

1 COURT OF INDIAN OFFENSES  
2 FOR THE COMANCHE NATION TRIBE OF OKLAHOMA  
3 ANADARKO, OKLAHOMA  
4 IN RE: )  
5 )  
6 RECOGNITION OF COMANCHE )  
7 NATION BUSINESS COMMITTEE, )  
8 TRIBAL ADMINISTRATOR, ) Case No. CIV-12-054  
9 ) (Mag. Judge Lujan)  
10 COMANCHE NATION, )  
11 )  
12 Petitioner. )

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14 TRANSCRIPT OF PROCEEDINGS  
15 HAD JUNE 22, 2012  
16 BEFORE THE HONORABLE MAG. JUDGE LUJAN  
17 ANADARKO, OKLAHOMA

18 \* \* \* \* \*

19 REPORTED BY:

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 MR. WALTER ECHO-HAWK, JR., Attorney at Law, 500 Kennedy Building, 321 S. Boston Ave., Tulsa, Oklahoma 74103.</p> <p>4</p> <p>5 MR. JIMMY GOODMAN, Attorney at Law, 20 N. Broadway, Suite 1800, Oklahoma City, Oklahoma 73102.</p> <p>6 MR. JAMES BURSON, Attorney at Law, 101 Park Avenue, Suite 700, Oklahoma City, Oklahoma 73102.</p> <p>7</p> <p>8 MR. WILLIAM NORMAN, Attorney at Law, 101 Park Avenue, Suite 700, Oklahoma City, Oklahoma 73102</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 MR. GOODMAN: (Nodded head.)</p> <p>2 THE COURT: And let's see. At this point,</p> <p>3 any other parties, if they would identify themselves</p> <p>4 to the Court that wish to be identified.</p> <p>5 Chairman Coffey filed a responsive</p> <p>6 pleading. Is he present?</p> <p>7 MR. COFFEY: Present.</p> <p>8 THE COURT: Good morning, Chairman.</p> <p>9 MR. COFFEY: Good morning.</p> <p>10 MR. TAYLOR: And, also, there was a</p> <p>11 responsive pleading by a Mr. Johnny Wauqua. Is he</p> <p>12 present?</p> <p>13 MR. WAUQUA: Present.</p> <p>14 THE COURT: Good morning, Mr. Wauqua.</p> <p>15 And let's see. As far as the matters that</p> <p>16 have been filed, I think that that covers those</p> <p>17 particular individuals, unless --</p> <p>18 Mr. Burson or Mr. Norman, are there any</p> <p>19 individuals that you wish for the Court to recognize</p> <p>20 that are parties on your behalf?</p> <p>21 MR. BURSON: Yes, Your Honor. We would</p> <p>22 like for you to recognize Vice Chairman Edward</p> <p>23 Eschiti.</p> <p>24 THE COURT: Good morning, Vice Chairman.</p> <p>25 MR. BURSON: And we have CBC member</p>
<p style="text-align: right;">Page 3</p> <p>1 (On June 22, 2012, proceedings were had before the Honorable</p> <p>2 Mag. Judge Philip Lujan as follows:)</p> <p>3 THE COURT: This is the Court of Indian</p> <p>4 Offenses for the Southern Plains Region Tribes,</p> <p>5 Anadarko, Oklahoma. This is June 22nd, 2012. The</p> <p>6 Court has a special docketing in CIV-12-054. This</p> <p>7 is: The Recognition of the Comanche Nation Business</p> <p>8 Committee Tribal Administrator. This was an interim</p> <p>9 order entered by this Court and this is the</p> <p>10 show-cause hearing for that order.</p> <p>11 And I think the way to proceed here is I</p> <p>12 want to recognize counsel and parties that are</p> <p>13 present and then the Court will sort this out of how</p> <p>14 the Court wants to proceed with the matters that are</p> <p>15 pending before the Court.</p> <p>16 And the Court notes here we have</p> <p>17 Mr. Burson and Mr. Norman. Good morning, Mr. Burson and</p> <p>18 Mr. Norman.</p> <p>19 MR. BURSON: (Nodded head.)</p> <p>20 MR. NORMAN: (Nodded head.)</p> <p>21 THE COURT: And, also, we have Mr. Goodman</p> <p>22 and Mr. Echo-Hawk.</p> <p>23 Good morning, Mr. Echo-Hawk.</p> <p>24 MR. ECHO-HAWK: Good morning.</p> <p>25 THE COURT: Good morning, Mr. Goodman.</p>	<p style="text-align: right;">Page 5</p> <p>1 Yonevea Terry.</p> <p>2 THE COURT: Good morning.</p> <p>3 MR. BURSON: And behind her is</p> <p>4 secretary/treasurer, Robert Tippeconnie.</p> <p>5 THE COURT: Okay. Good morning,</p> <p>6 Mr. Tippeconnie.</p> <p>7 MR. BURSON: On the third row back, we</p> <p>8 have Darrell Kosechequetah, CBC member.</p> <p>9 THE COURT: Good morning, Mr.</p> <p>10 Kosechequetah --</p> <p>11 MR. KOSECHEQUETAH: Kos --</p> <p>12 THE COURT: Kosechequetah.</p> <p>13 MR. KOSECHEQUETAH: Good morning.</p> <p>14 THE COURT: Good morning. I apologize. I</p> <p>15 always have trouble with Comanche names for some</p> <p>16 strange reason.</p> <p>17 MR. BURSON: Next to him is CBC member</p> <p>18 Robert Komahcheet.</p> <p>19 THE COURT: Good morning, Mr. Komahcheet.</p> <p>20 MR. KOMAHCHEET: Good morning.</p> <p>21 MR. BURSON: And next to him is CBC member</p> <p>22 Ronald Red Elk.</p> <p>23 THE COURT: Good morning, Mr. Red Elk.</p> <p>24 MR. BURSON: I don't know if I missed</p> <p>25 anybody. I think that's it.</p>

