

**No. 24-2056**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

---

JOSHUA HARRIS AND DONITA OLDS, on behalf of plaintiffs and the  
class members described herein,

*Plaintiffs-Appellees,*

v.

W6LS, INC., d/b/a WithU and WithU Loans, and  
CALIBER FINANCIAL SERVICES, INC.,

*Defendants-Appellants.*

---

On Appeal from the United States District Court for the Northern  
District of Illinois, Eastern Division, No. 1:23-cv-16429  
The Honorable Lindsay C. Jenkins, Judge Presiding.

---

**PROPOSED BRIEF OF THE NATIVE AMERICAN  
FINANCIAL SERVICES ASSOCIATION AS *AMICUS CURIAE*  
IN SUPPORT OF DEFENDANTS-APPELLANTS AND  
REVERSAL**

---

Patrick O. Daugherty, Counsel of Record  
Nakia Arrington  
VAN NESS FELDMAN, LLP  
2000 Pennsylvania Avenue, NW  
Suite 6000  
Washington, DC 20006  
Telephone: (202) 298-1800  
Email: [pod@vnf.com](mailto:pod@vnf.com)  
[narrington@vnf.com](mailto:narrington@vnf.com)

*Counsel for the Native American  
Financial Services Association*

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 24-2056

Short Caption: Joshua Harris, et al. v. W6LS, Inc. et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.



PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

- (1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3): The Native American Financial Services Association
(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court: Van Ness Feldman, LLP
(3) If the party, amicus or intervenor is a corporation: i) Identify all its parent corporations, if any; and None ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock: None
(4) Provide information required by FRAP 26.1(b) - Organizational Victims in Criminal Cases: N/A
(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2: N/A

Attorney's Signature: [Signature] Date: October 25, 2024

Attorney's Printed Name: Patrick Daugherty

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes [checked] No [ ]

Address: 2000 Pennsylvania Avenue, NW, Ste. 6000, Washington, DC 20006

Phone Number: 202-298-1800 Fax Number:

E-Mail Address: pod@vnf.com

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 24-2056

Short Caption: Joshua Harris, et al. v. W6LS, Inc., et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**



**PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):  
The Native American Financial Services Association

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:  
Van Ness Feldman, LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

None

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Nakia L. Arrington Date: October 25, 2024

Attorney's Printed Name: Nakia L. Arrington

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes  No

Address: 2000 Pennsylvania Avenue, NW, Ste. 6000, Washington, DC 20006

Phone Number: 202-298-1800 Fax Number: \_\_\_\_\_

E-Mail Address: nla@vnf.com

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICUS CURIAE</i> .....	1
REQUIRED DISCLOSURES.....	3
SUMMARY OF ARGUMENT.....	3
ARGUMENT .....	4
I. Tribal Economic Development Is Essential to the Exercise of Tribal Sovereignty.....	4
A. Federal Law and Policy Encourages Tribal Economic Development to Promote Tribal Self-Determination.....	5
B. The Sovereign Status of Tribal Businesses Is Critical to Tribes’ Economic Development Efforts.....	8
II. Arbitration Protects Tribal Treasuries from the High Costs of Litigation and Is Consistent with Tribal Sovereignty.....	9
A. Arbitration Offers Cost Savings to All Participants.....	10
B. Arbitration Conducted with the Consent of All Parties Is Consistent with Tribal Sovereignty, While Continued Litigation Is Not.....	12
CONCLUSION.....	14
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Breakthrough Management Group, Inc. v. Chukchansi Gold Casino &amp; Resort</i> , 629 F.3d 1173 (10th Cir. 2010).....	12
<i>California v. Cabazon Band of Mission Indians</i> , 480 U.S. 202 (1987).....	7, 14
<i>Cotton Petroleum Corp. v. New Mexico</i> , 490 U.S. 163 (1989).....	8, 13
<i>Epic Sys. Corp. v. Lewis</i> , 584 U.S. 497 (2018).....	11, 12
<i>McClanahan v. State Tax Comm’n of Ariz.</i> , 411 U.S. 164 (1973).....	4
<i>Mestek v. LAC Courte Oreilles Cmty. Health Ctr.</i> , 72 F.4th 255 (7th Cir. 2023) .....	12
<i>Metro E. Ctr. for Conditioning &amp; Health v. Quest Commc’ns Int’l, Inc.</i> , 294 F.3d 924 (7th Cir. 2002).....	10, 11
<i>Michigan v. Bay Mills Indian Cmty.</i> , 572 U.S. 782 (2014).....	7, 13
<i>Sac &amp; Fox Nation of Mo. v. Pierce</i> , 213 F.3d 566 (10th Cir. 2000).....	14
<i>United States v. Lara</i> , 541 U.S. 193 (2004).....	13
<i>White Mountain Apache Tribe v. Bracker</i> , 448 U.S. 136 (1980).....	6
<i>Worcester v. Georgia</i> , 31 U.S. 515 (1832) .....	4

