

Supreme Court of the United States.
WINNEMUCCA COLONY COUNCIL, Petitioner,
v.
Sharon WASSON and the Winnemucca Indian
Colony Council, Respondents.
No. 10-1011.
February 7, 2011.

On Petition For A Writ Of Certiorari To The United
States Court Of Appeals For The Ninth Circuit

Petition for a Writ of Certiorari

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QUESTIONS PRESENTED

1. Whether the United States Federal District Court
exceeded its powers by interjecting itself into the
fray of competing tribal factions within a single tri-
bal government to determine which faction shall
have control over tribal treasury resources thereby
imputing governmental control of the tribe to that
faction in contradiction to policies of self-
determination and self-governance under [25 U.S.C.
§ 450n](#) and other individual sections of the Indian
Self Determination Act.

2. Whether under [25 U.S.C. § 450b\(l\)](#) the United
States Court of Appeals for the Ninth Circuit erred
in upholding the District Court's Order awarding
tribal funds to a faction unrecognized by the BIA
but purporting to be the legitimate governing body
of the tribe even though the faction was not demo-
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*1 OPINION BELOW

The Ninth Circuit Court of Appeals did not publish an opinion in this case because it determined that it was not appropriate for publication. Its Memorandum is reprinted in the Appendix at 1-7.

JURISDICTION

The Ninth Circuit filed its decision on October 14, 2010, and entered an order denying Petitioner's Petition for Rehearing on November 9, 2010. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the circuit court's decision on a writ of certiorari.

STATUTORY PROVISIONS INVOLVED

25 U.S.C. § 450n

Nothing in this subchapter shall be construed as -

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit en-

joyed by an Indian tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

25 U.S.C. § 450b(l)

For purposes of this subchapter, the term -

(1) “tribal organization” means the recognized governing body of any Indian tribe; any legally established *2 organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

STATEMENT OF THE CASE

This case involves questions of great importance to disputing factions of Indians across the United States. Disagreements between Council Members of the Winnemucca Indian Colony (“WIC”) resulted in the tribal government splitting into two disputing factions. These factions are known as the Wasson Group and the Winnemucca Colony Council (“WCC”). Protracted litigation commenced beginning in the Winnemucca Tribal Court where the disputes evolved to the Inter Tribal Court of Appeals in Nevada, the CFR Court, the Bureau of Indian Affairs (“BIA”), the Interior Board of Indian Affairs (“IBIA”), and the United States District Court. Bank of America brought the underlying interpleader action in the United States District Court of Nevada (“USDC”) for a determination as to which of the two disputing factions had authority to use the account opened in the name of WIC. Appendix (hereafter “App.”) 31. Tribal Members of

WIC will be irreparably harmed if *3 the Memorandum Decision of the Ninth Circuit Court of Appeals (“9th Cir. Ct.”) (App. 1-7) is allowed to stand. The 9th Cir. Ct. affirmed the Order of the USDC granting a Motion for Summary Judgment in favor of Defendants, the Wasson Group (App. 30-43; App. 25-29) ruling that the decision by the Minnesota Panel (App. 72-98) was a binding, non-appealable order in full force and effect, and ordering the disbursement of tribal funds held in interpleader to “the council recognized by the Minnesota Panel’s August 16, 2002 order” [the Wasson Group] (App. 43). This resulted in recognition of one of the disputing factions (the Wasson Group) as the legitimate Council Members of WIC and “awarding” control of the interpled funds belonging to WIC to a non-existent council. The Minnesota Panel August 16, 2002, decision is stale. Only two (2) of the original five (5) individuals named as Council Members in that Order are still alive or members of the Tribe. Although it can be asserted that the ruling merely decided who gets the money, what has been inferred by this ruling is that the persons named therein constitute the legitimate tribal counsel for the Winnemucca Indian Colony. *See*, App. 185-188 and App. 8-24.^[FN1]

FN1. As can be seen from these documents, the Wasson Group, by and through its attorney, Treva Hearne, has initiated trespass actions against WCC through the IBIA, and has threatened WCC with criminal and civil actions as a result of the 9th Cir. Ct. decision.

***4 HISTORY OF PROCEEDINGS.**

The evolution of the Winnemucca Indian Colony (“WIC”) and the underlying facts of this case are best set forth in the Decision and Order of Steven Haberfeld, *pro tem* Tribal Court Judge for the Winnemucca Indian Colony in the case entitled *William Bills v. Sharon Vasson [sic], et al.*, Winnemucca Tribal Court Case Number CV1003 (2002). App. 99-158. Over the years, facts have been misinterpreted or forgotten altogether.