<p style="text-align: right;">Page 6</p> <p>1 THE COURT: All right. Those are 2 officials of the tribe. Thank you, Mr. Burson. 3 And Mr. Goodman or Mr. Wauqua, are there 4 any parties that you wish -- that are parties that 5 are part of those that you represent, that you would 6 like to have recognized? 7 MR. ECHO-HAWK: Your Honor, both of the 8 above listed, Mr. Chairman Coffey is present, as 9 well as Tribal Administrator Wauqua. 10 THE COURT: All right. 11 MR. ECHO-HAWK: And that's all we have. 12 THE COURT: Okay. Thank you, 13 Mr. Echo-Hawk. 14 All right. Well, here we are. We're 15 ready to proceed with the show-cause hearing. But 16 the Court notes that there is a Motion to Dismiss 17 filed on behalf of, I believe, the Chairman, 18 Mr. Coffey and Mr. Wauqua, and that, in the Court's 19 mind, is necessary for the Court, before it even 20 proceeds to its show cause hearing that it was going 21 to hold on its issuance of its Order. Because as 22 counsels are all aware here, that would be 23 dispositive of the matter of whether the Court 24 should have entered the Order or not. It would be 25 silly to hold the hearing.</p>	<p style="text-align: right;">Page 8</p> <p>1 years and I am not sure, and I understand their 2 cause for concern now, more than ever. 3 These are important principles. If you 4 look -- and particularly for those of us on the 5 western side of this state. You look at the tribes 6 on the western side of the state and the north 7 central side of the state, and you go to the eastern 8 side of the state and you see a stark, stark 9 difference, a revealingly stark difference of what 10 has been accomplished on that side of the state 11 versus what has been on our -- and I say "our" 12 because I'm part of this side of the state. 13 And actually, when I go over there, it's 14 not humbling because it stirs me up. And maybe 15 old-fashioned Indian jealousy is closer to my 16 emotion, I'll be honest. But there's a reason. 17 There's a reason they're better than us. And I know 18 it's easy, is what we say. Because they're -- 19 because they're white people, because they act like 20 white people. We're still the Indians that are 21 left. 22 Well, we'll be left all right. We'll be 23 left in the dust, trying to eat dust. 24 Well, I mean -- and the reason I do this 25 is because this is Indian court. This is not --</p>
<p style="text-align: right;">Page 7</p> <p>1 So we're going to proceed with that. But 2 before we do that, because we have a large 3 gallery -- I appreciate the gallery being present. 4 And to -- I know that most of you -- I'm not naive. 5 I know that most of you are here and what you're 6 really primarily interested in is whether you win or 7 lose. And I know -- that's not an admonishment. I 8 mean, that's just the way most humans are, it's win 9 or lose. 10 But it would be -- if you -- if you go 11 back and read the Lawton Constitution for the last 12 30 years -- I won't bother to tell you why. I'll 13 allow you to draw your own inference of the 14 repetitive nature of these kinds of events/incidents 15 that happen in the tribe. And it's cyclical and it 16 is repetitive. 17 There are some broader and more important 18 principles that are involved in this. If -- if 19 Indian tribes are going to learn to function in the 20 modern world, if we're going to be able to make the 21 transition to the modern world -- and those of you 22 who are older know that's what those old people used 23 to pray about. That's what that -- that was in 24 their prayers when they talked about the tribe. And 25 I will tell you that I've been doing this for 30</p>	<p style="text-align: right;">Page 9</p> <p>1 this is not federal court, this is not state court. 2 And the whole idea of this was for Indians to have a 3 forum. 4 Believe me, the United States Federal 5 Court has a concern and protection for the American 6 culture and the American way of life. The State 7 Courts in Oklahoma have the protection of the State 8 of Oklahoma and the way of life of Oklahoma. So I'm 9 just putting on the record this Court has a 10 legitimate concern and a stated concern about the 11 culture, about the survival, about the continuation 12 of tribes in Oklahoma. 13 Now -- so I wanted to say that, because we 14 may not get to that. And -- and I don't have to ask 15 for the indulgence of counsel here, because they 16 have to listen. They're helpless. 17 As you an Indian have wondered, "Okay, why 18 am I sitting here?" People wonder about that. 19 "Well, Who is he? Who does he think he is?" 20 The people who say that, I never saw them 21 in the law library when I was sweating test time 22 to -- and I wasn't the greatest scholar, either. 23 I'm not saying that. I mean, I had to scramble. 24 There's a certain training to get to this place, and 25 then now 30-years plus of experience.</p>