**Statutes**

Indian Financing Act of 1974, 25 U.S.C. §§ 1451, *et seq.*..... 5

Indian Reorganization Act of 1934, 25 U.S.C. §§ 5101, *et seq.* ..... 5

    25 U.S.C. § 5112 ..... 6

    25 U.S.C. § 5124 ..... 6

Indian Self-Determination and Education Assistance Act of  
1975, 25 U.S.C. §§ 5301, *et seq.*..... 5

    25 U.S.C. § 5302(b) ..... 6

Native American Business Development, Trade Promotion,  
and Tourism Act of 2000, Pub. L. No. 106-464, 114 Stat.  
2012..... 6

**Other Authorities**

Cohen’s Handbook of Federal Indian Law § 15.06[2] (2023) ..... 9

Exec. Order No. 13175 (2000) ..... 6

Federalist No. 12 (A. Hamilton) (Clinton Rossiter ed., 1961)..... 3

James Robert Colombe & Rory Taylor, *Tribal enterprises drive  
economic activity in Indian Country and beyond*, Federal  
Reserve Bank of Minneapolis (July 6, 2021),  
[https://www.minneapolisfed.org/  
article/2021/tribal-  
enterprises-drive-economic-activity-in-indian-country-and-  
beyond](https://www.minneapolisfed.org/article/2021/tribal-enterprises-drive-economic-activity-in-indian-country-and-beyond) ..... 9

President Biden, Proclamation on Indigenous Peoples’ Day  
(Oct. 11, 2024)..... 7

President Nixon, Special Message on Indian Affairs (July 8,  
1970)..... 6

Searle Civil Justice Institute, Consumer Arbitration, Before the American Arbitration Association, Preliminary Report (Mar. 2009), *available at* [https://masonlec.org/site/rte\\_uploads/files/Consumer%20Arbitration%20Before%20the%20AAA%20-%20Preliminary%20Rpt.pdf](https://masonlec.org/site/rte_uploads/files/Consumer%20Arbitration%20Before%20the%20AAA%20-%20Preliminary%20Rpt.pdf)..... 10

Treasury Tribal Advisory Committee, Subcommittee on Dual Taxation Report (Dec. 9, 2020), *available at* <https://home.treasury.gov/system/files/136/TTAC-Subcommittee-on-Dual-Taxation-Report-1292020.pdf>..... 8

U.S. CONST. art. I, § 8, cl. 3..... 13

## INTEREST OF *AMICUS CURIAE*

The Native American Financial Services Association (“NAFSA”) is a non-profit trade association advocating for tribal sovereignty, responsible financial services, and better economic opportunities in Indian country. NAFSA has advocated for these positions in *amicus* briefs filed in the U.S. Supreme Court, the U.S. Courts of Appeals for the First, Third, Fourth, Sixth, and Ninth Circuits, and other federal courts.

NAFSA’s member tribes face barriers to economic prosperity, including extreme rural isolation, which eliminates their ability to leverage gaming and other brick-and-mortar industries to stimulate their economies. NAFSA members have found e-commerce to be a great equalizer in overcoming this isolation and providing for their people.

Tribes have formed businesses—acting as arms of their tribal governments—to provide financial services to consumers that traditional banking interests are unwilling to serve. Importantly, these tribes have promulgated and actively enforced financial-services laws and regulations for many years. Harnessing the potential of e-commerce is vital to ensuring that American Indian tribes have not only the right,

but also the ability, to exercise self-determination. By creating tribal businesses, tribal leaders have filled the gap in federal funding that tribes receive for basic social services, while also working to alleviate generational poverty in tribal communities. NAFSA has a particular interest in ensuring that the language in this arbitration provision (and those of similarly situated NAFSA members) is applied in a manner that does not discriminate against tribal businesses.

NAFSA defends tribes' sovereign interests to determine their own economic futures. Tribal governments' sovereign right to self-determination depends largely on tribes' ability to engage in economic-development activities, including the selection of arbitration to resolve disputes arising from such activities. NAFSA member tribes' economic arms (including the Defendants-Appellants) often incorporate arbitration provisions into their loan agreements, just as non-Indian businesses do. The Order has implications for all tribal businesses that use arbitration agreements to conserve limited resources and safeguard funds destined for the tribal treasury from being wasted on litigation.

