

No. 16-498

**In The
Supreme Court of the United States**

DAVID PATCHAK,
Petitioner,

v.

SALLY JEWELL, IN HER OFFICIAL CAPACITY AS
SECRETARY OF THE UNITED STATES DEPARTMENT
OF THE INTERIOR, ET AL.,
Respondents.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
District of Columbia Circuit*

**INTERVENOR-RESPONDENT MATCH-E-BE-NASH-SHE-WISH BAND OF
POTTAWATOMI INDIANS'
OBJECTION TO MOTION TO FILE *AMICUS CURIAE* BRIEF**

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Pursuant to Supreme Court Rule 37.5, Intervenor-Respondent Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (“Respondent”) hereby files its Objection to the Motion for Leave to File and Brief of Federal Courts Scholars as *Amici Curiae* in Support of the Petitioner (the “Motion”) in this matter, dated November 16, 2016, and received by Intervenor-Respondent on November 18, 2016. Intervenor-Respondent’s Objections and reasons for withholding consent are as follows:

First, Respondent believes that the proposed *amicus* brief does not “bring[] to the attention of the Court relevant matters not already brought to its attention by the parties,” and, accordingly, such brief “is not favored” under Supreme Court Rule 37.1. The *amicus curiae* brief focuses on the *Klein* decision, which is already discussed at length in the Petition.

Second, the proposed *amicus curiae* failed to comply with Supreme Court Rule 37.2(a), which requires that “An *amicus curiae* filing a brief under this subparagraph shall ensure that the counsel of record for all parties receive notice of its intention to file an *amicus curiae* brief at least 10 days prior to the due date for the *amicus curiae* brief.” (emphasis added). As noted in the Motion, proposed *amicus curiae* did not notify Intervenor-Respondent until after the due date for filing the proposed *amicus* brief itself. Counsel for *amicus curiae* claims that its failure was because Counsel for Intervenor-Respondent did not appear on the Court’s electronic docket. However, the Petition for Writ of Certiorari prominently notes that the Intervenor-Respondent Tribe is a party to the proceedings (as do the filings in the Courts below in this matter).

Third, the Motion was not timely filed under Supreme Court Rule 37.2(b), which requires that any motion for leave to file an *amicus curiae* brief be “submitted within the time allowed for filing an *amicus curiae* brief.” In this matter, the deadline for filing the *amicus curiae* brief was November 14, 2016. The Motion was not submitted until November 16, 2016.

Fourth, pursuant to Supreme Court Rule 37.2(b) the Motion “is not favored.”

For the above reasons, Intervenor-Respondent Objects to the Motion for Leave to File and Brief of Federal Courts Scholars as *Amici Curiae* in Support of the Petitioner, and respectfully requests that said Motion be denied.

November 28, 2016

Respectfully submitted,

 /s/ Conly J. Schulte

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November 2016, a copy of the original and 10 copies of the foregoing were filed with the United States Supreme Court via hand-delivery.

Two copies were sent via First-Class Mail, postage prepaid, to:

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Acting solicitor General
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/s/ Conly J. Schulte