

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MASHPEE WAMPANOAG TRIBE,

Plaintiff,

v.

DAVID L. BERNHARDT, in his official capacity as
Secretary of the Interior, and UNITED STATES
DEPARTMENT OF THE INTERIOR,

Federal Defendants,

v.

DAVID LITTLEFIELD, *et al.*,

Intervenor-Defendants.

Case No. 1:18-cv-02242-PLF

**MOTION OF MEMBERS OF CONGRESS FOR LEAVE TO FILE *AMICI CURIAE*
BRIEF IN SUPPORT OF PLAINTIFF**

Pursuant to LCvR 7(o), the following Members of Congress respectfully submit this Motion for leave to file the attached *amici curiae* memorandum in support of Plaintiff Mashpee Wampanoag Tribe:

Representative Deb Haaland
Representative Tom Cole
Senator Elizabeth Warren
Senator Edward J. Markey
Representative Bill Keating
Representative Joe Kennedy III
Representative Betty McCollum
Representative Reuben Gallego
Representative Lori Trahan
Representative Derek Kilmer
Representative Rashida Tlaib
Representative Ayanna Pressley
Representative Pramila Jayapal
Representative Susan A. Davis

Representative Sharice L. Davids
Representative Stephen F. Lynch
Representative James P. McGovern
Representative Darren Soto
Representative Raúl M. Grijalva
Representative Alexandria Ocasio-Cortez
Representative Katherine M. Clark
Representative Kendra S. Horn
Representative Veronica Escobar
Representative Gwen Moore
Representative Jared Huffman

Amici are bipartisan Members of the United States Senate and United States House of Representatives with significant interests in safeguarding Congress’ authority to directly oversee Indian affairs and in preserving the integrity of the United States Constitution’s separation of powers. For the reasons stated herein, the Court should grant the Members of Congress’ request to participate as *amici curiae*.

“The decision whether to allow a non-party to participate as an *amicus curiae* is solely within the broad discretion of the Court.” *Ellsworth Assocs., Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (granting leave because the non-party movants had a “special interest” in the litigation and a “familiarity and knowledge of the issues raised therein that could aid in the resolution of [the] case”); *see also Hopi Tribe v. Trump*, No. 17-CV-2590 (TSC), 2019 WL 2494161, at *3 (D.D.C. Mar. 20, 2019) (granting leave to Members of Congress to file an amicus brief). Here, the Court is presented with an issue where an agency of the Executive Branch is unlawfully attempting to remove Plaintiff’s land from trust without a congressional delegation of authority, and Congress thus has an obligation to the People of the United States to remind the Branches of Government that Congress’ role in the grand structure of the Constitution is to legislate, maintain exclusive and plenary authority over Indian affairs—except where properly

delegated to the Executive Branch for the administration of specific actions—and check and balance the power of other Branches to ensure Congress’ powers are not impeded by another.

Neither party can adequately represent the public interests and constitutional responsibilities bestowed on Congress. Congress maintains the authority to choose when to acquire or alienate lands held in trust for the benefit of Indian tribes and has not, in this instance, delegated any authority to the Secretary to dispossess the Plaintiff’s land from tribal trust status. Moreover, Congress has a substantial and compelling interest in fulfilling its trust responsibilities toward Indian tribes and has enacted the Indian Reorganization Act (IRA) of 1934 to restore lands to Indian tribes. The Secretary’s unlawful attempts to strip the Plaintiff’s land from trust counters the authority delegated to the Secretary through the IRA and frustrates Congress’ overall policy toward restoring tribal homelands. Congress, therefore, has a right and a *duty* to weigh in on the issues presently before the Court and to urge the Court to consider the Secretary’s egregious attempts to legislate in Congress’ stead.

The Court will likewise benefit from the issues raised by *amici*. *Amici* will discuss the Secretary’s lack of authority to remove Plaintiff’s land from trust, absent a congressional or judicial mandate, and the Secretary’s blatant disregard of congressional evidence that Plaintiff was under federal jurisdiction in 1934. Indeed, the importance of Congress’ exclusive authority to legislate in the area of Indian affairs is an issue of such significance that, on its own, is dispositive of this case, but one in which no party has fully addressed.

Pursuant to LCvR 7(m), counsel for *amici* has conferred with counsel for Plaintiff and Federal Defendants in a good faith effort to determine whether there is any opposition to this motion. Counsel for Plaintiff has consented to this motion. Counsel for Defendant has stated that “Federal Defendants reserve taking any position until they review the filing.” Counsel for *amici*

also contacted Defendant-Intervenors to seek their position on this motion, but did not receive a response before the filing of this motion.

WHEREFORE, Members of Congress respectfully request leave to file the attached *amici curiae* brief. A proposed order is attached hereto.

Respectfully submitted May 19, 2020.

/s/ Keith M. Harper

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Keith M. Harper
Keith M. Harper, DC Bar No. 451956