

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

OGLALA SIOUX TRIBE, et al.,

Plaintiffs,

v.

LUANN VAN HUNNIK, et al.,

Defendants.

Case No. 5:13-cv-05020-JLV

**UNITED STATES' MEMORANDUM IN SUPPORT OF ITS
MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE**

The United States hereby respectfully requests leave of court to file an amicus brief pursuant to 28 U.S.C. § 517 regarding the two Motions for Partial Summary Judgment filed by Plaintiffs in this case. The amicus brief is attached as Exhibit 1 to the Motion for Leave to File a Brief as Amicus Curiae. The United States believes that this amicus brief may be of substantial assistance to the Court in resolving this case.

Significant federal interests are implicated in this case. Plaintiffs' First Partial Motion for Summary Judgment involves the interpretation and application of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 (2012) ("ICWA"). The United States has a "special relationship" with federally recognized Indian tribes. *See, e.g., Morton v. Mancari*, 417 U.S. 535, 552 (1974). Congress explicitly enacted ICWA in furtherance of this special relationship. 25 U.S.C. § 1901 (statute enacted in recognition of "the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people..."). Congress found in ICWA that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in

protecting Indian children.” *Id.* § 1901(3). In addition, the United States, through the Department of the Interior, has issued non-binding Guidelines addressing state implementation of ICWA, and provides funding for child and family services programs. As detailed in the United States’ amicus brief, among other things, ICWA requires that state officials insure that Indian children are returned home as soon as the threat of imminent physical damage or harm has ended, or that state officials “expeditiously” initiate a child custody proceeding subject to all ICWA protections. 25 U.S.C. § 1922.

The United States also has an interest in the issues raised in Plaintiffs’ Second Motion for Partial Summary Judgment, which concerns the Due Process Clause of the Fourteenth Amendment to the United States Constitution, U.S. Const. amend. XIV. As explained in the amicus brief, the Due Process Clause requires that parents be given notice of the claims against them and a prompt, meaningful opportunity to challenge the state’s allegations by presenting evidence and cross-examining witnesses. The United States has an interest and expertise in the protection of constitutionally-mandated rights, including civil rights and the right to due process. Therefore, the United States’ expertise will be of assistance to the Court and the parties in resolving the issues presented in this case.

The amicus brief is being filed pursuant to 28 U.S.C. § 517, which provides “[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.”

The filing of amicus briefs is an accepted practice in this Court. This Court recently accepted an amicus brief (styled as a “Statement of Interest”) from the United States in *Native*

American Council of Tribes v. Weber, No. 09-cv-4182 (Docket No. 181); *see also*, *Midland Farms, LLC v. U.S. Dep't of Agriculture*, ___ F. Supp. 2d ___, 2014 WL 3672134 (D.S.D., July 23, 2014) (noting that third party “may seek permission of this Court to submit a brief amicus curiae,” and citing *Hard Drive Prods., Inc. v. Does 1-1,495*, 892 F. Supp. 2d 334, 337 (D.D.C. 2012) (stating that it is within the district court’s discretion to grant a motion for leave to file an amicus curiae brief.)).

The filing of this brief will not prejudice the parties and will not delay the progress of this case. The United States files this motion and amicus brief more than two weeks before Defendants’ opposition to Plaintiffs’ summary judgment motions are due. Because Defendants will have an opportunity to respond to the United States’ brief, the United States does not believe the Defendants will be prejudiced in any way if the Court grants this motion.

For the foregoing reasons, the United States respectfully asks that the Court grant this motion and allow it to file an amicus brief in this case.

Respectfully Submitted,

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