No. 24-3487

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

KRISTIN TIX,
n/k/a Kristin Ann McGowan,
Plaintiff – Appellant,

v.

ROBERT TIX,
Defendant – Appellee,

On Appeal from the United States District Court
for the District of Minnesota
Case No. 24-cv-1824 (KMM/ECW)
Hon. Katherine Menendez

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SUMMARY OF THE CASE

This case concerns tribal jurisdiction over a divorce between a tribal member and non-member who have tribal member children. Defendant-Appellee Robert Tix ("Tix") is the tribal member. Plaintiff-Appellant Kristin Tix, now known as Kristin Ann McGowan ("McGowan"), is the non-member.

McGowan filed for divorce in state court. Tix filed for divorce in tribal court. The state court determined that the tribe possessed concurrent jurisdiction over the divorce. It deferred to the tribal court as the more convenient forum.

McGowan challenged the assertion of tribal jurisdiction in tribal court. Her challenge was rejected at both the trial and appellate levels. The tribal court decisions held that the tribe possesses jurisdiction by virtue of its power over non-members who enter into consensual relationships with the tribe and its members. They also cited as additional sources of authority the tribe's inherent power over family law matters and its *in rem* jurisdiction.

McGowan then filed this federal challenge. Like the other courts, the federal district court concluded that McGowan's consensual relationships with Tix and the tribe give rise to tribal jurisdiction.

The courts below correctly recognized that tribal court jurisdiction is present here. Appellee agrees with Appellant that 30 minutes of oral argument is appropriate given the important issues of tribal sovereignty presented.

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INTRODUCTION

Tix had a lot to offer McGowan if she decided to marry him. Love, of course. And also more tangible things. Because Tix is a member of a Native American tribe with successful business enterprises, he and the tribe could provide McGowan unique and substantial benefits. The tribe would let McGowan share Tix's six-figure annual per capita payments. It would give her tribal services like health and dental care. And if she chose to enroll her future children in the tribe, it would pay for them to go to college and make them millionaires when they turned 18.

McGowan accepted the offer. She married Tix, had three children with him, and enrolled the children in the tribe. Altogether, she spent nearly 14 years married to Tix. And during that time she received, as anticipated, substantial tribal funds and services because she married Tix. The tribe provided per capita payments that served as McGowan and Tix's sole source of income for much of the marriage. It ensured McGowan had health and dental care. And it supplied additional resources for the care and education of McGowan's children. In total, McGowan received at least seven figures worth of tribal funds and services.

Having reaped the benefits, McGowan now seeks to avoid the part of the deal she does not like: tribal jurisdiction. Although she and Tix have opted to divorce, she wants to still receive a portion of Tix's per capita payments, in violation of tribal (and federal) law. She hopes if the divorce is litigated in state court, the state court

will disregard this applicable law, as has happened before. She therefore filed this federal suit to try to stop the tribe's exercise of jurisdiction over her and Tix's divorce.

McGowan's suit is meritless. As the district court correctly concluded, McGowan is bound by the deal she agreed to. The Court should affirm the decision below.

STATEMENT OF THE CASE

A. The Prairie Island Mdewakanton Dakota Indian Community

The Prairie Island Mdewakanton Dakota Indian Community ("Community" or "PIIC") is a federally recognized Indian tribe. *See Who We Are, Our Nation*, Prairie Island Indian Community, https://prairieisland.org/who-we-are/our-nation (last visited Mar. 31, 2025). As a sovereign, it exercises jurisdiction over its territory and its people to the extent not "given up by treaty with the United States or taken away by legislation enacted by Congress." Aple.-App. 35; R. Doc. 17-1, at 17 (formatting altered).

The Community's reservation is on an island "located on the shores of the Mississippi and Vermillion Rivers, just north of Red Wing in southeastern Minnesota's Goodhue County." Aple.-App. 112; R. Doc. 17-1, at 109. The reservation is small: "approximately 534 acres of original reservation land and 2,774 acres of other trust land close to the existing reservation." *Id.* Much of the

reservation cannot be developed because it is situated "in the 100-year floodplain, including 1,295 acres of non-buildable land and open water." *Id.* This makes it "geographically impossible for all PIIC members to reside on the … reservation." *Id.*

The Community provides for the health, welfare, and safety of its citizens. It is fortunate to have developed successful business operations, including gaming. Using funds generated by those businesses, it offers services to tribal members and their families. *See* Aple.-App. 113; R. Doc. 17-1, at 110. It also distributes per capita payments. *See* Aplt.-App. 78; R. Doc. 30, at 2.

The Community's per capita payments are governed by federal and tribal law. Because they are derived from the Community's gaming activities, they must comply with the federal Indian Gaming Regulatory Act, which requires that tribal gaming revenues be used only "to provide for the general welfare of the Indian tribe and its members" or for certain other, limited purposes. 25 U.S.C. § 2710(b)(2)(B). In accordance with this edict, tribal law provides that in divorce proceedings, "[t]he Court may not consider the distribution of net gaming proceeds made from the Community to qualified Community members … when establishing or amending an order for [spousal] maintenance." Aple.-App. 125; R. Doc. 17-1, at 135.

The Community has a robust judicial system. It has adopted detailed rules of civil procedure that provide for discovery, cross-examination of witnesses, and jury

trials upon request, among other things. PIIC R. Civ. P. 14, 15, 20(d), *available at* https://prairieisland.org/uploads/Rules-of-Civ-Pro-FINAL-01.26.23.pdf. It also respects the rights afforded litigants by the federal Indian Civil Rights Act. *See* Aple.-App. 111; R. Doc. 17-1, at 108. A litigant dissatisfied with a ruling in the Community's trial court has a right to appeal. *See* PIIC Courts Ord. § 7(h)(6), *available at* https://prairieisland.org/uploads/Court-Ordinance_01.23.23.pdf. Appeals are decided by a panel of three judges. *Id.*

Judge B.J. Jones is one of the Community's trial court judges, and he presided over the tribal trial court proceedings here. Judge Jones "is recognized as a national expert in tribal law, federal Indian law, family law, and the Indian Child Welfare Act." Aple.-App. 127; R. Doc. 17-1, at 182.

The Community has exercised jurisdiction over family law disputes involving its members for years, including in cases involving off-reservation families. *See* Aple.-App. 126; R. Doc. 17-1, at 175. The Community extends its jurisdiction to off-reservation family law matters in part because "the land base of the Community is exceptionally small and does not permit all the members to live on the reservation." Aple.-App. 127; R. Doc. 17-1, at 182. If "access to the Tribal Court" were limited "to reservation residents only, it would foreclose most tribal members' opportunities to seek remedies in Tribal Court." Aple.-App. 112; R. Doc. 17-1, at 109.

B. The Parties' Relationship

This case arises out of the relationship between Tix and McGowan. Tix is a PIIC member. Aplt.-App. 78; R. Doc. 30, at 2. McGowan is not. *Id.* The two married in September 2008, in Minneapolis, Minnesota. *Id.*

The couple had three children, who are now 6, 12, and 14 years old. *Id.* McGowan and Tix chose to enroll the three children in the tribe. *Id.* Thus, four of the five people making up the family are tribal members.

During the marriage, the family and McGowan lived predominantly—and often solely—off tribal per capita payments. Aplt.-App. 90; R. Doc. 30, at 14. These per capita payments were significant: just over $198,000 in 2021 and a little more than $172,000 in 2022. Aplt.-App. 78; R. Doc. 30, at 2. As a result of these payments, McGowan did not have to work a job, and she and Tix were able to acquire significant assets. *See* Aplt.-App. 96; R. Doc. 30, at 20; Aple.-App. 12.

McGowan and the family also received substantial benefits from the Community. The Community gave McGowan health and dental insurance because she was married to Tix. Aplt.-App. 90; R. Doc. 30, at 14. It provided education and childcare assistance for the children. Aple.-App. 7. And in addition to Tix's per capita payments, the Community distributed per capita payments for the children, which the Community held in trust. Aple.-App. 12. These trust funds will likely

amount to over a million dollars by the time the children turn 18—on top of tuition assistance that the Community will provide if the children go to college. *Id.*

Tix "would have loved to live on the reservation." Aple.-App. 10. That was not possible, however, because of the tribe's small land base. Aple.-App. 10-11. Nevertheless, the family lived near the reservation, in Hennepin County, Minnesota. Aplt.-App. 78; R. Doc. 30, at 2. The family's residence near the Community permitted trips to the reservation, including for family visits, cultural events, and tribal services, like dental care. Aple.-App. 111; R. Doc. 17-1, at 108; *see also* Aple.-App. 13; Op. Br. 29.

The love did not last. McGowan and Tix decided to end their relationship. Apparently by coincidence, both filed for divorce on the same day—albeit in different fora. *See* Aplt.-App. 78-79; R. Doc. 30, at 2-3. McGowan filed in state court; Tix filed in tribal court. *Id.*

C. The State Proceedings

The state and tribal proceedings initially proceeded in parallel. In the state case, McGowan sought an order for protection for her and the children, alleging domestic abuse. Aplt.-App. 79; R. Doc. 30, at 3. Later, these allegations were largely—and in the case of the children, completely—not substantiated. Aple.-App. 70-71; R. Doc. 17-1, at 67-68. In the short term, however, the state court appointed

a guardian *ad litem* to "make recommendations regarding custody, temporary parenting time, counseling, and treatment." Aple.-App. 20; R. Doc. 17-1, at 2.

