

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

OSAGE NATION,

Appellant-Petitioner,

v.

Case No.: 09-5050

District Case: 1-CV-0516-JHP-FHM

THOMAS E. KEMP, JR., Chairman
of the Oklahoma Tax Commission;
JERRY JOHNSON, Vice-Chairman
of the Oklahoma Tax Commission;
CONSTANCE IRBY, Secretary-
Member of the Oklahoma Tax
Commission,

Appellee-Respondent.

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* NAMED OKLAHOMA
INDIAN TRIBES' BRIEF SUPPORTING THE OSAGE NATION'S
PETITION FOR *EN BANC* REHEARING**

Counsel for *Amici Curiae* named Indian Tribes of Oklahoma

Padraic I. McCoy, Tilden McCoy, LLC, Boulder, Colorado, for *Amici Curiae*
Seneca-Cayuga Tribe of Oklahoma; the Muscogee (Creek) Nation of Oklahoma;
the Sac and Fox Nation; and the Alabama-Quassarte Tribal Town of Oklahoma.

The named Indian tribes respectfully request that the Court grant leave to file the attached proposed *Amici Curiae* named Oklahoma Indian Tribes' Brief Supporting the Osage Nation's Petition for *En Banc* Rehearing. The Appellant Osage Nation consents to filing of the brief. The Appellees, officials of the Oklahoma Tax Commission, have been contacted through their attorney of record and consent to filing of the brief.

I. STATEMENT OF INTEREST

The named *amici* Indian tribes, as identified further in the proposed brief, are federally-recognized Indian tribes located in Oklahoma. Each such tribe occupies its own or a shared land base granted or confirmed to it by treaty or agreement with the United States. The Court's approach concerning reservation disestablishment raises matters of exceptional importance to the *amici* tribes.

II. REASON AMICI BRIEF IS DESIRABLE AND ITS RELEVANCE TO THE DISPOSITION OF THE CASE

The proposed *amici* brief is desirable and relevant because it discusses how the panel decision exceeded what was necessary to determine the narrow issue before it, how additional context and a further understanding of Oklahoma's complex history would aid the Court on rehearing, and how the decision potentially impacts the non-party *amici* tribes.

Respectfully Submitted,

/s/ Padraic I. McCoy

Padraic I. McCoy
Tilden McCoy, LLC
1942 Broadway, Suite 314
Boulder, CO 80302
Telephone: (303) 323-1922
Facsimile: (303) 416-8707
pmccoy@tildenmccoy.com
Counsel for *Amici Curiae*

**CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY
REDACTIONS**

I hereby certify that a copy of the foregoing MOTION FOR LEAVE TO FILE *AMICI CURIAE* NAMED OKLAHOMA INDIAN TRIBES' BRIEF SUPPORTING THE OSAGE NATION'S PETITION FOR *EN BANC* REHEARING, as submitted in Digital Form via the court's ECF system, is an exact copy of the written document filed with the Clerk and has been scanned for viruses with the Norton Antivirus 360 program, Virus Definition File Dated: 4/09/2010, and according to the program, is free of viruses. In addition, I certify all required privacy redactions have been made.

By: */s/ Padraic I. McCoy*

Padraic I. McCoy
Tilden McCoy, LLC
1942 Broadway, Suite 314
Boulder, CO 80302
Telephone: (303) 323-1922
Facsimile: (303) 416-8707
pmccoy@tildenmccoy.com
Counsel for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR LEAVE TO FILE *AMICI CURIAE* NAMED OKLAHOMA INDIAN TRIBES' BRIEF SUPPORTING THE OSAGE NATION'S PETITION FOR *EN BANC* REHEARING was furnished through ECF electronic service to the following on the 9th day of April, 2010:

Gary S. Pitchlynn
O. Joe Williams
Stephanie Moser Goins
Pitchlynn & Williams PLLC
124 E. Main St.
Norman, OK 73070
(405) 360-9600
gspitchlynn@pitchlynnlaw.com
jwilliams@pitchlynnlaw.com
smgoins@pitchlynnlaw.com

Thomas P. Schlosser
Morriset, Schlosser, & Jozwiak
801 Second Ave. Suite 1115
Seattle, WA 98104
(206) 386-5200
t.schlosser@msaj.com

