribal agreements, they provide a regular opportunity for members (and the general public) to comment on how the MFIP money under the tribal agreement will be spent. The *Amici* provide public notice of the biennial renewals of the MFIP agreement. *See* Minn. Stat. § 256J.626 subd. 4(d). Right now, regarding the renewal for the January 1, 2008 through December 31, 2009 period, the main page of the MCT website plainly states that “[t]he Minnesota Chippewa Tribe is seeking to enter into a Biennial Service Agreement with the State of Minnesota Department of Human Services

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<sup>2</sup>The *Amici* reiterate the Respondent's objections to the Appellant's assertions that she would have had to “go seventy (70) miles away to obtain employment (and do business), or have her MFIP benefits sanctioned,” as opposed to Aitkin, which is much closer to her home. A. Br. at 5, 15.

for MFIP Services.” See <http://www.mnchippewatribe.org/>. It further provides a link with the mailing address, e-mail, and telephone and fax numbers of the MCT Human Services contact, asking for “input from the public for use of funds provided through this agreement.” *Id.*

## **II. Other State-Tribal Agreements.**

As the Respondent noted in its brief, this grant of MFIP administrative authority was not a new concept when it was enacted in 1997. See R. Br. at 5. Minnesota and the MCT, as well as its member bands, have expanded their partnerships over time in order to encourage tribal sovereignty and to better deliver efficient, comprehensive, and culturally-appropriate services to tribal members. The MFIP employment agreement is only one of several current state-tribal agreements in place with the MCT. In addition to those programs the Commissioner mentions, the MCT also provides services under the Diversionary Work Program (funded in coordination with MFIP). See R. Br. at 36-37; Minn. Stat. § 256J.626. Furthermore, the MCT offers services to elders through the Senior Community Service Employment Program (funded through the Minnesota Department of Economic Security) and the Minnesota Indian Area Agency on Aging (through the Department of Human Services Board on Aging). See [http://www.mnchippewatribe.org/senior\\_services.htm](http://www.mnchippewatribe.org/senior_services.htm). The MCT and its member bands, including Leech Lake, plan to develop such partnerships to the fullest degree possible.

## **ARGUMENT**

The *Amici* incorporate in full the Argument as stated by the Commissioner. The *Amici* offer the following additional argument.

**The MFIP State-Tribal Agreement Does Not Infringe on any Tribal Member's Constitutional Rights, and Any Limitation of the Ability to Enter Such Contracts Would Violate Established State and Federal Law.**

Both the District Court and the Court of Appeals held that Minn. Stat. § 256J.645 requires a tribal member to obtain employment services from the MCT, and that this requirement does not infringe upon a member's constitutional equal protection rights. *Greene*, 733 N.W.2d at 497, R. App. at 19. As the Court of Appeals stated, under *Mancari*, American Indian classifications are "not racial but political" when they are limited to members of federally-recognized tribes, making a rational basis test appropriate. *See id.* at 495, R. App. at 18. That rational basis has been satisfied here: the state has an interest in encouraging tribal sovereignty, and the statute was passed "to provide the MCT with a greater responsibility for self-government." *Id.* The Court of Appeals articulated the MCT's interest in entering these contracts as follows:

[T]he 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.* at 496. In sum, despite the Appellant's objections, under the MFIP agreements, the state can require qualifying tribal members to obtain services exclusively from the tribe.

If this Court granted the Appellant any relief under her equal protection theories (and the *Amici* do join the Respondent in its motion to strike the Appellant's new "right to travel" argument), the result would cut sharply against federal and state law. *See Morton v. Mancari*, 417 U.S. 535, 94 S. Ct. 2474 (1974); *Kreuth v. Indep. Sch. Dist. No. 38*, 496 N.W.2d 829, 835 (Minn. Ct. App. 1993), *rev. denied*, (Minn. Apr. 20, 1993). It

would represent a severe infringement on well-established principle that tribal sovereignty is a state interest. And, as a practical matter, any limitation on the ability to enter binding state-tribal agreements would severely curtail the state and the tribes' ability to serve tribal members for years to come (and would undoubtedly engender further litigation). That one tribal member wishes to avoid using her tribe's MFIP services does not justify reversing the Court of Appeals.

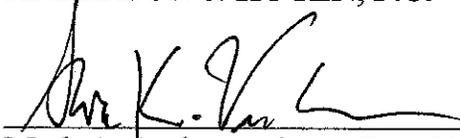
### CONCLUSION

Minnesota has a well-established, legitimate governmental interest in encouraging tribal sovereignty, and Minn. Stat. § 256J.645 (along with the actual MFIP agreements entered under that authority) is rationally related to that interest. Based upon the reasoning set forth above and in the brief of Respondent Commissioner of the Minnesota Department of Human Services, *Amici* Minnesota Chippewa Tribe and Leech Lake Band of Ojibwe respectfully request that this Court deny the Appellant relief and uphold the decision of the Court of Appeals.

Dated: October 29, 2007

Respectfully submitted,

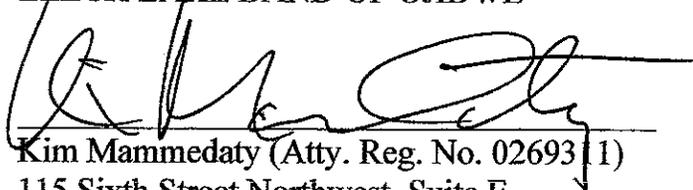
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**CERTIFICATE OF BRIEF LENGTH**

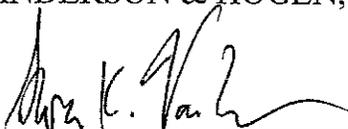
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The *Amici* hereby certify, under Minn. R. Civ. App. Proc. 132.01 subd. 3 (c), that their brief complies with the applicable word count limitation, the brief was prepared using Microsoft Office Word 2003, the brief complies with the typeface requirements of this Rule, and the number of words in the brief is 1,191.

Dated: October 29, 2007

Respectfully submitted,

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