IN THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA, et al.

Appellants,

v.

CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA,

Appellee.

Supreme Court No. S-14935

Trial Court Case #: 1JU-10-00376 CI

APPEAL FROM THE SUPERIOR COURT FIRST JUDICIAL DISTRICT AT JUNEAU
HONORABLE JUDGE PHILIP PALLENBERG

BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE

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Federal Statutes

42 U.S.C. § 655(f) Direct Federal funding to Indian tribes and tribal organizations

The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection.

42 U.S.C. § 666(f) Uniform Interstate Family Support Act

In order to satisfy section 654(20)(A) of this title, on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws.

Federal Regulations

45 C.F.R. § 302.36(a) Provision of services in intergovernmental IV-D cases

The State plan shall provide that, in accordance with § 303.7 of this chapter, the State will extend the full range of services available under its IV-D plan to:
(1) Any other State;
(2) Any Tribal IV-D program operating under § 309.65(a) of this chapter; and
(3) Any country as defined in § 301.1 of this chapter.

45 C.F.R. § 309.55 What does this subpart cover?

This subpart defines the Tribal IV-D plan provisions that are required to demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV-D of the Act and these regulations, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

ISSUES PRESENTED

1. Does the Central Council of Tlingit and Haida Indian Tribes of Alaska (the Tribe or CCTHIT) retain inherent authority to exercise concurrent jurisdiction to adjudicate child support for children who are members of or eligible for membership in the Tribe (tribal children)?

2. Under Title IV-D of the Social Security Act, the U.S. Department of Health and Human Services (HHS) funds qualified state and tribal child support enforcement programs (IV-D programs); both the State and the Tribe receive such funds (IV-D funds). Can the State of Alaska refuse to enforce all child support orders issued by the Tribe, even though the State, as a condition of receiving federal IV-D funds, adopted legislation that provides for enforcement of tribal child support orders and is required by HHS regulations to extend the full range of IV-D services to all tribal IV-D programs?

INTRODUCTION

The State contends that tribes that lack Indian country[1] do not have jurisdiction to adjudicate child support disputes. The United States disagrees with this contention and files this *amicus curiae* brief because the State's refusal to recognize the Tribe's child support orders interferes with tribal sovereignty and thwarts proper implementation of the federal child support enforcement program.

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[1] "Indian country" is defined to include "all land within the limits of any Indian reservation, . . . all dependent Indian communities . . . , and . . . all Indian allotments." 18 U.S.C. § 1151. While "Indian country" defines the scope of federal criminal jurisdiction under 18 U.S.C. § 1151, it also delineates the territorial jurisdiction of tribes. *Alaska v. Native Village of Venetie Tribal Gov't*, 522 U.S. 520, 527 (1998). In *Venetie*, the Supreme Court held that, under the Alaska Native Claims Settlement Act (ANCSA), ANCSA lands are not "Indian country." 522 U.S. at 532; *see also id.* at 524 (noting that ANCSA revoked all reservations in Alaska save for that of the Metlakatla tribe).

This Court has previously rejected the State's argument in the context of child custody cases. In the landmark *John v. Baker* case, this Court examined "whether the sovereign adjudicatory authority of Native tribes exists outside the confines of Indian country" and concluded that, even absent Indian country, "[t]ribal courts in Alaska have jurisdiction to adjudicate custody disputes involving tribal members." *John v. Baker,* 982 P.2d 738, 743, 765 (Alaska 1999). This Court found that Alaska Native tribes, like other federally recognized tribes, "possess the inherent 'power of regulating their internal and social relations,'" and that their "power to adjudicate internal domestic matters, including child custody disputes over tribal children, [derives] from a source of sovereignty independent of the land they occupy." *Id.* at 754 (citation omitted). This Court has repeatedly upheld this conclusion. S*ee In re C.R.H.*, 29 P.3d 849, 852-54 (Alaska 2001); *State v. Native Village of Tanana*, 249 P.3d 734, 751 (Alaska 2011).

The reasoning of *John v. Baker* and its progeny applies with similar force in the context of child support determinations. A tribe's ability to ensure that its children are properly supported and cared for throughout their childhood, like its ability to decide who cares for them, "falls squarely within [the tribe's] sovereign power to regulate the internal affairs of its members." *John v. Baker*, 982 P.2d at 759.

Moreover, the State's refusal to enforce the Tribe's child support orders undercuts critical aspects of the federal child support enforcement program in Alaska. The State receives federal funds for its IV-D program, conditioned on its commitment to extend child support enforcement services to tribes with federally funded IV-D programs. The State is nonetheless refusing to enforce all child support orders issued by the Tribe,

despite the fact that the Tribe has a federally approved and funded IV-D program. Alaska has offered no legitimate basis for its refusal, which undermines the very federal child support enforcement program that funds the State's own enforcement activities.

INTEREST OF THE UNITED STATES AS *AMICUS CURIAE*

This case implicates both the United States' interest in tribal self-determination and self-government and its interest in enabling federally recognized tribes to protect the health and welfare of tribal children. The United States has a special relationship with Indian tribes, *see United States v. Jicarilla Apache Nation*, 131 S.Ct. 2313, 2324-25, 564 U.S. ___ (2011), and is committed to the principles of self-determination and self-government of all Indian tribes, including the 229 federally recognized tribes in Alaska. *See, e.g.*, *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14-15 (1987); 25 U.S.C. §§ 479a, 479a-1 (requiring the Secretary of the Interior to publish a list of recognized tribes, including "Alaska Native tribe[s]"); Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 79 Fed. Reg. 4,748, 4,752 (Jan. 29, 2014) (listing the Tribe as a federally recognized tribe). Tribes in Alaska have a government-to-government relationship with the United States and have "the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other [acknowledged] tribes" located elsewhere in the United States. Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 58 Fed. Reg. 54,364, 54,366 (Oct. 21, 1993).

The United States has a particular interest in supporting the vitality of Native judicial systems, including those in Alaska. *See Iowa Mutual*, 480 U.S. at 14-15 ("[T]ribal courts play a vital role in tribal self-government, and the Federal Government

has consistently encouraged their development." (citations omitted)); *see also* 25 U.S.C. §§ 450, 450a (Indian Self Determination and Education Assistance Act (ISDEAA), providing funding and assistance for tribal government institutions, including courts); 25 U.S.C. § 3601 (confirming federal policy of supporting tribal justice systems); 25 U.S.C. § 1911 (Indian Child Welfare Act (ICWA), establishing tribal courts as preferred forums for adjudicating Indian child custody disputes and entitling tribal custody orders to "full faith and credit"); 25 U.S.C. §§ 3601, 3611-3614 (Indian Tribal Justice Act, which, *inter alia*, establishes an Office of Tribal Justice Support and includes congressional findings that "tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments").

It is important that the Court uphold the authority of tribal courts in Alaska to issue and seek enforcement of child support orders. The State's failure to recognize and enforce tribal child support orders has impacted and could continue to impact the ability of federally recognized Indian tribes to protect the health and welfare of tribal children and the tribes' core sovereign interest in "regulating their internal and social relations." *United States v. Wheeler*, 435 U.S. 313, 322 (1978) (quoting *United States v. Kagama*, 118 U.S. 375, 381-382 (1886)); *see also* 25 U.S.C. §§ 1931-1934 (authorizing grant program for Indian child services).

Moreover, the United States has a strong interest in ensuring the appropriate and effective administration of the federally funded tribal child support enforcement program, and the State's actions undermine this program. *See* 42 U.S.C. § 655(f) (authorizing

direct federal funding for tribal child support enforcement programs); 45 C.F.R. Part 309 (implementing regulations); *see also* HHS Office of Child Support Enforcement (OCSE), Fiscal Year (FY) 2012 Preliminary Report to Congress, Table P-36[2] (financial and statistical overview of tribal child support enforcement program from FY 2008 through FY 2012). The Tribe has been receiving funds through this program since 2005. Tribal child support programs play a critical role in protecting the financial security of tribal children. In FY 2012, HHS-funded tribal programs collected close to $42 million in child support, with $34 million in collections distributed by the tribes and over $7 million in collections forwarded to other tribes or states. *Id.* Such programs are able to provide services to Native American families consistent with tribal values and cultures. *See, e.g.*, Tribal Child Support Enforcement Programs, 69 Fed. Reg. 16,638, 16,652 (Mar. 30, 2004) (encouraging tribes to "develop culturally-appropriate policies to conform to the requirements of [Tribal IV-D] regulations"). Alaska's blanket refusal to address the Tribe's child support orders reduces the impact and undermines the effectiveness of the federal support for the Tribe.

STATEMENT OF THE CASE

Statutory and Regulatory Framework

Title IV-D of the Social Security Act establishes the federal child support enforcement program, with the goal of ensuring that both parents financially support their

[2] HHS, OCSE, FY 2012 Preliminary Report to Congress (Sept. 1, 2013), *available at* http://www.acf.hhs.gov/programs/css/resource/fy2012-preliminary-report-table-p-36. The United States requests that the Court take judicial notice of the HHS OCSE annual reports to Congress referenced herein. *See, e.g.*, Alaska R. Evid. 201(b) (providing for judicial notice of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned").

children. 42 U.S.C. §§ 651-669b. Under the IV-D program, HHS provides funding for qualified child support agencies to deliver a broad range of child support-related services, such as locating noncustodial parents, establishing paternity, establishing and enforcing support orders, and collecting child support payments.