## REQUIRED DISCLOSURES

No counsel for a party authored this brief in whole or in part.

No person other than *amicus* made a monetary contribution to this brief's preparation or submission.

## SUMMARY OF ARGUMENT

“A nation cannot long exist without revenues. Destitute of this essential support, it must resign its independence, and sink into the degraded condition of a province.”

Federalist No. 12 (A. Hamilton) (Clinton Rossiter ed., 1961).

---

NAFSA asks the Court to consider two important factors as it evaluates this case. First, tribal economic development companies, like W6LS operated by the Otoe-Missouri Tribe of Indians, are necessary for the exercise of tribal sovereignty. The founders of this nation recognized that governmental revenues play an essential role in the exercise of sovereign authority. This fundamental truth still holds true today for American Indian tribes seeking to exercise their rights to self-determination. Often lacking traditional tax bases, tribes must instead use commercial enterprises to raise revenue and fund their own priorities in order to truly exercise self-determination.

Second, enforcement of arbitration agreements protects tribal treasuries from the high costs of litigation. Like any consumer-facing business, tribal businesses will have a small number of dissatisfied customers file lawsuits. However, for tribal businesses, the stakes of arbitration enforcement are higher because, ultimately, funding for tribal government programs is at stake. NAFSA urges this Court to protect tribal businesses' access to lower-cost dispute resolution mechanisms that are consistent with the sovereignty of tribes and their economic arms.

## ARGUMENT

### **I. Tribal Economic Development Is Essential to the Exercise of Tribal Sovereignty.**

The sovereign authority of American Indian tribes to govern themselves existed long before the formation of the United States government. *Worcester v. Georgia*, 31 U.S. 515, 520 (1832); *McClanahan v. State Tax Comm'n of Ariz.*, 411 U.S. 164, 172 (1973). Congress has repeatedly recognized that economic development is a crucial component of tribal self-governance, as have presidential proclamations and decisions of the Supreme Court.

Tribal governments' sovereign right to self-determination depends largely on tribes' ability to engage in economic-development activities. Like many of NAFSA's members, the Otoe-Missouria Tribe has made substantial strides towards self-sufficiency through its tribal businesses, which provide critical revenue for the Tribe's government. Tribes' economic enterprises fund tribal budgets and services despite the barriers tribes face to raising revenue in traditional ways. That critical revenue source depends, however, on preserving tribal access to lower-cost dispute resolution services. The Order threatens to undermine those gains and obstruct the ability of tribes to engage in vital economic development.

**A. Federal Law and Policy Encourages Tribal Economic Development to Promote Tribal Self-Determination.**

A critical component of federal Indian law and policy is the advancement of tribal economic development as a necessary mechanism for tribes' economic self-sufficiency and self-determination. Through federal statutes such as the Indian Reorganization Act of 1934, 25 U.S.C. §§ 5101, *et seq.*, the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 5301, *et seq.*, and the Indian Financing Act of 1974, 25 U.S.C. §§ 1451, *et seq.*, Congress has

expressed its intent to “rehabilitate the Indian’s economic life” and provide opportunities for tribes to “develop the initiative destroyed by a century of oppression and paternalism.” *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143 n.10 (1980) (citations omitted); *see also* 25 U.S.C. §§ 5112, 5124 (appropriating funds for tribal corporations and describing the process for issuing tribal charter of incorporation); 25 U.S.C. § 5302(b) (“the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.”); Native American Business Development, Trade Promotion, and Tourism Act of 2000, Pub. L. No. 106-464, § 2(b)(3), 114 Stat. 2012, 2013 (codified at 25 U.S.C. § 4301(b)(3)) (purpose of the Act is “[t]o promote the long-range sustained growth of the economies of Indian Tribes.”).

Presidential proclamations have made the same point across several decades. *See* President Nixon, Special Message on Indian Affairs (July 8, 1970) (“[s]elf-determination among the Indian people can and must be encouraged[.]”); Exec. Order No. 13175, § 2(c) (2000) (“The United States recognizes the right of Indian tribes to self-government

and supports tribal sovereignty and self-determination.”); President Biden, Proclamation on Indigenous Peoples’ Day (Oct. 11, 2024) (“To make this new era of self-determination a reality, we must honor the solemn promises the United States made to fulfill our trust and treaty obligations to Tribal Nations and work together to rebuild Tribal economies and institutions.”).

