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No. 98003-9

SUPREME COURT OF THE STATE OF WASHINGTON

IN RE DEPENDENCY of Z.J.G. AND M.E.J.G,
minor children.

**DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES'
RESPONSE TO AMICI CURIAE**

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TABLE OF CONTENTS

I. INTRODUCTION1

II. ARGUMENT2

 A. The Reason-to-Know Finding at the 72-Hour Shelter Care Hearing Did Not Usurp the Role of the Tribe to Determine Membership3

 B. Basing a Reason-to-Know Finding on the Definition of Indian Child Does Not Undermine Legal Notice to Tribes5

 C. The Court Correctly Required a Reason to Know a Child Had a Political Connection to a Tribe9

 D. Other State Court Decisions Show that the Final Rule Requires a Reason to Know of a Political Affiliation with a Tribe15

III. CONCLUSION.....20

TABLE OF AUTHORITIES

Cases

<i>Brackeen v. Bernhardt</i> 937 F.3d 406, <i>reh'g en banc granted</i> , 942 F.3d 287 (5th Cir. 2019)	10
<i>Brackeen v. Zinke</i> 338 F. Supp. 3d 514 (N.D. Tex. 2018)	10
<i>Geouge v. Traylor</i> 68 Va. App. 343, 808 S.E.2d 541 (2017).....	16-17
<i>In re A.M.</i> 47 Cal. App. 5th 303, 260 Cal. Rptr. 3d 412 (2020).....	19
<i>In re Austin J.</i> 47 Cal. App. 5th 870, 261 Cal. Rptr. 3d 297 (2020).....	19
<i>In re B.R.</i> 176 Cal. App. 4th 773, 97 Cal. Rptr. 3d 890 (2009).....	19
<i>In re B.Y. & R.Y.</i> 432 P.3d 129 (Mont. 2018).....	18
<i>In re Dependency Z.J.G. & M.E.J.G.</i> 10 Wn. App. 2d 446, 448 P.3d 175 (2019).....	4, 14-15
<i>In re Interest of M.R.</i> No. 12-19-00375-cv, 2020 WL 500783 (Tex. App. Jan. 31, 2020)	18
<i>In re J.W.E., I.W.E. & J.W.E.</i> 419 P.3d 374 (Okla. Civ. App. 2018)	17
<i>In re L.A.G. & N.L.</i> 429 P.3d 629 (Mont. 2018).....	18
<i>In re M.W.</i> No. C089997, 2020 WL 3034156 (Cal. Ct. App. May 7, 2020)	19

<i>In re N.D.</i>	
46 Cal. App. 5th 620, 259 Cal. Rptr. 3d 826 (2020).....	19
<i>State ex rel. Children, Youth & Families Dep't v. Tanisha G.</i>	
451 P.3d 86 (N.M. Ct. App. 2019)	18

Statutes and Regulations

RCW 13.34.040(4).....	4
RCW 13.34.065(4).....	5
RCW 13.38.040(12).....	15
RCW 13.38.050	6, 11-12, 14
RCW 13.38.070	11
25 C.F.R. § 23.107	5
25 C.F.R. § 23.107(a).....	7
25 C.F.R. § 23.107(b)(2).....	9
25 C.F.R. § 23.107(c).....	5, 11, 16
25 C.F.R. § 23.107(c)(1).....	17
25 C.F.R. § 23.107(c)(2).....	17
25 C.F.R. § 23.108	5

Other Authorities

44 Fed. Reg. 67,584, 67,586 (Nov. 26, 1979).....	12
80 Fed. Reg. 10,146-02, 10,147-48, 10,152 (Feb. 25, 2015).....	12
81 Fed. Reg. 38,778-01, 38,795, 38,804, 38,806 (June 14, 2016).....	10

Bureau of Indian Affairs, U.S. Dep't of Interior,
*Guidelines for Implementing the Indian Child
Welfare Act* (Dec. 2016) 11-13

Washington State Dep't of Children, Youth & Families,
Indian Child Welfare Policies & Procedures
(last visited June 18, 2020), [https://www.dcyf.wa.gov/
indian-child-welfare-policies-and-procedures/](https://www.dcyf.wa.gov/indian-child-welfare-policies-and-procedures/) 7, 12

I. INTRODUCTION

The Department agrees with many of amici's arguments and fully supports the goals and policies of the Indian Child Welfare Act (ICWA) and Washington Indian Child Welfare Act (WICWA). But compliance with binding federal regulations and implementation of WICWA's distinction between the duty to investigate possible tribal connections versus the duty flowing from a "reason to know" determination supports affirming the Court of Appeals.

