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**Nebraska Supreme Court Opinion Affirms Right of Tribes to Fully Participate in Child Welfare Cases Involving Native American Children**

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LINCOLN, Nebraska – July 26, 2009 – Today, the Nebraska Supreme Court released an opinion affirming the right of tribes to intervene and fully participate in child welfare cases involving Native American children by a representative of their choosing. In doing so, the state’s highest court made clear that the participation of tribes in such cases is an important means of protecting the best interests of Native American children and preserving Indian culture.

In a unanimous decision, the Nebraska Supreme Court reversed and remanded a decision by Dakota County Judge Kurt Rager which refused to allow the Ponca Tribe of Nebraska to intervene in a child custody case involving two children. The Dakota County judge refused the Ponca Tribe’s Motion to Intervene because it was not signed by an attorney, but rather the Tribe’s designated representative, its Department of Social Services ICWA Specialist. The Nebraska Supreme Court reversed the lower court, holding that the federal Indian Child Welfare Act (ICWA) preempts Nebraska law regulating the unauthorized practice of law.

“This is a great step forward in protecting the best interests of Indian children in Nebraska,” said Brad Jolly of Smith, Jolly, Shelton & Ragona, L.L.C. “By ensuring that tribes can fully participate in ICWA proceedings, the decision is key to helping fulfill the goals of ICWA to protect and preserve Indian nations and their children, cultures, and communities.”

The case involves a juvenile court petition regarding two children, Elias L. and Evelyn M., who are both members of the Ponca Tribe. The Indian Child Welfare Act, which governs child custody proceedings involving Native American children, provides, among other things, a right of the child’s tribe to intervene.

The Nebraska Supreme Court determined that requiring the tribe to appear with legal counsel interferes with the tribe’s right to intervene. If the tribe is not able to intervene, Indian children would be without the advocacy of their tribe and the tribe’s interest as well as key interests of the children would go unrepresented. The court then went on to determine that the state’s interest in requiring groups to be represented by an attorney, while legitimate, is outweighed by the tribe’s

interests in ICWA proceedings and protecting its children. Moreover, in this context, the state's interest is not necessarily compromised because the tribe's representative, a trained ICWA Specialist, was familiar with applicable law and procedure and was authorized to speak on behalf of the tribe.

"The right of tribes to intervene in ICWA cases involving Native American children is a vital tool to preserve cultural connections and address the disproportionate number of Native American children in the state child welfare system," said Sarah Helvey, Director of Nebraska Appleseed's Child Welfare System Accountability Program. "Today's decision makes clear that tribes have a right to fully participate in ICWA cases through an agent of their choosing and protects the right of Indian children to have the advocacy and expertise of their tribe in such cases."

The Indian Child Welfare Act was enacted by Congress as a means of addressing the disproportionate number of Native American children removed from their homes and placed in non-Indian foster or adoptive homes by state agencies. According to a recent report by the National Indian Child Welfare Association, Nebraska is the 8<sup>th</sup> highest state in the country in terms of the percentage of children served in foster care who were American Indian/Alaskan Native and the 2<sup>nd</sup> highest state in the country in terms of the greatest disproportionality of American Indian/Alaskan Native children in the foster care system

*Brad Jolly of Smith, Jolly, Shelton & Ragona, L.L.C. represented the Appellant, the Ponca Tribe of Nebraska.*

*An amicus brief was filed in this case and included: Mark C. Tilden of the Native American Rights Fund on behalf of the National Indian Child Welfare Association, the Indian Center, Inc., the Santee Sioux Nation, the Oglala Sioux Tribe, the Osage Nation, the Sac and Fox Tribe of the Mississippi in Iowa, the Spirit Lake Tribe of North Dakota and the Rosebud Sioux Tribe; Sarah Helvey and LaShawn Young on behalf of the Nebraska Appleseed Center for Law in the Public Interest; Rosalyn J. Koob of Heidemann Law Firm, L.L.P. on behalf of the Winnebago Tribe of Nebraska; Ben Thompson of Thompson Law Office, L.L.C. on behalf of the Omaha Tribe of Nebraska; and Jennifer Gaughan on behalf of Legal Aid of Nebraska.*

*The Nebraska ICWA Coalition is a group of tribal representatives and advocates committed to the full enforcement of ICWA in Nebraska. Members of the Nebraska ICWA Coalition participating in the amicus brief included: the Winnebago Tribe of Nebraska, the Santee Sioux Nation, the Omaha Tribe of Nebraska, the Oglala Sioux Tribe, the Indian Center, Inc., Legal Aid of Nebraska, and Nebraska Appleseed.*

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