

1. The Cheyenne and Arapaho Tribes is a federally-recognized Indian tribe.

2. Janice Prairie Chief-Boswell is Governor of the Tribes, oversees the Executive Branch, and is vested with authority to oversee expenditures of government revenues. Cheyenne and Arapaho Tribes Constitution, art. VII, § 4(a).

3. First Bank and Trust Company ("Defendant") is an Oklahoma banking corporation with its principal place of business located at 510 Frisco, Clinton, Oklahoma 73601.

JURISDICTION AND VENUE

4. This is a civil action arising under the Constitution, laws, or treaties of the United States, and this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

5. This is a civil action brought by an Indian tribe with a body duly-recognized by the Secretary of the Interior, wherein the matter in controversy arose under the Constitution, laws, and treaties of the United States. 28 U.S.C. § 1362.

6. This Court possesses pendant or supplemental jurisdiction for all state law claims. 28 U.S.C. § 1367.

FACTS

7. The Tribes maintain certain accounts that contain funds appropriated by Congress to administer a variety of federal programs through the Indian Self-Determination and Education Assistance Act ("ISDEAA"); by the state of Oklahoma to administer a variety of state programs; and by the Tribes.

8. On April 24, 2012, at approximately 3:35 p.m., Defendant, by and through

counsel, notified and emailed a copy of a "Notice of Administrative Freeze." *Notice of Administrative Freeze*, attached hereto as **Exhibit 1**.

9. That *Notice of Administrative Freeze* had the effect of freezing the Tribes' accounts derived from federal, state and tribal appropriations for the Tribes' provision of essential governmental services.

10. The cash assets are for provision of essential governmental services including:

- 24/7 emergency paramedic services;
- 24/7 "advanced pre-hospital services" with advanced level trained medics;
- 24/7 critical care transport;
- ground emergency medical service including first response and ambulatory service in western Oklahoma with the protocol to perform lifesaving techniques such as rapid sequence intubation as in the event of a heart, lung or liver failure;
- medical equipment including diabetic supplies, wheelchairs, oxygen machines, and blood pressure monitors;
- transport persons to dialysis, cardiology, podiatry, urology, and chemotherapy appointments;
- critical lifesaving drugs including insulin, high blood pressure medication, antibiotics, hypertension medication, as well as cancer medication;
- home health care services to the disabled and the bedridden;
- temporary shelters during emergencies;
- emergency response during disasters;
- firefighter services;
- repair to dams and watersheds;
- investigation and provision of adult protective services for those physically, emotionally, sexually, or financially abused and neglected;
- investigation and provision of child protective services for abused, neglected, or exploited children;
- substance abuse program services under Court order;
- substance abuse program services for those who are changing their lives;
- food, clothing, shelter assistance;
- a head start at education for children; and
- foster care placement for children that are homeless and in need of aid.

11. Additionally, the above-referenced accounts contain: already earned wages of the Tribes' employees; the Tribes' unemployment tax obligations; state income tax withholdings; and federal income tax, social security and Medicare withholding.

12. Defendant has caused an unknown amount of checks to bounce, and placed the Tribes in risk of federal tax payment violations, state tax violations, contractual violations for payments to vendors, and contractual violations to the United States and the state of Oklahoma for program administration by making it impossible to perform. April 30, 2012 letter from Constance Fox; and April 30, 2012 email from Kimberly Woodard, attached hereto as **Exhibit 2** and **Exhibit 3**, respectively.

13. Upon information and belief, Defendant has charged Plaintiffs bounced check fees, penalties, bank charges, and attorneys' fees related to its own action of "Administrative Freeze."

14. Defendant has put in imminent risk the health, safety and welfare of the Tribes' members, and citizens of the state of Oklahoma, who depend upon the Tribes' provision of essential governmental services, including but not limited to those who depend upon the Tribes for food, shelter, clothing, life-saving medication, and life-saving emergency care.

15. Defendant has impaired the Tribes' right to govern itself by seizing the Tribes' accounts necessary for ISDEAA administration and self-governance.

16. The above-stated actions are in violation of federal law, including but not limited to, rights secured by the Constitution and laws of the United States, privileges and

immunities secured by the Constitution and laws of the United States, and rights secured by treaties.