The Department and amici share common ground on many issues in this case. The Department agrees that ICWA and WICWA establish important protections for Indian children, parents, and tribes; that tribes have exclusive authority to determine membership and eligibility; that a party need not "prove" a child is an Indian child to meet the reason-to-know standard; that early identification of Indian children is important; that ICWA and WICWA are constitutional; and that the Bureau of Indian Affairs (BIA) Final Rule is a binding regulation with respect to ICWA's application.

Contrary to amici's arguments, the opinion below respects all of these principles. The main distinction between the Department and amici is where to draw the line between situations in which ICWA and WICWA should be presumptively applied and formal legal notice required, pending

official input from a tribe, and situations (like here) where available information does not give reason to know a child is an Indian child, and instead requires continued investigation and inquiry with potentially connected tribes. The Court of Appeals correctly drew that line by following the plain language of the statutes and regulations. This Court should affirm.

II. ARGUMENT

Underlying many of amici's arguments are two false premises: (1) that the trial court made a conclusive determination or demanded conclusive evidence on whether the children were Indian children, thus usurping the role of a tribe to determine membership; and (2) that without the reason-to-know finding, there is no way that potentially interested tribes will receive notice necessary to participate in the proceeding and protect their sovereign interests. Neither premise is true. Instead, the trial court and Court of Appeals properly applied the plain meaning of ICWA, WICWA, and binding federal regulations to determine that, given the information presented at the shelter care hearing, the court did not have reason to know that either the parents or children were members of a tribe, and thus did not have reason to know that the children were Indian children. The Department remained obligated to continue its investigation with tribes (which it did), and the court remained obligated to revisit the issue if additional information came to light.

Amici's alternative standard for determining when a court has reason to know a child is an Indian child ignores the plain language of the statute, the binding regulations and commentary, and the overall scheme of WICWA. This Court should affirm.

A. The Reason-to-Know Finding at the 72-Hour Shelter Care Hearing Did Not Usurp the Role of the Tribe to Determine Membership

Several amici assert that by concluding that there was not a reason to know the children were Indian children, the court usurped the role of the tribes in determining membership and eligibility. *E.g.*, Amicus Br. of Amicus American Indian Law Professors¹ at 9; Amicus Br. of Northwest Justice Project² at 11-12. But neither the trial court nor the Court of Appeals purported to make any conclusive determination of the children's Indian status. Nor did the lower courts attempt to determine membership or eligibility requirements for the tribe. Rather, the trial court examined the evidence presented at a particular point in time, and explicitly recognized that, although it found no reason to know the children were Indian children,

¹ The American Indian Law Professors, Center for Indian Law & Policy, Fred T. Korematsu Center for Law and Equality, and American Civil Liberties Union of Washington filed a joint amicus brief. The Department cites to Amicus Brief of American Indian Law Professors for ease of reference and reading.

² Legal Counsel for Youth and Children, Northwest Justice Project, and Washington Defender Association jointly filed an amicus brief. The Department cites to Amicus Brief of Northwest Justice Project for ease of reference and reading.

the Department was continuing to investigate.³ CP 10. This determination was entirely justified because at the shelter care hearing, no person gave information indicating that either the children or the parents were members of a federally recognized tribe. RP 11, 67, 88. Not only that, but there was preliminary information from the Tlingit and Haida Tribes that the mother and children were *not* enrolled members. RP 11.

The Department recognizes—as did the Court of Appeals in its opinion below—that a person may be considered a member of a tribe without being an enrolled member. *See In re Dependency Z.J.G. & M.E.J.G.*, 10 Wn. App. 2d 446, 463, 448 P.3d 175 (2019); *cf.* Amicus Br. of Northwest Justice Project at 13 (arguing Court of Appeals and Department conflated membership and enrolled membership). Nevertheless, where there was no information at the shelter care hearing indicating any kind of membership for the parents or children, the positive evidence from a tribe and parent of a *lack* of enrolled membership was relevant and properly relied on by the trial court. Contrary to amici’s argument, neither the Department nor the Court of Appeals have suggested

³ In addition to the court order acknowledging that the reason-to-know determination was not final and conclusive, Washington law requires the juvenile court to revisit the ICWA issue in “[e]very order or decree entered” at all subsequent dependency hearings. RCW 13.34.040(4).

that lack of enrolled membership conclusively established that the children were not Indian children.