Larry D. Patton
Assistant General Counsel
Oklahoma Tax Commission
120 N. Robinson, Suite 2000W
Oklahoma City, OK 73102
(405) 319-8550
lpatton@tax.ok.gov

Lynn H. Slade
William C. Scott
Joan D. Marsan
Modrall, Sperling, Roehl, Harris,
& Sisk, P.A.
P.O. Box 2168
Albuquerque, NM 87103
(505) 848-1800
Lynn.slade@modrall.com
bscott@modrall.com
jdm@modrall.com

Steven W. Bugg
Jeff L. Todd
McAfee & Taft
10th Floor, Two Leadership
Square
211 N. Robinson
Oklahoma City, OK 73102
(405) 235-9621
Steven.bugg@mcafeetaft.com
Jeff.todd@mcafeetaft.com

By: */s/ Padraic I. McCoy*

Padraic I. McCoy
Tilden McCoy, LLC
1942 Broadway, Suite 314
Boulder, CO 80302
Telephone: (303) 323-1922
Facsimile: (303) 416-8707
pmccoy@tildenmccoy.com
Counsel for *Amici Curiae*

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

OSAGE NATION,)
)
)
)
)
Appellant-Petitioner,)
)
vs.)
)
THOMAS E. KEMP, JR., Chairman)
of the Oklahoma Tax Commission;)
JERRY JOHNSON, Vice-Chairman)
of the Oklahoma Tax Commission;)
CONSTANCE IRBY,)
Secretary-Member of the)
Oklahoma Tax Commission,)
)
Appellee-Respondent.)

Case No.: 09-5050
District Case: 1-CV-0516-JHP-FHM

AMICI CURIAE NAMED OKLAHOMA INDIAN TRIBES' BRIEF
SUPPORTING THE OSAGE NATION'S PETITION FOR EN BANC
REHEARING

Counsel for *Amici Curiae* named Indian Tribes of Oklahoma

Padraic I. McCoy, Tilden McCoy, LLC, Boulder, Colorado, for *Amici Curiae*
Seneca-Cayuga Tribe of Oklahoma; the Muscogee (Creek) Nation of Oklahoma;
the Sac and Fox Nation; and the Alabama-Quassarte Tribal Town

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
I. IDENTITY AND AUTHORITY OF <i>AMICI CURIAE</i>	1
II. INTEREST OF <i>AMICI</i> TRIBES AND INTRODUCTION.....	3
III. ARGUMENT AND NEED FOR REHEARING.....	4
A. The Court Improperly Inferred the Osage Reservation’s Disestablishment and Disadvantaged the <i>Amici</i> Tribes if they Should ever Seek Judicial Recognition of Their Lands.....	4
1. The Decision Relies Heavily on Untrustworthy and Non-Probative Evidence Not Necessary to its Determination.....	4
2. Every Indian Tribe and Tribal Land Base in Oklahoma has a Unique History and No Overarching Rule Concerning Indian Reservations in Oklahoma should be Implied.....	7
3. The Decision Raises but Fails to Consider the Federal Oklahoma Enabling Act, Whose Intent was to Preserve the Status Quo of Tribal Lands in the New State.....	9
B. If Rehearing is Denied, the Decision will Create Widespread Litigation by States and Others Seeking Disestablishment Determinations based on the Court’s Decision and Analysis.....	10
IV. CONCLUSION.....	10

TABLE OF AUTHORITIES

Federal Cases

<i>Buster v. Wright</i> , 135 F. 947 (8th Cir. 1905).....	7
<i>Harjo v. Andrus</i> , 581 F.2d 949 (D.C. Cir. 1978).....	1
<i>Harjo v. Kleppe</i> , 420 F. Supp. 1110 (D.D.C. 1976).....	1

Federal Statutes & Hearings

H.R. Rep. No. 59-496.....	8
Oklahoma Enabling Act, 34 Stat. 267 (Ch. 3335) (1906).....	9, 10

Federal Rules of Evidence and Procedure

Fed. R. App. P. 29(a).....	2
Fed. R. App. P. 35.....	11
Fed. R. App. P. 40.....	11
Fed. R. Evid. 401-402.....	6, 7