Before long, the state court learned of the concurrent tribal case. It held a case management conference to discuss "the issue of jurisdiction in [the state court] and the tribal court." Aple.-App. 21; R. Doc. 17-1, at 3. "The [state court] informed the parties, and the parties appeared to agree, that both the [state court] and the tribal court could simultaneously exercise jurisdiction over many of the issues presented by the parties." *Id.* Tix therefore moved to dismiss or stay the state case in favor of tribal court jurisdiction. Aplt.-App. 79; R. Doc. 30, at 3.

Despite her initial acknowledgement that the tribal court possessed jurisdiction, McGowan moved to dismiss in tribal court on jurisdictional grounds, as discussed below. She also opposed Tix's motion in state court.

The state court granted Tix's motion and deferred to the tribal court. Aplt-App. 80; R. Doc. 30, at 4. The state court concluded that the tribal court possessed jurisdiction over the divorce "because [Tix] and the minor children have a significant connection to the Community and substantial evidence is available in the tribal court concerning the minor children's care, protection, training, and personal relationships." Aple.-App. 26; R. Doc. 17-1, at 8. Although it too possessed jurisdiction over the divorce, the state court deferred to the tribal court after concluding "the tribal court would be a more convenient forum for the parties to

proceed with the custody matters in their dissolution." Aple.-App. 29; R. Doc. 17-1, at 11.

After two unsuccessful appeals, McGowan voluntarily dismissed the state case. Aplt.-App. 80-81; R. Doc. 30, at 4-5.

D. The Tribal Proceedings

As noted, the tribal case went forward concurrently with the state action. In response to McGowan's order for protection in state court, the Community's family services agency filed a petition for children in need of protective services in the tribal court. Aplt.-App. 79; R. Doc. 30, at 3. The tribal court, like the state court, appointed a guardian *ad litem*. Aple.-App. 46; R. Doc. 17-1, at 43. At McGowan's urging, the tribal court chose the same guardian *ad litem* as the state court. *See id.*

McGowan did not challenge the tribal court jurisdiction in the protective-services proceeding. Aple.-App. 46; R. Doc. 17-1, at 43. She did, however, move to dismiss the tribal court divorce action for lack of jurisdiction, as mentioned above.

The tribal trial court denied the motion. Examining U.S. Supreme Court precedent, it determined that the Community possessed jurisdiction because McGowan "voluntarily entered" into "the consensual relationship of marriage" with Tix "and benefitted from his membership and [their] children's membership in the Community during the marriage." Aple.-App. 37; R. Doc. 17-1, at 19. It also observed that that the Community has "in rem jurisdiction" over the marriage. *Id.*

In so ruling, the court noted the risk that a state court would fail to properly apply tribal law regarding tribal per capita payments. Aple.-App. 20; R. Doc. 17-1, at 2. It explained that in a previous case, a "Community member was brought into civil contempt penalties in state court and incarcerated" due to conflicting tribal and state court determinations about the inclusion of per capita payments in spousal support for a non-member. *Id.*

After the state court deferred to the tribal court, the tribal trial court proceeded to adjudicate the parties' divorce, holding a four-day trial. Aple.-App. 108; R. Doc. 17-1, at 105. McGowan was represented by counsel and allowed to present extensive evidence, including expert testimony. Aple.-App. 42-43; R. Doc. 17-1, at 39-40. Following deliberation, the tribal trial court issued a detailed and methodical 65-page opinion deciding the complex issues presented by the divorce. *See* Aple.-App. 42-106; R. Doc. 17-1, at 39-103.

Five aspects of the decision are most relevant to this appeal. First, the court ruled that McGowan was not entitled to a share of Tix's per capita payments as spousal maintenance. Aple.-App. 84; R. Doc. 17-1, at 81. Second, it determined care and custody of the tribal children. Aple.-App. 94-95, 100-01; R. Doc. 17-1, at 91-92, 97-98. Relying in part on the recommendations of the state-and-tribal-court-appointed guardian *ad litem*, it awarded Tix a greater share of custodial time. Aple.-App. 51, 94-95; R. Doc. 17-1, at 48, 91-92. Third, it permitted Tix to remove

McGowan from Tix's tribal-provided insurance policies. Aple.-App. 102, 104; R. Doc. 17-1, at 99, 101. Fourth, it divided the marital assets and addressed the parties' claims to non-marital assets. Aple.-App. 75-83; R. Doc. 17-1, at 72-80. Fifth, it prohibited "making negative statements about the child's culture directly to the children or around the children." Aple.-App. 70; R. Doc. 17-1, at 67. The last order was necessary because McGowan had disparaged the children's tribal heritage in front of them, allowed their maternal grandmother to do the same, and interfered with the children's involvement in the tribal community. Aple.-App. 65, 68-69; R. Doc. 17-1, at 62, 65-66.

McGowan appealed the tribal trial court's jurisdictional determination; she did not challenge its merits rulings. The PIIC Court of Appeals affirmed. It found that the Community possessed jurisdiction over the divorce because McGowan entered into a "consensual" and "contractual" relationship with Tix through marriage. Aple.-App. 116; R. Doc. 17-1, at 113. It also determined that "'Native tribes … possess the inherent sovereign power to adjudicate child custody disputes' involving tribal children." Aple.-App. 118; R. Doc. 17-1, at 115 (quoting *John v. Baker*, 982 P.2d 738 (Alaska 1999)).

E. These Federal Proceedings

After the PIIC Court of Appeals issued its decision, McGowan initiated this federal case, alleging that "[t]he Tribal Court exceeded the lawful limits of its

jurisdiction." Aplt.-App. 13; R. Doc. 1, at 8 (formatting altered). Tix moved to dismiss, while McGowan moved for summary judgment. *See* Aplt.-App. 83-84; R. Doc. 30, at 7-8. No material facts were disputed. Aplt.-App. 85; R. Doc. 30, at 9. On the merits, the parties contested whether the tribal court properly exercised (1) subject matter jurisdiction over the dissolution proceeding and (2) personal jurisdiction over McGowan. Aplt.-App. 83-84; R. Doc. 30, at 7-8. On procedure, they disagreed as to whether dismissal was required under Federal Rule of Civil Procedure 19 for failure to join the Community to the action. *See id.*

The district court concluded that the exercise of tribal jurisdiction was proper. As to subject matter jurisdiction, the district court held that the tribal court possessed jurisdiction under the first prong of the test set forth in *Montana v. United States*, 450 U.S. 544 (1981), which recognizes tribal authority over "the activities of nonmembers who enter consensual relationships with the tribe or its members." Aplt.-App. 89, R. Doc. 30, at 13 (quoting *Montana*, 450 U.S. at 565). The district court determined that it was "undisputed on this record that [McGowan] entered a 'consensual relationship' with a member of the [Community] through a 'contract' or 'other arrangement'—namely her marriage to [Tix]." *Id.* As to personal jurisdiction, the district court found that the tribal court correctly asserted authority over McGowan. *See* Aplt.-App. 93-98; R. Doc. 30, at 17-22. The district court did not reach the Rule 19 issue. *See* Aplt.-App. 83-99; R. Doc. 30, at 7-23. It denied

McGowan's motion for summary judgment, granted summary judgment to Tix, and denied Tix's motion to dismiss as moot. Aplt.-App. 84; R. Doc. 30, at 8.

McGowan now appeals. As she did below, she argues that the tribal court lacked subject matter jurisdiction over the divorce. She no longer, however, challenges the tribal court's assertion of personal jurisdiction over her. *See DISH Network Serv. L.L.C. v. Laducer*, 725 F.3d 877, 883 (8th Cir. 2013) (arguments "not raise[d] … in [the] initial brief" are "waived").

LEGAL BACKGROUND

"Indian tribes are domestic dependent nations that exercise inherent sovereign authority." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (cleaned up). They retain "those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status." *United States v. Wheeler*, 435 U.S. 313, 323 (1978).

Tribes' inherent sovereignty includes a "variety of self-government powers." *Haaland v. Brackeen*, 599 U.S. 255, 329 (2023) (Gorsuch, J., concurring). Tribes may, for example, "make their own substantive law in internal matters." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978). They may determine their membership. *Roff v. Burney*, 168 U.S. 218, 222 (1897). They may set rules of inheritance. *Jones v. Meehan*, 175 U.S. 1, 29 (1899). They may control "the use of [their] … resources by both members and nonmembers." *New Mexico v. Mescalero Apache Tribe*, 462

U.S. 324, 335 (1983). And they may "regulat[e] their internal and social relations," *United States v. Kagama*, 118 U.S. 375, 381-82 (1886), which includes "handl[ing] their own family-law matters and domestic disputes," *Brackeen*, 599 U.S. at 329 (Gorsuch, J., concurring) (cleaned up).

Beyond the foregoing contexts, tribal authority is more constricted, at least when non-members are involved. Even still, the Supreme Court has recognized tribal civil jurisdiction over non-members outside of these contexts in two circumstances. First, "[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members." *Montana*, 450 U.S. at 565. Second, "a tribe retains inherent sovereign authority to address 'conduct that threatens or has some direct effect on the health or welfare of the tribe.'" *United States v. Cooley*, 593 U.S. 345, 347 (2021) (cleaned up) (quoting *Montana*, 450 U.S. at 566). These are sometimes referred to as the two *Montana* prongs.