17. Plaintiffs seek declaratory judgment concerning Plaintiffs' rights in the federal, state, and tribal cash assets as those are more particularly described in:

- a. The Tribes' federal, state, and tribal cash assets are rights secured by the Constitution and laws of the United States that are not subject to seizure on a temporary or permanent basis by "Administrative Freeze." Defendant's "Administrative Freeze" is in excess of Defendant's authority.
- b. The Tribes' federal, state, and tribal cash assets are privileges and immunities secured by the Constitution and laws of the United States that are not subject to seizure on a temporary or permanent basis by "Administrative Freeze." Defendant's "Administrative Freeze" is in excess of Defendant's authority.
- c. The Tribes' possess treaty rights to receive, control, and manage cash assets for administration of programs and economic development within their territory, and their cash assets therefor are not subject to seizure on a temporary or permanent basis by "Administrative Freeze." Defendant's "Administrative Freeze" is in excess of Defendant's authority.
- d. The Tribes' cash assets are for the administration of contracts pursuant to congressional authorization including ISDEAA, the Indian Health Care Improvement Act, and the Indian Citizenship and Tribal Self Governance Act that may not be seized on a temporary or permanent basis by "Administrative

Freeze." Defendant's "Administrative Freeze" is in excess of Defendant's authority.

COUNTS

COUNT 1 DEPRIVATION OF RIGHTS, 42 U.S.C. § 1983

18. Plaintiffs reassert and incorporate by reference the allegations contained in paragraphs 1-17, as though set forth fully herein.

19. Defendant deprived Plaintiffs' rights secured by the Constitution and laws of the United States, most specifically the Tribes' rights in property by illegally freezing and seizure of its cash assets.

20. As a result of such illegal freeze and seizure of the Tribes' accounts, Plaintiffs have suffered damages in an amount to be proven at trial.

COUNT 2 DEPRIVATION OF PRIVILEGES AND IMMUNITIES, 42 U.S.C. § 1983

21. Plaintiffs reassert and incorporate by reference the allegations contained in paragraphs 1-20, as though set forth fully herein.

22. Defendant deprived Plaintiffs privileges and immunities secured by the Constitution and laws of the United States, most specifically the Tribes' sovereign immunity by seizing Plaintiffs' accounts.

23. As a result of the seizure, Plaintiffs have suffered damages in an amount to be proven at trial.

COUNT 3
DEPRIVATION OF TREATY RIGHTS, 28 U.S.C. § 2201

24. Plaintiffs reassert and incorporate by reference the allegations contained in paragraphs 1-23, as though set forth fully herein.

25. Defendant's "Administrative Freeze" of Plaintiffs' cash assets derived from federal, state, and tribal appropriations, without a law supporting such seizure, advance notice, and an opportunity to be heard before such seizure, is a *per se* unlawful infringement of the Tribes' treaty rights to receive, control, and manage cash assets in furtherance of administration of essential governmental services for the health, safety and welfare to its tribal members within their territory. Defendant's seizure of the Tribes' cash assets, under color of state contract law, is unlawful. There is no underlying contract authorizing such seizure, and even if there was, such contract is preempted by federal law.

26. Plaintiffs request a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' rights to receive, control, and manage its assets for administration of programs and service delivery are implied in the Tribes' treaty, that may not be abridged on a temporary or permanent basis by "Administrative Freeze."

27. Plaintiffs are also entitled to a declaration that any effort by Defendant to enforce such "Administrative Freeze" would constitute an act in excess of Defendant's authority.

COUNT 4
DECLARATORY JUDGMENT, 28 U.S.C. § 2201

28. Plaintiffs reassert and incorporate by reference the allegations contained in paragraphs 1-27, as though set forth fully herein.

29. Defendant's "Administrative Freeze" of Plaintiffs' federal ISDEAA program funds is an impermissible interference with a legally binding contract between the federal government and the Tribes, and effectively renders impossible the Tribes' performance thereon, and jeopardizes tribal members' health, safety and welfare and the employment of tribal employees who may be laid off, have been laid off, or in imminent danger of losing their jobs.

30. Plaintiffs request a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the federal funds may not be seized on a temporary or permanent basis by "Administrative Freeze."

31. Plaintiffs are also entitled to a declaration that any effort by Defendant to enforce such "Administrative Freeze" would constitute an act in excess of Defendant's authority.

COUNT 5
DECLARATORY JUDGMENT, 28 U.S.C. § 2201

32. Plaintiffs reassert and incorporate by reference the allegations contained in paragraphs 1-31, as though set forth fully herein.

