

No. A06-804

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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.

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APPELLANT'S REPLY BRIEF

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## ARGUMENT

The Appellate Court framed Greene's argument as

Appellant contends that without her freedom for access to an Aitkin County employment service, serving non-members of MCT, she is denied equal protection of the laws.

*See* Greene v. The Commissioner of the Minnesota Department of Human Services, 733 N.W.2d 490, 494-495 (2007). The Court avoided stating the argument recognizing Greene as a person, citizen taxpayer like all other similarly situated being denied her right of access to local public services funded with federal dollars. Respondents continue to mislead this Court suggesting that the federal Indian law cases of Morton v. Mancari, 417 U.S. 535, 94 S.Ct. 2474 (1974), Fisher v District Court, 424 U.S. 382, 96 S.Ct. (1976), United States v. Antelope, 430 U.S. 641, 97 S.Ct. 1395 (1977), and St. Paul Intertribal Housing Bd. v Reynolds, 564 F.Supp. 1408 (1983), along with that Court's Krueth v. Indep. Sch. Dist. No. 38, 496 N.W.2d 829 (Minn. Ct. App. 1993), *rev. denied* (Minn. April 20, 1993) decision support Respondents' and Amici' contention that their financial contract that it is not a violation of Greene's civil rights to be barred from the same public access of Aitkin County Employment Services as any other similarly situated, resident, tax paying, citizen

[b]ecause the channeling of appellant's right of access to her tribal service occurs as part of her tribe's contractual arrangement for the benefit of its members, it is political rather than racial in nature, and appellant fails to show a loss of her constitutional rights.

Id. Here, Respondents and the joint Amicus Curiae have relied upon cases that are not in a line and do not lead to nor support the decision of the Minnesota Court of Appeals in this Greene case.

Further, the Appellate Court appears to recognize “appellant’s right to access” but does not recognize it as a fundamental right of all citizens’, including Appellant Greene. Instead, all other references in the decision minimize the right of access by calling it “freedom of choice” (Id. at 493) or “not given the freedom to choose” (Id. at 494 See ISSUE). Appellant urges this Court to recognize her Right of Access as a significant and fundamental right, of which she is being disenfranchised and denied by Respondents and the Joint Amicus parties by *their* third party beneficiary contract, to which Greene is not a party.

Instead, Appellant directs this Court to look to its past reasoning of its decision in Jefferson v. Commissioner of Revenue, 631 N.W. 2d 391, 397 (Minn. 2001) and this Court’s reliance on Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973). Both Jefferson and Mescalero deal with Indian tribal members *off* reservation. Most important to note is that the U.S. Supreme Court’s Mescalero decision in 1973 precedes its decision in Morton v. Mancari in 1974. The Mancari Court looked to the very same Mescalero case noting that

Congress was seeking to modify the then-existing situation whereby the primarily non-Indian-staffed BIA had plenary control, for all practical purposes, over the lives and destinies of the federally recognized Indian tribes.

Id. at FN 13 at 542. *citing* Hearings on H.R. 7902, Readjustment of Indian Affairs, 73d Cong., 2d Sess., 1–7 (1934) (hereafter House Hearings). See also Mescalero Apache Tribe v. Jones, 411 U.S. 145, 152–153, n. 9, 93 S.Ct. 1267, 1272–1273, 36 L.Ed.2d 114 (1973). The Mancari Court found no need to distinguish itself from Mescalero because Bureau of Indian (BIA) jobs can be anywhere, on and off reservations and the employment preference was for all Indians who are enrolled in any and all federally recognized tribes.

In Jefferson, this Court previously recalled that

[t]he government's right to impose an income tax on its residents is justified by the advantages, rights, and protections it bestows in return. *Luther v. Comm'r of Revenue*, 588 N.W.2d 502, 509 (Minn.1999). It is the “sovereign right” and “ordinary prerogative” of a state to “tax the income of every resident,” including “income earned outside the taxing jurisdiction.” *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 453, 115 S.Ct. 2214, 132 L.Ed.2d 400 (1995).