Court Documents

Opinion.....	passim
Petition.....	10

Other Authorities

- “Allotment Information for Eastern Oklahoma BIA Region,”
and “Allotment Information for Southern Plains BIA Region,”
Indian Land Tenure Foundation (2009), [www.indianlandtenure.org/
ILTFallotment/specinfo/specinfo.htm](http://www.indianlandtenure.org/ILTFallotment/specinfo/specinfo.htm)..... 7, 8
- Cohen’s Handbook of Federal Indian Law*
§ 1.04 (Nell Jessup Newton ed., LexisNexis 2005) (1942)..... 5
- Kirke Kickingbird, “*Way Down Yonder in the Indian Nations,
Rode my Pony Cross the Reservation!*” from “*Oklahoma Hills*”
by Woody Guthrie, 29 *Tulsa L.J.* 303 (1993/94)..... 5, 9
- “Tribal Jurisdictions in Oklahoma,” Okla. Dep’t of Transp. (2005),
<http://ttap.okstate.edu/ttapmaps> 7

I. IDENTITY AND AUTHORITY OF AMICI CURIAE

A. The Seneca-Cayuga Tribe of Oklahoma is originally from modern-day New York State and is a successor-in-interest to the historic Cayuga Nation. Upon removal from New York to Ohio to the “Indian Territory,” prior to Oklahoma Statehood, by various treaties the United States granted the Tribe a land base in what is now northeast Oklahoma. The Tribe’s land base has been diminished at least two times by treaty and, separately, was allotted under the General Allotment Act, but no subsequent enactment has altered or affected its treaty lands.

B. The Muscogee (Creek) people originally come from the southeastern United States and were forcibly removed to present-day Oklahoma in the early 19th century. The Creek Nation is historically a union of several tribes, called tribal towns or “talwa,” and is one of the “Five Civilized Tribes” (Cherokee, Choctaw, Creek, Chickasaw, and Seminole). As were many “Oklahoma” tribes, the Creeks were granted a land base in fee. The Creek treaty lands are in central eastern Oklahoma. In 1898, Congress passed the Curtis Act, which began the allotment of the Nation’s treaty-established national domain and contemplated the dismantling of the governments of all of the “Five Tribes.” However, the Nation’s end as envisioned by Congress never occurred. *See Harjo v. Kleppe*, 420 F. Supp. 1110 (D.D.C. 1976), *aff’d by Harjo v. Andrus*, 581 F.2d 949 (D.C. Cir. 1978).

C. The history of the Sac and Fox Nation in what is now Oklahoma is only 140 years old. The Sac and Fox arrived in Indian Territory in November 1869 from a reservation in the State of Kansas that the tribe had occupied for approximately 20 years after removal from homelands in parts of southeast Canada, New York, Connecticut, Massachusetts, Michigan, Wisconsin, Illinois, and Iowa. The Sac and Fox Nation government is now headquartered in Stroud, Oklahoma and tribal jurisdiction includes Payne, Lincoln, and Pottawatomie counties in Oklahoma with tribal population located primarily in the cities of Cushing (Payne County), Stroud (Lincoln County), Prague (Lincoln County) and Shawnee (Pottawatomie County).

D. The Alabama-Quassarte Tribal Town is a historical component of the Creek Confederacy and one of the original at least forty-four Creek tribal towns or “talwa.” The Tribal Town shares many cultural characteristics, certain aspects of its language, religious practices, and social and familial structures with the other tribes and towns of the Creek Confederacy. The Tribal Town gained separate federal recognition in 1939 under the Oklahoma Indian Welfare Act and remains culturally and politically tied to the Creek Nation. The Tribal Town is located within the Creek Nation boundaries.

The *Amici* tribes file this brief under the authority of Fed. R. App. P. 29(a).

II. INTEREST OF AMICI TRIBES AND INTRODUCTION

The Court correctly cites the reservation disestablishment/diminishment framework (Op. at 7-11.), in particular, that Congressional intent controls (*id.* at 8), and that statutory language is the most probative evidence of intent. (*Id.* at 9.) However, respectfully, the Court’s determination (the “Decision”) improperly inferred disestablishment by too heavily relying on the non-probative evidence of contemporaneous non-lawyer authors and subsequent population data (which may be especially unreliable as to Osage, discussed below).

The Decision exceeded what was necessary to the question before it and either implied disestablishment as to *Amici* Oklahoma tribes or, at a minimum, negatively impacted such tribes’ ability to secure judicial recognition of reservation status of their lands—should they seek such status in the future. Each tribe and tribal land base in Oklahoma is unique and has been established and affected by different treaties and acts. Each Oklahoma tribal land base deserves its own treatment.