33. Defendant's "Administrative Freeze" of Plaintiffs' accounts derived from federal, state, and tribal appropriations, a law supporting such seizure, advance notice, and an opportunity to be heard before such seizure, is *per se* unlawful. Defendant's

seizure of the Tribes' accounts, under color of state contract law, is unlawful. There is no underlying contract authorizing such seizure, and even if there was, such contract is preempted by federal law.

34. Plaintiffs request a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' accounts from federal, state and tribal appropriations for the Tribes' provision of essential governmental services are rights secured to the Tribes by the Constitution and laws of the United States that may not be seized on a temporary or permanent basis by "Administrative Freeze."

35. Plaintiffs are also entitled to a declaration that any effort by Defendant to enforce such "Administrative Freeze" would constitute an act in excess of Defendant's authority.

**COUNT 6
DECLARATORY JUDGMENT, 28 U.S.C. § 2201**

36. Plaintiffs reassert and incorporate by reference the allegations contained in paragraphs 1-35, as though set forth fully herein.

37. Defendant's "Administrative Freeze" of Plaintiffs' cash assets derived from federal, state, and tribal appropriations, a law supporting such seizure, advance notice, and an opportunity to be heard before such seizure, is a *per se* unlawful. Defendant's seizure of the Tribes' accounts, under color of state contract law, is unlawful. There is no underlying contract authorizing such seizure, and even if there was, such contract is preempted by federal law.

38. Plaintiffs request a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' accounts derived from federal, state and tribal appropriations for the Tribes' provision of essential governmental services are privileges and immunities secured to the Tribes by the Constitution and laws of the United States that may not be seized on a temporary or permanent basis by "Administrative Freeze."

39. Plaintiffs are also entitled to a declaration that any effort by Defendant to enforce such "Administrative Freeze" would constitute an act in excess of Defendant's authority.

COUNT 7
DECLARATORY JUDGMENT, 28 U.S.C. § 2201

40. Plaintiffs reassert and incorporate by reference the allegations contained in paragraphs 1-39, as though set forth fully herein.

41. Defendant's "Administrative Freeze" of Plaintiffs' accounts derived from federal, state, and tribal appropriations, a law supporting such seizure, advance notice, and an opportunity to be heard before such seizure, is a *per se* unlawful. Defendant's seizure of the Tribes' accounts, under color of state contract law, is unlawful. There is no underlying contract authorizing such seizure, and even if there was, such contract is preempted by federal law.

42. Plaintiffs request a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' accounts derived from federal, state and tribal appropriations for the Tribes' provision of essential governmental services are for the administration of contracts pursuant to congressional authorization including ISDEAA,

the Indian Health Care Improvement Act, the Indian Citizenship Act and the Tribal Self Governance Act, that may not be seized on a temporary or permanent basis by "Administrative Freeze."

43. Plaintiffs are also entitled to a declaration that any effort by Defendant to enforce such "Administrative Freeze" would constitute an act in excess of Defendant's authority.

COUNT 8
DECLARATORY JUDGMENT, 28 U.S.C. § 2201

44. Plaintiffs reassert and incorporate by reference the allegations contained in paragraphs 1-43, as though set forth fully herein.

45. Defendant's "Administrative Freeze" of Plaintiffs' cash assets derived from federal, state, and tribal appropriations, a law supporting such seizure, advance notice, and an opportunity to be heard before such seizure, is a *per se* unlawful infringement of rights secured to the Tribes by the Indian Commerce Clause of the United States Constitution. Defendant's seizure of the Tribes' accounts, under color of state contract law, is unlawful. There is no underlying contract authorizing such seizure, and even if there was, such contract is preempted by federal law.

46. Plaintiffs request a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' accounts derived from federal, state and tribal appropriations for the Tribes' provision of essential governmental services are rights secured by the Indian Commerce Clause, that may not be seized on a temporary or permanent basis by "Administrative Freeze."

47. Plaintiffs are also entitled to a declaration that any effort by Defendant to enforce such "Administrative Freeze" would constitute an act in excess of Defendant's authority.

COUNT 9
DECLARATORY JUDGMENT, 28 U.S.C. § 2201

48. Plaintiffs reassert and incorporate by reference the allegations contained in paragraphs 1-47, as though set forth fully herein.

