No. 24-3487

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

KRISTIN ANN TIX, now known as, KRISTIN ANN MCGOWAN,

Plaintiff-Appellant,

v.

ROBERT WILLIAM TIX,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Minnesota,
Case No. 0:24-cv-01824-KMM-ECW
Hon. Judge Katherine Menendez

BRIEF OF *AMICUS CURIAE* THE PRAIRIE ISLAND INDIAN COMMUNITY IN THE STATE OF MINNESOTA IN SUPPORT OF APPELLEE'S PETITION FOR *EN BANC* REVIEW

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BACKGROUND AND INTEREST OF AMICUS CURIAE

The Prairie Island Indian Community, a federally recognized Indian tribe ("Community"), has occupied the states of Minnesota, Iowa, and Wisconsin since time immemorial. Today, the Community's Reservation—in southeast Minnesota—is small and constrained by flooding and adjacent nuclear waste storage. Tribal Amicus Brief ("Tr. Am. Br.") at 7-8. Consequently, there is limited on-Reservation housing and many Community members live off-Reservation. *Id.*

Appellee is a member and while Appellant was married to Appellee, she enjoyed a variety of benefits from the Community, including financial support, health and life insurance, and other services, administered under Community law and from Community land. Tr. Am. Br. at 2. The three children of the marriage are members and receive benefits from the Community. *Id.* Nevertheless, Appellant contests the Prairie Island Indian Community Tribal Court's jurisdiction over the parties' divorce. The Tribal Trial Court, Tribal Court of Appeals, State Court, and the federal District Court all found the Tribal Court has jurisdiction. Tr. Am. Br. at 2-3. But an Eighth Circuit Panel determined the Tribal Court lacked jurisdiction. *Tix v. Tix*, No. 24-3487, 12 (8th Cir. Dec. 12, 2025) ("Op.").

Appellee petitioned for *en banc* review, and the Community submits this Brief in support. The Community has a substantial interest in this case because it contemplates the exercise of tribal jurisdiction, the application, validity, and

enforcement of tribal laws, and the administration of its judicial system. The Community files this Amicus Brief and motion for leave pursuant to Fed. R. App. P. 29(a)(3).[1]

ARGUMENT IN SUPPORT OF PETITION FOR REHEARING

This case is a divorce proceeding between a member and non-member where the non-member's consensual relationships with the Community and a member through marriage lead to the unremarkable conclusion that the Tribal Court has jurisdiction concurrent with state court. *See Montana v. United States*, 450 U.S. 544 (1981); *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008).

In reversing the District Court, the Panel made three critical errors. First, it ignored the plain text of *Montana* and misinterpreted *Plains Commerce*. But the Supreme Court's holding in *Montana*—and the recitation of that holding in *Plains Commerce*—is binding. The Panel instead crafted a standard for tribal jurisdiction over non-members that conflicts with established precedent.

Second, the Panel ignored this Circuit's Fed. R. Civ. P. 19 precedent when it failed to consider the unique sovereign interests that the Community has in the exercise of jurisdiction in divorce proceedings between a member and non-member.

[1] No counsel for a party authored any part of this brief, and no person or entity other than the Community contributed money intended to fund preparing and submitting this brief.

Finally, the Panel failed to address an issue of exceptional importance by not articulating a standard for tribal jurisdiction over divorce proceedings involving a non-member. These are recurring matters that implicate tribal court administration and sovereign interests.

I. The Panel imposed requirements for tribal jurisdiction that are inconsistent with *Montana* and its progeny.

The Panel concluded the Appellant's consensual relationship with the Community and a member was not sufficient to justify the exercise of tribal court jurisdiction over the divorce because it "did not require the allocation of Community resources" and called for exercise of authority "outside the reservation" regarding the care and custody of Community member children. Op. at 11-12. The Panel decision misinterpreted *Plains Commerce* to add a "self-government or [] internal relations" inquiry onto *Montana's* consensual relationship exception. Op. at 7-8 (citing *Kodiak Oil & Gas (USA) Inc. v. Burr*, 932 F.3d 1125, 1138 (8th Cir. 2019)).