Finally, if its analytical approach stands, especially concerning the Court’s reliance on population data, the Decision will trigger additional litigation by Oklahoma and other states and counties seeking declarations of reservation disestablishment or diminishment.

Rehearing is necessary in order for the Court to consider important historical circumstances concerning Oklahoma-Indian history and to prevent the Decision's impact on the *Amici* Oklahoma tribes.

III. ARGUMENT AND NEED FOR REHEARING

A. The Court Improperly Inferred the Osage Reservation's Disestablishment and Disadvantaged the *Amici* Tribes if they Should ever Seek Judicial Recognition of Their Lands.

1. The Decision Relies Heavily on Untrustworthy and Non-Probativ Evidence Not Necessary to its Determination.

With respect, the Decision exceeds what was necessary to reach a determination as to the facts and law at issue, in particular, the Osage Allotment Act ("Act") and its impact on the Osage reservation. As to those matters the Court concluded correctly as follows:

Thus, the operative language of the [Act] does not unambiguously suggest diminishment or disestablishment of the Osage reservation.

(Op. at 11.) This conclusion should have ended the matter.

Rather, the Decision discusses certain circumstances surrounding the Act's passage. In doing so, the Court considers varying statements of four authors (Prucha, Baird, Kelly, and Chapman; Op. at 12-15) (whose qualification as experts or reliable, credentialed historians is not clear). These statements are inconsistent with established law and are not themselves the product of in-depth, or any, *legal* analysis. In one instance, the Court relies on F. Prucha's statements that the Act

was passed “at a time where the United States sought dissolution of Indian reservations, specifically the Oklahoma tribe’s reservations.” (Op. at 12.)

However, the federal policy concerning Indian tribes in 1906 was arguably that of allotment and assimilation. *See Cohen’s Handbook of Federal Indian Law* § 1.04 (Nell Jessup Newton ed., LexisNexis 2005) (1942).¹ If Prucha is correct, however, Congress knew how to terminate a reservation expressly but failed to do so in the Act.

The Court relies on another F. Prucha statement that, “The Indians of Oklahoma were an anomaly in Indian-white relations . . . There are no Indian reservations in Oklahoma . . . [T]he reservation experience that was fundamental for most Indian groups in the twentieth century was not part of Oklahoma Indian history.” (Op. at 15.) The Court also references B. Chapman, an author who provided that, while Congress created many reservations prior to Oklahoma’s 1907 statehood, “the last of these reservations to be dissolved by allotments” was the Osage reservation. (Op. at 15.) (Emphasis added). As used by the Court, these statements lack historical context—which a rehearing would permit—and project an incomplete and oversimplified picture of Oklahoma-Indian history.²

¹ The United States’ official attempt at the legal termination of Indians tribes and lands came later, in the mid-1900s, and was a resounding failure. *Id.* at § 1.06.

² Oklahoma-Indian history is substantially complex and not subject to sweeping generalizations such as those offered by F. Prucha. *See generally* Kirke Kickingbird, “Way Down Yonder in the Indian Nations, Rode my Pony Cross the Reservation!” from “Oklahoma Hills” by Woody Guthrie, 29 Tulsa L.J. 303 (1993/94).

These statements are further inaccurate. The Court acknowledges that Congress created an Osage reservation in 1872 (Op. at 3-4.) but Prucha's statements suggest Congress never established Indian reservations in Oklahoma in the first instance. Prucha is at-odds then with both the Court and Chapman, but the Court still appears to place much reliance on Prucha's untested opinions. The Court's use of these second-hand statements, which have not been subjected to scrutiny or examination, also creates the implication that non-Osage tribal lands in Oklahoma are not reservations.³

The Decision appears to rely heavily on post-Act history, including population and demographic data (Op. at 17-19.)—after having acknowledged that such history has no evidentiary value on its own and can only support or confirm other evidence. (Op. at 9.) Yet, prior to the Court's discussion of such information, no reliable evidence had been found supporting Congress's termination of the Osage Reservation through the Osage Allotment Act.

The Court seemingly places much weight on the increased non-Indian population in Osage County following the Act's passage and for several years thereafter. (Op. at 17-19.) First, such a subsequent population change can have no relevance, strictly speaking, on Congress's earlier intent. *See, e.g.,* Fed. R. Evid.