Title IV-D initially provided funding for state programs only, but Congress amended it in 1996 to authorize direct payments to tribes that demonstrate the "capacity to operate a child support enforcement program meeting the objectives" of the IV-D program. 42 U.S.C. § 655(f) (added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996)). At the same time, Congress required all states receiving IV-D funds to adopt the Uniform Interstate Family Support Act (UIFSA)[3] to "increase the effectiveness" of the IV-D program. 42 U.S.C. § 666(a), (f). UIFSA establishes rules and procedures for child support matters that touch multiple jurisdictions, including the enforcement in one state of child support orders issued by "another State." 1996 UIFSA § 102(26). UIFSA defines a "State" to include an "Indian tribe." 1996 UIFSA § 101(19). A prime goal of UIFSA is "[t]olerance for the laws of other States [and Indian tribes] in order to facilitate child support enforcement." 1996 UIFSA, Prefatory Note at 4. UIFSA establishes a "one-order system," using the principle of "continuing, exclusive jurisdiction" to require states to give effect to child support orders issued by another state or by an Indian tribe. 1996 UIFSA, Prefatory Note at 5-7.

[3] The 1996 UIFSA is available on the website of the National Child Support Enforcement Association, at http://www.ncsea.org/wp-content/uploads/2012/02/UIFSA_1996.pdf (1996 UIFSA).

The 1996 amendments to Title IV-D grew in part out of recommendations from the U.S. Commission on Interstate Child Support's Report to Congress. U.S. Comm'n on Interstate Child Support, Supporting Our Children: A Blueprint for Reform (Lisa Davis ed., U.S. Gov't Printing Office) (1992) (Comm'n Report) (attached in relevant part). Congress created the Commission in the Family Support Act of 1988 and tasked it with making recommendations for improving interstate establishment and enforcement of child support orders. P.L. 100-485, § 126 (1988). The Commission Report recommended "reforms targeted to the special needs of Indian children" to "assist Indian tribes in establishing support plans and programs that are compatible with tribal custom and recognized by states."[4] Comm'n Report at 200. Finding the "[t]raditional tribal interest over domestic relations [to be] an integral part of tribal self-government," the Commission concluded that "[i]t is crucial to the economic well-being of Indian children that support orders . . . be recognized by both state and tribal courts." *Id.* at 201, 203. The Commission Report accordingly recommended "tribal government involvement in the IV-D process . . . [giving tribes] the option of performing the IV-D functions themselves," as well as the "inclusion of Indian tribes in the definition of 'State' within the [UIFSA]." *Id.* at 206, 207. Both recommendations are reflected in the 1996 amendments.

[4] Although the Commission Report focused on jurisdictional issues and concerns related to cases involving "Indian country," it recognized that tribal jurisdiction is not limited to cases where all parties reside in Indian country. Commission Report at 201 (recognizing that "the tribal court can continue to have jurisdiction" even if a parent resides off reservation, but noting that state courts may have concurrent jurisdiction).

The recognition of tribal sovereignty carried through from the Commission Report to the legislative process. In sponsoring an early version of what later became 42 U.S.C. § 655(f), Senator McCain argued for direct funding of tribal IV-D plans as "consistent with the government-to-government relationship between tribal governments and the Federal Government," emphasizing the need for such services among the "approximately 554 federally recognized Indian tribes and Alaska Native villages." 141 Cong. Rec. S13566 (daily ed. Sept. 14, 1995). He concluded by reciting the support of the National Council of State Child Support Enforcement Administrators for direct tribal funding, quoting the Council's view that "the most effective way to provide comprehensive services to Native American children is for the federal government to deal directly with sovereign tribal governments." *Id.* at S13567.

HHS issued regulations implementing the tribal child support enforcement program in 2004. 69 Fed. Reg. 16,638 (Mar. 30, 2004) (codified at 45 C.F.R. §§ 302.36, 309.01-309.170). "Consistent with the government-to-government relationship between the Federal government and Indian Tribes," the regulations provide that "all Federally-recognized Indian Tribes," including Alaska Native tribes, are eligible to apply for IV-D funding. 69 Fed. Reg. 16,648-49; 45 C.F.R. § 309.05. HHS paid particular attention to the "special circumstances in Alaska," and stated that "the lack of 'Indian country' in Alaska does not prevent Alaska Native villages from applying for direct funding or from exercising jurisdiction over their members." 69 Fed. Reg. at 16,648-49, 16,665. HHS also explained that "[t]he purpose of the Tribal Child Support Enforcement Program is to strengthen the economic and social stability of families" and that tribal IV-D programs

"will result in increased child support enforcement services, including increased child support payments, for Tribal service populations." 69 Fed. Reg. at 16,639. The 2004 regulations establish criteria that tribes must meet to qualify for IV-D funding, including a requirement that tribes applying for funding certify that there are at least 100 children "subject to the jurisdiction of the Tribe." 45 C.F.R. § 309.70.

The regulations also require all state IV-D plans to provide that the state "will extend the full range of services available under its IV-D plan to . . . [a]ny Tribal IV-D program." 45 C.F.R. § 302.36(a)(2). The preamble to the regulations emphasizes that "coordination and partnership, especially in the processing of inter-jurisdictional cases" are "[e]ssential to the Federal-State-Tribal effort to ensure that noncustodial parents support their children." 69 Fed. Reg. 16,639; *see also* 69 Fed. Reg. at 16,651 ("The unique circumstances and challenges faced by child support enforcement programs in the State of Alaska require recognition and accommodation so that arrangements may be made for the provision of needed services. Alaska and Alaska Native Tribal entities are encouraged to find local solutions to meet the challenges they face.").

Factual and Procedural Background

CCTHIT is a federally recognized Indian tribe. 79 Fed. Reg. 4,748, 4,752 (Jan. 29, 2014). HHS approved the Tribe's IV-D plan and granted its application for IV-D funding in 2007, after having provided startup funds for two years to help the Tribe develop its child support program. Consistent with HHS regulations, CCTHIT's tribal code addresses the determination, modification, and enforcement of child support orders, including enforcement of orders issued by other jurisdictions, as well as establishment of paternity.

CCTHIT Family Responsibility Act, Tribal Statutes Title 10. In approving the Tribe's child support program, HHS found that the tribal code met the objectives of Title IV-D. 45 C.F.R. § 309.55. In FY 2012, the Tribe's child support program distributed $490,074 in child support collections, an increase of nearly $200,000 over the previous year.[5]

Alaska also receives federal funds for its child support enforcement program and is therefore required to have in effect specified laws and procedures, including UIFSA, "to increase the effectiveness of" its IV-D program. 42 U.S.C. §§ 654(20)(A), 666(d). Although Alaska adopted UIFSA in 1995 and amended it in 1997 and 1998, it failed to include "Indian tribe" in its definition of "state." Alaska Stat. § 25.25.101 (1998). In 2008—ten years after PRWORA required the State to enact UIFSA, and one year after CCTHIT became the first Alaska Native tribe approved for IV-D funding—Alaska twice petitioned HHS for an exemption allowing it to exclude tribes from its version of UIFSA. Exc. 721-766 (correspondence between Alaska and HHS). Alaska argued that it need not define Indian tribes as states because "Alaska Indian tribes do not have authority to issue and enforce child support orders in the absence of Indian Country," and because Alaska "already recognizes tribal child support orders issued in Indian Country under [the Full Faith and Credit for Child Support Orders Act (FFCCSOA)]." Exc. 752, 755. The FFCCSOA requires state courts to enforce child support orders issued by the courts of

[5] OCSE FY 2012 Preliminary Report to Congress, Table P-37, available at http://www.acf.hhs.gov/programs/css/resource/fy2012-preliminary-report-table-p-37.

"another State," which is defined to include "Indian country (as defined in section 1151 of title 18)." 28 U.S.C. § 1738B (a), (b).[6]

HHS rejected Alaska's request because it found that Alaska's failure to extend UIFSA to child support orders issued in Alaska was inconsistent with the intent of Title IV-D's UIFSA requirement. HHS rejected Alaska's argument that FFCCSOA provided sufficient recognition of tribal child support orders:

> UIFSA provides necessary and additional procedures, not included in FFCCSOA, for the orderly and efficient recognition and enforcement of inter-governmental child support orders .... These procedures apply to tribal child support orders across the United States, but do not apply in Alaska because of the failure to include 'Tribes' in the definition of State. As a result, FFCCSOA does not meet the goals and intent of UIFSA and cannot substitute for UIFSA.

Exc. 758-59. Even after its request for an exception was twice denied, Alaska did not amend its UIFSA to comply with Title IV-D until OCSE informed the State that its failure to do so could cost it more than $60 million in federal funding. Exc. 760-61.[7]

Consistent with the federal IV-D program requirements, Alaska law now requires the State to "recognize the continuing, exclusive jurisdiction of a tribunal of another state [or Indian tribe] that has issued a child support order under a law substantially similar to

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[6] Although FFCCSOA does not require recognition of tribal child support orders that are not issued in Indian country, it does not preclude it. As Alaska acknowledged in its petition, "Alaska ... has existing law [FFCCSOA] to recognize tribal orders issued outside of Indian country ... under comity principles." Exc. 756 (citing *John v. Baker*, 982 P.2d at 765).

[7] In FY 2008, Alaska received nearly $15 million in IV-D funds, as well as over $46 million for its Temporary Assistance for Needy Families (TANF) program. Exc. 761. A state is eligible for TANF funds only if it can certify that it will operate an approved IV-D plan. 42 U.S.C. § 602(a)(2).

this chapter." Alaska Stat. § 25.25.205(d).[8] Such orders, once registered with Alaska, are then "enforceable in the same manner and . . . subject to the same procedures" as orders issued by Alaska courts. Alaska Stat. § 25.25.603(b). A party against whom enforcement is sought may contest the registration or enforcement of the child support order, including by challenging its validity or denying that the issuing court had personal jurisdiction. Alaska Stat. §§ 25.25.605-25.25.607. The failure to contest the validity or enforcement of the registered order in a timely manner results in the confirmation of the order by operation of law. *Id.* § 25.25.606.