Amici also suggest that it was somehow improper for the trial court to assess the information available at the shelter care hearing and determine whether at that point in time it had information indicating that the children were Indian children. *E.g.*, Amicus Br. of Northwest Justice Project at 11. But that is exactly what ICWA and WICWA require the court to do. 25 C.F.R. § 23.107; RCW 13.34.065(4). Inherent in any reason-to-know determination is an examination of the information before the court at the particular point in time, and an assessment of whether that information gives reason to know the child is an Indian child. It does not require the court to determine a tribe's membership criteria or decision-making; instead it looks to whether participants in the proceeding indicate the child is a member or eligible for membership and the biological child of a member. 25 C.F.R. § 23.107(c). The tribe retains full authority to determine membership and eligibility. 25 C.F.R. § 23.108.

B. Basing a Reason-to-Know Finding on the Definition of Indian Child Does Not Undermine Legal Notice to Tribes

Several amici argue that requiring information indicating that the statutory definition of Indian child is met would improperly deny notice to tribes and thwart the purpose of ICWA and WICWA. Amicus Br. of Tribes

at 7; Amicus Br. of Northwest Justice Project at 16. As discussed below, this argument ignores the plain language of the statutes and regulations. But it also ignores WICWA's overall statutory scheme, which accounts for the situation where information indicates a child's "possible Indian status" as distinct from when the reason-to-know standard is met. RCW 13.38.050. Where the child's Indian status is "possible," the Department must make a good faith effort to determine whether the child is an Indian child, including by contacting any Indian tribe "in which the child may be a member or may be eligible for membership." RCW 13.38.050.

Amici acknowledge that this obligation of a good faith inquiry is separate from a reason-to-know finding, and that it applies even before a court might have reason to know a child is an Indian child. Amicus Br. of Northwest Justice Project at 5-6; *see also* Amicus Br. of Tribes at 4 (noting that good faith effort to investigate is not the same as requirements arising from reason-to-know determination). But if the reason-to-know standard is met based on the low bar that amici advocate, there would be little use for this requirement. Reports of Indian heritage or ancestry with a specific tribe would instead trigger the full panoply of ICWA and WICWA protections, including formal legal notice, obviating any need for informal investigation and contacts.

Moreover, the good faith inquiry into the possible connection with tribes is robust and ensures that tribes will receive notice where there is a possibility that a child is an Indian child. The Department’s Indian Child Welfare Practices and Procedures require the Department to send inquiry letters and ancestry charts up to three times to tribes located within Washington state and twice to all other tribes. *ICW Manual*,⁴ Chapter 3: Policy 4. These inquiries are sent to the same tribal offices that would receive formal legal notice after a reason-to-know finding unless the tribe requests otherwise, thus alleviating the concern expressed by amici that the appropriate tribal representatives will not receive notice of the proceedings. Amicus Br. of Tribes at 5; Amicus Br. of Northwest Justice Project at 5. Even after sending the required notices, the social workers are instructed to continue ongoing efforts to obtain responses from the tribes, in situations where potentially connected tribes fail to respond. *ICW Manual*, Chapter 3: Policy 6. If, while making its good faith effort, the Department subsequently receives information that provides a “reason to know” the child is an Indian child, the Department is required to inform the court. 25 C.F.R. § 23.107(a); *see also ICW Manual*, Chapter 3: Policy 8.

⁴ Washington State Dep’t of Children, Youth & Families, *Indian Child Welfare Policies & Procedures (ICW Manual)* (last visited June 18, 2020), <https://www.dcyf.wa.gov/indian-child-welfare-policies-and-procedures/>.

