

**Testimony before the
Senate Committee on Judiciary and Ballot Measure 110 Implementation
In support of SB 183-1
On behalf of the
Oregon State Bar Indian Law Section**

March 8, 2021

On behalf of the Oregon State Bar's Indian Law Section, we present SB 183 for your consideration. The Oregon State Bar (OSB) is a public corporation with over 15,000 active members. It serves the public interest by: regulating the legal profession and improving the quality of legal services; supporting the judiciary and improving the administration of justice; and advancing a fair, inclusive and accessible justice system. The Indian Law Section (ILS) is made up of Oregon lawyers with a variety of legal roles and perspectives on Indian Law, some of whom represent tribes and others of whom advance the interests of individual tribal members.

Background. To provide a sense of the breadth of the input solicited, we acknowledge the following authors and contributors. The Section's pursuit of Full Faith and Credit for tribal courts has spanned several ILS chairs: Diane Henkels (Henkels Law LLC), Patrick Sullivan (then Hobbs Strauss Dean & Walker LLP, now Dickinson Wright PLLC), Jessie Young, Martha Klein Izenson (Legal Aid Services of Oregon's Native American Program), and current co-chairs, Brendan Keenan (Yakama Nation) and Corin La Pointe-Aitchison (Galanda Broadman PLLC). ILS Executive Committee members who made substantial contributions to this bill are Naomi Stacy, Lead Attorney for the Confederated Tribes of the Umatilla Indian Reservation Office of Legal Counsel, Stephanie Striffler, now retired from the Oregon Department of Justice, and Kristen Winemiller of Pacific Northwest Law LLP. Essential members of the work group convened to finalize the bill include Sarah Sabri (Oregon Department Justice Domestic Violence Resource Prosecutor), Karen Clevering (Oregon Department of Justice Native American Affairs Coordinator), Brent Leonard (CTUIR Office of Legal Counsel) and Tom Cooney (Cooney Cooney and Madigan LLC). Chief Justice Martha Walters, Oregon Judicial Department staff and the judges of the Oregon Tribal Court/State Court Forum provided guidance throughout the process and were instrumental in shaping the final bill.

We submit this written testimony today to express the Indian Law Section's strong support for SB 183. This is a consensus bill, and we are aware of no opposition to its passage. Chief Justice Martha Walters provided the initial impetus for the bill in 2018 with a request she directed to the ILS. To assess how best to afford Full Faith and Credit to federally recognized tribes, Martha Klein Izenson and three student volunteers conducted extensive research into the approaches other states have taken. Following a review of that research, the ILS responded to the Chief Justice with

a set of options, then moved forward in concurrence with her guidance. A work group of stakeholders was convened to refine the options, with invitations extended to all Oregon tribes. Additional stakeholders, such as the Oregon State Sheriffs' Association, provided input. After further consultation with the Chief Justice and the Tribal Court/State Court Forum, all involved in the drafting urge its passage.

Senate Bill 183.

The bill is intended to meet two needs that affect tribes and tribal members in Oregon. The first is to afford broad and comprehensive recognition of judgments, decrees and orders emanating from tribal courts, essentially to place tribal judiciary on the same footing as the courts of other jurisdictions afforded Full Faith and Credit. The second goal is specific to restraining orders and is intended to provide an effective mechanism to ensure proper recognition and enforcement of tribal protection orders for individuals when they are outside the issuing tribe's jurisdiction.

Recognition of Tribal Court Judgments, Decrees and Orders

Section 1 of SB 183 utilizes the framework of ORS Chapter 24 by amending the definitional section, ORS 24.105, to include recognition of tribal judgments, decrees and orders. The intent is to afford this recognition in the same manner that Full Faith and Credit is afforded to the federal government and other states. By taking this approach, the bill incorporates an existing framework that is familiar to judges and legal practitioners. The existing framework is supported by a body of case law that will govern recognition in specific substantive areas of law.

The work group initially followed the Minnesota approach (the bill as filed) but further consultation led the work group, including all constituent members, to conclude that the -1 amendment filed would provide the most efficient path to implementation.

The bill identifies one area in which Oregon law currently provides an alternate mechanism for tribes to access state services, ORS 426.180. That statute specifically provides tribes a means to access state services when moving to civilly commit an individual. The drafters' intent is that ORS 426.180, and any other statutory mechanism adopted specifically for the benefit of tribes, not be disturbed by SB 183. Although not noted specifically in the text, Oregon also has adopted the Oregon Indian Child Welfare Act (HB 4214 – 2020 1st special session); it contains a full faith and credit provision that would be covered by the "catch all" provision in the bill.

The drafters have not identified other such statutes currently in force but acknowledge Legislative Counsel's concern that a defined list would be preferable to a 'catch-all' provision. Again, to the drafters' knowledge, ORS 426.180 and HB 4214 (2020 1st special session) are the existing Oregon statutes that could be undermined by Section 1 of SB 183 without a carveout.

Proper Recognition and Enforcement of Tribal Restraining Orders

Sections 2 through 4 of SB 183 provide a new framework for enforcing tribal restraining orders beyond the jurisdiction of the issuing court. These sections harmonize Oregon law with federal

law, resolving a conflict between state and federal law that now exists, and expand the geographic reach of the protection afforded.

Under 18 USC §2265, Oregon must give full faith and credit to protection orders issued by any other state, Indian tribe or territory. SB 183 brings ORS 24.190 into full compliance with the federal requirements by removing the exception for “other than support orders.”

Petitioners of tribal orders (included in Oregon’s definition of “foreign restraining”) often encounter barriers to proper enforcement of orders when violated outside of the tribal jurisdiction. Gaps in the requirements of the system and varied interpretations of the existing statute have resulted in inadequate and improper recognition and enforcement of these foreign restraining orders. SB 183 identifies clear steps for the courts and sheriffs’ offices to take when there is a voluntary request to have an order registered and entered into the court and law enforcement databases. SB 183 also clarifies the requirements of law enforcement responding to a report of a violation of a foreign restraining order, to assure that petitioners of tribal orders are afforded the same protections as petitioners of state orders.

Conclusion.

The parties working on this bill firmly believe that affording Full Faith and Credit to tribes is an important step in recognizing the strength of tribal governance. Through this alliance of judicial systems, Oregon as a whole will benefit.

We appreciate the Committee’s consideration of SB 183, and urge its passage with the -1 amendments. Thank you for the opportunity to offer this written testimony. We look forward to providing such additional information or assistance as may be requested.

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