Similarly, these policy goals have been recognized by the U.S. Supreme Court. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 807 (“If Tribes are ever to become more self-sufficient, and fund a more substantial portion of their own governmental functions, commercial enterprises will likely be a central means of achieving that goal.”), 810 (2014) (“A key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on federal funding.”) (citation omitted). The landmark case recognizing the sovereign right of tribes to operate gaming businesses (even in states where such businesses were then prohibited) was also rooted in this policy. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216 (1987) (recognizing the “‘overriding [congressional] goal’ of encouraging tribal self-sufficiency and economic

development.”) (quoting *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334-35 (1983)).

**B. The Sovereign Status of Tribal Businesses Is Critical to Tribes’ Economic Development Efforts.**

Tribal business revenue is essential to self-determination because tribal governments face legal and practical limitations that other federal, state, and local governments do not. For instance, tribes are unable to tax most reservation property due to its being held in trust by the federal government. Additionally, state authority to tax economic activity occurring on tribal lands that involves non-Indians places tribes in an impossible bind. *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989). If they choose to tax an on-reservation non-Indian business on top of the state’s taxes then businesses will go elsewhere, but without that revenue, many tribes will struggle to fund basic government functions. This specter of dual taxation is “crippling to the growth of Tribal economies.” See Treasury Tribal Advisory Committee, Subcommittee on Dual Taxation Report at 2 (Dec. 9, 2020). These challenges are compounded by legal restrictions that render reservation trust lands incapable of being leveraged to raise capital or support

community development. *See* Cohen’s Handbook of Federal Indian Law § 15.06[2] (2023).

The operation and management of tribal businesses is, therefore, an exercise in sovereignty because it generates much-needed income for tribal treasuries. Tribal governments then use that revenue to fund vital programs for their citizens—healthcare, education, housing, and infrastructure. *See, e.g.,* James Robert Colombe & Rory Taylor, *Tribal enterprises drive economic activity in Indian Country and beyond*, Federal Reserve Bank of Minneapolis (July 6, 2021) (noting that “tribal enterprises are economic engines” and that tribal funding of public goods and services is “almost entirely reliant on either federal government appropriations or revenue that tribal enterprises generate.”). The revenue provided by tribal businesses makes it possible for tribes to fulfill the goal of self-determination, which the federal government encourages and promotes.

## **II. Arbitration Protects Tribal Treasuries from the High Costs of Litigation and Is Consistent with Tribal Sovereignty.**

The Order improperly limits the ability of tribal businesses to employ arbitration, thereby diverting desperately needed funds from the tribal treasuries to litigation costs. The Order also undermines

tribal sovereignty by replacing mutually agreed upon arbitration with non-consensual litigation in a manner inconsistent with the sovereignty of the Tribe and the tribal business.

**A. Arbitration Offers Cost Savings to All Participants.**

For tribal business, the benefits of arbitration are straightforward. Disputes can be resolved promptly and at lower cost than through U.S. district court litigation. One study found that the average time from filing to final award in a consumer arbitration case was 6.9 months. Searle Civil Justice Institute, *Consumer Arbitration, Before the American Arbitration Association, Preliminary Report* at xiii (Mar. 2009). In contrast, this case has already been pending for 10 months and is nowhere near resolution on its merits despite prompt action from the parties and the court. Funds not spent on legal bills are funds that the tribal business can deposit in the tribal treasury to fund essential tribal government functions.

But the benefits of arbitration are not one-sided. This Court has recognized that “arbitration may offer net benefits to all concerned.” *Metro E. Ctr. for Conditioning & Health v. Qwest Commc’ns Int’l, Inc.*, 294 F.3d 924, 927 (7th Cir. 2002). Additionally, this Court has

recognized that “the discovery procedures of litigation may be more expensive for both sides than are the procedures used in arbitration.”

*Id.* Here, the tribal business’s arbitration agreement also contains several other provisions that “give the customer the upper hand[.]” *Id.*

The customer may elect to have the arbitration conducted within 30 miles of their home. Dkt. 7-1 at 22, 47.<sup>1</sup> If the consumer prevails, the tribal business must also reimburse filing fees, reasonable attorneys’ fees, and other costs of arbitration. *Id.* at 20, 46. Thus, both consumers and the tribal businesses may “find arbitration a valuable cost-saver[.]” *Metro E. Ctr. For Conditioning & Health*, 294 F.3d at 928.

The Supreme Court has repeatedly reaffirmed the “liberal federal policy favoring arbitration agreements.” *See, e.g., Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 505 (2018) (citation and quotation marks omitted). That policy recognizes that all commercial activity, even when conducted with scrupulous adherence to the law, involves the risk of litigation, and that arbitration is often more cost-effective than litigation in resolving disputes. *Id.* Tribal governments, just like other

---

<sup>1</sup> Material in the Required Short Appendix filed with Defendants-Appellants’ brief is cited as “A-\_\_.” Other record material is cited by docket number and internal page number as “Dkt. \_\_ at \_\_.”

governments and private parties throughout this country, are entitled to benefit from Congress's instruction to the "federal courts to enforce arbitration agreements according to their terms." *Id.* at 502. Instead of following this policy, the Order sets a higher hurdle for arbitration of disputes with tribally-owned businesses. *See* Defs.-Appellants Br. at 30-32.