Since the murder of its Chairman, Glenn Wasson, [FN2] in February 2000, the government of WIC has been in a state of turmoil. Subsequently, by virtue of his position as Vice Chairman, William Bills became Acting Chairman of WIC. Disputes erupted between Council members in particular pertaining to the Tribe's bank accounts when it was discovered that Council members were writing checks on the accounts who were not authorized to do so and were inappropriately using Tribal funds. This and other factors including enrollment of tribal members led to the split in the government into two (2) factions. *See, e.g.*, App. 99-158. These factions became known as the Wasson Group (Respondents herein) and the Bills Group (later, the Winnemucca Colony Council [WCC], Appellants herein). In an effort to stop the misuse of Tribal funds as well as other negative actions being committed by the Wasson Group, Acting Chairman Bills initiated suit in the Winnemucca Tribal Court *5 requesting that a restraining order be issued on the Tribe's bank accounts including the Bank of America account that is the subject of the instant interpleader action. An Order for Permanent Injunctive Relief and Restraining Order was issued by Winnemucca Tribal Court Judge Kyle Swanson. App. 159-171. Judge Swanson held that WIC Council members consisted of William Bills as Acting Chairman, Thomas Wasson and Elverine Castro. Because the ruling was adverse to them, the Wasson Group attempted to terminate Judge Swanson. App. 117, 118.

FN2. The murder of Chairman Glenn Wasson remains unresolved.

In the meantime, on or about August 28, 2000, Bank of America initiated the underlying interpleader action requesting the District Court's intervention to ascertain which faction should have access to the Winnemucca Indian Colony funds.

Also during 2000, the Bureau of Indian Affairs ("BIA") deemed the WIC government dysfunctional for the second time in 15 years terminating the government-to-government relationship.

Judge Swanson's Order was appealed to the Inter-Tribal Court of Appeals of Nevada ("ITCAN"). On remand, the parties by agreement entered into a Stipulation appointing a mutually acceptable *pro tem* Tribal Court Judge Steven Haberfeld and certified three questions for decision: (1) the names of WIC members eligible for enrollment; (2) the identity of the [then] present legitimate and proper members of WIC Business Council; and (3) the identity of the [then] present legally authorized Tribal Judge. Judge Haberfeld issued his decision on or about May 9, 2002. App. 99-158.

*6 The parties attempted to appeal Judge Haberfeld's decision. However, because ITCAN lacked funding to hear the case, the parties agreed to the creation of a special appellate panel to hear the appeal. App. 174-179. The panel became known as the Minnesota Panel. [FN3]

FN3. All three judges sitting on the panel were tribal judges from Minnesota. Although the Minnesota Panel was created by the agreement of the parties, the parties' attorneys failed to consult with Council members to obtain their consent for this appointment. No resolution was passed to appoint the judges by either the Wasson Group or WCC. Additionally, because the panelists were not Nevada Indians, the appointment was contrary to the Winnemucca Law and Order Code Title 1, 1-90-010(c) which states:

(c) Nothing in this section shall prevent the Tribal Council from entering into an agreement with other Tribes, reservations, and colonies of **Nevada Indians** whereby Tribal Court judges are shared among the various Tribal Courts for the purposes of hearing appeals.... (Emphasis added.)

The Minnesota Panel issued its order overturning Judge Haberfeld's decision on or about August 30, 2002. The Panel's Decision announced Sharon Wasson, Thomas Wasson, William Bills and Elver-

ine Castro as the legitimate Council Members. The Panel then ordered that an appointment be made to fill the chair of the deceased member (Thomas Magiera). The Panel further ordered the parties to enroll eligible members and hold an election, setting forth specific instructions for doing so. App. 72-98.

*7 Due to internal conflict, William Bills^[FN4] withdrew his membership in the Tribe and resigned his Council position sometime during 2002. Mr. Bills' resignation was prompted by the revelation that he was adopted by Ermon Bills (where his membership was derived from) and that he was not of American Indian lineage, but of Filipino descent.

FN4. Even though William Bills effectively resigned from tribal membership and did not seek to be elected as a council member thereafter, his name appears throughout the proceedings. Significantly, in 2009 Mr. Bills charted a bank in the name of the Winnemucca Indian Colony. In doing so, he held himself out to be the Chairman of the Winnemucca Indian Colony.

