

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Americans for Tribal Court Equality, James
Nguyen, individually and on behalf of his
minor child A.N., and Michelle Steinhoff,
individually and on behalf of her minor
child T.J.,

Plaintiffs,

Case No. 17-CV-4597 ADM/KMM

**PLAINTIFFS
NOTICE OF MOTION FOR
SUMMARY JUDGMENT**

v.

Emily Piper, in her official capacity as
Commissioner of the Minnesota
Department of Human Services, and Scott
County,

Defendants.

The Plaintiffs Americans for Tribal Court Equality, James Nguyen and individually and on behalf of his minor child A.N., and Michelle Steinhoff, individually and on behalf of her minor child T.J. moves for summary judgment requesting this Court to grant for the Plaintiffs all claims asserted against the Defendants. This motion is brought under Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7.1 (a) and (c).

In summary, the Plaintiffs will assert that Defendant Minnesota's Department of Human Services Indian Child Welfare Manual¹ is preempted by the federal Indian Child Welfare Act by requiring transfer of child custody matters to tribal jurisdiction without a state court proceeding and without obtaining, in that state court proceeding, the non-

¹ The DHS Indian Child Welfare Manual is currently available at
“http://www.dhs.state.mn.us/main/groups/county_access/documents/pub/dhs16_157701.pdf”.

member parent's consent: Under the Department's written policy, the Defendant Scott County violates the federal ICWA by transferring child custody and child welfare matters concerning minor children residing off the reservation and on Public Law 280 tribe reservations without first commencing a state court proceeding and without, in that state court proceeding, first obtaining both parents' consent. In so doing, the Department's and County's written policy and custom unconstitutionally assume that a non-member parent would consent in state court to tribal-court transfer, which is a substantive violation of the Due Process Clause of the United States Constitution and under *Troxel v. Granville*, 530 U.S. 57 (2000) in which the United States Supreme Court opined:

[S]o long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children.

Troxel, 530 U.S. at 68-69.

The Department's and County's written policy and custom also fail to provide for federally-required state court due process for the non-member parent to exercise his or her federally-protected right to object to tribal-court transfer.

The Plaintiffs' motion will be based upon filed memoranda of law, supporting declarations and exhibits, and oral argument, including all other documents filed in these proceedings as deemed necessary.

Dated: November 2, 2017.

/s/Erick G. Kaardal

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