49. Defendant's "Administrative Freeze" of Plaintiffs' accounts derived from federal, state, and tribal appropriations, a law supporting such seizure, advance notice, and an opportunity to be heard before such seizure, is a *per se* unlawful infringement of rights secured to the Tribes by the Indian Commerce Clause of the United States Constitution. Defendant's seizure of the Tribes' accounts, under color of state contract law, is unlawful. There is no underlying contract authorizing such seizure, and even if there was, such contract is preempted by federal law.

50. Plaintiffs request a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' accounts derived from federal, state and tribal appropriations for the Tribes' provision of essential governmental services are rights secured by the Supremacy Clause, that may not be seized on a temporary or permanent basis by "Administrative Freeze."

51. Plaintiffs are also entitled to a declaration that any effort by Defendant to enforce such "Administrative Freeze" would constitute an act in excess of Defendant's authority.

COUNT 10
DECLARATORY JUDGMENT, 28 U.S.C. § 2201

52. Plaintiffs reassert and incorporate by reference the allegations contained in paragraphs 1-51, as though set forth fully herein.

53. The Oklahoma Enabling Act provides "That nothing in this act shall be construed to impair any right now pertaining to any Indians or Indian tribe in said Territory under the laws, agreements, and treaties of the United States, or to impair the right of person or pertaining to the said Indians, or to affect the authority of the Government of the United States to make any regulation or to make any law respecting said Indians, their lands, property, or other rights which it would have been competent to make or enact if this act had not been passed." It also provides "That nothing in this act contained shall be so construed as to give jurisdiction to the court established in said Territory in controversies arising between Indians of the same tribe, while sustaining their tribal relations."

54. This provision of law, known as the Oklahoma Enabling Act, protects the property rights of the Oklahoma Tribes.

55. Defendant has impaired the Tribes' right to govern itself by seizing the Tribes' cash assets necessary for ISDEAA administration and self-governance.

56. Defendant has interfered with and impaired this property right by causing to be seized the Tribes' accounts, in violation of the explicit provisions of the Oklahoma Enabling Act.

57. The right to govern itself by seizing the Tribes' accounts necessary for ISDEAA administration and self-governance is a property right that may not be impaired under the Oklahoma Enabling Act that allowed Oklahoma to enter into the Union.

58. Plaintiffs are entitled to a declaration that the action of Defendant in causing to be seized the accounts of the Tribes is in direct violation of the property rights of Plaintiffs.

COUNT 11
WRIT OF PROHIBITORY INJUNCTION, 28 U.S.C. § 2202

59. Plaintiffs reassert and incorporate by reference the allegations contained in paragraphs 1-58, as though set forth fully herein.

60. Unless the "Administrative Freeze" is dissolved, Plaintiffs will continue to sustain imminent and irreparable harm.

61. Plaintiffs request the Court enjoin the "Administrative Freeze" and release Plaintiffs' cash assets to Plaintiffs for their immediate use.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the court find and adjudge as follows:

1. For judgment in favor of Plaintiffs for actual damages in an amount to be proven at trial;

2. For a declaration that pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' rights to receive, control, and manage accounts for

administration of programs and service delivery are implied in the Tribes' treaty, that may not be abridged on a temporary or permanent basis by "Administrative Freeze."

3. For a declaration that that any effort by Defendant to enforce such "Administrative Freeze" would constitute an act in excess of Defendant's authority;

4. For a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' rights to receive, control, and manage accounts for administration of programs and service delivery are implied in the Tribes' treaty, that may not be abridged on a temporary or permanent basis by "Administrative Freeze";

5. For a declaration that pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the federal funds may not be seized on a temporary or permanent basis by "Administrative Freeze";

6. For a declaration that pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' cash assets derived from federal, state and tribal appropriations for the Tribes' provision of essential governmental services are rights secured to the Tribes by the Constitution and laws of the United States that may not be seized on a temporary or permanent basis by "Administrative Freeze";

7. For a declaration that pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' accounts derived from federal, state and tribal appropriations for the Tribes' provision of essential governmental services are privileges and immunities secured to the Tribes by the Constitution and laws of the United States that may not be seized on a temporary or permanent basis by "Administrative Freeze";

8. For a declaration that pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' cash assets derived from federal, state and tribal appropriations for the Tribes' provision of essential governmental services are for the administration of contracts pursuant to congressional authorization including ISDEAA, the Indian Health Care Improvement Act, the Indian Citizenship Act and the Tribal Self Governance Act, that may not be seized on a temporary or permanent basis by "Administrative Freeze";