Alaska has nonetheless refused to recognize any child support orders issued by the Tribe's IV-D program or to enforce child support orders issued by the CCTHIT tribal court. Exc. 1-9, 168-78. Alaska takes the position that the Tribe "does not have authority to issue child support orders." Sup. Ct. Brief of Appellants at 7, Aug. 26, 2013 (Alaska Br.). Alaska has thereby prevented those who obtain child support orders through the Tribe's IV-D program from enforcing those orders through mechanisms—such as unemployment benefit garnishments, license revocations, and garnishment of Permanent Fund Dividends (PFD) paid by the state of Alaska—that Alaska can use, but that Indian tribes cannot independently access.

The Tribe filed its Complaint on January 19, 2010, asking that Alaska be directed to "respond promptly to interstate requests for child support services from the Tribe in accordance with UIFSA and federal regulations." Exc. 9. The Superior Court granted CCTHIT's motion for summary judgment, holding that the "inherent power [of tribes] as

[8] This requirement is part of Alaska's UIFSA statute, which is codified at Alaska Stat. §§ 25.25.101-25.25.903.

sovereign nations" to "regulate internal domestic relations among its members" includes jurisdiction over child support decisions involving tribal member children. Exc. 661-666. The court based its reasoning largely on *John v. Baker's* holding that Alaska Native tribes have inherent jurisdiction to adjudicate custody disputes involving tribal member children. *Id.* On September 24, 2012, the Court entered a permanent injunction, Exc. 676-77, from which the State appealed.

STANDARD OF REVIEW

The Court decides *de novo* "legal questions such as the scope of tribal court subject matter jurisdiction and the meaning of federal statutes." *John v. Baker*, 982 P.2d at 744. The Court is to "adopt the rule of law that is the most persuasive in light of precedent, reason, and policy." *Id.* The Court's analysis starts from a "presum[ption] that tribal sovereign powers remain intact." *Id.* at 751.

ARGUMENT

Alaska Native tribes possess inherent sovereignty to address certain matters involving the welfare of tribal children, regardless of the existence of Indian country. This authority extends to child support orders. Although the State claims that the support of tribal children is not an internal tribal matter because of the potential for State involvement in enforcing some tribal child support orders, Alaska Br. at 17-28, the State's involvement does not divest tribes of their inherent jurisdiction in this area.

The State of Alaska is also incorrect to the extent it argues that child support is not an "internal" tribal matter any time it involves nonmember parents. Alaska Br. at 28-39. None of the cases on which the State relies addresses the tribal authority involved here, as the support of tribal children is inextricably linked to a tribe's political integrity, health,

and welfare. Moreover, the State's argument addresses an issue that is not before this Court, as the State refuses to recognize or enforce *any* of the Tribe's child support orders, even where both parents are tribal members. Thus, the State's position can be sustained only if Alaska Native tribes *never* have jurisdiction to issue child support orders involving tribal children due to their lack of Indian country. *See* Alaska Br. at 1. The Superior Court properly concluded that it need not consider "hypothetical case[s]" or "decide the precise outer limits" of the Tribe's jurisdiction to resolve this case. Exc. 667-68. This Court need not reach those issues either.

Finally, the federal child support enforcement program depends on cooperation among the federal, state, and tribal governments. The State's refusal to enforce the Tribe's child support orders undermines that cooperation and is inconsistent with UIFSA and the commitments the State made in applying for and accepting federal IV-D funds.

I. Alaska Native Tribes Retain Inherent Powers to Adjudicate Child Support for Tribal Children

Indian tribes, including Alaska Native tribes, have "inherent powers of a limited sovereignty which has never been extinguished." *United States v. Wheeler*, 435 U.S. at 322 (quoting Felix S. Cohen, *Handbook of Federal Indian Law* 122 (1945)) (emphasis omitted). Tribes continue to "possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status." *Id.* at 323 (citing *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978)). The inherent sovereignty possessed by Alaska Native tribes is no different than that of tribes elsewhere. *See, e.g.,* Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 58 Fed. Reg. 54,364, 54,366 (Oct. 21, 1993)

(Alaska Native tribes have "the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes"); *see also* 25 U.S.C. § 1212 (confirming CCTHIT as federally recognized tribe); *cf.* 25 U.S.C. § 476(f), (g) (prohibiting federal agencies from distinguishing "the privileges and immunities available to a federally recognized Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes").

In particular, tribes have inherent authority over domestic relations, including jurisdiction over the welfare of child members of the tribe. *See, e.g.*, *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 42 (1989) ("Tribal jurisdiction over Indian child custody proceedings is not a novelty of the ICWA."); *Fisher v. District Court*, 424 U.S. 382, 389 (1976) (recognizing that a tribal court had exclusive jurisdiction over an adoption proceeding involving tribal members residing on the reservation); *United States v. Kagama*, 118 U.S. at 381-82 (tribes are "a separate people" possessing "the power of regulating their internal and social relations"). Courts, including this one, have repeatedly confirmed that tribes, including Alaska Native tribes, have inherent authority to protect the welfare of tribal children, including by addressing issues of child custody, child protection and adoption. *See John v. Baker*, 982 P.2d at 748 (child custody); *In re C.R.H.*, 29 P.3d at 852 (child protection); *Native Village of Venetie I.R.A. Council v. Alaska*, 944 F.2d 548, 561-62 (9th Cir. 1991) (adoption). Alaska Native tribes maintain this general jurisdiction over matters of child welfare involving tribal members notwithstanding their

lack of Indian country.[9] *See John v. Baker,* 982 P.2d at 754-55; *Native Village of Venetie I.R.A. Council v. Alaska*, 944 F.2d at 558-59 (recognizing that the "modern-day successors" to historical Alaska Native bands "are to be afforded the same rights and responsibilities as are sovereign bands of [N]ative Americans in the continental United States.").

A. Congress Has Recognized that Tribes Have Inherent Sovereignty to Adjudicate Child Support Issues

Tribes retain "powers of self-government that include the inherent authority to regulate internal domestic relations among members … unless and until [these] powers are divested by Congress." *Tanana*, 249 P.3d at 750; *John v. Baker*, 982 P.2d at 751-52. The State does not even attempt to show that Congress has divested the Tribe's authority over child support matters. In fact, far from stripping tribes of authority in this area, Congress has confirmed that Indian tribes retain inherent authority over domestic relations, specifically including the authority to adjudicate child support, by enacting legislation that depends on the existence of such authority. In extending Title IV-D to provide for direct funding of tribal child support enforcement programs, Congress demonstrated its understanding that tribes have the inherent legal authority to "establish[] … paternity, establish[], modif[y], and enforce[] … support orders, and locat[e] … absent

[9] This analysis applies to all tribes, including those in the continental United States, that lack Indian country. For tribes with Indian country, it applies similarly as to domestic matters involving members who live off-reservation. The existence of "Indian country" is relevant in analyzing tribal authority over the domestic matters of tribal members only in that a tribe may have *exclusive* jurisdiction over domestic matters involving its own members in its own Indian country, but its jurisdiction over such matters will be *concurrent* with that of the state outside of Indian country. *See John v. Baker*, 982 P.2d at 759-60; *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. at 36, 42.

parents." 42 U.S.C. § 655(f). Without such inherent authority, tribes could not "demonstrate[] ... the capacity to operate a child support enforcement program," as required by the statute. *Id.* The amendment of Title IV-D to include tribal child support enforcement programs grew out of the recognition that "[t]raditional tribal interest over domestic relations is an integral part of tribal self-government." Comm'n Report at 201. As Senator McCain explained, federal funding of tribal IV-D programs is based on "the government-to-government relationship between tribal governments and the Federal Government." 141 Cong. Rec. S13566 (daily ed. Sept. 14, 1995).

Nothing in the tribal Title IV-D provisions suggests that Congress intended that Alaska Native tribes be treated differently than other tribes. The tribal funding provision is not limited to tribes with Indian country. HHS emphasized in implementing this provision that "eligibility for direct IV-D funding of Tribal IV-D programs is extended to all Federally-recognized Indian Tribes." 69 Fed. Reg. at 16,648; *see also id.* at 16,653 ("[O]ne of the key underlying principles of these final Tribal IV-D regulations is recognition of and respect for Tribal sovereignty and the unique government-to-government relationship between Indian Tribes and the Federal government."); *id.* at 16,639 ("[T]he direct Federal funding provisions provide Tribes with an opportunity to administer their own IV-D programs to meet the needs of children and their families."). HHS further recognized that "the lack of 'Indian country' in Alaska does not prevent Alaska Native villages from applying for direct funding or from exercising jurisdiction over their members." 69 Fed. Reg. at 16,665.

Congress's recognition that all federally recognized tribes retain inherent authority to adjudicate child support issues is also confirmed by its requirement that states enact UIFSA as a condition of receiving IV-D funding. 42 U.S.C. § 666(f). UIFSA provides jurisdictional rules for the establishment, modification, and enforcement of child support orders that implicate multiple states, specifically defining "State" to include Indian tribes. 1996 UIFSA § 101(19). By requiring that states adopt UIFSA as a condition of funding, Congress has recognized that tribes have jurisdiction over child support matters and that tribal authority should be treated on par with that of the states.