**B. Arbitration Conducted with the Consent of All Parties Is Consistent with Tribal Sovereignty, While Continued Litigation Is Not.**

Tribal businesses often operate as economic arms of their tribal governments. When they do, the tribe's sovereign immunity extends to the tribal business. *See Mestek v. LAC Courte Oreilles Cmty. Health Ctr.*, 72 F.4th 255, 260 (7th Cir. 2023) (adopting multi-factor test articulated in *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1187 (10th Cir. 2010), because it "furthers the foundational principles of tribal sovereign immunity.") (citing Cohen's Handbook of Federal Indian Law § 7.05[1][a] (2019)).

Just as a tribal health center may share its tribe's immunity, so to can its consumer lending business. Here, the tribal business has consented to arbitration of consumer disputes and provided a limited

waiver of its sovereign immunity to permit individual arbitration and enforcement of any arbitration award. *See* Dkt. 7-1 at 23. “It is undisputed that the parties entered into loan agreements . . . requiring individual arbitration.” A-1 at 3. Enforcing those agreements would respect the well-established legal principles and federal policies of promoting tribal self-governance and self-determination.

Federal law has long recognized that “Indian tribes are domestic dependent nations that exercise inherent sovereign authority.” *Bay Mills*, 572 U.S. at 788 (citations and quotation marks omitted). At the same time, Congress has “plenary power to legislate in the field of Indian affairs.” *Cotton Petroleum Corp.*, 490 U.S. at 192 (citations omitted); *see also United States v. Lara*, 541 U.S. 193, 200 (2004) (noting that Congress’s power with respect to Indian tribes has consistently been described as “plenary and exclusive[.]”) (citations omitted). That power derives from the Indian Commerce Clause, which provides that “Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” U.S. CONST. art. I, § 8, cl. 3. In addition to empowering Congress, and only Congress, this clause “protect[s] tribal self-

government from state interference.” *Sac & Fox Nation of Mo. v. Pierce*, 213 F.3d 566, 574 (10th Cir. 2000) (citation omitted).

Here, Plaintiffs have the right to proceed to individual arbitration. Plaintiffs also have the right to petition Congress to regulate tribal lending businesses in the same manner Congress regulated tribal gaming businesses after *Cabazon* recognized tribes’ sovereign authority to operate gaming businesses. What Plaintiffs may not do is hale a sovereign arm of the Tribe into Court without its consent.

### **CONCLUSION**

Governments need revenue to exercise governmental powers. Tribal governments are no exception. Without tribal business revenue, all the pronouncements in favor of tribal self-determination from Congress, Presidents, and the Supreme Court will remain unrealized aspirations.

Tribal businesses employ arbitration agreements to keep their revenues flowing to tribal treasuries instead of to legal fees. NAFSA respectfully requests that this Court preserve arbitration as a lower-cost dispute resolution option for tribal businesses and forcefully reject

any argument that arbitration is unavailable solely because a tribal business seeks to have its contracts governed by its own laws.

Respectfully submitted,

/s/ Patrick O. Daugherty

PATRICK O. DAUGHERTY

Counsel of Record

NAKIA L. ARRINGTON

VAN NESS FELDMAN, LLP

2000 Pennsylvania Avenue, NW

Suite 6000

Washington, DC 20006

Telephone: (202) 298-1800

Email: [pod@vnf.com](mailto:pod@vnf.com)

[narrington@vnf.com](mailto:narrington@vnf.com)

*Attorney for Amicus Curiae Native  
American Financial Services  
Association*

DATED: October 31, 2024

## CERTIFICATE OF COMPLIANCE

1. This brief complies with Federal Rule of Appellate Procedure 29(a)(5) and Seventh Circuit Rule 32(b) in that, according to the word-count feature of the word-processing program with which it was prepared (Microsoft Word), the brief contains 2,526 words, excluding the portions exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Century Schoolbook in 14-point font.

Dated: October 31, 2024

/s/ Patrick O. Daugherty

PATRICK O. DAUGHERTY

**CERTIFICATE OF SERVICE**

On this 31st day of October 2024, I electronically filed the foregoing using the Court's appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by that system.

/s/ Patrick O. Daugherty

PATRICK O. DAUGHERTY