Tribal authority includes not just the power to regulate, but also to resolve disputes. *See Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997). "Tribal courts have repeatedly been recognized as appropriate forums for the … adjudication of disputes affecting important personal and property interests of both Indians and non-Indians." *Santa Clara Pueblo,* 436 U.S. at 65-66. This Court has accordingly required non-members to litigate in tribal court on many occasions. *E.g.*, *DISH*

Network, 725 F.3d at 885; *WPX Energy Williston, LLC v. Jones*, 72 F.4th 834, 838-39 (8th Cir. 2023); *Stanko v. Oglala Sioux Tribe*, 916 F.3d 694, 699-700 (8th Cir. 2019).

SUMMARY OF ARGUMENT

Issue 1: The tribal court possesses jurisdiction over the parties' divorce because tribes have inherent authority over family law matters involving tribal members. That authority encompasses the divorce here because both Tix and the parties' children are members of the tribe. McGowan's non-member status is irrelevant to this source of tribal authority, as is the fact that the family lived outside the reservation.

Issue 2: The tribal court also possesses jurisdiction over the parties' divorce by virtue of its *in rem* authority. A tribe has *in rem* jurisdiction over the marital and child custody statuses of its citizens. A tribe also has *in rem* jurisdiction over its property. Those sources of authority suffice to confer tribal jurisdiction over each part of the parties' divorce here.

Issue 3: *Montana*'s first prong is another source of tribal authority over the parties' divorce. As the courts below recognized, McGowan's marriage to Tix, her decision to raise a family with him and enroll their children in the tribe, and her acceptance of tribal funds and services, all constitute consensual relationships under *Montana*'s first prong. And the divorce action bears a close nexus to each.

Issue 4: *Montana's* second prong is a fourth and final source of tribal authority. As Congress has long recognized, there is no resource more vital to the continued existence and integrity of Indian tribes than their children. Divorces involving tribal children thus directly impact a tribe's political integrity, economic security, health, and welfare. The same is true of divorces that require allocation of tribal resources. And this particular divorce is connected to tribal lands because the family lived near the reservation, visited it regularly, and depended on reservation resources.

Issue 5: Federal Rule of Civil Procedure 19 provides an additional basis to affirm. McGowan seeks to invalidate tribal jurisdiction so that she may obtain a share of Tix's per capita payments. The Community, however, has a property interest in those funds, and that interest could subject Tix to inconsistent obligations if the state court issues a ruling in conflict with tribal law. The Community is thus a required party, and because sovereign immunity prevents the Community's joinder, equity and good conscience compel dismissal.

STANDARD OF REVIEW

"The extent of tribal court subject matter jurisdiction … is a question of federal law" that federal courts "review de novo." *Atty's Process & Invest. Servs., Inc. v. Sac & Fox Tribe of Miss. in Iowa ("API")*, 609 F.3d 927, 934 (8th Cir. 2010). "However, as a matter of comity," federal courts "consider the opinions of the tribal

court on the jurisdictional issue and give due consideration to its expertise in the matter." *State Farm Ins. Cos. v. Turtle Mtn. Fleet Farm LLC*, No. 1:12-CV-94, 2014 WL 1883633, at *7 (D.N.D. May 12, 2014). For factual issues, federal courts "rely on the record developed in the tribal courts." *API*, 609 F.3d at 937.

Whether to dismiss a case under Rule 19 is in part an exercise of district court discretion. *See United States ex rel. Steele v. Turn Key Gaming, Inc.*, 135 F.3d 1249, 1251 (8th Cir. 1998). Here, the district court did not reach the Rule 19 issue. An appellate court, however, can decide a Rule 19 issue without remand "where only one determination by the district court would be within its discretion." *Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 132 (2d Cir. 2013).

ARGUMENT

I. THE COMMUNITY POSSESSES JURISDICTION OVER THE PARTIES' DIVORCE.

Four separate and independent sources of tribal authority provide the Community jurisdiction over McGowan and Tix's divorce. Any one suffices to affirm the decision below. First, the Community possesses jurisdiction under its inherent authority over family law matters involving tribal members. Second, the Community possesses jurisdiction pursuant to its *in rem* authority over the legal statuses of tribal members and the disposition of tribal property. Third, the Community possesses jurisdiction under *Montana*'s first prong because McGowan entered into a consensual relationship with Tix and the Community itself. Fourth,

the Community possesses jurisdiction under *Montana*'s second prong because divorces like this one involving tribal children and tribal resources directly impact a tribe's political integrity, economic security, health, and welfare. Each jurisdictional basis is addressed in turn.[1]

A. The Community Possesses Jurisdiction Pursuant To Its Inherent Jurisdiction Over Family Law Matters.

1. Tribes Have Inherent Authority Over Family Law Cases Involving Tribal Members.

Family law disputes involving tribal members—especially those that present care and custody decisions about tribal member children—fall within "the inherent power of tribes 'to conduct internal self-governance functions.'" *State v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, 371 P.3d 255, 265 (Alaska 2016) (emphasis omitted) (quoting *John*, 982 P.2d at 758). As the Supreme Court has long observed, tribes possess authority to "regulat[e] their internal and social relations." *Kagama*, 118 U.S. at 382. And that authority encompasses "family-law matters and

[1] The proceedings below focused primarily on *Montana*'s first prong. *See* Aplt.-App. 89; R. Doc. 30, at 13. *But see* Aplt.-App. 82; R. Doc. 30, at 6 (noting that the tribal court of appeals upheld jurisdiction in part under the Community's "power to exercise jurisdiction over its members' domestic relations"); Aple.-App. 37; R. Doc. 17-1, at 19 (finding "in rem jurisdiction" over the marriage and property). This Court, however, "may affirm the judgment below on any ground supported by the record, whether or not raised or relied on in the district court." *A.H. ex rel. Hubbard v. Midwest Bus Sales, Inc.*, 823 F.3d 448, 453 (8th Cir. 2016) (cleaned up). Indeed, these arguments cannot be waived or forfeited, as they go to the tribal court's subject matter jurisdiction. *Lee v. Sanders*, 943 F.3d 1145, 1148 (8th Cir. 2019).

domestic disputes." *Brackeen*, 599 U.S. at 329 (Gorsuch, J., concurring) (cleaned up).

This inherent tribal authority over family law disputes involving tribal members arises most often in the child welfare context,[2] where the Alaska Supreme Court has taken the lead in exploring the nature and scope of this central component of tribal sovereignty. *See, e.g.*, *John*, 982 P.2d 738; *Cent. Council*, 371 P.3d 255; *Simmonds v. Parks*, 329 P.3d 995 (Alaska 2014). As that court has explained, Indian tribes possess "a core set of sovereign powers that remain intact even though Indian nations are dependent under federal law." *John*, 982 P.2d at 751. "[I]n particular, … domestic affairs lie within a tribe's retained inherent sovereign powers." *Id.* And those domestic affairs includes child welfare matters. Child welfare matters "are a pillar of domestic relations and are directly related to the well-being of the next generation." *Cent. Council*, 371 P.3d at 265. A tribe, after all, "has a strong interest in preserving and protecting the Indian family as the wellspring of its own future." *Id.* (cleaned up). The welfare of tribal children is thus "'a family law matter integral to tribal self-governance,' and as such is part of the set of core sovereign powers that tribes retain." *Id.* (quoting *John*, 982 P.2d at 758).

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[2] "Child welfare" is sometimes used as a term of art to refer solely to child dependency proceedings. This brief, however, uses it as a shorthand for all cases that raise questions of child care and custody and thereby "concern[] the welfare of Indian children." *Cent. Council,* 371 P.3d at 269.

Though originally recognized in the child welfare context, this inherent tribal authority is "situated within the larger context of family affairs." *Cent. Council*, 371 P.3d at 265. As the Supreme Court has underscored, "the determination of parentage of children, termination of parental rights, commitments by … courts, guardianship, marriage contracts, and obligations for the support of spouse, children, or other dependents" are all "areas of traditional tribal control." *Three Affiliated Tribes v. Wold Eng'g*, 476 U.S. 877, 889 (1986) (quotation marks omitted). This inherent tribal authority therefore encompasses divorces, particularly those involving tribal children. *See Cent. Council*, 371 P.3d at 265; *see also In re Marriage of Skillen*, 956 P.2d 1, 18 (Mont. 1998) (recognizing concurrent tribal jurisdiction over a marriage dissolution involving Indian children because "Indian children manifest a fundamental aspect of [a] tribe's sovereign power"), *overruled in part on other grounds by In re Est. of Big Spring*, 255 P.3d 121 (Mont. 2011).

A recent Alaska state trial court decision confirms that tribes' inherent authority over domestic matters encompasses divorces. Finding this issue "easily disposed," the court explained that "[i]f a tribal court can terminate the parental relationship … , there is no reason it could not terminate a marital relationship." *Gerdes v. Jackson*, No. 1KE-24-00172CI, at 7 (Alaska Super. Ct. Sept. 12, 2024).[3]

[3] *Gerdes* is unpublished and not in a publicly accessible database. It is thus attached to this brief as an addendum. *See* Eighth Circuit Local Rule 32.1A.

Likewise, "if a tribal court has the inherent authority to order a … parent to pay child support for a … child, … there is no reason the tribal court could not enter a property division order." *Id.* A "tribal court, then, has inherent sovereign authority to decide divorce cases." *Id.* at 8.