That tribes have inherent sovereignty over issues related to the care of Indian children is similarly confirmed by the federal statute governing child custody proceedings, the Indian Child Welfare Act. 25 U.S.C. §§ 1901-1963. That statute includes detailed provisions governing how state courts and tribal courts are to share jurisdiction over child custody cases involving children who are members of, or eligible for membership in, Indian tribes. These jurisdictional provisions, notably Section 1911(b), are "[a]t the heart of" the statute, and provide for "concurrent but presumptively tribal jurisdiction in the case of [Indian] children not domiciled on the reservation." *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. at 36. By its own terms, Section 1911(b) of ICWA does not include a grant of jurisdiction to a tribe over matters involving Indian children—including Indian children located off-reservation. *See* 25 U.S.C. § 1911(b). Instead, the provision assumes that tribal court jurisdiction already exists, and requires a state court to transfer such proceedings to the jurisdiction of the tribe upon the request of a parent, tribe, or Indian custodian, with limited exceptions. *See*

id. Section 1911(b)'s scheme of "concurrent but presumptively tribal jurisdiction" recognizes inherent tribal authority over the welfare of tribal children—even when they do not live in Indian country.

The tribal provisions in each of these federal statutes would be rendered meaningless in the absence of inherent tribal authority to govern child support matters. None of these statutes includes, or relies upon, a congressional grant of jurisdiction over child support matters. Rather, they each presume such jurisdiction exists as a matter of inherent tribal sovereignty.

Although the State emphasizes that Congress has not expressly delegated authority over child support matters to Indian tribes, it fails to recognize that the Congressional inclusion of tribes in the federal child support enforcement program is premised on the existence of *inherent* tribal sovereignty over such matters. The State nowhere argues that Congress divested such inherent authority from Alaska Native tribes in particular, or from all tribes that lack Indian country. Instead, the State appears to assume that tribal jurisdiction over the welfare of tribal children could only be a matter of territorial jurisdiction. But the State's discussion of the relationship between tribal territory and tribal jurisdiction does not bolster its position. Alaska Br. at 10-16. None of the cases cited even suggests that tribes lack authority over child support or other matters pertaining to the welfare of tribal children in the absence of Indian country, or that tribal territory is somehow the source of tribal authority over such matters. Nor does the Full Faith and Credit for Child Support Act (FFCCSOA)—the sole authority the State cites as demonstrating that "land clearly matters" to child support issues, Alaska Br. at 13-14—

support the State's position. FFCCSOA requires states and tribes with Indian country to enforce child support orders across state and Indian country lines. While FFCCSOA does not require giving full faith and credit to child support orders issued outside of Indian country, it does not preclude states from doing so.[10] Nor does it present any obstacle to enforcing such orders through UIFSA procedures or through a state's own comity rules.[11] More significantly, though, and similar to the Title IV-D tribal amendments and ICWA, FFCCSOA does not include a grant of jurisdiction to tribes; instead, like those statutes, FFCCSOA presumes that such jurisdiction exists as a matter of *inherent* tribal authority. If inherent tribal sovereignty over domestic and internal relations did not include authority to issue child support orders, Congress would have had no basis for requiring enforcement of such orders. Alaska's refusal to recognize the Tribe's ability to adjudicate

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[10] Contrary to the State's suggestion, Alaska Br. at 14 n.52, the fact that FFCCSOA is limited to Indian country need not puzzle nor detain us. As noted above, *supra* n. 9, and as the State itself recognizes, Alaska Br. at 2 n.2, the existence of Indian country can indeed be relevant here—it is relevant, however, not to whether a *tribe* has inherent jurisdiction but to whether a *state* can exercise jurisdiction. *See, e.g.*, *John v. Baker*, 982 P.2d at 760 and nn.147, 148 (tribal jurisdiction may be exclusive as to children domiciled on reservation but concurrent as to children who live off-reservation); *see also Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. at 42 (noting the basis in "case law in the federal and state courts" for congressional recognition that "in child custody proceedings involving Indian children domiciled on the reservation, tribal jurisdiction was exclusive as to the States"). Congress could well have found that the need to give full faith and credit to tribal child support orders was greater where state law could not reach.

[11] Indeed, the State conceded as much in its petition for an exemption from the Title IV-D requirement that it include "Indian tribe" in its definition of "State." Exc. 756 ("Alaska also has existing law to recognize tribal orders issued outside of Indian Country. … [T]he Alaska state court can recognize the order under comity principles."); *see also* Exc. 749 ("[T]here is no provision in FFCCSOA that prevents States from recognizing other types of orders. As such, FFCCSOA does not trump UIFSA, instead, both Acts work in tandem with each other.")

child support matters runs counter to the holding of the United States Supreme Court that tribes retain their sovereign powers "until Congress acts" to defease those powers. *United States v. Wheeler*, 435 U.S. 313, 323 (1978) ("Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.")

B. The Reasoning of *John v. Baker* Fully Applies Here

In *John v. Baker*, this Court concluded that Alaska Native tribes can adjudicate internal child custody disputes even though they do not possess territorial jurisdiction over Indian country. 982 P.2d at 748 (reaching this conclusion notwithstanding that Alaska is a P.L. 280 State). Noting that a custody dispute about a child tribal member "lies at the core of [tribal] sovereignty," the Court carefully examined United States Supreme Court precedent addressing tribal self-governance, and concluded that tribal authority over internal relations is not tied to the tribe's territorial authority. *Id.* at 755-58. The Court made clear that "the character of the power that the tribe seeks to exercise, not merely the location of events," determines "whether tribes retain their sovereign powers." 982 P. 2d at 751-52. Thus, "tribes without Indian country do possess the power to adjudicate internal self-governance matters," including "internal family law affairs like child custody disputes." *Id.* at 759. That conclusion has been unambiguously reaffirmed in subsequent decisions of this Court. *See In re C.R.H.*, 29 P.3d at 852 (holding that Alaska Native village possessed transfer jurisdiction under ICWA section 1911(b) notwithstanding P.L. 280); *Tanana*, 249 P.3d at 751 (holding that Alaska Native tribes have concurrent jurisdiction to initiate ICWA child custody proceedings and are entitled to full faith and credit with respect to ICWA-defined child custody orders).

The reasoning of *John v. Baker, C.R.H.* and *Tanana* applies equally here. Like child custody and child welfare disputes, child support issues are central to a tribe's authority to regulate domestic relations among its members and to ensure the welfare of tribal children. *See John v. Baker*, 982 P.2d at 752 ("Congress has recognized that a tribe has a strong interest in 'preserving and protecting the Indian family as the wellspring of its own future.'" (citing H.R. Rep. No. 95-1386 at 19 (1978)). In fact, both the majority and the dissent in *John v. Baker* briefly mentioned, without deciding, that the decision could affect child support awards. 982 P.2d at 764 n.185, 802; *see also John v. Baker*, 125 P. 3d 323, 326 (Alaska 2005) (concluding that the original *John v. Baker* decision did not reach child support jurisdiction despite brief "refer[ences] in passing" to the issue). As Congress has made clear in the context of child custody cases, "there is no resource ... more vital to the continued existence and integrity of Indian tribes than their children." 25 U.S.C. § 1901(3). Tribes have an important stake in ensuring that tribal children are cared for and provided the financial support they are entitled to from both parents.

Thus, while the *John v. Baker* decision focused on child custody disputes involving tribal children, its logic naturally extends to ensuring the ongoing financial support of those same children. Child support for tribal children is a critical safeguard for the financial well-being of those children, and as such is clearly within the domestic affairs of a tribe. Yet Alaska fails to explain why the logic of *John v. Baker* should not also apply to tribal issuance of child support orders. Instead, the State argues for an outcome that would deny tribal courts that have the authority to decide custody issues any ability to ever decide the "logically concomitant" issue of child support. *McCaffery v.*

Green, 931 P. 2d 407, 413-14 (Alaska 1997) (noting how closely tied are the issues of child custody and child support). The State's position does not square with either *John v. Baker* or the practical ties between child custody and child support.

The State's only attempt to argue that "tribal child support jurisdiction is not analogous to tribal custody jurisdiction" quickly devolves into the unremarkable claim that child custody and child support issues can be decided separately by separate courts. Alaska Br. at 42-46 ("There is no reason that child support and custody must or should be decided by one court."). While this claim may be true, it does not suggest that tribal courts are divested of jurisdiction over child support matters. Nor does it in any way refute the argument that child support, like child custody, is central to a tribe's ability to protect its children.

The State similarly fails to overcome *John v. Baker's* conclusion that Native Alaskan tribes' authority to govern domestic affairs such as child support is not based on territorial jurisdiction. In that case, this Court made clear that "the character of the power that the tribe seeks to exercise, not merely the location of events," determines "whether tribes retain their sovereign powers" and that "internal functions involving tribal membership and domestic affairs" are within the "core set of sovereign powers that remain intact" for tribes. 982 P. 2d at 751-52; *see also Tanana,* 249 P. 3d 734 (reaffirming *John v. Baker's* "foundational" holding and confirming that all federally recognized Alaska Native tribes have concurrent jurisdiction to initiate child custody proceedings, both inside and outside of Indian country).

C. The State's "Interests" Do Not Divest the Tribe of Jurisdiction

The State claims that child support is not within a tribe's inherent authority because the issue is not "internal" to the tribe since the "Tribe's child support program significantly interferes with important state interests." Alaska Br. at 16-28. But the existence of a state interest in off-reservation children's issues does not strip a tribe of its inherent authority. Even though a state may have concurrent jurisdiction and a strong interest in certain off-reservation matters affecting children, tribes also retain concurrent jurisdiction over those matters within their inherent authority. *See, e.g., John v. Baker*, 982 P.2d at 759 (making clear that "the state, as well as the tribe, can adjudicate such disputes in its courts"); *In re C.R.H.*, 29 P.3d at 853-54 (concluding that case should be transferred from state to tribal court unless good cause exists to deny transfer); *cf. Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. at 36 (describing ICWA's "concurrent but presumptively tribal jurisdiction in the case of children not domiciled on the reservation"); *Kelly v. Kelly*, 2009 ND 20, ¶ 18, 759 N.W.2d 721, 726 (where "[m]any incidents of the marriage occurred off of the reservation," "the [state] court had concurrent jurisdiction with the tribal court to adjudicate the incidents of the marriage").