Indian tribes are sovereigns with the right to "make their own laws and be governed by them," and to "regulate nonmember behavior that implicates tribal governance and internal relations." *Attorney's Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d 927, 936 (8th Cir. 2010) (quoting *Nevada v. Hicks*, 533 U.S. 353, 361 (2001)); *Plains Commerce Bank*, 554 U.S. at 335.

In *Montana*, the Court recognized at least two instances where a tribe may exercise jurisdiction over non-members—what the Court deemed "necessary to protect tribal self-government or to control internal relations." *Montana*, 450 U.S. at 564. The Court found *two* distinct instances where the internal relationships and self-government inquiry is satisfied: (1) if the non-member enters a consensual relationship with "the tribe or its members, through commercial dealing, contracts, leases, or other arrangements;" (the first "*Montana* exception") or, (2) if the non-member's conduct "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe" (the second "*Montana* exception"). *Id.* at 565-66; *Lexington Ins. Co. v. Smith*, 94 F.4th 870, 886 (9th Cir. 2024), *cert. denied sub nom. Lexington Ins. Co. v. Suquamish Tribe*, 145 S. Ct. 2701 (2025).

The Court's consideration of tribal jurisdiction over non-members in *Plains Commerce* applied the first *Montana* exception and confirmed that tribal jurisdiction arises from non-member consent—express or implied—in a matter where the tribe has sovereign interests. *Plains Commerce*, 554 U.S. at 337.[2] Thus, a non-Indian

[2] The Panel looks to *Kodiak Oil & Gas (USA) Inc. v. Burr*, but that case focused on the federal government's regulation of the relationship between non-Indian and members—a question of preempting jurisdiction. 932 F.3d 1125, 1130 (8th Cir. 2019). It did not require the Court to otherwise decide if a self-government and internal relations inquiry applies to the first *Montana* exception. *Id.* at 1130, 1138. The Panel also misconstrued other Circuits as supporting its holding. In fact, the Seventh Circuit decision assessed "a tribe's inherent sovereign authority to set

company could be subject to tribal jurisdiction regarding transactions with tribal members, but that did not make the company subject to tribal jurisdiction for the company's transactions with other non-members. *Id*. at 337-38; *Lexington Ins. Co.*, 94 F.4th at 886-87 (citing *Plains Commerce*, 554 U.S. at 337); *Dolgencorp, Inc. v. Mississippi Band of Choctaw Indians*, 746 F.3d 167, 175 (5th Cir. 2014).

The Panel's decision erroneously concludes that *Plains Commerce* imposed a new substantive limit on *Montana*'s first exception—a direct effect on tribal sovereignty. Op. at 8-9. That collapses *Montana*'s second exception with its first, requiring that both be satisfied to establish jurisdiction rather than one. *See Lexington Ins. Co.*, 94 F.4th at 886 (citing *Plains Commerce*, 554 U.S. at 337); *see also Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 136 (2023) ("[E]ven if the lower court thinks the [prior] precedent is in tension with" a later decision, courts must apply apposite binding precedent). The Panel's decision further conflicts with *United States v. Cooley*, where the Court preserved the distinction between the two exceptions. 593 U.S. 345, 350-51 (2021).

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conditions on entry," not the self-government and internal relations inquiry, which is automatically satisfied if a *Montana* exception applies. *Jackson v. Payday Fin., LLC*, 764 F.3d 765, 783 (7th Cir. 2014) (*Plains Commerce*, 554 U.S. at 337). And the Sixth Circuit's holding in *Nat'l Lab. Rels. Bd. v. Little River Band of Ottawa Indians Tribal Gov't*, is not about tribal jurisdiction—like *Kodiak*, it is about federal preemption when tribal law conflicts with federal law. 788 F.3d 537, 549 (6th Cir. 2015).

Assessing the Tribal Court's jurisdiction, the Panel focused on the Community's interest in per capita payments and regulation of Community member children. Op. at 10-11. These relate to the non-member's impact on "the political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 450 U.S. at 565-66. The Panel did not adequately account for the implications of the non-member's consensual relationship, and defied *Montana* by collapsing its two distinct exceptions into one.