2. *Tribes' Inherent Authority Over Family Law Matters Extends To Cases Involving Non-Members Outside Of Indian Country.*

Two aspects of this inherent tribal authority are particularly relevant to this dispute: it is unaffected by the presence of non-members within an Indian family, and it is non-territorial.

First, unlike *Montana* jurisdiction, this core family law power is not impacted by the presence of non-members in an Indian family. "[T]he source of tribal authority that *Montana* and ensuing cases have analyzed[] … critically differs from the source of authority at issue here." *Cent. Council*, 371 P.3d at 270. Whereas *Montana* jurisdiction "focus[es] on the specific nonmember conduct alleged," *API*, 609 F.3d at 938, "this jurisdiction relates to the character of the legal question that the tribal courts seek to decide, … [and] to the categories of … families who might properly be brought before the tribal court." *Cent. Council*, 371 P.3d at 262. Hence, under tribes' inherent domestic affairs authority, "tribal courts may … have jurisdiction to 'resolve civil disputes involving nonmembers, including non-Indians' when the civil actions involve essential self-governance matters … where 'the exercise of tribal authority is vital to the maintenance of tribal integrity and self-

determination.'" *John*, 982 P.2d at 756 (quoting *Duro v. Reina*, 495 U.S. 676, 687, 688 (1990)).

Divorces involving the care and custody of Indian children fall within that category of civil actions. Child welfare is "an area of law that is integral to tribal self-governance." *Cent. Council*, 371 P.3d at 269. And though child welfare disputes may involve non-member parents, a non-member parent's involvement "aris[es] out of [the] parent's obligations to his or her tribal child." *Id.* at 271. Hence, "the basis and limits of [a tribe's] authority" over such cases "are tied to the child rather than the parent." *Id.* at 269.

Second, this inherent tribal power persists regardless of land status. "The federal decisions discussing the relationship between Indian country and tribal sovereignty indicate that the nature of tribal sovereignty stems from two intertwined sources: tribal *membership* and tribal *land*." *John*, 982 P.2d at 754 (emphases in original); *see also United States v. Mazurie*, 419 U.S. 544, 557 (1975) (noting that tribes have jurisdiction over "both their members *and* their territory" (emphasis added)). Accordingly, "in determining whether tribes retain their sovereign powers, the United States Supreme Court looks to the character of the power that the tribe seeks to exercise, not merely the location of events." *John*, 982 P.2d at 752. "The key inquiry," for purposes of this core inherent authority, "is not whether the tribe is

located in Indian country, but rather whether the tribe needs jurisdiction over a given context to secure tribal self-governance." *Id.* at 756.

That is the case for divorces involving tribal children. In matters implicating child care and custody, "[t]he authority [a tribe] invokes … stems from its sovereignty over its members." *Cent. Council*, 371 P.3d at 270. And the need for that authority over such matters to ensure tribal self-determination is clear. "As Congress put it, 'there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children.'" *Brackeen*, 599 U.S. at 265 (quoting 25 U.S.C. § 1901(3)). Hence, "[t]he tribal sovereignty to decide cases involving the best interests of tribal children … is inherent, *non-territorial* sovereignty." *Simmonds*, 329 P.3d at 1008 (emphasis added).

3. The Courts, Congress, And The Executive Branch Have All Recognized This Inherent Tribal Authority Over Family Law Matters.

While the Alaska Supreme Court has produced the leading cases on tribes' inherent, non-territorial jurisdiction over family affairs involving tribal members, it is not alone in affirming tribes' core powers in this area. Other courts, Congress, and the Executive Branch have all recognized this core aspect of tribal sovereignty as well.

Start with the judiciary. Many courts have concluded that tribes possess inherent "extra-territorial jurisdiction when it comes to … domestic matters," even when non-members are parties to such cases. *Cohen's Handbook of Federal Indian*

Law § 15.03, at 962 (2024); *see, e.g.*, *Miodowski v. Miodowski*, Nos. 8:06CV443, 8:06CV503, 2006 WL 3454797, at *4 (D. Neb. Nov. 29, 2006) ("Courts have held that [a] Tribe has jurisdiction over a divorce action where one party is a member of the tribe and one party is not a member of the tribe."). In *Kaltag Tribal Council v. Jackson*, for instance, a federal district court determined that a tribal court had authority to issue an off-reservation adoption order impacting a non-member parent, because "it is the membership of the child that is controlling [for jurisdictional purposes], not the membership of the individual parents." No. 3:06-CV-211, 2008 WL 9434481, at *6 (D. Alaska Feb. 22, 2008). On appeal, the Ninth Circuit affirmed, underscoring that "[r]eservation status is not a requirement of jurisdiction because a Tribe's authority over its reservation or Indian country is incidental to its authority over its members." *Kaltag Tribal Council v. Jackson*, 344 F. App'x 324, 325 (9th Cir. 2009) (unpublished) (cleaned up). And in *Atwood v. Fort Peck Tribal Court Assiniboine*, the Ninth Circuit held that a non-member father was required to exhaust tribal remedies in a child custody dispute. 513 F.3d 943, 945 (9th Cir. 2008). The Ninth Circuit concluded that "tribal court jurisdiction almost certainly [was] proper" given that the child was "a member of the tribe." *Id.* at 948 (emphasis omitted). Other decisions are in accord.[4]

[4] *E.g.*, *Gila River Indian Community v. Department of Child Safety*, 395 P.3d 286, 291 (Ariz. 2017) (concluding that state courts may transfer off-reservation child welfare cases to tribal court based on tribes' "inherent authority to hear child custody

Courts are not alone in this conclusion; the political branches, too, have affirmed inherent, non-territorial tribal jurisdiction over family affairs involving tribal members. Take Congress, to whom this Court "must defer" on matters of "tribal sovereignty." *United States v. Lara*, 294 F.3d 1004, 1007 (8th Cir. 2002).[5] In the Indian Child Welfare Act ("ICWA"), Congress enacted a tribal-state court transfer scheme premised on "concurrent but presumptively tribal jurisdiction" over Indian child welfare matters that arise off reservation. *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 36 (1989). This tribal jurisdiction is "not a novelty of ICWA," but rather "ha[s] a strong basis in pre-ICWA case law." *Id.* at 42. Hence, "[i]n enacting ICWA, Congress affirmed th[e] understanding" that "domestic law arrangements fall within Tribes' traditional powers of self-governance." *Brackeen*, 599 U.S. at 331 (Gorsuch, J., concurring); *see also, e.g.*, *Gila River*, 395 P.3d at 291 (same).

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proceedings involving their own children"); *Byzewski v. Byzewski*, 429 N.W.2d 394, 399 (N.D. 1988) (recognizing exclusive tribal court jurisdiction over a divorce and custody dispute involving a non-member spouse/parent who lived off reservation because "domestic relations among [tribal] members is an important area of traditional tribal control" and "this tribal interest in domestic relations" does not "dissipate[] merely because one of the parties to a marriage is a non-Indian" (cleaned up)).

[5] *Lara* was initially reversed en banc, *see* 324 F.3d 635 (8th Cir. 2003) (en banc), but ultimately affirmed by the Supreme Court, *see* 541 U.S. 193 (2004).

Finally, the Executive Branch shares the same understanding. It has determined that "[t]ribes possess inherent jurisdiction over domestic relations, including the welfare of child citizens of the Tribe, even beyond that authority confirmed in ICWA." 2016 BIA Final Rule, 81 Fed. Reg. 38,778, 38,822, J(1), Response to Comment. And it has explained that this "inherent sovereignty to address certain matters involving the welfare of tribal children" persists "regardless of the existence of Indian country." Br. for the United States at 13, *Cent. Council*, 371 P.3d 255 (No. S-14935), 2014 WL 4230736, at *13; *see also* Br. for the United States at 9, *Hogan v. Kaltag Tribal Council*, No. 09-960 (U.S. Aug. 27, 2010), 2010 WL 3391759, at *9 [hereinafter U.S. *Kaltag* Br.] (expressing similar views to the U.S. Supreme Court).

4. The Parties' Divorce Falls Within This Inherent Tribal Authority.

The divorce here falls squarely within the bounds of this inherent tribal jurisdiction. This is a family law matter involving a member parent and member children, and "it is [their] membership … that is controlling … , not the membership of [McGowan]." *Kaltag*, 2008 WL 9434481, at *6. Moreover, this divorce raises child care and custody issues, making this an especially clear instance where "the tribe needs jurisdiction … to secure tribal self-governance." *John*, 982 P.2d at 756. That the family lived off reservation is irrelevant to the analysis. The tribal court therefore had authority to adjudicate the divorce.

Indeed, this case is like *Johnson v. Jones*, which also presented the question of the Community's jurisdiction over an off-reservation family with a non-member parent. *See* No. 6:05-cv-1256, 2005 WL 8159765, at *1 (M.D. Fla. Nov. 3, 2005). There, the district court determined that the tribal action (a child-dependency proceeding) "involve[d] a domestic matter of paramount importance to Indian tribes, over which [the Community] possesses inherent sovereign authority." *Id.* at *2. Although the "children were located outside the confines of tribal lands," that fact "presented no impediment to the tribe's exercise of jurisdiction." *Id.*

This case is even easier than *Johnson*. The considerations that supported jurisdiction there are present here too. And whereas the *Johnson* family lived 1500 miles from the reservation, Tix kept his family near the Community, and he hoped to move to an assignment on tribal land. Aple.-App. 11-12. The tribal court therefore properly exercised jurisdiction over the parties' divorce, and this Court can affirm the judgment below on this ground alone.