Further, the State's potential involvement in enforcing *some* tribal child support orders does not mean that the issuance of *all* such orders is not an "internal" tribal matter. The State estimates that its enforcement services may be required in fifty percent of child support cases. Alaska Br. at 25. Yet, by Alaska's inverted reasoning, simply because the State enforces some cases, the other fifty percent of cases—in which the State admittedly has no involvement—are not "internal" to the Tribe, even where all parties are tribal members. Perhaps more importantly, though, the prospect of State involvement in

eventual *enforcement* of child support orders is simply not relevant here. The question is whether tribes have inherent authority to adjudicate the support of tribal children in the first instance. This is a prior, independent question that is separate and apart from the question of what effect the State is required—under federal law (and the State's UIFSA, adopted pursuant to federal law)—to give such orders.

Significantly, the cases that the State cites do not support its assertion that "[t]ribal interference with [] off-reservation matters of considerable state interest" is prohibited. Alaska Br. at 17 (citing *Nevada v. Hicks*, 533 U.S. 353, 364 (2001) and *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95, 112-13 (2005)). Neither case addresses whether states and tribes may share concurrent off-reservation authority over issues of domestic relations. Rather, both cases address the extent to which a state has freedom to act, without tribal regulation or interference, on reservation lands when "state interests outside the reservation are implicated." *Hicks*, 533 U.S. at 362-64 (concluding that tribe may not adjudicate claims regarding the conduct of a state warden on the reservation when he was investigating off-reservation violations of state law); *Wagnon*, 546 U.S. at 99 (concluding that eventual delivery of fuel to an on-reservation gas station does not defeat a state tax that arises as a result of a transaction that occurs off the reservation).

The State's speculation that its child support program will be "upended" by the burden of enforcing tribal child support orders rings hollow. Alaska Br. at 18. Any such inconvenience or cost to the State would not provide a valid basis to oust tribes of their inherent jurisdiction. Moreover, the State's argument that the support of tribal children is not "internal" to the Tribe because it "impacts the State," Alaska Br. at 17, does not hinge

on or relate in any meaningful way to the absence of Indian country—the State's purported basis for challenging jurisdiction here, that is,. Indeed, the State's arguments about the "burdens" it would face in enforcing Native Alaskan tribal child support orders would appear to apply equally regardless of whether those orders were issued in Indian country. Thus, for example, the State's claims that having to enforce the orders of "multiple [tribal] child support programs" would impede its "overriding interest in simple, uniform, predictable child support rules" Alaska Br. at 18-19, or turn the State into "a virtual arm of the Tribe," Alaska Br. at 21-23, apply equally to orders issued by tribes located on reservations or by other States.

Significantly, too, the State has *agreed* to accept any such burdens by accepting IV-D funds. When faced with the loss of tens of millions of federal dollars in IV-D and TANF funds annually, the State agreed to enforce the child support orders of the Tribe, just as it agreed to enforce orders from other states and other IV-D approved tribes. In attempting to evade its obligations by reciting the hypothetical "costs" and "burdens" of providing IV-D enforcement services to tribal child support agencies, the State is seeking to advance its own policy preferences as to the IV-D program at the expense of the federal policy behind the tribal child support enforcement program. In the PRWORA amendments, Congress determined that it would "increase the effectiveness" of the IV-D program for states to adopt UIFSA, which would require each state to treat child support orders issued by Indian tribes similarly to those issued by other states. 42 U.S.C. § 666(f); *see also* 141 Cong. Rec. S13566 (daily ed. Sept. 14, 1995) (Statement of Senator McCain, agreeing with National Council of State Child Support Enforcement

Administrators that "the most effective way to provide comprehensive services to Native American children is for the federal government to deal directly with sovereign tribal governments"); Comm'n Report at 203 ("It is crucial to the economic well-being of Indian children that support orders ... be recognized by both state and tribal courts.")

The State's argument also fails to recognize that the work the Tribe is doing to adjudicate and oversee child support cases actually relieves the State and its court system from costs and burdens that they would otherwise need to shoulder. If members of the Tribe are unable to avail themselves of tribal authority over child support, they will need to turn to the State. The State will then need to do the work that the Tribe is otherwise ready, willing, able, and federally funded to do. In addition to adding costs to the State, this shift of Tribal members into the State system will force Tribal members to grapple with the "barriers of culture, geography, and language [that] combine to create a judicial system that remains foreign and inaccessible to many Alaska Natives."[12] *John v. Baker*, 982 P.2d at 760.

Further, although Alaska repeatedly invokes the specter of having to enforce the child support laws of "229 separate child support regimes," Alaska Br. at 22-28, any practical complications are narrower than the State suggests. Both HHS and the drafters of UIFSA considered and addressed the need for an orderly, efficient process that serves the objectives of Title IV-D. Thus, the HHS regulations do not require states to enforce

[12] Federal regulations recognizing the unique tribal cultural aspects of supporting and caring for Indian children reinforce that tribal systems can provide services that are tailored to the needs of Alaska Natives. *See, e.g.*, 45 C.F.R. § 309.105(a) (allowing for non-cash/in-kind payments in tribal programs and providing that such payments will not satisfy assigned support obligations).

any and all tribal child support orders, but only to "extend the full range of [their IV-D] services ... to *any Tribal IV-D program.*" 45 C.F.R. § 302.36(a) (emphasis added). Nor does UIFSA demand that Alaska enforce any and all tribal child support orders, regardless of the nature of the tribe's "regime." Instead, UIFSA requires the State to recognize the jurisdiction (and orders) of "a tribunal of another state [or Indian tribe] that has issued a child support order under a law substantially similar to this chapter."[13] Alaska Stat. § 25.25.205(d) (2013). The State is thus not required by federal law to recognize or enforce tribal child support orders that are alien to the State's interests or inadequate to protect tribal children.[14] Moreover, rather than creating the prospect of conflicting orders, UIFSA's "one-order system" actually *prevents* concurrent jurisdiction from creating conflicting orders. 1996 UIFSA, Prefatory Note at 5 ("principle of continuing, exclusive jurisdiction" is directed toward "recogniz[ing] that only one valid support order may be effective at any one time").

The State's concern is further tempered by the UIFSA provisions permitting parties to challenge the validity of orders that the State is asked to enforce. 1996 UIFSA

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[13] CCTHIT—like all tribes that have approved IV-D plans—has a child support "regime" that is entirely consistent with the State's, as evidenced by HHS's determination that the Tribe's plan meets the objectives of the federal child support enforcement program. 45 C.F.R. § 309.55.

[14] In addition, upon challenge by a party in a particular case, enforcement of tribal child support orders issued by tribes without IV-D programs would be analyzed under principles of comity, which would allow the State to consider whether the tribal court had personal jurisdiction, whether the tribal court proceedings comported with due process, or whether the tribal order is "against the public policy of the United States or the forum state in which recognition is sought." *John v. Baker*, 982 P.2d at 764 (citing *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997)); *see also John v. Baker*, 125 P.3d 323 (Alaska 2005).

§§ 605-608; Alaska Stat. §§ 25.25.605-608. UIFSA establishes procedures under which a parent can challenge the validity of any state or tribal support order on various grounds, including that the issuing tribunal lacked personal jurisdiction over that parent or that the tribunal did not provide due process. 1996 UIFSA §§ 606, 607(a)(1), § 606 Cmt. ("[A] constitutionally-based attack may always be asserted ...."); Alaska Stat. §§ 25.25.606, 25.25.607(a)(1). UIFSA provides that, if a party proves that "the issuing tribunal lacked personal jurisdiction over the contesting party," or establishes another defense, then enforcement may be stayed. 1996 UIFSA § 607; Alaska Stat. § 25.25.607.[15] Thus, the requirement that tribal courts have personal jurisdiction over the parties may provide a significant safeguard against tribal jurisdiction over individuals with little or no connection to the tribe. *See Kulko v. Superior Court*, 436 U.S. 84, 91 (1978) (personal jurisdiction depends upon "reasonable notice" and "a sufficient connection between the defendant and the forum [jurisdiction] to make it fair to require defense of the action in the forum"). Courts will consider such issues on a case-by-case basis with the benefit of a fully developed record.

Finally, the State's arguments that its citizens will be "denied state [court] access" if tribal jurisdiction is recognized does not square with this Court's precedent. Alaska Br. at 46-48. *John v. Baker* squarely rejected this claim and emphasized that parties "who for

[15] Similarly, under a comity analysis, a tribal court order would not be enforceable in state court if the tribal court did not have personal jurisdiction. *John v. Baker*, 982 P.2d at 763 (requiring personal jurisdiction "ensures that the tribal court will not be called upon to adjudicate the disputes of parents and children who live far from their tribal villages and have little or no contact with those villages").

any reason do not wish to have their disputes adjudicated in a tribal court will retain complete and total access to the state judicial system." 982 P.2d at 761.