This case demonstrates the effectiveness of WICWA's two-tiered approach in ensuring contact and involvement of potentially connected tribes. Where, as here, there was evidence of a child's potential connection with tribes, but no information indicating the child or parent was a member of any tribe, the Department sent inquiry letters to all of the potentially interested tribes. Dep't's Resp. Br. at Court of Appeals, App. A at 2. As noted by the trial court, the Department continued to investigate the children's Indian status after the shelter care hearing. CP 10. Amici portray the Tlingit and Haida Tribes' later intervention in the case as almost happenstance, or the result of voluntary efforts by the Department.⁵ Amicus Br. of Tribes at 7; Amicus Br. of Northwest Justice Project at 16. To the contrary, the Tlingit and Haida Tribes, Klawock Cooperative Association, and all of the other potentially connected tribes received inquiry letters from the Department in the course of the regular procedures followed by the Department, which were adopted to fulfill its obligations under WICWA and ICWA. Requiring evidence of a political connection with a tribe through membership in order to satisfy the reason-to-know requirements

⁵ The Tribes contend that the Klawock Cooperative Association is the children's tribe for ICWA purposes, and that the Tlingit and Haida Tribes intervened on behalf of the Klawock Cooperative Association. Amicus Br. of Tribes at vii. The Tribes of course have ultimate authority to determine their membership and desired involvement in child welfare proceedings, but the record here reflects that the Tlingit and Haida Tribes intervened; there is no indication that they intervened on behalf of the Klawock Cooperative Association. CP 19.

thus does not undermine the purposes of ICWA and WICWA. Nor does it prevent potentially connected tribes from learning of, and participating in, child welfare proceedings.

C. The Court Correctly Required a Reason to Know a Child Had a Political Connection to a Tribe

As discussed extensively in the Department's Supplemental Brief, the plain language of ICWA, binding regulations of the Bureau of Indian Affairs, and policy all support the Court of Appeals holding that the reason-to-know standard requires more than claims of Indian ancestry, and instead requires information indicating that a child is a member or eligible for membership and the biological child of a member. *See generally* Dep't's Suppl. Br. at 9-15. And despite some differences in statutory language, WICWA requires the same. Dep't's Suppl. Br. at 16-20. Amici make numerous arguments to the contrary, but none merit reversing the Court of Appeals.

Amicus American Indian Law Professors primarily focus on the constitutionality of a rule broadly requiring notice to tribes where there is not necessarily an indication that a child is a member of a tribe.⁶ Amicus

⁶ Amicus American Indian Law Professors argue that requiring legal notice to potentially interested tribes based on an expansive reason-to-know finding is constitutional, but ignore the requirement that the court apply ICWA unless and until a tribe confirms that a child is not a member. *See* 25 C.F.R. § 23.107(b)(2).

Br. of American Indian Law Professors at 10-18. The Department agrees that ICWA and WICWA are constitutional even under the interpretation advocated by Mr. G and amici, and Washington joined with 20 other states in submitting an amicus brief supporting ICWA in federal litigation challenging its constitutionality. *See Brackeen v. Bernhardt*, 937 F.3d 406, *reh'g en banc granted*, 942 F.3d 287 (5th Cir. 2019) (listing states joining amicus brief in Attorney and Law Firm section). Nevertheless, ICWA has been challenged with at least some success as using unconstitutional, race-based classifications, and amici's proposed interpretation makes the statute more vulnerable to such attack. *See Dep't's Suppl. Br. at 13* (citing *Brackeen v. Zinke*, 338 F. Supp. 3d 514 (N.D. Tex. 2018) and commentators). More importantly, this constitutional concern helps explain the BIA's requirement in the Final Rule that a reason-to-know determination must be based on a political affiliation rather than race. *See* 81 Fed. Reg. 38,778-01, 38,795, 38,804, 38,806 (June 14, 2016).

Amicus Northwest Justice Project agrees that a reason-to-know determination must be based on political affiliation but argues that Indian heritage can be relevant evidence of such political affiliation. Amicus Br. of Northwest Justice Project at 11-13. The Department agrees that claims of Indian heritage with a specific tribe are relevant evidence of a child's "possible Indian status" that would trigger the Department's good

faith inquiry under RCW 13.38.050. But reports of Indian heritage, without more, do not indicate that a child is an Indian child and therefore do not give a court reason to know the child is an Indian child. *See* 25 C.F.R. § 23.107(c).

Northwest Justice Project also cites to Department policies when WICWA was enacted and the BIA *2016 Guidelines*, but these policies cannot displace the statutory language and federal regulations followed by the Court of Appeals. Amicus Br. of Northwest Justice Project at 4, 7-9. First, Northwest Justice Project notes that the Department's former policies instructed the Department to contact tribes when it had reason to believe or information suggesting a child was "Indian" rather than requiring the child be an "Indian child." Amicus Br. of Northwest Justice Project at 8. It is unclear, in the first instance, whether this policy language refers to what later became the good faith inquiry under RCW 13.38.050 or a reason-to-know determination under RCW 13.38.070. In any event, these policies cannot override statutory language or federal regulations.