B. The Community Possesses Jurisdiction Pursuant To Its *In Rem* Authority Over The Legal Statuses Of Tribal Members And Over Tribal Property.

The tribal court was also empowered to adjudicate the parties' divorce by virtue of its "in rem jurisdiction over the marriage between the Parties and the property issues." Aple.-App. 37; R. Doc. 17-1, at 19. Specifically, it possessed *in rem* jurisdiction over each of the "discrete parts" of this particular divorce action: "(1) dissolution of the marriage; (2) child custody[] [and] visitation[] … ; (3) [child

and] spousal support; and (4) division and distribution of property and debts." *Paul v. Paul*, 830 P.2d 1158, 1160 (Haw. App. 1992). And as with the Community's inherent jurisdiction over family law matters, McGowan's lack of tribal membership and her residence outside of Indian country are irrelevant to this source of tribal authority, because *in rem* jurisdiction is "[a] court's power to adjudicate the rights of a given piece of property." *Jurisdiction,* Black's Law Dictionary (12th Ed. 2024); *cf. United States v. Certain Funds*, 96 F.3d 20, 27 (2d Cir. 1996) (noting that federal courts can possess "jurisdiction over *res* located overseas").

First, the tribal court had *in rem* authority over the "dissolution of the marriage." *Paul*, 830 P.2d at 1160. "An action for divorce is regarded as a form of in rem action." 27A C.J.S. Divorce § 146. So long as a court has "obtain[ed] jurisdiction of the res, that is, of the marriage status," then "the court has in rem jurisdiction to grant relief." *Id.* In practice, this means that a divorce action may proceed "based on the [citizenship] of [just] one of the parties," *id.*, for a sovereign "ha[s] the power[] … to exercise jurisdiction over cases concerning the legal status of its citizens regardless of whether the other spouse" falls within the sovereign's authority, *id.* § 159. Applying that rule here, because one of the parties to this divorce—Tix—is a tribal member, the tribal court had *in rem* jurisdiction to dissolve the marital bonds.

Second, the tribal court possessed *in rem* jurisdiction over the "child custody" and "visitation" components of the divorce. *Paul*, 830 P.2d at 1160. As with "divorce, separation, and annulment," "[t]he legal relationships involved in cases of child custody[] … are considered statuses" for which jurisdiction is tied to the citizenship of the children. *Byzewski*, 429 N.W.2d at 398-99 (quotation marks omitted). This principle is affirmed in the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), which has been "adopted by 49 states." *Allen v. State (In re H.M.A.)*, 563 P.3d 312, 317 n.7 (Okla. Civ. App. 2024). The UCCJEA recognizes that a state or tribe possesses jurisdiction over a child custody dispute when that state or tribe "is the home State of the child" or when "the child and at least one parent … have a significant connection with [the] State other than mere physical presence" (and the home state has declined to exercise jurisdiction). UCCJEA § 201(a)(1), (2)(A).[6]

Both those conditions are satisfied here. As the United States has explained, a child's "tribal membership" makes a tribe "the equivalent of [the child's] 'home state.'" U.S. *Kaltag* Br., 2010 WL 3391759, at *13. And at minimum, both Tix and his children have a "significant connection" with the Community by virtue of their membership, their receipt of tribal funds and services, and their participation in tribal

[6] For purposes of this provision, the UCCJEA treats tribes as states. *See* UCCJEA § 104(b).

meetings and events—as the state court recognized when it declined jurisdiction. Aple.-App. 26; R. Doc. 17-1, at 8. The tribal court thus had jurisdiction over the custody aspects of the divorce.

Third, the tribal court had *in rem* authority over the question of "[child and] spousal support." *Paul*, 830 P.2d at 1160. Tribes possess jurisdiction over "the use of [their] resources … by both members and nonmembers." *Mescalero Apache*, 462 U.S. at 335. In fact, the tribal court is the *only* court able to determine how the Community's property will be used, as the Community has the "exclusive right to … protect the … property of its own people." *Raymond v. Raymond*, 83 F. 721, 722 (8th Cir. 1897); *see also, e.g.*, *In re Decora*, 396 B.R. 222, 225 (W.D. Wis. 2008) (similar). Here, the child support and spousal maintenance issues concerned allocation of future tribal per capita payments. *See* Aple.-App. 85, 100; R. Doc. 17-1, at 82, 97. And those future per capita payments are "the collective property of the Community." Aple.-App. 125; R. Doc. 17-1, at 135. The questions of child support and spousal maintenance were thus questions about allocation of tribal funds—questions that fall within the Community's *in rem* jurisdiction.

Finally, the tribal court had *in rem* jurisdiction to adjudicate the "division and distribution of [the marital] property and debts." *Paul*, 830 P.2d at 1160. The property at issue here is once again tribal property. Tix and McGowan "derived … their assets from per capita payments that [Tix] received from the Community."

Aple.-App. 111; R. Doc. 17-1, at 108. Although the Community released its possession of those funds, it did not relinquish complete control of them. Rather, the funds were provided subject to terms and conditions, including the condition that they not be transferred to the marital estate. *See* Aple.-App. 124; R. Doc. 17-1, at 132. That means they remained, in part, tribal property. The Community as grantor "never gave away" all rights in the per capita payments, but instead retained a property interest them and, by extension, any assets the funds were used to purchase. *El Dorado Land Co., L.P. v. City of McKinney*, 395 S.W.3d 798, 803 (Tex. 2013) (quotation mark omitted); *cf. United States v. Aubrey*, 800 F.3d 1115, 1124 (9th Cir. 2015) (concluding that tribal funds "continue[d] to belong" to a tribal organization "even after they [were] disbursed" because the tribe "exercise[d] supervision and control over the funds").

In addition, the tribal court possessed *in rem* jurisdiction over this aspect of the divorce because it implicated the children's per capita payments. Aple.-App. 102; R. Doc. 17-1, at 99. In the case of those funds, the Community itself holds them in trust for the children. Aple.-App. 12. Because this aspect of the divorce, too, concerned the Community's own property interests, the tribal court possessed *in rem* jurisdiction to divide the marital assets.

C. The Community Possesses Jurisdiction Under *Montana*'s First Prong.

Montana's first prong provides a third basis for tribal jurisdiction over the parties' divorce, as every court below concluded. *Montana*'s first prong recognizes tribal jurisdiction when a nonmember "enter[s] consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." *Montana*, 450 U.S. at 565. When such a consensual relationship exists, a tribe may adjudicate any claims that have "a sufficient nexus to the consensual relationship," *API*, 609 F.3d at 941, such that the nonmember "may reasonably have anticipated" that her consensual relationships "could trigger [the] tribal authority" that is exercised. *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 338 (2008).

Here, McGowan entered into a consensual relationship with a tribal member by marrying Tix. She also entered into consensual relationships with both Tix and the Community by having and enrolling tribal children and accepting tribal funds and services. Each of these relationships suffices under *Montana*'s first prong. And the divorce action bears a direct nexus to all of them.

1. McGowan Entered Into A Consensual Relationship With A Tribal Member When She Married Tix.

Montana's first prong is satisfied here because McGowan married Tix. A marriage "is a coming together," a "two-person union," "an association," and a "decision to enter into [a] relationship." *Obergefell v. Hodges*, 576 U.S. 644, 666-

67 (2015). Hence, "[m]arriage, especially a marriage resulting in children, is certainly a 'consensual relationship with the tribe or its members.'" *Gerdes*, No. 1KE-24-00172CI, at 8 n.3.

Case law confirms this self-evident conclusion. Federal courts have consistently upheld tribal jurisdiction over "divorce cases involving an Indian plaintiff and non-Indian defendant." *Sanders v. Robinson*, 864 F.2d 630, 633 (9th Cir. 1988); *see also, e.g.*, *Turpen v. Muckleshoot Tribal Ct.*, No. C22-0496-JCC, 2023 WL 4492250, at *3 (W.D. Wash. July 12, 2023) (applying *Sanders*); *Miodowski*, 2006 WL 3454797, at *4 (same). So have state courts. *E.g.*, *Byzewski*, 429 N.W.2d at 394, 398-99; *Barrett v. Barrett*, 878 P.2d 1051, 1054-55 (Okla. 1994). Indeed, such cases have a long legacy. "The courts of the American Union have, from an early time" "held and regarded as valid" "marriages between a member of an Indian tribe and a white person, not a member of such tribe," when "contracted … in accordance with the laws and customs of such tribe." *Cyr v. Walker*, 116 P. 931, 934 (Okla. 1911). "And the same effect [was] given to the dissolution of the marriages under the customs of the tribe as [was] given to the marriage relation itself." *Id.* (collecting authorities).

Disagreeing with these cases, McGowan maintains that the first *Montana* prong is limited to "contractual" relationships, and that it thus excludes marriages. Op. Br. 19-21. But to start, a marriage *is* a "contract," *Obergefell*, 576 U.S. at 559,

as McGowan herself acknowledges, *see* Op. Br. 21 (noting that "Minnesota state law[] … deems marriage a contract"). McGowan insists that is the case only "so far as [a marriage's] validity in law is concerned." Op. Br. 20 n.2 (quotation marks omitted). Not so. A marriage contract "[does] *not* differ[] from any other contract," except that it can only be dissolved by a court, rather than by the unilateral "will of the parties." *Guptil v. E.O. Dahlquist Contracting Co.*, 266 N.W. 748, 750 (Minn. 1936) (emphasis added) (quoting *Hulett v. Carey*, 69 N.W. 31, 34 (Minn. 1896)); *see also, e.g.*, *Reynolds v. United States*, 98 U.S. 145, 165 (1878) ("Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law.").