D. The Potential Involvement of Nonmembers of the Tribe in Some Cases Does Not Divest the Tribe of Jurisdiction Over Child Support

The State argues that the Tribe lacks subject matter jurisdiction because "child support is not an 'internal' tribal matter where it involves nonmember parents." Alaska Br. at 28. The State claims that "the Tribe's efforts to regulate nonmembers are 'presumptively invalid,'" because "the trend of the U.S. Supreme Court has been to unequivocally limit tribal authority over nonmembers." *Id.* at 30-31 (citing, *inter alia*, *Montana v. United States*, 450 U.S. 544, 565 (1981), *Hicks*, 533 U.S. at 378, and *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 327-30 (2008)). However, the "trend" that Alaska outlines is based on cases that are not relevant to the issue of tribal child support before this Court. Moreover, the Court need not address the jurisdictional issues raised by the State regarding nonmembers of the Tribe, as those issues are not presented here.

Critically, the cases that the State cites do not implicate the tribes' inherent authority regarding the welfare of tribal children. To the contrary, in *Montana v. United States*, the Court recognized that, even "without express congressional delegation," tribes retain the power to do "what is necessary to protect tribal self-government or to control internal relations." 450 U.S. at 564. That power includes authority over the conduct of nonmembers "when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Id.* at 566. In the cases the State invokes, the United States Supreme Court found that certain forms of

activity by non-Indians did not sufficiently implicate a tribe's political integrity, health, or welfare to allow for tribal regulatory jurisdiction. In *Plains Commerce Bank*, for example, the Supreme Court held that a tribe's inability to regulate the terms under which a non-Indian could sell non-Indian fee land to a non-Indian did not "'imperil the subsistence' of the tribal community." 554 U.S. at 319 (quoting *Montana*, 450 U.S. at 566). Similarly, in *Hicks*, the Supreme Court held that state law-enforcement officers who enter a reservation to execute process related to an off-reservation violation of state law do not "threaten[] or ha[ve] some direct effect" on the tribe's political integrity, health, or welfare. *Id.* at 371 (quoting *Montana*, 450 U.S. at 566).

Here, by contrast, the political integrity, health, and welfare of the Tribe are closely linked to its ability to ensure its children are financially supported. *Cf. John v. Baker*, 982 P.2d at 752 ("[T]he United States Supreme Court looks to the character of the power that the tribe seeks to exercise, not merely the location of events."). Indeed, Congress has recognized in the child custody context that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." 25 U.S.C. § 1901(3). Just as the child custody cases implicate a tribe's "political integrity, health, or welfare," so too do the child support cases at issue in this case. The ability of a tribe to ensure that its members are properly cared for and supported through their childhood is vital to its continued political integrity, health, and welfare.

This case, however, does not require this Court to adjudicate the outer limits of Native Alaskan tribes' jurisdiction. Given Alaska's blanket refusal to enforce *any* tribal child support orders, including those where both parents are tribal members and the child

is a member or is eligible for membership, this case presents the question of whether there are any circumstances under which Native Alaskan tribes without Indian country can adjudicate child support disputes. Thus, "[i]t is not necessary to decide the precise outer limits of the [tribal] court's jurisdiction to decide this case." Order at 13-14 (noting that limits of due process of personal jurisdiction should be addressed where there are particular cases that directly raise such issues); *see also Tanana*, 249 P. 3d at 751-52 (refusing to address State's "hypothetical situations" regarding jurisdiction).

In this case, the Tribe should prevail if there is *any* instance in which its court has authority to adjudicate child custody. The State's uniform refusal to enforce tribal child support orders presented—even where all parties are tribal members—demonstrates the State's complete disregard for any tribal authority over child support. In an affidavit supporting its motion for summary judgment, the Tribe described multiple instances where "the child, ... the Petitioner, ... and the Respondent" were *all* members of or eligible for enrollment in the Tribe, but where Alaska nonetheless refused to cooperate on enforcement. Exc. 172-73. The State's arguments regarding possible limitations of tribal authority under other, more complex, scenarios should be dismissed as merely an attempt to muddy the waters.

Having determined that the Tribe has inherent authority to address child support issues, the Court need go no further. In *Tanana*, this Court left "the varied hypothetical situations posited by the State as creating difficult jurisdictional questions ... for later determinations under specific factual circumstances." *Tanana*, 249 P. 3d at 751-52. The Court noted that

> The nature and extent of tribal jurisdiction in any particular case will depend upon a number of factors, including but not limited to: (1) the extent of the federal recognition of a particular tribe as a sovereign; (2) the extent of the tribe's authority under its organic laws; (3) the tribe's delegation of authority to its tribal court; and (4) the proper exercise of subject matter and personal jurisdiction. Among the many issues we are not deciding today are: ... (2) the extent of tribal jurisdiction over non-member parents of Indian children; and (3) the extent of tribal jurisdiction over Indian children or member parents who have limited or no contact with the tribe.

Id. Just as in *Tanana*, this Court should defer addressing the hypothetical issues that the State raises until later cases where it has "sufficient facts to make determinations about specific limitations on inherent tribal jurisdiction." *Id.*

II. Alaska's Refusal to Enforce the Tribe's Child Support Orders Undermines the Federal Child Support Enforcement Program

State eligibility for IV-D funds is conditioned on (1) the state having "in effect" UIFSA, which requires the state to recognize and enforce tribal child support orders, 42 U.S.C. § 666(f), and (2) the state's IV-D plan "extend[ing] the full range of services available under its IV-D plan to... *[a]ny [operating] Tribal IV-D program*," 45 C.F.R. § 302.36(a) (emphasis added). Given the State's failure to process CCTHIT's child support orders in compliance with UIFSA, it is difficult to conclude that the relevant provisions of UIFSA are truly "in effect" within Alaska's borders. In this respect, little has changed since HHS found that the "procedures [applicable] to tribal child support orders across the United States ... do not apply in Alaska because of the [State's] failure to include 'Tribes' in the [UIFSA] definition of State." Exc. 759. Alaska's blanket refusal to recognize and enforce child support orders issued by the Tribe's IV-D program is inconsistent with the cooperative federal-state-tribal program established by federal law.

The 1996 PRWORA amendments to Title IV-D provide for states and tribes to work together, along with the federal government, to protect the financial security of Native American children and families. In the Preamble to the implementing regulations, HHS emphasized the importance of "States and Tribes … work[ing] together to ensure families receive the support they deserve," and particularly "encouraged [Alaska and Alaska Native Tribal entities] to find local solutions to meet the challenges they face." 69 Fed. Reg. at 16,651, 16,653. Alaska's refusal to follow its IV-D State plan commitment or UIFSA in its dealings with the Tribe disregards this principle of state-federal-tribal cooperation, and undercuts UIFSA's "prime goal" of "[t]olerance for the laws of other States [and Indian tribes] in order to facilitate child support enforcement." 1996 UIFSA, Prefatory Note at 4. State enforcement of tribal child support orders, including those issued outside of Indian country, furthers the federal child support enforcement program.

Congress and the Secretary of HHS have determined that the best way to support both tribes and tribal children is to provide direct IV-D payments to any federally recognized tribe, including Native Alaskan tribes, that demonstrates its ability to operate child support enforcement programs meeting the objectives of Title IV-D. CCTHIT has made this demonstration. The State's arguments here simply do not justify its refusal to honor its commitment to enforce child support orders issued by tribal IV-D programs, including those orders issued by the Tribe.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

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ATTACHMENT

"Supporting Our Children: A Blueprint for Reform"

THE U.S. COMMISSION ON INTERSTATE CHILD SUPPORT'S REPORT TO CONGRESS

"Supporting Our Children: A Blueprint for Reform"

The U. S. Commission on Interstate Child Support was established as a part of the Family Support Act of 1988. The Commission was charged by the Congress to make recommendations on improvements to the interstate establishment and enforcement of child support awards. The Commission is required to submit a final report to the Congress.

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"Too often, with regard to Indians, Congressional oversight has meant overlooked."

Sam DeLoria, Director, American Indian Law Center.

Indian Children

There are no studies or data concerning the establishment and enforcement of support obligations on behalf of Indian children. However, given that the largest group on Indian reservations are children under age 18, and that 15.9% of Indian households are headed by a single female, one may reasonably assume that there are a large number of Indian children entitled to support.[18]

Support enforcement is sufficiently complex when the parents live in the same state. When the parents live in different states, another layer of problems arise. When an interstate case involves one parent or child who lives in Indian country, the complexity is multi-fold.

There are 314 federally recognized tribes in the lower 48 United States. Among these tribes there are approximately 130 tribal courts and 17 Courts of Indian Offenses (CFR courts).[19] Most tribal codes authorize their courts to hear parentage and child support matters that involve at least one member of the tribe or person living on the reservation. This jurisdiction may be exclusive or concurrent with state court jurisdiction, depending on whether the tribe is located in a state with Public Law 280 civil jurisdiction.[20]

In the summer of 1989, a project funded by the State Justice Institute sent a survey to individuals in 32 states with federally recognized Indian country. Twenty-one states reported disputed jurisdiction cases, especially in domestic relations cases —divorce, child custody and support.[21] In the area of child support, respondents cited the following problems: "a non-Indian spouse may challenge a tribal court child support order accompanying a divorce; a reservation Indian may seek to reject a state court's jurisdiction with child support; a tribe member may seek to reject a state court process served on the reservation."

Indians have also raised concerns. They cite the failure of some state courts to recognize tribal orders, the need for states to accommodate trial custom and collection procedures, and the needed ability to expeditiously modify state support orders based on imputed wage levels that they believe are unrealistic for Indian reservations.

These problems and others were identified at a public hearing the Commission held in New Mexico that focused on Indian children and nonsupport. As a result, the Commission recommends reforms targeted to the special needs of Indian children. The recommendations will assist Indian tribes in establishing support plans and programs that are compatible with tribal custom and recognized by states. All of these recommendations are premised on the firm belief that Indian children who are entitled to support should receive child support.

"Today we move forward toward ... a relationship in which the tribes of the nation sit in positions of dependent sovereignty along with the other governments that compose the family that is America."