Id. at 395 *citing* Chickasaw Nation at 462-63, 464, 466. The Jefferson Court continued note the significance difference in the State’s taxing authority with regard to Indians on and off reservation pointing to its previous decision when the

Brun Court

considered whether Minnesota's income tax could be imposed on a married couple who were enrolled members of the Red Lake Band of Chippewa Indians but who lived off the tribe's reservation. 549 N.W.2d at 92. *Citing* *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 181, 93 S.Ct. 1257, 36 L.Ed.2d 129 (1973), we observed that “states are without authority to tax income of tribal members who live and earn their income on a Reservation within the state.” *Brun*, 549 N.W.2d at 92. *Quoting* *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973), we also 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, 549 N.W.2d at 92.**

*See Jefferson* at 395, *citing Brun v. Commissioner of Revenue*, 549 N.W.2d 91 (Minn.1996)(Emphasis added). It is readily apparent that the Minnesota Supreme Court has continued to argue that when Indians are *off* reservation, Indians are state citizens who can be taxed in exchange for the *advantages, rights, and protections [the State of Minnesota] bestows in return* and are *generally subject to nondiscriminatory state law otherwise applicable to all citizens of the State*. Presumably this would include the Constitutions of the United States and Minnesota, and ALL of the civil rights protections reserved by/to all citizens under the Fourteenth Amendment. Here Greene is not domiciled on any reservation.

#### **Off Reservation vs. On Reservation**

Respondents and Amici rely on Fisher and Antelope to assert the use of the rational basis test by the United State Supreme Court, however, both cases dealt with on reservation Indians. In Antelope, the Court was dealing with an on-reservation federal, *criminal* jurisdiction in a non-Pubic Law 280 state. (Id.) In Fisher, the Court was dealing with an adoption matter where all tribal members lived on the reservation, which had its own tribal court, and which tribal court was held to be the proper court of jurisdiction for the adoption matter. (Id.)

Here, Respondent and Amici hope this Court will not see the differences of on and off reservation application of federal laws previously distinguished by the

United States Supreme Court in Mescalero Apache Tribe v. Jones, as well as the Minnesota Supreme Court in Jefferson and Brun.

The interesting thing about Fisher is that the reservation government had passed a tribal ordinance conferring *concurrent jurisdiction* on state courts. (Id. at 384. In Fisher the Court clearly announced that

we reject the argument that denying the Runsaboves access to the Montana courts constitutes impermissible racial discrimination. The exclusive jurisdiction of the Tribal Court does not derive from the race of the plaintiff but rather from the quasi-sovereign status of the Northern Cheyenne Tribe under federal law. Moreover, even if a jurisdictional holding occasionally results in denying an Indian plaintiff a forum to which a non-Indian has access, such disparate treatment of the Indian is justified because it is intended to benefit the class of which he is a member by furthering the congressional policy of Indian self-government. *Morton v. Mancari*, 417 U.S. 535, 551-555, 94 S.Ct. 2474, 2483-2485, 41 L.Ed.2d 290 (1974).

See Fisher citing Mancari recognizing need to recognize tribal courts jurisdiction because “State-court jurisdiction plainly would interfere with the powers of self-government . . . .” Id. at 947. The Fisher Court also recognized that

resolution of conflicts between the jurisdiction of state and tribal courts has depended, absent a governing Act of Congress, on “whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.” *Williams v. Lee*, 358 U.S. 217, 220, 79 S.Ct. 269, 271, 3 L.Ed.2d 251 (1959); accord, *Kennerly v. District Court of Montana*, 400 U.S. 423, 426-427, 91 S.Ct. 480, 481-482, 27 L.Ed.2d 507 (1971) (Per curiam ).

Id. at 946. Kennerly is a case dealing with consent of Indians to state jurisdiction.

### **Consent of MCT on behalf of tribal members**

In Kennerly, the Supreme Court pointed out that

[w]e think the meaning of these provisions is clear: the tribal consent that is prerequisite to the assumption of state jurisdiction under the provisions of Title IV of the Act must be manifested by majority vote of the enrolled Indians within the affected area of Indian country.<sup>1</sup> Legislative action by the Tribal Council does not comport with the explicit requirements of the Act.

Id. at 429. The Supreme Court clearly announced that a tribal government by itself cannot consent on behalf of the tribal members without a referendum held for that purpose. Here, Respondents openly state that

[w]hen the Minnesota Chippewa Tribe voluntarily entered into the employment services contract with the State, it consented on behalf of its members to be bound by the contract's terms.

Resp. Brf. at 39. Amici adopt and "incorporate in full" Respondents' Legal Issue, Statement of the Case, Facts and Argument. However, the Amici fail to answer any of the four (4) questions Appellant posed in her initial Brief after Amicus Curiae was granted by this Court.