Similarly, Northwest Justice Project's attempt to use the Department's current policy to support its interpretation fails. Northwest Justice Project argues that the Department's inclusion of the BIA Final Rule's requirement that a child be treated as an Indian child unless and until the tribe says otherwise in the same section of its manual that instructs case

workers to ask about ancestry has some significance.⁷ Amicus Br. of Northwest Justice Project at 9 (citing Wash. State Children’s Admin., Indian Child Welfare Manual, § 03.20(5) (2016)). Northwest Justice Project appears to be citing to the section of the manual that explains the good faith inquiry process required by RCW 13.38.050. *See ICW Manual*, Chapter 3: Procedures.⁸ The Manual therefore provides no support for their claim that ancestry alone is used to make a reason-to-know determination. The legal notice required after a reason-to-know finding is addressed elsewhere in the Manual. *ICW Manual*, Chapter 6: Policy 4(b), (c). Like the former policies, the Department’s current policies also cannot override statutory language or federal regulations.

Northwest Justice Project also relies on the guidelines published by the BIA in 2016. Amicus Br. of Northwest Justice Project at 3-4 (citing Bureau of Indian Affairs, U.S. Dep’t of Interior, *Guidelines for Implementing the Indian Child Welfare Act (2016 Guidelines)* 11

⁷ Northwest Justice Project also incorrectly states that the BIA guidelines in effect in 2011 required the same presumptive application of ICWA. Amicus Br. of Northwest Justice Project at 9 n.6. The *1979 Guidelines* in effect in 2011 did not require a presumptive application of ICWA when a court had reason to know a child was an Indian child. *See* 44 Fed. Reg. 67,584, 67,586 (Nov. 26, 1979). That requirement was first promulgated by the BIA in *2015 Guidelines*, which were non-binding and later superseded by the Final Rule and *2016 Guidelines*. *See* 80 Fed. Reg. 10,146-02, 10,147-48, 10,152 (Feb. 25, 2015).

⁸ Northwest Justice Project appears to cite to a former version of the *ICW Manual*, because the numbered section they cite does not exist in the current policy. *See ICW Manual*, Chapter 3. The language they quote remains in Chapter 3, however. *ICW Manual*, Chapter 3: Policy 1.

(Dec. 2016)). While those guidelines emphasize the importance of providing early notice to tribes and suggest that courts interpret the factors showing a reason to know expansively, the same guidelines reject amici's broad interpretation of the reason-to-know standard:

The rule reflects the statutory definition of "Indian child," which is based on the child's political ties to a federally recognized Indian Tribe, either by virtue of the child's own citizenship in the Tribe, or through a biological parent's citizenship and the child's eligibility for citizenship. ICWA does not apply simply based on a child or parent's Indian ancestry. Instead, there must be a political relationship to the Tribe.

2016 Guidelines at 10. In addition, immediately after suggesting that state courts interpret the factors of the Final Rule expansively, the Guidelines note: "When in doubt, it is better to conduct further investigation into a child's status early in the case; this establishes which laws will apply to the case and minimizes the potential for delays or disrupted placements in the future. States or courts may choose to require additional investigation into whether there is a reason to know the child is an Indian child." *2016 Guidelines* at 11. The *2016 Guidelines* thus do not support finding a reason to know a child is an Indian child where preliminary information indicates that neither the parent nor the children were members of a tribe.

Several amici also suggest that because ICWA's requirements would benefit children and families regardless of whether they are Indian

children, there is no harm to applying ICWA broadly while waiting to confirm potential tribal connections with a tribe. *E.g.*, Amicus Br. of American Indian Law Professors at 19; Amicus Br. of Northwest Justice Project at 17. This argument ignores the legislative policies expressed in ICWA and WICWA, which clearly distinguish between standards and procedures designed to protect Indian children, families, and tribes, and those applicable to non-Indian children. Broad application of ICWA and WICWA to non-Indian children could also impact the availability of qualified expert witnesses and Indian family placements for Indian children.