President George Bush
June 14, 1991
Part of a proclamation reaffirming a government to government relationship between Indian tribes and the Federal Government.

Sovereign to Sovereign Relationship

The relationship between the federal government and Indian tribes is (for the most part) the same as that between sovereign nations. Although Indian tribes are under authority of the United States, they retain all rights of self-government that have not been limited by federal treaties or statutes.[22]

The Commission affirms this sovereign-to-sovereign relationship. Any federal policy addressing child support on behalf of Indian children needs to recognize the sovereignty of Indian tribes.

Traditional tribal interest over domestic relations is an integral part of tribal self-government. The major federal legislation addressing tribal/state court jurisdiction is Public Law 83-280. Originally passed by Congress in 1953, it affected both civil and criminal jurisdiction of tribal courts by expanding state court jurisdiction over such matters in five states.[23] By 1958, the number had increased to 16 states as a result of amendments to Public Law 280 and implementing state legislation.[24] Public Law 280 was last amended in 1968 when Congress passed the Indian Civil Rights Act.[25] Congress limited the extension of Public Law 280 civil and criminal jurisdiction to those states in which an Indian tribe consents by a majority of voting adult Indians. No Indian tribe has so consented.

At the present time, therefore, tribal courts have exclusive jurisdiction over parentage and support matters where both parents reside in Indian country. If one parent resides in Indian country and one parent resides off the reservation, the tribal court continues to have jurisdiction. However, state courts may have concurrent jurisdiction depending upon whether the state has Public Law 280 jurisdiction. Added to the jurisdictional puzzle are competing tribal court jurisdictions when one Indian party is not a member of the tribe asserting jurisdiction.

There are a number of possible "combinations" of parties involved in a parentage or support action which may raise the issue of tribal versus state court jurisdiction:[26]

1) Indian mother and Non-Indian father
2) Non-Indian mother and Indian father
3) Indian/member mother and Indian/member father
4) Indian/member mother and Nonmember Indian father
5) Nonmember Indian mother and Indian/member father

The children's receipt of government benefits adds further complication. Some courts characterize the State as a nonIndian party and analyze jurisdiction accordingly.[27] Other courts characterize the State as an Indian since it derives its interest in the child support action from the Indian parent by means of an assignment of support rights.[28]

Jurisdictional issues should not prevent any Indian child from receiving support to which he or she is entitled.

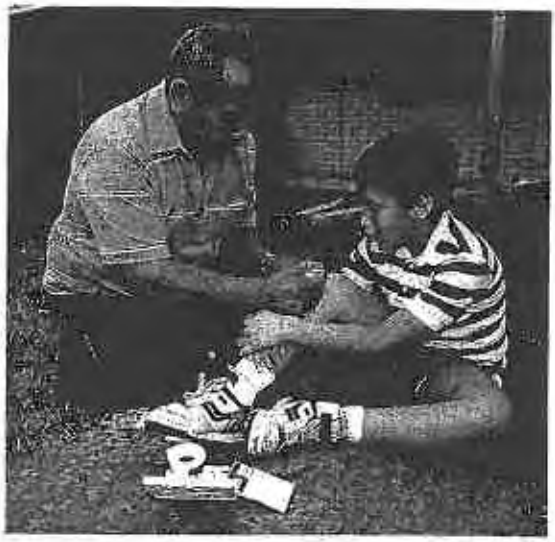
The Commission encourages states and tribes to consider intergovernmental agreements as one method to resolve child support jurisdictional issues and facilitate the collection of child support on behalf of Indian children.

Intergovernmental agreements (IGAs) between a tribe and a state are not new. Nationwide, hundreds of IGAs exist addressing such topics as hunting and fishing rights, natural resources, cross-deputization, and the Indian Child Welfare Act.[29] The legal basis for such agreements is typically found in a state statute and the inherent authority of tribes to enter into agreements with state and local governments.

States and tribes are beginning to explore IGAs related to child support. "From a state perspective, IGAs represent a means by which the State can provide required child support services on

behalf of Indian children. From a tribal perspective, IGAs are advantageous because they recognize, respect and depend upon the use of tribal courts; allow tribes to assert their tribal authority; result in less litigation over jurisdiction issues; and provide additional resources for child support cases."[30]

An example of a child support IGA is the Colville Agreement negotiated between Washington State Department of Social and Health Services and the Colville Confederated Tribes in 1987.[31] According to the Colville Agreement, the parties "recognize that their ability to enforce child support obligations, orders, and judgments will be enhanced with the establishment of procedures for the reciprocal recognition and enforcement of child support orders and judgments." Pursuant to the agreement, the Colville Tribes agree to give full faith and credit to any state child support order when the custodial parent works or resides within the Colville Indian reservation and the parent or child has (1) received AFDC or (2) applied for IV-D services with the state. The State of Washington similarly agrees to give full faith and credit to any child support order entered by the Colville Tribal Court. The procedure for obtaining full faith and credit is registration of the order in the appropriate court, with an application requesting that the order be accepted as a judgment of that court. Once accepted, all provisions regarding enforcement of judgments apply, with limited exceptions. An Indian obligor in tribal court may raise any defense to enforcement that is not precluded by res judicata, including defenses based on tribal custom. Additionally, although the Colville Confederated Tribes agreed to waive their sovereign immunity for the limited purpose of allowing state garnishment of wages for child support, the Tribes cannot be sanctioned if the Tribes fail to comply with a state withholding order.



Based on preliminary reports, the Colville Agreement has been successful in collecting much needed support for Indian children. For the period from October 1990 through March 1992, the state office of support enforcement initiated 150 cases with the Colville Tribal Court, resulting in collections of $110,317.05. The Commission encourages other states and tribes to negotiate child support IGAs. In addition to procedures for reciprocal enforcement of child support orders, it may be appropriate to include provisions in the IGA regarding service of process and establishment of orders.

The use of intergovernmental agreements in child support would likely increase if Congress took the lead in recognizing the validity and enforceability of state and tribal court child support orders. The U.S. Constitution provides that "Full Faith and Credit shall be given in each State to the Public Acts, Records and Judicial Proceedings of every other State." Additionally, 28 U.S.C. section 1738 provides that authenticated records and judicial proceedings "shall have the same Full Faith and Credit in every court within the United States and its territories and possessions as they have by law or usage in the courts of such States, territories or Possessions from which they are taken." At issue is whether an Indian tribe is included within the

phrases "State" or "territories." Congress has never clarified the issue. However, in the Indian Child Welfare Act Congress acknowledged the importance of tribal and state courts' recognizing the validity of each other's custody orders. It provides the following:

> Full faith and credit shall be given to the judgments and decrees of foreign courts provided such foreign court has, at the time of the entry of such judgment or decree, jurisdiction of the parties and subject matter, and provided further that recognition of such judgment or decree is not repugnant to the health, safety or well-being of the members of the community.

It is crucial to the economic well-being of Indian children that support orders also be recognized by both state and tribal courts. The Commission, therefore, recommends that Congress require reciprocal recognition and enforcement of state and tribal court orders similar to the Full Faith and Credit approach taken in the Indian Child Welfare Act.

A federal statute, along with IGAs, will enhance reciprocity among state and tribal courts not only in cases where both parents reside in the same state but also in interstate cases. Interstate support cases involving children should also be explicitly addressed under URESA.

Every state, American territory, and the Commonwealth of Puerto Rico have adopted some version of URESA which provides for interstate establishment and enforcement of support awards. Section 2 of the 1968 Revised Act defines State to include "any foreign jurisdiction in which this [RURESA] or a substantially similar reciprocal law is in effect." The Act does not expressly mention Indian tribes.

As discussed in Chapter 12, the National Conference of Commissioners on Uniform State Laws is again revising URESA. They have drafted a new Act, the Uniform Interstate Family Support Act (UIFSA), which will be submitted for approval this summer. UIFSA includes a revised definition of state which recognizes Indian tribes. Tribes are treated similarly to States rather than foreign jurisdictions since there is no requirement that the Indian tribe have a code substantially similar to UIFSA or reciprocate in enforcement of support orders. The Commission supports this provision in UIFSA and recommends that Indian tribes be included in the definition of "state" under UIFSA.

Indian Children and Tribal Courts

As stated earlier, domestic relations among tribal members is an important area of traditional tribal control. This tribal interest does not dissipate when one of the child's parents is a non-Indian. In establishing parentage and child support awards, tribal courts should protect and preserve the continuity of family as perceived by Indian children. Orders should promote healthy contact with both parents, absent credible evidence to the contrary.

Determination of Parentage

At its public hearing in New Mexico, the Commission heard testimony that state and tribal courts alike would benefit from better research regarding HLA testing for Indians. According to witnesses, there has not been a sufficient Indian subject class tested to be able to conduct the full range of comparisons necessary to determine the likelihood of parentage when the parties are Indians. Accordingly, the Commission recommends that Congress or the U.S. Department of Health and Human Services fund a study to produce genetic marker frequency data on Indians.

Enforcement

Income withholding has proven the most effective collection remedy states have against an obligor who is regularly employed. If the obligor is an Indian, states may still enforce their support order so long as he or she works

off the reservation. However, if the obligor works for the tribal government, income withholding will most likely be unsuccessful because of sovereign immunity.[32]

There is a strong public policy that governments should take the lead in protecting their children. In 42 U.S.C. section 659, the federal government has waived its sovereign immunity for the limited purpose of garnishment for child support. The Commission recommends that Indian tribes waive their sovereign immunity to the same extent as the federal government for the limited purpose of garnishment for child support.

