

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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No. 98003-9

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**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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In the Dependency of Z.L.G. and M.G., minor children

STATE OF WASHINGTON, DSHS

Respondent,

v.

SCOTT JAMES GREER,

Appellant.

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**MOTION FOR LEAVE TO FILE BRIEF OF  
AMICI CURIAE AMERICAN INDIAN LAW PROFESSORS,  
CENTER FOR INDIAN LAW & POLICY, FRED T. KOREMATSU  
CENTER FOR LAW AND EQUALITY, AND AMERICAN CIVIL  
LIBERTIES UNION OF WASHINGTON IN SUPPORT OF  
PETITIONER**

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**I. MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE**

**A. Identity of Moving Parties**

Professors Robert T. Anderson, Kristen A. Carpenter, Angeliq  
ue W. EagleWoman, Matthew L.M. Fletcher, Lorie Graham, and Sarah  
Krakoff, in their scholarship and clinical practice focus on the subject-  
matter areas—Indian law, tribal powers, and federal- and state-court  
jurisdiction under the Indian Child Welfare Act, 25 U.S.C. § 1901, et  
seq.—that are implicated by this case. Amici have an interest in ensuring  
that cases in these fields are decided in a uniform and coherent manner,  
consistent with the foundational principles of these areas of law. Amici  
submit this brief to highlight the extent to which the court below  
incorrectly applied the Act’s notice requirement, which allowed the State  
to improperly circumvent the Act.

The Center for Indian Law & Policy (“CILP”) at Seattle University  
School of Law is dedicated to educating the next generation of Indian law  
attorneys by providing educational opportunities for students and  
practitioners. CILP works with tribes and tribal attorneys providing them  
with information, training and support they need to be successful in  
improving the quality of life throughout Indian Country. CILP also  
oversees a student-run American Indian Law Journal, oversees tribal

judicial clerkships, assists tribes and attorneys in drafting and revising tribal codes and constitutions, provides continuing legal education to bench and bar on Indian law topics, hosts public forums and events highlighting existing and emerging issues in Indian Country, and oversees the most extensive Indian and tribal law curriculum in the Pacific Northwest. CILP has a special interest in ensuring the proper application of ICWA. The Center takes the position that ICWA fulfills its purpose of recognizing each Tribe's inherent sovereignty over the upbringing, education and protection of the next generation of its members and leaders. The Center for Indian Law & Policy does not, in this brief or otherwise, represent the official views of Seattle University.

The Fred T. Korematsu Center for Law and Equality (Korematsu Center) is based at Seattle University School of Law and advances justice through research, advocacy, and education. The Korematsu Center is dedicated to advancing the legacy of Fred Korematsu, who defied the military orders during World War II that ultimately led to the incarceration of over 120,000 Japanese Americans. He took his challenge to the military orders to the United States Supreme Court, which upheld his conviction in 1944 on the ground that the removal of Japanese Americans was justified by "military necessity." Mr. Korematsu went on to successfully reopen his case and clear his conviction and to champion the cause of civil liberties

and civil rights for all people. The Korematsu Center, inspired by his example, works to advance his legacy by promoting social justice. The Korematsu Center has a special interest in ensuring that the government follow appropriate procedures in its treatment of Native children. In this vein, the Korematsu Center is serving as co-counsel to two tribes in Alaska to ensure adequate procedures when Alaska Native foster children are confined in private psychiatric hospitals, *Native Village of Hooper Bay et al. v. Lawton et al.*, No. 3AN-14-5238CI (Superior Ct., Third Judicial District at Anchorage), and a tribe and two young men in Alaska to ensure adequate procedures are followed with regard to the administration of psychotropic medication to foster children, *Native Village of Kotlik et al. v. Lawton*, No. 3AN-17-06569CI (Superior Ct., Third Judicial District at Anchorage). The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

The American Civil Liberties Union of Washington (ACLU-WA) is a statewide, nonprofit, nonpartisan organization with over 135,000 members and supporters. It is dedicated to the preservation and defense of civil liberties and civil rights and has particular interest and expertise in the area of tribal sovereignty. ACLU-WA recognizes that Native American tribes have been wronged by the government since the country's founding, and defends the rights of tribes and Native Americans to be free

from discrimination and governmental abuse of power. This case presents an important issue regarding ICWA and the potential for resulting harm against Native American children, parents, and tribes. ACLU-WA has often participated as amicus in dependency cases such as this.

### **B. Statement of Relief Sought**

Amici seek permission, pursuant to RAP 10.6(a), for leave to file the accompanying amicus curiae brief on the basis that it will assist the Court by providing further explanation and context so that this Court will understand better the history of the improper removal of Indian children from their homes, including in Washington state.

### **C. Facts Relevant to Motion**

This motion was prepared by attorneys authorized to practice law in Washington, as required by RAP 10.6(a). The motion likewise satisfies the requirements of RAP 10.6(b).

#### ***1. Amici's Interest in this Case***

Amici's interest in this case is detailed above. Amici Kristen A. Carpenter, Angelique W. EagleWoman, Matthew L.M. Fletcher, the Center for Indian Law & Policy, and the Fred T. Korematsu Center for Law and Equality were previously granted permission by this Court to submit an amicus memorandum in support of review in this matter.

#### ***2. Familiarity with Issues and Argument***

Attorneys for amici have reviewed the record and the arguments presented by the parties in the Court of Appeals and in this Court. Amici is familiar with the scope of the arguments presented by the parties and will not unduly repeat their arguments.

### ***3. Issues Amicus Curiae Brief Will Address***

Amici will address whether the court should reverse the decision below because proper notice was not provided as required by ICWA. The question of proper notice when the state through its agencies and its courts removes a child that it has reason to know is or may be an Indian child is a matter of substantial public interest and is vital to Tribal interests. The brief provides important context so that this Court will understand better the history, including in Washington state, of the improper removal of Indian children from their homes. The brief highlights how, historically, the failure to provide notice to Tribes resulted not only in families being torn apart but also jeopardizing the continued existence of the Tribes.

### ***4. Belief that Additional Argument Is Necessary on These Issues***

Amici believe that additional argument on this issue is critical for this Court to appreciate fully what is at stake when Washington state, through its agencies and its courts, removes a child who is or may be an Indian child. Because the Court's decision on the issues in this case will



significantly impact an important area of law in this state and will affect an especially vulnerable population, amici believe that the brief will add further detail and context to assist the Court.

#### **D. Grounds for Relief and Argument**

Amici request that the Court allow the filing of the brief on the ground that it meets all the requirements contained in RAP 10.6 for submission of an amicus curiae brief.

#### **II. TIMELINESS**

Consistent with RAP 10.2(f), the Court by its April 21, 2020, letter ruling granted an extension for amicus curiae briefs and their accompanying motions to be due on or before May 29, 2020. This motion is therefore timely filed.

#### **III. CONCLUSION**

Amici respectfully request that the Court accept the proposed brief for filing and permit them to participate in the case as amici curiae.

DATED: May 29, 2020

*/s/ Brooke Pinkham*

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## DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington, that on May 29, 2020, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 29th day of May, 2020.

/s/ Brooke Pinkham  
Brooke Pinkham  
Counsel for Amici Curiae

# SEATTLE UNIVERSITY SCHOOL OF LAW

May 29, 2020 - 9:16 AM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98003-9  
**Appellate Court Case Title:** In the Matter of the Dependency of Z.J.G. and M.E.J.G., minor children.

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