

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

No. 98003-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE THE DEPENDENCY OF Z.J.G. AND M.G., Minors,  
WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH,  
AND FAMILIES,

Respondent,

v.

SCOTT JAMES GREER,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR KING COUNTY

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RESPONSE TO AMICUS BRIEFS

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## I. ARGUMENT

The father responds to two points made in supplemental amicus briefs submitted in this matter.

First, *amici* detail the acute problem of Indian child removal, as studied in 1976, that led to the passage of ICWA. Supplemental Amicus Br. of American Indian Law Professors, *et al.*, at 4. The Children’s Tribes supplemental amicus brief further details the disproportionate rate of Indian child removal that led to the passage of WICWA. Supplemental Amicus Brief of the Children’s Tribes at 7-8.

In response, it is important to note that, even now, Indian children are disproportionately removed from their families in Washington State. Washington State DCYF Racial Disparity Indices Report (2018) at 10, 13 (noting that “placement rates for AI/AN [American Indian/Alaska Native] children/youth are highly elevated” and that “[r]elative to the degree of disparity evident at the other stages of decision making considered in this report, disparity of removal/placement is the clearest”).<sup>1</sup>

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<sup>1</sup> Report available at: [https://www.dcyf.wa.gov/sites/default/files/pdf/reports/Washington\\_State\\_DCYF\\_Racial\\_Disparity\\_Indices\\_Report\\_2018.pdf](https://www.dcyf.wa.gov/sites/default/files/pdf/reports/Washington_State_DCYF_Racial_Disparity_Indices_Report_2018.pdf) (last viewed June 18, 2020).

Second, the question of whether ICWA and WICWA are constitutional is not before this Court; no party has made that challenge. Further, the state has already conceded that even a broad construction of the statutory notice requirements would not render the statute unconstitutional. DCYF Supplemental Br. at 14. However, to the extent it is relevant to addressing the argument raised in the state’s supplemental brief that ICWA should be construed to avoid “constitutional concerns,” the supplemental amicus brief of American Indian Law Professors, *et al.*, should be given great weight.

In making a passing reference to this constitutional question, the state relies on a law review article by Prof. Matthew Fletcher, (“discussing the possibility of invalidation”), DCYF Supplemental Br. at 13, who is one of the law professors who submitted the amicus brief in this case. The supplemental brief of American Indian Law Professors conclusively dispels any concerns about ICWA’s constitutionality. Supplemental Amicus Br. of American Indian Law Professors, *et al.*, at 10-18. *See also* Matthew L.M. Fletcher, *Politics, Indian Law, and the Constitution*, 108 Calif. L. Rev. 495, 552 (2020) (“Congress reasonably made a decision to legislate specifically in favor of Indian children, Indian parents, and Indian potential foster and adoptive families given the discrimination they all faced. None of the

choices made by Congress in ICWA are irrational choices to apply federal law to Indians on the basis of their race or ancestry.”).

DATED this 18th day of June, 2020.

Respectfully submitted,

KING COUNTY DEPARTMENT OF  
PUBLIC DEFENSE

s/Tara Urs

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# KING COUNTY DEPARTMENT OF PUBLIC DEFENSE

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## Transmittal Information

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**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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