The Title IV-D Program and Indian Children

A number of state witnesses at the Commission's public hearing on support of Indian children testified about the problem of providing IV-D services to Indian children on Indian reservations. In their opinion, current federal regulations hinder rather than facilitate child support efforts on behalf of Indian children.

The federal Office of Child Support Enforcement has informed state IV-D administrators that Indian children must be included within their potential caseload for whom services must be provided. Federal law requires a IV-D office to locate absent parents, establish parentage, establish and modify support obligations, and enforce support orders. State child support administrators feel that such an expectation regarding Indian children is unrealistic due to jurisdictional issues. Some IV-D administrators have explored the possibility of tribes providing IV-D services on their reservations on behalf of the IV-D office. Federal regulations authorize IV-D services through cooperative agreements with "appropriate courts and law enforcement officials."[33] It is unclear whether "tribes" come within the definition of "appropriate courts." Even if tribes were considered to be "appropriate courts," it appears that federal financial participation (FFP) would not be available to fund cooperative agreements with most tribes. Federal regulations governing cooperative agreements require that they:

(a) Contain a clear description of the specific duties, functions, and responsibilities of each party;

(b) Specify clear and definite standards of performance that meet Federal requirements;

(3) Specify that the parties will comply with Title IV-D of the Act, implementing Federal regulations and any other applicable Federal regulations and requirements.[34]

That means if a state has an agreement with a tribe that allows state personnel or that allows tribal personnel to pursue child support on behalf of, and against, persons who are within tribal jurisdiction, FFP will not be available unless the tribal code conforms to federal IV-D requirements. Most tribal codes do not meet federal IV-D requirements.

The Commission urges Congress to monitor Indian child support programs. The federal Office of Child Support Enforcement and the Bureau of Indian Affairs should develop policy clearly stating how their agencies plan to facilitate the collection of child support on behalf of Indian children. The Commission recommends that the Bureau of Indian Affairs and the federal Office of Child Support Enforcement be adequately funded to administer such efforts to enforce child support on Indian reservations.

It is also crucial that Congress resolve whether Title IV-D of the Social Security Act applies to Indian country. The Commission recommends that, in the long term, IV-D requirements should apply to Indian tribes. That means Indian tribes — similar to state IV-

D agencies — would have the option of providing IV-D services through a tribal entity or a contract with an outside entity, such as the state IV-D agency. One barrier that many tribes will face is the inability to fund the "state's" matching share of federal financial participation, as required under current law. The Commission therefore recommends that Indian tribes receive 100% funding of their IV-D programs. Another issue is the fact that a few tribes operate pursuant to custom and have no written laws or constitutions. Tribes without written constitutions and codes should provide written assurance that their courts have the power to adjudicate parentage and child support claims, and that the rights of the non-Indian parent or nonmember Indian parent will be protected.

In preparation of Congressional extension of Title IV-D to Indian country, the Commission recommends two-year demonstration projects. Congress should establish site criteria as it does for state demonstration projects. The Commission recommends that preference in site selection should be given to tribes that have demonstrated their commitment to children. For example, the successful use of child abuse prevention programs, community organization projects, Indian youth programs or other proven family and child centered programs indicate a tribal commitment to improving children's welfare. Information from reports evaluating the demonstration projects should prove very useful to Congress and tribes in planning for the extension of Title IV-D to Indian country.

Communication

As part of the SJI project mentioned earlier, forums were established in three states (Arizona, Oklahoma, and Washington) for the purpose of building cooperation among state and tribal courts. Each forum issued a report, highlighting barriers to cooperation and effective methods to overcome those barriers. Each report stresses the importance of continued communication. The Commission believes that many of the jurisdictional disputes and misperceptions of state and tribal courts in child support cases can also be resolved through ongoing communication. Accordingly, the Commission recommends that tribal and state governments

have a joint task force to study problems of service of process;

cooperate on the production of a tribal court manual for child support;

discuss regularly within respective judiciary and bar associations concerns regarding child support enforcement; and,

provide continuing legal education for the tribal court bar on child support.

Only with improved communication and coordination among state and tribal courts, and reciprocal recognition of each other's support orders, will Indian children receive the support to which they are entitled.

82 RECOMMENDATION

INDIAN CHILDREN AND TRIBAL COURTS

Preamble

The federal government, including the Bureau of Indian Affairs and the federal Office of Child Support Enforcement, has no Indian policy as it concerns issues of child support. It should be the intent of Congress to assure that Indian children residing on Indian reservations be vigorously accorded the same rights to support as are currently afforded off-reservation children. Additionally, state and tribal governments should do all in their power to ensure that jurisdictional issues do not prevent any Indian child — on or off the reservation — from receiving the support to which he or she is entitled.

Specific Recommendations

a. Any federal policy addressing support issues and Indian children should recognize the sovereignty of Indian tribes.

b. Congress should enact federal legislation to resolve jurisdictional issues regarding state and tribal court child support orders similar to the Full Faith and Credit language in the Indian Child Welfare Act.

[Federal plenary statute]

c. The BIA and OCSE should be required to adopt policies for the appropriately funded and effective administration of child support enforcement on Indian reservations.

[Federal plenary statute]

d. States and tribes are encouraged to negotiate intergovernmental agreements to resolve child support jurisdictional issues and facilitate the collection of child support for Indian children.

[Encouragement]

e. Regarding tribal government involvement in the IV-D process:

1. In the long-term, the Commission recommends that IV-D requirements be extended to Indian tribes. Tribes should have the option of performing the IV-D functions themselves or contracting with the State for IV-D services. Initially, Indian tribes should be 100% funded through Title IV-D of the Social Security Act as compared to the current federal/state ratio funding for State IV-D programs. OCSE should be required to monitor tribal IV-D programs as it does state IV-D programs.

2. In the short-term, we recommend that federal legislation provide for two-year demonstration projects to selected tribes for the purpose of determining the most optimal child support enforcement models in Indian country.

A. In awarding demonstration grants to Indian tribes, preference should be given to those tribes best demonstrating their commitment to their children. For example, such commitment may be evidenced through the successful use of child abuse prevention

programs, community organization projects, Indian youth programs and other child and family centered programs.

B. Preference should also be given to those tribes which can best demonstrate the least erosion of their community and family integrity over the past fifty years.

C. Demonstration projects should reflect the diversity of Indian cultures in the United States.

3. In the short-term, we also recommend that states should be required to develop policies specifying how they will provide IV-D services to Indian children.

[Federal plenary and funding-loss-risk statutes]

f. Indian tribes should assure that children within their jurisdictions are provided the appropriate financial support by their parents or legal caretakers. Those few tribes with noncodified and nonconstitutional tribal governments should provide written, verifiable assurance of the authority of their courts to establish paternity, and to establish and enforce child support obligations, and of factors to be considered in establishing the support amount similar to the authority provided by codified and constitutional tribal governments.

[Encouragement]

g. States and tribes are encouraged to develop mutually beneficial joint powers agreements (also known as intergovernmental agreements) or compacts to facilitate child support establishment and enforcement.

[Encouragement]

h. Congress should consider providing additional fiscal incentives to States and Indian tribes to enter into and implement such state/tribal and intertribal agreements.

[Recommendation to Congress]

i. The Commission supports the inclusion of Indian tribes in the definition of "State" within the Uniform Interstate Family Support Act, now under consideration by the National Conference of Commissioners on Uniform State Laws.

[Recommendation to NCCUSL]

j. Within the federal Office of Child Support Enforcement, there should be established a liaison with Indian tribes. We suggest that the office-holder coordinate contact between the Bureau of Indian Affairs and the U.S. Department of Health and Human Services regarding child support issues, and provide technical assistance to the states and tribes.

[Recommendation to OCSE and BIA]

k. Staff of Congressional Indian legislative committees need to monitor all legislation related to child support to ensure it has an appropriate impact on Indians.

[Recommendation to Congress]

l. Indian tribes should waive their sovereign immunity as payor to the same extent as the federal government waives its sovereign immunity as payor solely for the purpose of garnishment of child support.

[Recommendation to Indian tribes]

m. Congress or DHHS should fund a study to produce genetic frequency data on Indians. The results of such a study would help not only in parentage establishment, but also in criminal actions and medical donor matches.

[Federal plenary statute]

n. Tribes and states should engage in joint activities such as the following:

1. Joint task forces should be established to study problems of service delivery regarding child support and to recommend approaches to addressing jurisdictional and service of process issues.

2. Indian law committees of state bars or tribal courts should publish and disseminate tribal court handbooks with the objective of facilitating ongoing communication with, and understanding of, tribal courts and tribal court personnel.

3. State and tribal judges who preside in adjacent locations should meet periodically to share judicial concerns, information and resources and to address mutual problems and issues regarding child support.

4. Domestic Relations and Family Law Committees of local and state bar associations should study the problems of child support enforcement with respect to Indian children, especially those in Indian country, and invite tribal participation in developing remedies; and

5. Tribal continuing legal education programs should include sessions on child support establishment and enforcement.

o. The continuation of the family as perceived by Indian children should be protected and preserved by the Indian courts. Consistent with the mandates of the Indian Child Welfare Act, in seeking solutions to child support problems, the courts should execute remedies which preserve the child's need for healthy contact with both parents, absent credible evidence to the contrary.

[Encouragement]

International Law

The Commission notes that over 2.4 million Americans live abroad, a significant number of whom has support obligations.[35] Historically, an obligor's relocation in a foreign nation made child support enforcement extremely difficult, time-consuming and expensive. There are also thousands of foreigners with offspring who reside in the United States, who are U.S. citizens for whom support should be provided.

The United States has not signed any of the major treaties regarding international support enforcement. The United States is now considering whether to sign the Convention on the Recovery Abroad of Maintenance of 1956. If signed and ratified, the United