More fundamentally, *Montana*'s first prong is not restricted to contractual relationships. *Montana* itself refutes that gerrymandered limitation. It held that tribal jurisdiction exists when a non-member "enter[s] consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, *or other arrangements*." *Montana*, 450 U.S. at 565 (emphasis added). If *Montana*'s first prong encompassed just contracts, *Montana* would have said so. *See Mathis v. United States*, 579 U.S. 500, 514 (2016) ("[A] good rule of thumb for reading our decisions is that what they say and what they mean are one and the same….").

Lower courts have likewise rejected this artificial constraint. The Ninth Circuit has expressly concluded that jurisdiction exists under *Montana*'s first prong

even when claims "d[o] not arise from contracts or leases." *Smith v. Salish Kootenai College*, 434 F.3d 1127, 1136 (9th Cir. 2006) (en banc). And more generally, courts have roundly dismissed arguments that *Montana*'s first prong captures only commercial arrangements, which would be the upshot of McGowan's argument. *E.g.*, *id.* at 1140 n.5; *Cent. Council*, 371 P.3d at 272; *Dolgencorp, Inc. v. Miss. Band of Choctaw Indians*, 746 F.3d 167, 173 (5th Cir. 2014), *aff'd by an equally divided Court sub nom. Dollar Gen. Corp. v. Miss. Band of Choctaw Indians,* 579 U.S. 545 (2016) (per curiam).

Fort Yates Public School District No. 4 v. Murphy, 786 F.3d 662 (8th Cir. 2015), is not to the contrary. *See* Op. Br. 17, 19. *Fort Yates* merely applied the principle—recognized in *Nevada v. Hicks*, 533 U.S. 353 (2001)—that *Montana*'s first prong concerns "*private* individuals" and thus does not encompass "States or state officers acting in their *governmental* capacity." *Fort Yates*, 786 F.3d at 668 (emphasis altered) (quoting *Hicks*, 533 U.S. at 372). *Fort Yates* accordingly reinforces that when McGowan entered into a "*private* consensual relationship" with Tix through marriage, she brought herself within *Montana*'s first prong. *Id.* (emphasis altered) (quoting *Hicks*, 533 U.S. at 359 n.3).

2. After Marrying Tix, McGowan Entered Into Additional Consensual Relationships With Both Tix And The Community.

McGowan's marriage to Tix is just the tip of the iceberg. Over the years, McGowan built upon that marriage—having children with Tix, purchasing joint

property, and entering into the countless mutual agreements inherent in building a life together and raising a family. *Supra* 6. She also took advantage of the tribal opportunities that her marriage to Tix opened to her by entering into consensual relationships with the Community itself. She enrolled her children as tribal members, accepted and primarily lived off Tix's per capita payments, and received tribal services, including health and dental insurance. *Id.* And she accepted benefits for her children, including education and childcare assistance, additional health and dental insurance, and per capita payments held in trust. *Supra* 6-7; *see also* Aplt.-App. 90; R. Doc. 30, at 14.

Like the marriage union, these additional relationships give rise to tribal jurisdiction under *Montana*'s first prong. Begin with McGowan's decision to have children with Tix. "A relationship that leads to the birth of a child is one that has significant consequences and obligations." *Cent. Council*, 371 P.3d at 272. "When two people bring a child into being each should reasonably anticipate that they … perhaps may need to turn to a court to establish the precise rights and responsibilities associated with the resulting family relationship." *Id.* And "[t]his may require litigating in a court that is tied to the child but with which the parent has more limited contacts." *Id.* "[R]elationships that give rise to the birth of a child" thus "fit within the first *Montana* exception." *Id.* at 272-73.

The other relationships give rise to *Montana* jurisdiction, too. *Turpen* is illustrative. There, like here, a non-member married a tribal member and received substantial benefits from the tribe by virtue of her marriage. 2023 WL 4492250, at *3. She lived for a time in "a home … leased by the Tribe," accepted "an income-based [tribal] grant for the down payment" on a different home "and loan assistance for the mortgage," and worked for the tribe. *Id.* "Viewed in totality," these relationships were "sufficient to show consent needed for the Tribal Court to have subject matter jurisdiction." *Id.* The same is true of McGowan's many relationships with Tix and the Community.

Johnson is also instructive. In addition to recognizing the Community's inherent, nonterritorial jurisdiction over domestic matters involving Community members (*see supra* 27), *Johnson* held that the Community possessed jurisdiction there under *Montana*'s first prong. *See* 2005 WL 8159765, at *2. It explained that the tribal member father and the tribal children had "received per capita payments," the father "was allowed to vote in tribal elections and to participate in decisions regarding tribal government and policies addressing the future of the Tribe," and "the children were eligible to receive various benefits through the [Community] including educational benefits and the protections afforded by the Child Welfare office." *Id.* (cleaned up). Accordingly, the *Johnson* court concluded that it could not "interfere with" the Community's jurisdiction. *Id.* So too here.

McGowan's attempt to distinguish these cases falls flat. She says that in *Turpen*, the non-member had "consented to numerous contracts." Op. Br. 21 (emphasis omitted) (quoting *Turpen*, 2023 WL 4492250, at *3). But McGowan's relationships were "numerous" too. And as explained above (*supra* 34-35), the relationships need not have been "contracts" to trigger tribal jurisdiction (though many of them plainly were—even if not written). As for *Johnson*, McGowan claims it "never addressed the *Montana* consensual dealings argument on the merits." Op. Br. 23. To the contrary, *Johnson* treated *Montana*'s first prong as "an alternative basis for tribal court jurisdiction" in that dispute. *Id.* at *2 (quoting *John*, 982 P.2d at 759 n.141).

Nor is there anything to McGowan's claim that a consensual relationship under *Montana* must be with "*the tribe*," as opposed to a tribal member. Op. Br. 21 (emphasis in original). *API* expressly rejected that argument. *API*, 609 F.3d at 941. Moreover, McGowan *did* enter into consensual relationships with the Community, as this discussion illustrates.

3. The Divorce Action Has A Close Nexus To McGowan's Marriage And Other Consensual Relationships.

Once a consensual relationship is established, *Montana*'s first prong requires that the assertion of tribal authority "have a nexus to the consensual relationship." *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 656 (2001). As noted above, this requirement is satisfied when the nonmember "may reasonably have anticipated"

that her consensual relationships "could trigger [the] tribal authority" that is exercised. *Plains Commerce*, 554 U.S. at 338.

The requisite nexus exists here. Start again with the marriage. A divorce goes to the very heart of a marriage. It bears the tightest possible connection to the marriage agreement. No more was needed for the tribal court to adjudicate the divorce under *Montana*'s first prong.

McGowan's other relationships with Tix and the Community likewise have a close nexus to the divorce action. McGowan had children with Tix and enrolled them in the Community; the divorce determined the care and custody of those children. *Supra* 10-11. McGowan shared in Tix's per capita payments; the divorce decided whether she gets any future share of those payments. *Id.* McGowan received additional tribal assistance such as health and dental insurance; the divorce resolved whether McGowan is entitled to that assistance going forward. *Id.* McGowan and Tix used tribal funds to acquire property; the divorce divides that property between them. *Id.* Essentially every subject addressed during the divorce is tied to McGowan's relationships with Tix and the Community—because Tix and McGowan integrated the Community into virtually every aspect of their lives. In short, McGowan's relationships "ha[d] 'tribal' written all over them," *Lexington Insurance Co. v. Smith*, 117 F.4th 1106, 1107 (9th Cir. 2024) (opinion respecting denial of rehearing en banc), so she "could reasonably anticipate from her dealings

… that the Tribal Court could exercise jurisdiction over [this] marriage dissolution," Aptl.-App. 90; R. Doc. 30, at 14.

McGowan fails to show otherwise. She complains that nothing in Minnesota state law "put her on notice that her marriage and the terms of its dissolution would be governed by tribal law." Op. Br. 21-22. But the very nature of marriage is that its dissolution can occur in a jurisdiction different from the one where it was entered. *See Snider v. Snider*, 551 S.E.2d 693, 775 (W. Va. 2001) ("It is a common occurrence for one party to a marriage to seek a divorce in a jurisdiction that is foreign to the other party."). And in any event, tribal law provided express notice that McGowan was entering into relationships that could lead to tribal adjudication. *See* Aple.-App. 123; R. Doc. 17-1, at 131.

Nor did the district court below impermissibly substitute an *International Shoe* contacts analysis for *Montana*'s consensual-relationship test. *See* Op. Br. 29-31. The district court's analysis at times considered factors relevant under *International Shoe*, but that is because the *Montana* and *International Shoe* tests "resemble[]" each other. *Smith*, 434 F.3d at 1138. Contrary to McGowan's assertion, the Supreme Court has not held otherwise. The case that McGowan cites for that claim concerned tribal *criminal* jurisdiction, and it was superseded by statute to boot. *See* Op. Br. 31 (citing *Duro*, 495 U.S. 676, *superseded by* 25 U.S.C. § 1301(2)). In

any event, the consensual relationships here were far more than would have been needed to satisfy *International Shoe*, and suffice under *Montana*'s first prong.

