

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

| | | |
|--|----|--------------------------|
| CHAD EVERET BRACKEEN, et al., | :: | |
| | : | |
| Plaintiffs, | : | |
| | : | Case No. 4:17-CV-00868-O |
| v. | : | |
| | : | |
| RYAN ZINKE, in his official capacity as | : | |
| Secretary of the United States Department of the | : | |
| Interior, et al., | : | |
| | : | |
| Defendants. | : | |

**MOTION OF THE STATE OF OHIO FOR LEAVE
TO FILE *AMICUS CURIAE* BRIEF OPPOSING
DEFENDANTS' MOTION TO DISMISS**

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Counsel for Proposed *Amicus Curiae*
State of Ohio

MOTION FOR LEAVE TO FILE

The State of Ohio respectfully requests leave to file the amicus brief attached as an exhibit here supporting the Plaintiffs' opposition to the motion to dismiss.

Respectfully submitted,

/s Daniel P. Novakov

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MEMORANDUM IN SUPPORT OF LEAVE TO FILE

The State of Ohio respectfully moves, pursuant to L.R. 7.1 and the Court's inherent authority, for leave to file a brief as amicus curiae in opposition to Defendant's Motion to Dismiss.

This motion is authorized by L.R. 7.1. The filing of an amicus curiae brief, with leave of the Court, is authorized by L.R. 7.2(b). Whether to permit amicus participation lies within the Court's inherent authority.¹ "Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case,"² as evidenced by this Court's historic practice of permitting amici participation.³

There are no prerequisites to qualify for amicus status; rather, this Court has accepted amicus briefs by persons who demonstrate "sufficient interest in the outcome of the litigation to warrant leave to file the amicus briefs,"⁴ or who provide information that is "timely and useful or otherwise necessary to the administration of justice."⁵ Other courts similarly have required only that one seeking to appear as amicus "must merely make a showing that his participation is

¹ See, e.g., *Georgia Aquarium, Inc. v. Pritzker*, 135 F. Supp. 3d 1280, 1288-89 (N.D. Ga. 2015); *Jin v. Ministry of State Sec.*, 557 F. Supp.2d 131, 136 (D.D.C. 2008); *Sierra Club v. Fed. Emergency Mgmt. Agency*, No. H-07-0608, 2007 WL 3472851, at *3 (S.D. Tex. Nov. 14, 2007).

² *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990).

³ See, e.g., *City of Dallas v. Hall*, Nos. 3:07-CV-0060-P, 3:07-CV-0213-P, 2008 WL 2622809, at *2-3 (N.D. Tex. June 30, 2008), *aff'd*, 562 F.3d 712 (5th Cir. 2009); *U.S. Fleet Servs., Inc. v. City of Fort Worth*, 141 F. Supp. 2d 631, 633 (N.D. Tex. 2001); *Burlington N. R.R. Co. v. Office of Inspector Gen.*, 767 F. Supp. 1379, 1381 (N.D. Tex. 1991), *aff'd sub nom. Burlington N. R.R. Co. v. Office of Inspector Gen., R.R. Ret. Bd.*, 983 F.2d 631 (5th Cir. 1993); *R.A.J. v. Miller*, 590 F. Supp. 1319, 1320 (N.D. Tex. 1984).

⁴⁴ *In re Allied Pilots Class Action Litig.*, No. CIV.A.3:99-CV-0480P, 2000 WL 1405235, at *1 n.1 (N.D. Tex. Sept. 26, 2000).

⁵ *United States ex rel. Long v. GSD & M Idea City LLC*, No. 3:11-CV-1154-O, 2014 WL 11321670, at *4 (N.D. Tex. Aug. 8, 2014) (quoting *Does 1-7 v. Round Rock Indep. Sch. Dist.*, 540 F. Supp. 2d 735, 738 n.2 (W.D. Tex. 2007)).

useful to or otherwise desirable by the court.”⁶ An amicus brief may be of considerable help if it “brings to the attention of the Court relevant matter not already brought to its attention by the parties[.]”⁷

This litigation involves questions that interest and affect the State of Ohio. Ohio’s officials, like those in other states, must conform their conduct to the Indian Child Welfare Act. But Ohio believes that the Act and its associated regulations unconstitutionally usurp States’ authority to structure domestic-relations law around the best interests of children, and that the State Plaintiffs should be able to litigate that question. The motion to dismiss (ECF 57 at p. 18) claims that the State Plaintiffs here lack standing to bring this suit. Ohio has deep interest in the substantive questions in this case and in the issue of State standing raised in the motion to dismiss.

The State of Ohio respectfully submits the amicus brief attached to this filing, and requests that the Court permit its filing and deem it filed with any grant of this motion. Counsel for the United States Defendants and counsel for the Intervenors do not oppose this motion.

Respectfully submitted,

/s/ Daniel P. Novakov
Daniel P. Novakov
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⁶ See, e.g., *Louisiana*, 751 F. Supp. at 620.

⁷ *Maples v. Thomas*, No. 5:03-cv-2399-SLB-MHH, 2013 WL 5350669, *3 (N.D. Ala. Sept. 23, 2013) (quoting Sup. Ct. R. 37.1).

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Counsel for Proposed *Amicus Curiae*
State of Ohio

CERTIFICATE OF SERVICE

I hereby certify that on this 26 day of April, 2018, the foregoing motion seeking leave to file an amicus brief was filed electronically. Notice of this filing therefore will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system, and Parties may access this filing through the Court's system.

/s/ Daniel P. Novakov
Counsel for Proposed *Amicus Curiae*
State of Ohio

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| RYAN ZINKE, in his official capacity as | : | |
| Secretary of the United States Department of the | : | |
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| | : | |
| Defendants. | : | |

**[PROPOSED] ORDER GRANTING MOTION OF THE STATE OF OHIO
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
OPPOSING DEFENDANTS' MOTION TO DISMISS**

Before the Court is the State of Ohio's Motion for Leave to File *Amicus Curiae* Brief Opposing Defendants' Motion to Dismiss (ECF No. ____). Having reviewed the Motion, the Court finds that it should be and is hereby **GRANTED**. Accordingly, it is hereby **ORDERED** that the State of Ohio's *amicus* brief opposing Defendants' Motion to Dismiss is hereby filed.

SIGNED on this ____ day of _____, 2018.

THE HONORABLE REED O'CONNOR
UNITED STATES DISTRICT JUDGE