The Panel's interpretation of *Plains Commerce* conflicts with *Montana* because *Montana's* first exception applies to a non-member's consensual relationship with a tribal "member," not just the tribe. *Montana*, 450 U.S. at 565-66. But a non-member may enter a consensual relationship with only a member—the tribe is not always a party. *See DISH Network Serv. L.L.C. v. Laducer*, 725 F.3d 877, 884-85 (8th Cir. 2013). Nonetheless, if the claim has a sufficient nexus to the consensual relationship and tribal jurisdiction is foreseeable, *Montana's* first exception permits tribal jurisdiction. *See Id.* (citing *Sac & Fox Tribe*, 609 F.3d at 940-41). This inquiry is satisfied here because Appellant entered "a consensual marriage with a tribe member" and "consented to numerous contracts directly with the Tribe to" receive benefits from the tribe, benefits that are distributed from the Reservation and derived from on-Reservation resources. *Turpen v. Muckleshoot Tribal Court*, No. C22-0496-JCC, 2023 WL 4492250, *3 (W.D. Wash. July 12,

2023); Tr. Am. Br. at 19-20; *e.g., Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Lawrence*, 22 F.4th 892, 902 (10th Cir. 2022) (Contractual relationship occurs on Reservation when property is within the Reservation and the "Tribe conducts its business from tribal headquarters.").

The Panel's decision conflicts with *Montana* by requiring a tribe prove an interest—economic, political, or to protect the "health or welfare of the tribe"—in addition to demonstrating a consensual relationship.

II. The Panel ignored critical Community Rule 19 interests.

Even as the Panel required a heightened showing of Community interest under *Montana*, it ignored critical aspects of the Community's interests under Rule 19, taking a narrow view of the Community's interest in the proceeding—the per capita payments—and ignored the Community's broader sovereign interests in the Tribal Court proceeding, including administration of its judicial system and the application of Tribal law. Op. at 16 (citing Panel's jurisdictional holding instead of conducting a Rule 19 analysis).

The Panel states that its jurisdictional analysis—also improperly narrowed, as explained above—resolves the Rule 19 inquiry. *Id.* But a Rule 19 inquiry is broader than the narrow property interest that the Panel considered. Tribes are necessary parties in a variety of proceedings that impact a range of interests. *E.g., Dawavendewa v. Salt River Project Agr. Imp. & Power Dist.*, 276 F.3d 1150, 1157

(9th Cir. 2002) (Tribe is a necessary party to suit challenging on-Reservation lessee's hiring preferences because tribe has "multiple economic and sovereign interests" in the proceeding).

A party does not need to demonstrate that the "interest be property in the sense of the due process clause," rather, the interest solely needs to be a claim to a "legally protected interest." *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1023-24 (9th Cir. 2002).

In *Two Shields v. Wilkinson*, this Circuit recognized that a sovereign's Rule 19 analysis must consider non-economic interests—a sovereign has a protectable Rule 19 interest if a proceeding implicates the sovereign's "administration, enforcement, and interpretation of its laws and regulations." 790 F.3d 791, 797 (8th Cir. 2015); *see also N. Arapaho Tribe v. Harnsberger*, 697 F.3d 1272, 1279 (10th Cir. 2012) (Tribe has a Rule 19 interest in the Indian Country status of land because it implicates the tribe's civil and criminal jurisdiction). Under *Two Shields*, the Panel should have considered the Community's non-economic sovereign interests, which include the Community's interest in the validity, application, and interpretation of its laws, and the operations of its judicial system, including the provision of a forum for divorce proceedings. Tr. Am. Br. at 23-26. This Court should require an analysis consistent with *Two Shields*.

III. The standard for exercise of jurisdiction over a divorce involving a tribal member and non-member with a nexus to the Reservation and tribal property is an issue of exceptional importance.

The exercise of jurisdiction over divorce proceedings between a member and non-member holds significant importance to the Community because it implicates the Community's sovereign interests, including operation of its judicial system.