Finally, amici repeat Mr. G's arguments that WICWA provides greater protection than ICWA because WICWA refers to a court having reason to know that the child is "or *may be*" an Indian child. *E.g.*, Amicus Br. of Northwest Justice Project at 7; Amicus Br. of Tribes at 9. Amici do not address the Court of Appeals conclusion that despite the difference in statutory language, both ICWA (as explained in the Final Rule) and WICWA address uncertainty regarding whether a child is an Indian child. *In re Dependency Z.J.G.*, 10 Wn. App. 2d at 463. Nor do they address that an expansive interpretation of the reason-to-know standard would make the good faith inquiry requirement of RCW 13.38.050 superfluous. *See* Dep't's Suppl. Br. at 17. They thus provide no reason for rejecting these arguments that support the Court of Appeals.

The Tribes also repeat Mr. G's late-raised argument regarding WICWA's definition of "membership," which includes eligibility for membership. Amicus Br. of Tribes at 9 (citing RCW 13.38.040(12)). Like Mr. G, the Tribes fail to address the internal conflict in WICWA between the definition of Indian child and the definition of membership. Nor do they address prior indications by this Court and the legislature that the definition of Indian child under ICWA and WICWA is identical. *See* Dep't's Suppl. Br. at 19. Accordingly, they provide no further support to Mr. G's incomplete argument.

D. Other State Court Decisions Show that the Final Rule Requires a Reason to Know of a Political Affiliation with a Tribe

The Tribes' amicus brief claims that the Court of Appeals opinion is an outlier among decisions issued both before and after the BIA adopted the Final Rule. Amicus Br. of Tribes at 16. In fact, the cases they cite, while not unanimous, generally reinforce the Court of Appeals' recognition that a court must have reason to know of a child's or parent's membership in a tribe rather than relying on ancestry or heritage alone. *See In re Dependency Z.J.G.*, 10 Wn. App. 2d at 468.

In arguing for a lower threshold for meeting the reason-to-know standard, the Tribes primarily discuss cases published before the Final Rule established an exclusive list of factors governing this determination.

Amicus Brief of Tribes at 16-17; *see also* 25 C.F.R. § 23.107(c) (“How should a State court determine if there is reason to know the child is an Indian child?”). These cases are inapposite. Further, none of the cited cases address the particular facts here, where no person testified that the children or parents were members, and the court had information from a tribe and a parent that the parent and children were *not* enrolled members. RP 11, 90.

With respect to cases issued after the Final Rule, the Tribes cite several cases that support the Department rather than the Tribes, several that do not support either the Department or the Tribes due to uncertain facts or failing to address the issue, and a minority of cases that support the Tribe. In the first case cited by the Tribe, the court rejected the rule advocated by the Tribes and other amici, and instead held that the reason-to-know standard was not met where a parent reported Cherokee heritage, but could not say whether the child was an Indian child as defined under ICWA. *Geouge v. Traylor*, 68 Va. App. 343, 351, 365, 808 S.E.2d 541 (2017) (cited in Amicus Brief of Tribes at 17). Instead, the parent could only assert that ICWA “might” apply, which the court found insufficient. *Id.* The *Geouge* court also noted that before the Final Rule was issued, state courts had split on the reason-to-know analysis, with some finding only a “bald assertion” sufficient. *Id.* at 367. The *Geouge* court disregarded that prior precedent, and instead examined the factors set forth in the Final Rule to determine

that a participant's good faith belief that ICWA "might" apply was not enough; instead, a party must "assert in good faith a belief that the child 'is an 'Indian child.''" *Id.* at 367 (citing 25 C.F.R. § 23.107(c)(1), (2)).

Similarly, the Tribes' reliance on *In re J.W.E., I.W.E. & J.W.E.*, 419 P.3d 374 (Okla. Civ. App. 2018), is misplaced. There, the court held that there was a reason to know the children were Indian children based on testimony that the mother was an "established member" of the Choctaw Nation, which would qualify the children for membership, and that she was in the process of enrolling the children. *Id.* at 380. The court noted with apparent favor the *Geouge* court's analysis requiring a party to assert a child "is" an Indian child rather than "might" be an Indian child. *Id.* at 379. Based on a misunderstanding of the facts, the Tribes claim that the Department's approach would have resulted in a different outcome. Amicus Brief of Tribes at 18-19. But this is not true. The *In re J.W.E.* decision is entirely consistent with the Court of Appeals opinion because a participant had provided information indicating the child met ICWA and WICWA's definition of an Indian child, based on the parent's tribal membership and the children's eligibility for membership. *See* 25 C.F.R. § 23.107(c)(1), (2); *In re J.W.E.*, 419 P.3d at 380. Here, in contrast, no evidence was presented that a parent or child was a member of a tribe.