Following the decision, WCC filed a motion for reconsideration with the Minnesota Panel. Unfortunately, the Minnesota Panel was non-responsive to this request and all other inquiries made thereafter. In the interim, ITCAN obtained federal funding and was reconvened. Due to the Minnesota Panel's non-responsiveness, WCC filed the motion for reconsideration with ITCAN in 2004. ITCAN determined that it was the Minnesota Panel's successor court, and therefore had the authority to review any decision by the Minnesota Panel. ITCAN then granted WCC's request for reconsideration holding that ITCAN maintained subject matter jurisdiction. App. 61-71. ITCAN's resulting decision reinstated the "last legitimately elected colony council, namely the Colony Council in place in February, 2000"; *i.e.*, William Bills, Thomas Wasson, Elverine Castro and Lucy Lowry. *Id.* The reinstatement was only until a proper tribal election could be held. *Id.* ITCAN further *8 ordered that an official tribal en-

rollment list be established and further that an election be held to establish a legitimate Colony Council. ITCAN retained jurisdiction to preside over the enrollment issues and to see that a legitimate tribal election took place.

Thereafter, the Wasson Group brought suit in Federal District Court of Nevada against the ITCAN panel of judges in 2004, *Wasson v. Inter-Tribal Court of Appeals of Nevada*, Case No. CV-N-04-573. In settlement of the case, the Wasson Group and ITCAN Judges entered into a Stipulation to Reinstate the Council of the Winnemucca Indian Colony under the direction of USDC Judge, Honorable Howard McKibben. App. 180-184. The Stipulation reinstated and, more importantly, revised the terms of the Minnesota Panel Decision. *Compare*, App. 72-98 and App. App. 180-184. In addition to changing terms in the decision, the Stipulation included the appointment of two council members to the Wasson Group. App. 181.

ITCAN on its own motion dismissed the case pending before it declaring it had no appellate jurisdiction and withdrew the mandates on all orders and rulings on or about May 17, 2007. App. 44-46.

WCC was not a party in the proceedings against the ITCAN Judges even though it was a real party in interest by virtue of the fact that the underlying case was initiated by WCC when it made its motion for reconsideration of the Minnesota Panel Decision. WCC was barred from taking part in settlement negotiations and the resultant Stipulation entered into by the Wasson Group and the ITCAN Judges to *9 its prejudice and detriment. What is even more unsettling is that the Stipulation entered into under the direction of the District Court Judge changed pertinent terms of the Minnesota Panel Decision including the appointment of council members. Interestingly, because ITCAN withdrew jurisdiction it was determined that the factions had exhausted all tribal remedies and this allowed the Wasson Group to re-submit its Motion for Summary Judgment herein. *See*, App. 30-43.

In ruling on the Wasson Group's Motion for Summary Judgment, the District Court found that because ITCAN dismissed the case for lack of jurisdiction, the parties had exhausted all tribal remedies. Based on this, the District Court determined that it had jurisdiction to enter summary judgment and distribute the bank account funds held in interpleader in this matter. In its opinion, the District Court found the Minnesota Panel Decision controlling because the panel was created by stipulation of the parties and it was to "issue a binding, non-appealable decision."^[FN5] The District Court further stated that under principles of comity, the decision of the Minnesota *10 Panel is entitled to enforcement and ruled that the funds of the Bank of America account be distributed to the "tribal council recognized by the Minnesota Panel's August 16, 2002 order." App. 30-43. WCC's subsequent Motion to Alter or Amend Judgment was denied. App. 25-29.

FN5. The creation of the Minnesota Panel was brought by agreement of the parties. App. 174-179. The parties did not intend that any decision issued by the Minnesota Panel be a binding, non-appealable decision rendering it non-reviewable. App. 66. The proceedings were to be conducted pursuant to the Constitution, By-Laws and Law and Order Code of the Winnemucca Indian Colony. App. 179. The confusion arose when the Minnesota Panel declared that its findings were binding and non-appealable in its decision. *See*, App. 74.

WCC appealed the District Court's decision to the 9th Cir. Ct. In its Memorandum Decision upholding the District Court's Orders, the 9th Cir. Ct. reprimanded prior counsel for shortcomings which included, but were not limited to, failing to raise arguments properly, or offering excuses for such failures, not providing evidence regarding important issues, failing to abide by court rules, and failing to include proper and complete excerpts of record including the most significant decision, that of the

Minnesota Panel (App. 72-98). App. 1-7. In response, WCC obtained new counsel and filed a Petition for Panel Rehearing in an effort to be afforded the opportunity to rectify these shortcomings and provide the appellate court with a complete and comprehensive record for reconsideration. WCC's Petition for Rehearing was summarily denied. App. 172-173. Because of the failures referred to by the appellate court, the decision was prejudicial to WCC and not only punishes WCC, but punishes tribal members of the Winnemucca Indian Colony.