The contract between the Respondents and MCT also require that the MCT or other reservation "shall comply with the Indian Civil Rights Act of 1968." (ICRA) *See* MN-MCT MFIP grant Contract at section XX, previously attached to Appellant's Brief to Court of Appeals dated August 21, 2006, at Appendix page 78 (last document of appendix). The ICRA provides that

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

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<sup>1</sup> The following footnote appeared as FN 5 in Kennerly at 429. "The plain meaning of the statute is reinforced by the legislative history. Title IV of the 1968 Act was offered and principally sponsored by Senator Ervin of North Carolina as part of an amendment by way of a substitute to H.R. 2516, which eventually became part of the Civil Rights Act of 1968. See 114 Cong.Rec. 393-395. In discussing Title IV, Senator Ervin stated, *id.*, at 394:"

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;

ICRA, 25 U.S.C. §1302 (8)(Emphasis added). Here, Amici MCT has not shown any notice to tribal members affected or opportunity to be heard, much less a referendum by the tribal members affected. Yet in concert with Respondents the MCT has usurped an off reservation Indian's federal and state constitutional *rights of access* to public services. Evidently, Amicus MCT assert they have the power to consent to the deprivation of tribal members' other and various civil rights and contract them away with the state within which the tribal members reside?

### **Preference vs. Restriction**

Morton v Mancari (1974) is an employment decision unique to the BIA's employment practices. The Krueth Court was correct to follow Mancari because the issue there was an Indian Employment preference under a Minnesota Act.

However, as the Krueth Court aptly pointed out

[i]f section 126.501 has any meaning anywhere in the State of Minnesota, it has meaning in Independent School District No. 38, Red Lake, Minnesota. The school district is located entirely **on the Red Lake Reservation** and consists of a student population almost 100% American Indian.

Krueth at 837. (Emphasis added for on reservation).

However, Respondents pointing to St. Paul Intertribal Housing Bd. v Reynolds must necessarily rely on legislative intent. Not just the alleged

Minnesota Legislature's intent<sup>2</sup> alluded to by Respondents, but Congressional intent. That federal District Court discussed the need for thorough Congressional intent to underlie the State's attempt to use the federal "trust doctrine" as a rational basis for an off reservation housing program for Indians only. That Court pointed out that because the St. Paul Intertribal Housing

Board's more extensive showing of *congressional intent* to benefit Indians in the Housing Act is sufficient to establish that Indian preference programs relying on that Act fall under the trust doctrine.

Id. at 1412, (Emphasis added). Here, Respondents attempt to infer and imply that the classification of tribal members is rationally related to the State's legitimate interest in promoting inter-governmental agreements and tribal self-government. As there was no actual evidentiary hearing, Respondent's attempt to insert new evidence and alleged facts in their present Response Brief by Addendum. Appellant wonders why, if, these documents are relevant now, why they were not disclosed previously under Appellant's on-going discovery request?<sup>3</sup> Respondent seems to prefer hiding the ball until service assists Respondent's needs.<sup>4</sup>

The Minnesota Statute at issue requires only that county agencies refer Indian tribe members who are receiving MFIP benefits to obtain employment

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<sup>2</sup> Respondents attempt to insert information into the Record by Addendum and infer and imply intent.

<sup>3</sup> Appellant served and filed a formal Discovery Demand dated June 6, 2005, including a request for the transcript from the original agency hearing, which was not given to Appellant until attached in Respondent's Appellate Court Response Brief.

<sup>4</sup> See also Brochure of Minnesota Chippewa Tribes Employment Program (R. Add. 5) and Instructional Bulletin #94-9B (R. Add. 7).

services through their Indian tribe. Minn. Stat. § 256J.645, subd. 4. Additionally, the statute only requires such a referral if the tribal member “reside[s] in the service area of an Indian tribe operating employment services under an agreement with the commissioner.” Id. Initially, this Court could find that this statute does not on its face violate the equal protection rights of tribal members. But, the contract agreed to by MCT and the Department requires Indian tribal members to receive service through MCT rather than through their county agency. Within this scope of restricted or *channeled* **Rights of Access**, we turn to determine the appropriate test in determining whether the tribal classification satisfies Constitutional equal protection.