³ In reality, these statements—or misstatements rather—can be explained by the fact that the authors appear to have believed that allotment alone dissolved a reservation's boundaries—perhaps an honest mistake of contemporaneous non-law trained authors. As the Court correctly explains earlier in its opinion, however, the answer to whether a particular act results in reservation disestablishment requires a statute-specific analysis and careful consideration of Congress's intent—case-by-case. (Op. at 8-9.)

401-402. Second, alternative reasons exist for the dramatic population change. For instance, Osage County was rich in oil resources and for that reason attracted fortune-seekers and others to the area in large numbers. Similarly, settlers moved into Oklahoma Indian country to establish towns and become merchants and traders. *See, e.g., Buster v. Wright*, 135 F. 947, 948 (8th Cir. 1905) (Creek Nation).

In short, the Court relies on evidence with little or no probative value or relevance in determining Congress's intent in 1906 with respect to the Osage reservation. Compounding that fault is that the same evidence negatively impacts the *Amici* tribes should they decide in the future to seek judgments concerning their own lands.

2. Every Indian Tribe and Tribal Land Base in Oklahoma has a Unique History and No Overarching Rule Concerning Indian Reservations in Oklahoma should be Implied.

Every Oklahoma Indian tribe has its own history, its own or a shared territory, and own explanation of how it came to be located in the "Indian Territory," modern-day Oklahoma. Further, the over twenty-five different tribal land bases for the thirty-seven different Indian tribes of Oklahoma (*see* "Tribal Jurisdictions in Oklahoma," Okla. Dep't of Transp. (2005) (<http://ttap.okstate.edu/ttapmaps>) were allotted by over a dozen various acts. *See* "Allotment Information for Eastern Oklahoma BIA Region," and "Allotment

Information for Southern Plains BIA Region,” Indian Land Tenure Foundation (2009) (www.indianlandtenure.org/ILTFallotment/specinfo/specinfo.htm). Every tribal land base in Oklahoma should be treated according to the particular treaties or laws affecting it, and no “one-size-fits-all” rule should be implied as to Indian reservations in Oklahoma. As could be explained at rehearing, the Indian tribes of Oklahoma, all forcibly removed there from their aboriginal territories, have, since their relocations, been subjected to extreme pressures—political, legal, social, cultural, and otherwise. Treating Oklahoma Indian lands as a monolith in this respect can only perpetuate the tribes’ historical mistreatment.

At a minimum, rehearing is necessary in order to remove unnecessary references to other tribes. For instance, regarding the “Five Civilized Tribes,” the Decision provides the following:

In preparation for Oklahoma’s statehood, the Dawes Commission had already implemented an allotment process with the Five Civilized Tribes that extinguished national and tribal title to lands within the territory and disestablished the Creek and other Oklahoma reservations. See H.R. Rep. No. 59-496, at 9, 11 (1906) (Aplee. Supp. Add. at 28, 30).

(Op. at 12.) A single reference to a Congressional report is not sufficient authority for such a broad conclusion concerning an issue not before the Court.⁴

⁴ This is especially true for the Five Tribes and others in Oklahoma who received their lands in fee, rather than in trust, which required allotment to be carried out by the tribes themselves as fee owners of the lands. Thus, allotment as to the Five Tribes was merely the transfer of title from the tribes to tribal members—i.e., intra-tribal conveyances, as opposed to federal government-to-individual Indian conveyances where the United States held a tribe’s land base in trust.

3. The Decision Raises but Fails to Consider the Federal Oklahoma Enabling Act, Whose Intent was to Preserve the Status Quo of Tribal Lands in the New State.

Oklahoma comprises the former “Indian Territory” (eastern Oklahoma) and the former Oklahoma Territory (western Oklahoma). *See* Kickingbird, *Way Down Yonder* at 322; Oklahoma Enabling Act, 34 Stat. 267 (Ch. 3335) (1906). The State was born in 1907.

Congress was concerned with the status and treatment of Indian lands in and by the new state, and in the Enabling Act went far in both preserving the federal government’s primacy over Indian tribes and Indian lands in Oklahoma and in protecting “Indian reservations” from encroachment by the embryonic state. The Enabling Act prohibited the State constitution from:

limit[ing] or affect[ing] the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights ...