Indeed, the courts below engaged in no "in for a penny, in for a pound analysis." Op. Br. 27 (quotation marks omitted). McGowan cherry picks particular consensual relationships and, viewing them in isolation, claims they cannot support tribal jurisdiction over the divorce. *See* Op. Br. 29. But the marriage alone provides a sufficient nexus to the divorce proceeding. Everything else is just gravy—additional grounds that further support the tribal court's exercise of jurisdiction over each aspect of the divorce. McGowan's acceptance of tribal dental services, for instance (*see* Op. Br. 29), merely bolsters the conclusion that her continued receipt of those services was properly subject to the tribal authority as part of the divorce.

Finally, McGowan's reliance on *Atkinson Trading Co. v. Shirley* is off base. She says under *Atkinson*, "the receipt of benefits from [a] tribe does not create consent." Op. Br. 30.[7] But *Atkinson* was a case where the "benefits" were simply basic municipal functions—like "police, fire, and medical services," 532 U.S. at 655—that governments provide to all those within their territorial boundaries, regardless of consent. To hold that tribal jurisdiction was present in those circumstances would have been tantamount to holding that mere presence on the

[7] McGowan's brief purports to block quote *Atkinson*. Much of the text in that block quote is not found in the Supreme Court's opinion. *See* Op. Br. 30.

reservation is enough to establish tribal jurisdiction—effectively abrogating *Montana*. *See id.* This case, by contrast, is one where the non-member deliberately chose, again and again, to enter into consensual relationships with a tribe and its members and received not merely basic services, but seven-figures worth of funds and benefits.

4. McGowan's "Tribal Land" And "Tribal Self-Government" Arguments Are Meritless.

McGowan maintains that *Montana*'s first prong cannot apply off reservation and that it requires a tie to tribal self-government. Op. Br. 17. Both arguments are wrong.

a. ***Montana's* First Prong Is Not Limited To Tribal Lands.**

At the outset, McGowan's tribal-land argument is not implicated.[8] As explained at further length below, the marriage and divorce here are tied to tribal lands. The family regularly went to the reservation for tribal services, family visits, and cultural events, and they lived off funds generated within reservation boundaries. *Infra* 51-52.

In any event, *Montana*'s consensual-relationship prong contains no "limit[] against off-reservation regulation." Op. Br. 25. "[T]he Supreme Court has never explicitly held that Indian tribes lack inherent authority to regulate nonmember

[8] It is unclear whether McGowan uses "tribal land" to refer just to land owned by tribes or to all of Indian country; the difference is ultimately immaterial here.

conduct that takes place outside their reservations." *City of Seattle v. Sauk-Suiattle Tribal Ct.*, No. 2:22-CV-142, 2022 WL 2440076, at *3 (W.D. Wash. July 5, 2022) (quoting *Dolgencorp*, 746 F.3d at 176). And this Court's decision in *Attorney's Process & Investigation Services, Inc. v. Sac & Fox Tribe of Mississippi in Iowa* ("*API*") strongly suggested that *Montana*'s first prong is not so circumscribed.

API suggests that conclusion because it drew a distinction between *Montana*'s first and second prongs. *API* held that the *second* prong under *Montana* requires a connection to tribal lands. 609 F.3d at 940 ("In order to establish jurisdiction over the conversion claim *under the second Montana exception*, the Tribe must show that the conduct it seeks to regulate occurred within [its lands]." (emphasis added)). And applying that requirement, it determined that a conversion claim fell outside the second prong due to lack of a land connection. *Id.* at 941. But *API* simultaneously remanded for the district court to determine whether there might still be jurisdiction under the *first* prong, explaining that "the operative question" was "whether the conversion claim ha[d] a sufficient nexus to the consensual relationship." *Id.* That remand would have been pointless if the tribal-lands requirement applied to *Montana*'s first prong. The implication, therefore, is that it does not in fact apply.

In distinguishing between the two *Montana* prongs, *API* followed *Montana* itself. Like *API*, *Montana* limited its second prong to on-reservation conduct. It concluded that a tribe may "exercise civil authority over the conduct of non-Indians

on fee lands *within its reservation* when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." 450 U.S. at 566 (emphasis added). But *Montana* placed no such constraint on its first prong. Instead, it recognized that a tribe may regulate "the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements"—full stop. *Id.* at 565. Subsequent Supreme Court case law has reinforced this distinction between the two prongs, instructing that "a tribe has no authority over a nonmember until the nonmember enters tribal lands *or* conducts business with the tribe." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 142 (1982) (emphasis added).

Other courts have also recognized that a consensual relationship gives rise to tribal subject matter jurisdiction regardless of land status. *See Bank One, N.A. v. Shumake*, 281 F.3d 507, 512 n.13 (5th Cir. 2002) (indicating that *Montana*'s first prong can apply both to on-reservation "Indian-fee lands" and "off the reservation"). *Johnson* held that the family's residence in Florida there "presented no impediment to the [Community's] exercise of jurisdiction" under both the Community's inherent domestic affairs power and its *Montana*-first-prong authority. 2005 WL 8159765, at *2. *Turpen*, similarly, rejected the argument that the first "*Montana* [prong] [was] inapplicable because the parties did not reside on the reservation." 2023 WL 4492250, at *3. And the North Dakota Supreme Court has concluded that state and

tribal courts can have concurrent jurisdiction over "off-reservation" divorces. *Kelly v. Kelly*, 759 N.W.2d 721, 726 (N.D. 2009).

McGowan's cases, meanwhile, are inapposite. *Hornell Brewing Co. v. Rosebud Sioux Tribal Court* (*see* Op. Br. 25) concerned the *second* prong under *Montana*, as the district court recognized. 133 F.3d 1087, 1093 (8th Cir. 1998); *see* Aplt.-App. 92; R. Doc. 30, at 16. And *DISH Network* (*see* Op. Br. 26) *rejected* a challenge to tribal court jurisdiction premised on the notion that the tort claim arose "off tribal land." 725 F.3d at 885 (requiring non-member to exhaust tribal remedies). To be sure, *DISH Network* noted—in what McGowan admits is "dicta," Op. Br. 26—that even if the tort there arose off reservation, the relevant contract "relate[d] to activities on tribal lands." *Id.* at 884. But in making that observation, *DISH Network* did not conclude that a land connection is required. As the district court explained, cases like *DISH Network* often note ties to tribal land because that is "one way the first *Montana* exception might be invoked." Aplt.-App. 92; R. Doc. 30, at 16. Such cases, however, do not foreclose off-reservation jurisdiction—they simply have no need to "explore the extent of tribal court jurisdiction over a nonmember who does not reside on tribal land." *Id.*; *see also John*, 982 P.2d at 754 (noting that courts have generally "not had occasion" to examine tribal jurisdiction outside of Indian country).

As for out-of-circuit authority, *Lexington Insurance Co. v. Smith* (*see* Op. Br. 19-20) merely underscores that even if *Montana*'s first prong imposed a tribal-lands requirement, that requirement would not demand "physical entry or presence." 94 F.4th 870, 881 (9th Cir.), *reh'g and reh'g en banc denied*, 117 F.4th 1106 (9th Cir. 2024), *petition for cert. filed*, No. 24-884 (Feb. 13, 2025). Indeed, *Lexington* makes this an easy case. Whereas in *Lexington* the non-member insurance companies and their employees never even set foot within reservation boundaries and acquired the jurisdiction-conferring contracts from a non-member intermediary, McGowan visited the reservation periodically and directly entered into the consensual relationships at issue. *See* 94 F.4th at 876, 881. If any tribal-lands requirement was satisfied in *Lexington*, certainly it is met here.

Of course, a tribal court does not possess jurisdiction anytime any nonmember anywhere enters into a consensual relationship with a tribal member. But that is because of the first *Montana* prong's nexus requirement—which assures the non-member "may reasonably have anticipated" she could be subject to the tribal authority at issue, *Plains Commerce Bank*, 554 U.S. at 338—and the requirement that a tribal court possess personal jurisdiction over a defendant in an *in personam* action, *see Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 809 (9th Cir. 2011). Here, the nexus requirement is satisfied, *supra* 38-42, and

McGowan has waived her personal jurisdiction challenge, *supra* 13.[9] Geographic considerations thus play no further role in the analysis under *Montana*'s first prong.

b. *Montana*'s First Prong Does Not Incorporate An Additional "Tribal Self-Government" Requirement.

That just leaves McGowan's claim that *Montana*'s first prong requires a "tie[] to tribal self-government" beyond that already implicit in *Montana*'s consensual-relationship and nexus requirements. Op. Br. 17-18. Here again, McGowan makes an argument not presented by the facts at hand. As explained in the next section, this divorce is closely bound up with tribal governance—in fact, it directly impacts tribal political integrity, economic security, health, and welfare. *Infra* 49-51. So any need to show an additional connection to tribal sovereignty is more than met.