First, the Panel's holding disrupts the Community's administration of its judiciary without presenting an articulable standard for tribal jurisdiction over non-member divorce proceedings. For example, the Panel held the Tribal Court lacked jurisdiction because "the divorce order *primarily* addressed the division and distribution of non-Community assets." Op. at 11 (emphasis added). While this acknowledges that there *are* Community assets at issue in the divorce order, the holding implies that there is an undefined threshold of tribal assets necessary to support the exercise of tribal jurisdiction.

The Panel further held that the Tribal Court lacked jurisdiction because "[a]lthough contingent on marital status, [Appellant's] receipt of [Community] benefits reflects a connection to tribal property of a more limited and incidental character than what has typically justified tribal jurisdiction, such as residing on the reservation." Op. at 10. This implies that some connections to tribal property gives rise to tribal jurisdiction, but fails to articulate the extent or quality required.

The Panel also held that the Tribal Court lacked jurisdiction because "the children have neither lived on Community lands nor been regular participants in tribal life." Op. at 12. This holding unartfully implies that jurisdiction is dependent on how culturally "tribal" a family is, in the assessment of the federal court. It is not the judiciary's role to determine jurisdiction based on a federal appellate court's perception of what constitutes sufficient cultural participation for tribal children to be tribal members.

The Panel's assessment leaves state courts and tribal courts—which regularly provide a forum to non-members and members seeking to dissolve marriages[3]—with vague standards for jurisdiction over divorce proceedings between tribal members and non-members, even in instances where both parties consent to tribal court jurisdiction.[4] Tr. Am. Br. at 10-11. If left undisturbed, the Panel's decision will result in inconsistent judgments and frustrate principles of comity established between tribal courts and state courts by creating substantial uncertainty over when a sovereign should stay its proceedings to respect the other sovereign's authority.

[3] "In 2023, 50 cases involving non-members were filed" in the Community court, 8 of which were divorce proceedings. "In 2024, 43 cases were filed with the Tribal Court involving non-members, 8 child custody proceedings and 6 divorce proceedings." Tr. Am. Br. at 10.

[4] As Appellee notes, the Panel's misinterpretation of *Plains Commerce* indiscriminately imposes a self-government and internal relations test on all consensual relationships with a tribe—this appears to include instances where a non-member consents to tribal court jurisdiction, calling into question a non-member's right to avail themselves to a convenient tribal court forum.

Appendix of Appellee ("Aple.-App.") 118; *e.g., Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians*, 665 N.W.2d 899, 917 (Wis. 2003) (Abrahamson, J., concurring); *see* Minn. Gen. R. P. 10.[5]

Second, the Panel's decision had substantial impacts on the Community's sovereign interests, which are of substantial importance. The Community has an interest in the administration of its judiciary, including providing a forum to non-members and members seeking marriage dissolution, the faithful application, interpretation, and validity of its laws, and Community property that is implicated in divorce proceedings.[6] A decision that gravely impacts these sovereign interests must be reconsidered to ensure this Court has adequately considered the practical sovereign interests its decision implicates.

CONCLUSION

Based on the foregoing, the Petition for Rehearing should be granted.

[5] In this case, as a matter of comity, the State Court stayed its proceedings pending resolution of the Tribal Court proceeding. Aple.-App. 31.

[6] In addition to per capita payments and tribal benefits, non-member/member divorce proceedings will often contemplate the disposition of assigned non-alienable Indian land within the Reservation that the family resided on pre-dissolution. PIIC Homesite Assignment Ord., § 1.03 subd. 2. Allocation of property on Homesites, and consideration of the Homesite interest, requires the application of tribal law—a matter that cannot be decided by a state court. 25 C.F.R. § 162.014(a)(2) (tribal law governs Homesites); *see In re Musel*, 631 B.R. 744, 753 (Bankr. D. Minn. 2021).

Dated: January 16, 2026.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 29(b)(4) because this brief contains 2600 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman typeface.

Pursuant to 8th Circuit Rule 28A(h)(2), I further certify that this brief has been scanned for viruses and is virus-free.

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2026, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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