The Court of Appeals considered two equal protection tests, strict scrutiny and rational basis. Greene argues that the application of the rational basis test below resulted in an inaccurate holding. Strict Scrutiny applies to legislative statutes when the statute (1) impermissibly limits a fundamental right, or (2) involves a suspect classification. Krueth at 835. Greene did not allege below that the statute impermissibly limited a fundamental right, but rather linked with the MN-MCT contract, that the classification based on tribal membership is suspect under the second element. Classifications based on race are generally considered ‘suspect’ and therefore fall subject to the strict scrutiny test. Washington v. Davis, 426 U.S. 229, 247 (1976). However, Courts have determined that preferences for American Indians are political classifications, rather than racial. Morton v. Mancari, 417 U.S. 535 (1974). This political classification relies upon the

limitation of legislation to members of federally recognized tribes. 496 N.W.2d at 837. Therefore, this Court should apply the rational basis test to the statute in question if the statute demonstrates a *preference* for Indian tribal members. However, if the statute does not demonstrate a preference for Indian tribal members, this Court should find a racial classification subject to strict scrutiny.

The enforcement of the contract between the MCT and the Department does not demonstrate a preference for Indian tribal members. Rather, the contract restricts the rights of Indian tribal members by advocating for the sovereignty of the tribe at large. The Krueth and Morton courts found that the *preference* shown to tribal members indicated a political classification within a statute. But, this Court should not extend those decisions to advocate the morality of *restricting* rights to Indian tribal members.

Since *restriction*<sup>5</sup> **does not equal** *preference*, this Court should apply a strict scrutiny test in analyzing the enforcement of the contract between the MCT and the Department. Under both the Minnesota and United States Constitution, the strict scrutiny test requires that a classification be (1) narrowly tailored to (2) meet a compelling governmental purpose. 496 N.W.2d at 835. No compelling interest is argued or served by Respondents or Amici.

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<sup>5</sup> See Roget's New Millennium™ Thesaurus, First Edition (v 1.3.1) Copyright © 2007 by Lexico Publishing Group, LLC. Found at [dictionary.com](http://dictionary.com) providing synonyms to **Restrict** include: constrict, contain, demarcate, demark, diminish, encircle, hamper, handicap, hang up, hold back, hold down, impede, inclose, inhibit, limit, prelimit, reduce, regulate, restrain, etc. Synonyms for **Restriction** include: condition, confinement, constraint, containment, contraction, control, regulation, reservation, restraint, rule, etc.

### Support tribal self-governance

Respondents continue to assert that they have the best intentions and want to promote intergovernmental agreements and tribal self-government. But *compare* in 1999 when a decade long treaty rights case concluded in Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172, 119 S.Ct. 1187, 143 L.Ed.2d 270 (1999). *Combined with* Fond du Lac Band of Chippewa Indians v. Carlson, No. 5-92-159 (D.Minn. Mar. 18, 1996). Following the decision Minnesota paid attorney fees to the Bands in excess of \$2 million. Also compare State v R.M.H., 617 N.W.2d 55 (2000) where the 1990 Congressional Act known as the Duro fix<sup>6</sup> was missed by the Minnesota Supreme Court which Congressional legislation overturned Duro v. Reina, 495 U.S. 676, 110 S.Ct. 2053, 109 L.Ed.2d 693 (1990), which the Minnesota Supreme Court relied upon instead. Also compare in 2006, State v. Hart, Not Reported in N.W.2d, 2006 WL 1229587 (Minn.App.) *rev. denied*, where the Court of Appeals followed the R.M.H. Court where they weighed the “federal interest in tribal sovereign authority and the state's interest in regulating traffic on its highways, the supreme court determined that the federal interest of tribal sovereignty is diminished when the state exercises jurisdiction over nonmember Indians.” R.M.H. at 64. Here, the Hart Court recognized the

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<sup>6</sup> *Duro fix*, Act of Nov. 5, 1990, Pub. L. No. 101-511, § 8077(b), 104 Stat. 1892 (25 U.S.C. 1301(2)). Made permanent Act of Oct. 28, 1991, Pub. L. No. 102-137, § 1, 105 Stat. 646.

“Duro fix” but not the preemption and subsequent infringement on tribal sovereignty and self-governance.

This year alone in 2007, two cases where the majority declined to recognize federal preemption and infringement. 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.<sup>FN3</sup> 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 for and/or authority under the Supremacy clause to find jurisdiction when they created the Adam Walsh Act to cover all circumstances thereby occupying the field of law.

Most recently in State v. Losh, 739 N.W.2d 730, Minn.App., October 09, 2007 (NO. A06-1910), quoting State v. R.M.H.

the district court held that Losh, a nonmember of the Leech Lake Band of Ojibwe, "is not entitled to the same 'insulation from state government authority' on the Leech Lake Reservation because the Leech Lake Band's sovereign interest is not as strongly implicated as it would be with an enrolled member."