9. For a declaration that pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' accounts derived from federal, state and tribal appropriations for the Tribes' provision of essential governmental services are rights secured by the Indian Commerce Clause, that may not be seized on a temporary or permanent basis by "Administrative Freeze";

10. For a declaration that pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that the Tribes' accounts derived from federal, state and tribal appropriations for the Tribes' provision of essential governmental services are rights secured by the Supremacy Clause, that may not be seized on a temporary or permanent basis by "Administrative Freeze";

11. For a declaration that the action of Defendant in causing to be seized the accounts of the Tribes is in direct violation of the property rights of Plaintiffs;

12. Money damages to compensate the Tribes for Defendant's unlawful acts;

13. Enjoin the "Administrative Freeze" and release Plaintiffs' cash assets to Plaintiffs for their immediate use;

14. A prohibition against Defendant from charging any bank fees, including attorneys' fees, assessed against Plaintiffs as a result of the illegal "Administrative Freeze";

15. An award to the Tribes of their reasonable attorneys' fees incurred herein pursuant to 42 U.S.C. § 1988;

16. All other costs and fees as allowed by law; and

17. Such other additional relief as the Court deems just and equitable.

CERTIFICATION REGARDING RULE 65(b)(2)

Undersigned counsel hereby certifies that they have emailed and faxed notification to Defendant's counsel Scott Meacham. Plaintiffs believe such effort is in reasonable compliance with the notification requirements.

Respectfully submitted this 4th day of May, 2012.

FREDERICKS PEEBLES & MORGAN LLP

/s/ Martha L. King

(Filing Attorney)

Martha L. King, OBA #: 30786

Thomasina Real Bird, Esq.

FREDERICKS PEEBLES & MORGAN LLP

1900 Plaza Drive

Louisville, Colorado 80027

Telephone: (303) 673-9600

Facsimile: (303) 673-9155

Email: mking@ndnlaw.com

Email: trealbird@ndnlaw.com

ATTORNEYS FOR THE CHEYENNE AND

ARAPAHO TRIBES' EXECUTIVE BRANCH

*(Signed copy of document bearing signature of
Filing Attorney is being maintained in the office
of Filing Attorney)*

CHEYENNE AND ARAPAHO TRIBES

/s/ Kimberly Richey

*(Signed by Filing Attorney with permission of
Attorney)*

Charles B. Morris, Attorney General

Kimberly Richey, Assistant Attorney General

Cheyenne and Arapaho Tribes

P.O. Box 32

Concho, Oklahoma 73022

Telephone: (405) 422-7421

Facsimile: (405) 422-8220

Email: morrbchas@yahoo.com

Email: krichey1@sbcglobal.net

ATTORNEYS FOR THE CHEYENNE AND

ARAPAHO TRIBES

*(Signed copy of document bearing signature of
Attorney is being maintained in the office of Attorney)*

VERIFICATION AND ACKNOWLEDGMENT

I, Janice Prairie Chief-Boswell, Governor of the Cheyenne and Arapaho Tribes, as affiant, being first duly sworn, states that I have read the attached *Verified Complaint*, and that the factual assertions stated therein are true and accurate to the best of my knowledge, information and belief.

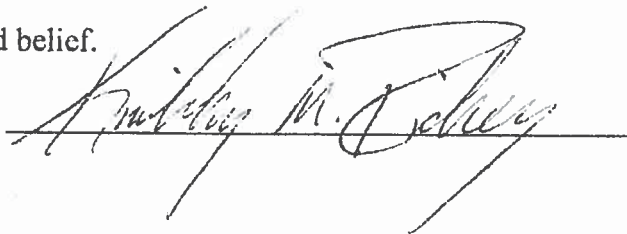
Affiant's Signature

A handwritten signature in cursive script, reading "Janice Prairie Chief-Boswell", is written over a horizontal line.

VERIFICATION AND ACKNOWLEDGMENT

I, Kimberly Richey, Assistant Attorney General for the Cheyenne and Arapaho Tribes, as affiant, being first duly sworn, states that I have read the attached *Verified Complaint*, and that the factual assertions stated therein are true and accurate to the best of my knowledge, information and belief.

Affiant's Signature

A handwritten signature in black ink, appearing to read "Kimberly M. Richey", is written over a horizontal line.