Several of the other post-Final Rule cases cited by the Tribes do not support their claims because they do not address the reason-to-know analysis or do not clearly set forth the factual predicates for the analysis. *State ex rel. Children, Youth & Families Dep't v. Tanisha G.*, 451 P.3d 86, 88 (N.M. Ct. App. 2019) (addressing standard for reversing reason-to-know finding in face of state agency stipulation but otherwise failing to address reason-to-know analysis); *In re B.Y. & R.Y.*, 432 P.3d 129, 132 (Mont. 2018) (reason to know children were Indian children because state agency asserted the children may be Indian children and tribe had not responded to inquiries, but no discussion of underlying facts giving rise to state agency assertion). Finally, the Tribes cite several opinions that support the view that evidence of membership is not required to meet the reason-to-know standard. Amicus Brief of Tribes at 17-18 (citing *In re L.A.G. & N.L.*, 429 P.3d 629, 632-33 (Mont. 2018) (discussing reason-to-know standard, uncontested on appeal, to find standard satisfied based on evidence of eligibility alone); *In re Interest of M.R.*, No. 12-19-00375-cv, 2020 WL 500783, *3 (Tex. App. Jan. 31, 2020) (extensive evidence of heritage with specific tribes without evidence of membership was sufficient to meet reason-to-know standard)). As the Tribes acknowledge, Texas courts have come to differing conclusions. Amicus Brief of Tribes at 17-18.

Far from showing Washington as an outlier, the Tribes' citation to post-Final Rule cases in other jurisdictions shows that Alabama, Oklahoma, and Virginia reject a reason-to-know standard that is disconnected from the Final Rule factors and statutory definition of Indian child. Among the cases cited by the Tribe, only Montana clearly agrees with the Tribe's interpretation and Texas courts remain conflicted on the issue. The Tribes do not cite post-Final Rule cases from California, but that state too has followed the Final Rule's list of factors in determining that reporting of heritage alone did not provide reason to know that a child was an Indian child. *In re A.M.*, 47 Cal. App. 5th 303, 321-22, 260 Cal. Rptr. 3d 412 (2020).⁹

In short, the majority of other jurisdictions addressing the reason-to-know standard after the BIA promulgated its Final Rule agree with the Court of Appeals: a court has reason to know a child is an Indian child when one of the factors in the Final Rule has been met. Reports of heritage with

⁹ The Tribes claim that some districts in California agree with its interpretation, but cite only to a 2009 opinion, and admit that California later amended its statutes to conform to the Final Rule issued in 2016. Amicus Brief of Tribes at 16 & n.3 (citing *In re B.R.*, 176 Cal. App. 4th 773, 97 Cal. Rptr. 3d 890 (2009); *In re Austin J.*, 47 Cal. App. 5th 870, 261 Cal. Rptr. 3d 297 (2020)). In addition to *In re Austin J.* and *In re A.M.*, California has just in the last few weeks published an opinion recognizing that under the new law, which mirrors the Final Rule, reports of Indian heritage do not satisfy the reason-to-know standard. *In re M.W.*, No. C089997, 2020 WL 3034156 (Cal. Ct. App. May 7, 2020). *But see In re N.D.*, 46 Cal. App. 5th 620, 259 Cal. Rptr. 3d 826 (2020) (holding reason-to-know requirement met based on reports of Indian heritage).

specific tribes, without information suggesting membership of the child or parent, is not sufficient.

III. CONCLUSION

The Department agrees with many of the concerns expressed by amici, and is committed to implementing the policies and important protections of ICWA and WICWA. The two-tiered approach set forth in WICWA fully supports those policies: When there is information of potentially connected tribes, the Department must investigate and inquire with the tribes. When information surpasses that potential connection and gives a court reason to know a child is an Indian child, the Department must provide formal legal notice and ICWA will provisionally apply until the tribe makes the ultimate determination on whether the children are Indian children. This Court should affirm the decisions below.

RESPECTFULLY SUBMITTED this 18th day of June 2020.

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DATED this 18th day of June 2020.

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