The question brought before the District Court in these proceedings was which council is the proper council to be recognized as having control over the funds interpled by Bank of America. Even though the *11 District Court ruled that it was not deciding who the government is but simply who gets the money, the consequence of declaring the Minnesota Panel Decision as controlling and distributing the funds to the "tribal council recognized by the Minnesota Panel's August 16, 2002, order" is that the ruling implies that those persons are the legitimate WIC Tribal Council. The Wasson Group interprets the decision in this manner.^[FN6] *See*, App. 185-188. The ruling is significant to others such as the IBIA. *See*, App. 8-24. Surely, if the Tribal Council recognized by the Minnesota Panel's August 16, 2002, order is that which is recognized by the District Court as having control over WIC's bank account (funds), it stands to reason that the council designated by the District Court will be recognized for all other purposes.

FN6. This coincides with the earlier position that the determination of who has access to the money is dependent upon a resolution of which group constitutes the WIC Tribal Council.

Additionally, in declaring the Wasson Group as council for the Winnemucca Indian Colony pursuant to the original terms of the Minnesota Panel Decision, the District Court appointed a council that existed in the year 2000. This Council no longer exists. Only two (2) of the five (5) original members

are still alive and one (1) (William Bills) is no longer a tribal member. To allow the remaining two (2) members of the original Wasson Group to appoint individuals to fill vacant positions as was done by the District Court in *Wasson v. Inter-Tribal Court of Appeals of Nevada*, Case *12 No. CV-N-04-573, *supra*, is beyond any power implied in the Minnesota Panel decision and an unwarranted incursion on the sovereignty of the Tribe and the doctrine of Separation of Powers. Furthermore, under the terms of the Minnesota Panel decision, the council referred to therein was to remain as it was until enrollment and election procedures were fulfilled and a new duly elected council seated. App. 95. Significantly, the proposed decision, if implemented, leaves control to the Wasson Group's current council members, which includes individuals that do not meet the blood quantum requirement for membership in the Winnemucca Indian Colony, and one individual who is not even enrolled as a member by the Wasson Group or the Winnemucca Tribe.

WIC includes Native Americans of both Shoshone and Paiute descent who meet the blood quantum requirements and qualifications of the Constitution and Bylaws of WIC. Prior to the murder of Chairman Glenn Wasson, serious problems were arising pertaining to the enrollment of tribal members. [FN7] The Wasson Group, illegally acting under the color of the Business Council of the Western Band of the Western Shoshone (a tribe that is not federally recognized and does not have the necessary recognition of the BIA) (*see*, App. 160), would only enroll individuals of Shoshone descent. The enrollment application was entitled *13 "Application for Membership With the Western Bands of the Western Shoshone Tribe." Importantly, those enrolled were immediate family members of the Council (the Wasson Group). The Wasson Group rejected applicants of Paiute descent. Strategically, this practice ensured that the Wasson Group would remain in power of the WIC government. Today, there are only approximately seven (7) members of those enrolled under the Wasson

Group, five (5) of which sit on its council. Importantly, no member of the Wasson Group lives on the Colony or in Nevada, but reside in California. They have done nothing to benefit WIC.

FN7. These enrollment issues were also factors contributing to the disputes between the factions. *See*, App. 99-158.

In contrast, WCC has grown through the years and now consists of over 60 enrolled members. The majority of these members live on the Colony. WCC has managed the business affairs of WIC, including the smoke shop. Proceeds from the smoke shop are used to benefit WIC members as well as those who live on the Colony that are not members. WCC has made improvements to the land and buildings, purchased furniture and fixtures, set up distribution of commodity foods, worked with a neighboring tribe to institute diabetes education, and the like.

Since the disputes arose between council members resulting in the division of the factions and protracted litigation commenced, various decisions and orders have been issued, many conflicting with others. Those referenced herein are not inclusive of all that have been issued, nor do the facts herein detail all the events that have taken place over the years. Prevalent in the rulings are issues *14 surrounding proper enrollment of tribal members and a bona fide election by these members for a council of their choosing.