Losh at 731. Here, Respondents can not argue with any case law consistency that Minnesota supports tribal self-governance or tribal sovereignty by the various cases just provided by Appellant.

### **Citizenship**

Under federal law, the Indian Citizenship Act<sup>7</sup>, Buddie Greene is a citizen simply by being born in Duluth, Minnesota and by being an Indian because

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<sup>7</sup> The text of the 1924 Indian Citizenship Act (43 U.S. Stats. At Large, Ch. 233, p. 253 (1924)) reads as follows:

The following shall be nationals and citizens of the United States at birth:

**(a) a person born in the United States**, and subject to the jurisdiction thereof;

**(b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe:** *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;

See 8 U.S.C.A. § 1401. Indians were made citizens under Indian Citizenship Act of 1924, which precedes the Minnesota Chippewa Tribe (MCT) becoming a federally recognized Indian tribe organized under a constitution and by-laws ratified by the Tribe on June 20, 1936, and approved by the Secretary of the Interior on July 24, 1936, pursuant to the Howard-Wheeler Act or Indian Reorganization Act.<sup>8</sup> As such, Indians were citizens before becoming enrolled in federally recognized tribes under the Indian Reorganization Act.

Congress has trust responsibilities to Indians and also to tribes, which are two different and distinct groups. Here, Respondents are financially contracting

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BE IT ENACTED by the Senate and house of Representatives of the United States of America in Congress assembled, That all non citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: Provided That the granting of such citizenship shall not in any manner impair or otherwise affect the right of any Indian to tribal or other property."

Approved, June 2, 1924. June 2, 1924. [H. R. 6355.] [Public, No. 175.] SIXTY-EIGHTH CONGRESS. Sess. I. CHS. 233. 1924. See House Report No. 222, Certificates of Citizenship to Indians, 68th Congress, 1st Session, Feb. 22, 1924. Note: This statute has been codified in the United States Code at Title 8, Sec. 1401(a)(2).

<sup>8</sup> See section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat., 378).

with and favoring one group (tribes) at the expense of the Indian peoples' civil rights under the ICRA and the constitutions of the United States of America, State of Minnesota and Minnesota Chippewa Tribe.

**Mandatory vs. Passive**

The language of Minn. Stat. § 256J.645 is mandatory for the county *must* refer tribal members to the tribal service provider. The MN-MCT MFIP contract may also be a mandatory “supply” contract, where the MCT is supposed to accept all tribal members referred (supplied) by the county. However, there is no such *mandatory* language in the contract, which applies to tribal members. And there is no mandatory language directing the Indian people to obey. Instead a simple form asking simple questions is used.

Appellant Greene was not familiar with Minn. Stat. § 256J.645, and certainly not privy to the MN-MCT MFIP Contract. The only document Appellant Greene encountered was the Tribal/Reservation Membership form. See Exhibit A-1 in Appellant's principal brief. The language in the form is vague at best stating that

This form gives the county agency data it needs to decide where you can get MFIP employment Services. Members of some Indian tribes or Bands can get services from a Tribal Program. Others can get services from the county.

Id. at Exhibit A-1.

The word “can” is similar in meaning to the word “may.” Can or may suggests something is permitted rather than required and not an exclusive or

required means. See In Re Estate of Palmer, 658 N.W.2d 197 (2003). In the Palmer case the Minnesota Supreme Court held that “*the word ‘may’ is permissive.*” Id. at 199 commenting on Minnesota’s probate statutes Minn. Stat. § 645.44, subd. 15 (2002)(Emphasis added). The Supreme Court went on to note that “the district court and court of appeals both correctly interpreted Minn. Stat. § 524.2-114 as permitting, but not requiring . . . .” Id. Certainly the words *can get* on a form asking about tribal enrollment do not give any meaningful information for which an applicant can make an informed decision that becomes binding and mandatory.

### CONCLUSION

Respondents have deprived Appellant Greene of her various civil rights to access and use any public service, anywhere in the United States, here particularly in Aitkin County, Minnesota. (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’ *rights of public access* can be *channeled* away from the public’s 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 *only* to 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 access* public service as every other citizen, is contemptuous of human and civil rights in the 21<sup>st</sup> Century.

Certainly Appellant Greene purchased Minnesota's extended civil rights "advantages, rights and protections" in her 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 whether/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 financial sanctioning.*

The MN-MCT 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: November 19, 2007

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