(*Id.*) The Act further required that Indian lands in the new state “shall be and remain subject to the jurisdiction, disposal, and control of the United States.” (*Id.* at 270.)

The Enabling Act also required the new state to “forever disclaim” all interest in or to all Indian or tribal lands lying within the state. (*Id.* at 270.) The Act further:

[protects] all the territory now constituting the Cherokee, Creek, and Seminole nations, and the Indian reservations lying northeast of the Cherokee Nation.

(*Id.* at Sec. 6) (Emphasis added). Section 2 prohibited intoxicating liquors within the “Osage Indian Reservation” and within any other part of the new state that existed “as Indian reservations” on January 1, 1906. (*Id.* at Sec. 2.) The Act also reserved from its school-land grants “any lands embraced in Indian, military, or other reservations.” (*Id.* at Sec. 7.) Rather than disestablishing or even rendering questionable the reservation status of Indian lands within the new state, the Enabling Act confirmed that status.

B.If Rehearing is Denied, the Decision will Create Widespread Litigation by States and Others Seeking Disestablishment Determinations based on the Court’s Decision and Analysis.

As discussed in the Osage Nation’s petition (Pet. at 9-10.), the Court improperly relied to a great extent on non-probative population and demographic data to find disestablishment. If such reliance is not reconsidered, it will trigger additional litigation by Oklahoma and its subdivisions—and by other states in the Tenth Circuit at least—seeking declarations of reservation disestablishment or diminishment. This would be unfair as, considering the reliance on population data especially, due to the federal allotment policy at work between 1887 and 1934 and other reasons, non-Indians have heavily infiltrated Indian reservations inside

and outside Oklahoma. Rehearing is necessary to prevent a likely wave of Statewide and nationwide litigation.

IV. CONCLUSION

For the foregoing reasons, *Amici* Indian tribes respectfully request this Court exercise its discretion under Fed. R. App. P. 35 and 40 and grant the Osage Nation's petition for *en banc* rehearing.

Dated this 9th day of April, 2010

Respectfully submitted,

/s/ Padraic I. McCoy

Padraic I. McCoy, CO # 37710; CA # 223341
TILDEN MCCOY, LLC
1942 Broadway, Suite 314
Boulder, Colorado 80302
Telephone: (303) 323-1922
Facsimile: (303) 416-8707
Email: pmccoy@tildenmccoy.com
ATTORNEYS FOR *AMICI CURIAE* INDIAN TRIBES

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR LEAVE TO FILE *AMICI CURIAE* NAMED OKLAHOMA INDIAN TRIBES' BRIEF SUPPORTING THE OSAGE NATION'S PETITION FOR *EN BANC* REHEARING was furnished through ECF electronic service to the following on the 9th day of April, 2010:

Gary S. Pitchlynn
O. Joe Williams
Stephanie Moser Goins
Pitchlynn & Williams PLLC
124 E. Main St.
Norman, OK 73070
(405) 360-9600
gspitchlynn@pitchlynnlaw.com
jwilliams@pitchlynnlaw.com
smgoins@pitchlynnlaw.com

Thomas P. Schlosser
Morriset, Schlosser, & Jozwiak
801 Second Ave. Suite 1115
Seattle, WA 98104
(206) 386-5200
t.schlosser@msaj.com

Larry D. Patton
Assistant General Counsel
Oklahoma Tax Commission
120 N. Robinson, Suite 2000W
Oklahoma City, OK 73102
(405) 319-8550
lpattton@tax.ok.gov

Lynn H. Slade
William C. Scott
Joan D. Marsan
Modrall, Sperling, Roehl, Harris,
& Sisk, P.A.
P.O. Box 2168
Albuquerque, NM 87103
(505) 848-1800
Lynn.slade@modrall.com
bscott@modrall.com
jdm@modrall.com

Steven W. Bugg
Jeff L. Todd
McAfee & Taft
10th Floor, Two Leadership
Square
211 N. Robinson
Oklahoma City, OK 73102
(405) 235-9621
Steven.bugg@mcafeetaft.com
Jeff.todd@mcafeetaft.com

By: */s/ Padraic I. McCoy*

Padraic I. McCoy
Tilden McCoy, LLC
1942 Broadway, Suite 314
Boulder, CO 80302
Telephone: (303) 323-1922
Facsimile: (303) 416-8707
pmccoy@tildenmccoy.com
Counsel for *Amici Curiae*