REASONS FOR GRANTING THE PETITION

I. A PRINCIPAL MUST BE PUT IN PLACE BY THIS COURT FOR THE RESOLUTION OF CASES OF THIS TYPE. WITHOUT A CONSISTENT PRECEDENT ACROSS THE COUNTRY, THESE TYPES OF CASES CONTINUE TO GROW. A CLEAR AND CONCISE PRINCIPAL MUST BE ANNUNCIATED BY THIS COURT TO ELIMINATE FUTURE DISPUTES FLOUNDERING WITHOUT DIRECTION.

The Indian Civil Rights Act, [25 U.S.C. §§ 1301-](#)

1341, mandates a policy of Indian self-determination and self-government. A tribe possesses an inherent and exclusive power over matters of internal tribal governance. *See, Nero v. Cherokee Nations*, 892 F.2d 1457 (10th Cir. 1989). As such, it is the policy of federal courts and the BIA not to become involved in the internal affairs of tribal governments. Unfortunately, this policy leaves tribal members or potential tribal members without any recourse when a tribal government splits into disputing factions.

From the time the BIA declared WIC dysfunctional and terminated government-to-government relations with it in 2000, many attempts have been *15 made by both factions to be recognized as the legitimate government of WIC primarily based on various court decisions, including the District Court's. The BIA still refuses to recognize either faction. App. 8-24. Because recognition by the BIA cannot be obtained, WIC cannot enter into contracts under P.L. 93-638 (Indian Self Determination Act) to receive federal funding and benefits, nor receive Indian Health Services (IHS), nor apply for grant funding from any federal agency, nor apply for any funding or programs for housing from the Department of Housing and Urban Development (HUD) or the Environmental Protection Agency (EPA). The lack of a recognized government also prevents WIC from authorizing IHS to construct needed infrastructure for water lines and sewer lines on the Colony for existing trailers and homes. Needless to say, WIC members are irreparably harmed by this.

This case is not unique. Disputes involving opposing tribal factions have markedly increased in the past years, are becoming more common, and, in some cases, have turned violent. Problems are enhanced by the fact that there are no principals in place for guidance in resolution of faction disputes. Federal policy of non-interference in tribal affairs leaves parties entangled in the disputes putting the tribe in a state of chaos and turmoil. A clear and concise principal must be put in place by this Court in order to give guidance for resolution to eliminate

and prevent future disputes of tribal factions from floundering without direction.

*16 II. THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS MUST BE OVERTURNED AND THE PARTIES RETURNED TO THE POSITION THEY WERE IN PRIOR TO THE RULING SO THAT A PROPER AND FAIR ENROLLMENT AND VALID ELECTION MAY BE HELD.

Pursuant to 25 U.S.C. § 450b(1), a tribal organization is the

recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled sanctioned, or chartered, by such governing body or which is **democratically elected** by the adult **members** of the Indian **community** to be served by such organization and which includes the **maximum** participation of Indians in **all** phases of its activities. (Emphasis added.)

The Wasson Group only includes a minority of tribal members who are selfish, greedy and dominating. The goal is to have a government that is led by a council democratically elected by the majority of tribal members, and ruled by consensus.

When contending parties invoke the process of the courts, however, it becomes [their] unsought responsibility to resolve the federal and constitutional issues the judicial systems have been forced to confront. *Bush v. Gore*, 531 U.S. 98, 121 S. Ct. 525, 148 L. Ed. 2d 388 (2000). The decision in this case merely deciding who gets the funds held in interpleader has left the parties without direction as to the legitimate governing body of WIC. To prevent injustice and *17 prejudice to tribal members of WIC, the decision of the 9th Cir. Ct. must be overturned and the status quo must remain until enrollment of tribal members can be made in good faith, and a bona fide election be held wherein tribal members democratically elect a council of their choosing pursuant to WIC's Constitution and Bylaws. Until these actions occur, there will not be recognition of the Winnemucca Indian Colony by

the BIA and it will remain ineligible for federal funding, healthcare services, HUD housing and other benefits that are or may become available.

The funds from the Bank of America account belong to the Winnemucca Indian Colony. They are not the personal income of the Wasson Group and should not be placed in the hands of the Wasson Group because they are not the duly elected and recognized government of the Winnemucca Indian Colony. Returning the parties to their position prior to the 9th Cir. Ct.'s ruling is the only incentive that will force the Wasson Group to work with WCC in a positive manner and move forward as it should have throughout the years.

CONCLUSION

Petitioner WCC respectfully requests that certiorari be granted and that the lower Court's decision be overturned returning the parties to the position they were in prior to freezing the funds from the Bank of America account until enrollment and election issues are resolved, and principals be established by this *18 Court for resolution of cases such as this wherein disputes between tribal government factions flounder without direction.

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