But regardless, there is no such need. McGowan purports to draw this requirement from a stray line in *Plains Commerce Bank v. Long Family Land & Cattle Co.*, in which the Supreme Court observed that tribal regulation under *Montana* must "stem from the tribe's inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations." 554 U.S. at 337. *See* Op. Br. 18 (citing 554 U.S. at 337). But as the Ninth Circuit recently explained—in a case that McGowan herself invokes, *see* Op. Br. 19-20—deriving an additional test from that line "misreads *Plains Commerce*." *Lexington*, 94 F.4th

[9] Of course, the Community does have personal jurisdiction over McGowan, as the district court recognized. Aplt.-App. 93-98; R. Doc. 30, at 17-22.

at 886. The Supreme Court "was merely stating that even if a nonmember consented to tribal law, the tribe could impose that law on the nonmember only if the tribe had the authority to do so under the power to exclude[] … []or the *Montana* exceptions.'" *Id.* (cleaned up). Hence, "[i]f the conduct at issue satisfies one of the *Montana* exceptions, it necessarily follows that the conduct implicates the tribe's authority in one of the areas described in *Plains Commerce.*" *Id.*

To be sure, there is a circuit split on this issue. The majority, however, takes the view of the Ninth Circuit; only one circuit has said that *Plains Commerce* "requires this separate inquiry." *Lexington*, 117 F.4th at 1108 (opinion respecting denial of rehearing en banc). If the Court reaches this issue, it should join that majority. But this Court need not weigh in on this conflict, given that any separate "tribal self-government" requirement is satisfied, as detailed next.

D. The Community Possesses Jurisdiction Under *Montana*'s Second Prong.

Montana's second prong provides the fourth and final basis for tribal jurisdiction here. A tribe "retain[s] inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 450 U.S. at 566. Divorces involving tribal children and the allocation of tribal resources fall within this second prong.

And here, the requirement that the divorce bear a connection to tribal lands is satisfied.

1. The Care And Custody Of Tribal Children And The Allocation Of Tribal Resources Directly Impact Tribal Political Integrity, Economic Security, Health, And Welfare.

Divorces involving the care and custody of tribal children are subject to tribal jurisdiction under *Montana*'s second prong. "[T]here can be no greater threat to 'essential tribal relations' and no greater infringement on the right of the … tribe to govern themselves than to interfere with tribal control over the custody of their children." H.R. Rep. No. 1386, 95th Cong., 2d Sess. 15 (1978) (ellipsis in original) (quoting *Wakefield* v. *Little Light,* 347 A.2d 228, 237-238 (Md. 1975)). Likewise, "determining what resources a child will enjoy from her community" goes directly to "preserving and protecting the Indian family as the wellspring of [a tribe's] own future." *Cent. Council*, 371 P.3d at 265 (quotation marks omitted). Accordingly, courts to address the issue have recognized that *Montana*'s second prong provides authority over cases about the care and custody of tribal children. *See, e.g.*, *id.* at 273; *In re Marriage of Skillen*, 956 P.2d at 17.

This very case demonstrates why tribal jurisdiction over these types of cases is necessary to prevent "serious potential … damage to the next generation of tribal members." *Cent. Council*, 371 P.3d at 273. As the tribal trial court detailed, McGowan has "tried to keep" the children's paternal grandfather "out of … [their]

lives," made troubling "comments … to the children about their Dakota culture," and impeded the children's "involve[ment] in the [tribal] community." Aple.-App. 65, 68; R. Doc. 17-1, at 62, 65. For instance, she told the children to "'blame your people' in reference to Prairie Island'" while allowing their maternal grandmother "to tell the children that Native Americans never amount to anything." Aple.-App. 68-69; R. Doc. 17-1, at 65-66. In turn, the tribal court had to expressly prohibit "making negative statements about the child's culture directly to the children or around the children." Aple.-App. 70; R. Doc. 17-1, at 67. McGowan interfered with the Community's relationship with tribal member children, and in doing so placed her divorce squarely within *Montana*'s second prong.

Tribal jurisdiction under *Montana*'s second prong also exists over this case because it concerns the allocation of tribal resources. As explained above, the assets at issue are primarily per capita payments and assets acquired with per capita payments. *Supra* 30-31. A "tribe's right to 'manage the use of … [tribal] resources by both members and nonmembers…' is necessary to protect tribal self-government." *Harvey v. Ute Indian Tribe of the Uintah & Ouray Rsrv.*, 416 P.3d 401, 418 (Utah 2017) (quoting *Mescalero Apache Tribe*, 462 U.S. at 335). That is particularly true when tribal resources are used to support tribal children. "Ensuring that tribal children are [financially] supported … may be the same thing as ensuring that those children are fed, clothed, and sheltered," and thus is essential to "[t]he

future of a tribe." *Cent. Council*, 371 P.3d at 273. For this additional reason, jurisdiction exists under *Montana*'s second prong.

2. The Marriage And Divorce Are Connected To Tribal Lands.

As discussed above, this Court has held that the second *Montana* prong requires a connection to tribal lands. *API*, 609 F.3d at 940. But as this Court has also recognized, that requirement does not demand that a non-member be physically present on tribal lands. Rather, activity that "occur[s] off tribal lands" need merely "relate[] to activities on tribal land." *DISH Network*, 725 F.3d at 884.

This test is satisfied here. Although the family and McGowan lived off reservation, they frequently visited the Community. Tix "attended tribal meetings and participated in events," and was a member of the Community's wellness committee. Aple.-App. 20; R. Doc. 17-1, at 2; *see* Aple.-App. 12. McGowan similarly "attend[ed] cultural events in the Community with the children." Aplt.-App. 96; R. Doc. 30, at 20. Near the start of their marriage, Tix worked at the Prairie Island Health Clinic. Aple.-App. 8. McGowan, meanwhile, received health and dental care from the Community, as did Tix and the children. *Supra* 6-7. And of course, the Community's on-reservation gaming and other business activities provided the income that supported McGowan and the family during the bulk of the marriage. *Supra* 6. Indeed, the future tribal per capita payments at the heart of this dispute are still within reservation boundaries. These ties to tribal lands more than

satisfy *Montana*'s second prong. *See Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Lawrence*, 22 F.4th 892, 902 (10th Cir. 2022) (breach-of-contract claim between a tribe and an off-reservation non-member arose on the reservation when the "Tribe conduct[ed] its business from tribal headquarters" and the contract concerned on-reservation property).

II. THE COURT CAN ALSO AFFIRM FOR FAILURE TO JOIN THE COMMUNITY.

McGowan's case falters for another reason, this one procedural: she did not (and cannot) join the Community to this proceeding, and thus dismissal is required under Federal Rule of Civil Procedure 19. The district court did not reach this issue, but it provides an alternative ground for rejecting McGowan's appeal.

Rule 19 prescribes a three-step test to determine whether a court must dismiss an action for failure to join an absent party. First, Rule 19 asks whether the absent party is "required." Fed. R. Civ. P. 19(a)(1). An absent party is required when, *inter alia*, it has "an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may[] … leave an existing party subject to a substantial risk of incurring … inconsistent obligations because of the interest." *Id.* 19(a)(1)(B)(ii). Second, if the absent party is required, Rule 19 directs the court to "join[]" the absent party to the proceeding "if feasible." *Id.* 19(b). Third, should joinder prove impossible, Rule 19 requires the court to "determine whether, in equity

and good conscience, the action should proceed among the existing parties or should be dismissed." *Id.*

This test compels dismissal here. As to the first step, the Community has an interest related to the subject of this action that puts Tix at risk of inconsistent obligations. McGowan readily admits that the chief reason she wishes to litigate this divorce in state court is that she hopes the state court will disregard tribal law regarding per capita payments. *See* Op. Br. 9 ("Th[e] difference in how the state and tribe define property—and how per capita benefits are sheltered—serves as the backdrop for this jurisdictional dispute…."). Yet as discussed above, the Community retains a property interest in those per capita payments—indeed, before they are distributed, they are solely tribal property. *Supra* 30.

That property interest puts Tix at risk of inconsistent obligations. In fact, he faces the possibility of imprisonment if the state and tribal courts issue conflicting rulings. That is no hyperbole—it has happened before. As the tribal trial court explained, in a previous divorce between a Community member and non-member, a Minnesota state court "ignored" the prohibition on including per capita payments in spousal support, "resulting in a directive to the Community to pay over [per capita benefits] to non-Community members." Aple.-App. 40; R. Doc. 17-1, at 22. "When the Community and [the tribal court], when asked to grant full faith and credit to that order, balked at doing so because the state court order violated federal and

Community law *the Community member was then brought into civil contempt penalties in state court and incarcerated.*" *Id.* (emphasis added). Because the same thing could happen here, the Community is a required party to these proceedings.

Rule 19's second and third steps also lead to dismissal. As to the second step, the Community cannot be joined because it possesses sovereign immunity from suit. *See Bay Mills*, 572 U.S. at 788. And as to the third step, equity and good conscience generally require that a case be dismissed when, as here, sovereign immunity is what prevents joinder. *See Two Shields v. Wilkinson*, 790 F.3d 791, 798 (8th Cir. 2015). Indeed, the reasons for dismissal are even clearer here than in the typical sovereign immunity Rule 19 case. Often in such cases, the plaintiff never gets to litigate her claims. Here, by contrast, McGowan was allowed to mount her jurisdictional challenge in the state court, the tribal trial court, the tribal court of appeals, and the federal district court, and all four courts rejected her arguments wholesale.

For these reasons, Rule 19 provides an alternative basis to uphold the decision below.

CONCLUSION

The Court should affirm.

Respectfully submitted this 1st day of April 2025.

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 13,000 words, excluding those parts of this brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in the proportionally spaced typeface of 14 point Times New Roman font using Microsoft Word 365. This brief has been scanned for viruses pursuant to Eighth Circuit Local Rule 28A(h)(2) and is virus-free.

/s/ Leonard R. Powell
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on April 1, 2025. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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