<p style="text-align: right;">Page 10</p> <p>1 Now, I'm going to ask you -- see, is 2 what's really at the heart of this, where I said 3 something more important -- we may not get to this 4 today. But see, just like -- just like at a 5 meeting, see, I'm going to ask: How many people 6 brought their Bible today? How many people brought 7 their Constitution? That's the Bible. 8 A lot of people talk about the Bible, but 9 they don't read it. There's fewer people that read 10 it, but they don't study it. The fewest of people 11 study it, and I've spent the last several days 12 reacquainting myself and restudying. See, you can 13 see I've got highlights, I've got markers for the 14 last three days getting ready for today's hearing. 15 See, and this is like daily meditation. I've got my 16 notes. See. 17 And all about this. (Indicating 18 Constitution.) And the problem that we have in 19 western Oklahoma is we haven't embraced this. And 20 this is incomplete and it doesn't provide all the 21 answers. 22 So why doesn't someone love it? So why 23 doesn't somebody care for it? So why doesn't 24 somebody nurture it? Why? 25 Yes, this was given to us by the white</p>	<p style="text-align: right;">Page 12</p> <p>1 If there had been a white man standing 2 around and the first Comanche got on that horse, and 3 they had said, "Indians don't ride horses, Comanches 4 don't ride horses, that's a white man thing," there 5 would have never been a plains culture. 6 So here we are at the brink of another 7 time, and that horse brought a flowering. And, I 8 mean, that literally. It flowered the culture. 9 I'm telling you, I don't care what anybody 10 says, you can call me romantic, there never has been 11 freedom and a more wonderful life than was on the 12 plains in the 18 -- I mean, freedom in the late 13 1700s and early 1800s. Nothing like it in the 14 world, except maybe those guys up in Mongolia on the 15 horses. I won't -- I won't forget about those guys. 16 Well, that's my -- that was -- see, now 17 we're going to go -- these lawyers are going to be 18 responsible for some boring stuff here, stuff that 19 is of immediate concern, but it's a technical kind 20 of thing. But it's important. But I wanted to say 21 that for you to think about. You make up your own 22 mind. 23 See what -- sometimes those -- they used 24 to say, "I've said it, now you think about it." 25 See, we didn't force Indian -- they don't force</p>
<p style="text-align: right;">Page 11</p> <p>1 people. It was forced on us at a certain time in 2 the 1930s, but why haven't the tribes over here made 3 it theirs? 4 When the horse came, that was a white 5 man's deal. That's what this is like. But the 6 Comanches, hey, hate to admit it, you guys were the 7 first ones to bring them out of Mexico and the 8 Spaniards. You guys were the -- I'll give it up to 9 you, the first ones to steal them from the 10 Spaniards. More power to you. 11 And a whole culture came out of something 12 that was the white man's. They made it -- the 13 Comanches made it Indian. They made it Comanche. 14 They made the horse a Comanche. Why? Because they 15 saw the utility of it. They saw how it helped make 16 life easier and better economically for the people. 17 Go further into the plains and bring back more meat, 18 protein, simple as that. 19 And you couldn't fool those old Indians, 20 man. Hey, because we forget how dangerous life was 21 then, how dangerous it was to venture out on the 22 plains. You break a leg out there, guys, you die. 23 You get lost out there, you die. 24 It's like that now, guys. If you can see 25 it, if you have the eyes to see.</p>	<p style="text-align: right;">Page 13</p> <p>1 anybody to think anything. You pick it up, you look 2 at it or you just (indicating) toss it. It's okay. 3 I feel like I have met my obligation and 4 responsibility of this office to talk about that. 5 So now we're going to start. 6 Don't get me wrong now, this is an 7 important issue. What they're saying is -- see, a 8 judge -- a lot of Indians and a lot of people out 9 here for years have thought, "Boy, I'd like to be a 10 judge. That Judge Lujan -- if you're judge, you can 11 do anything you want." 12 Wrong. A judge only has authority and 13 power when they follow the law. You can't do 14 anything you want. You may -- you may wonder -- 15 there's things I've had to order that I've hated 16 when I ordered it, but I have to follow the law just 17 like everyone else has to follow the law. 18 So I have a motion here. I want to 19 explain this to you in laymen terms. What they're 20 saying is, "Judge Lujan, this Court, and you're 21 responsible for this Court, does not have the 22 authority to decide this issue that's before today." 23 And, you know, Indians understand 24 authority. I remember there was this -- my 25 grandfather used to say, "They're not authorized,"</p>

<p style="text-align: right;">Page 14</p> <p>1 so he didn't listen. You know, you -- I wondered, 2 "Why is he not paying attention that somebody is 3 talking about something?" Because they're not -- 4 they're not allowed to talk about that in the old -- 5 you know, in the custom and tradition, that wasn't 6 something that they could talk about. (Indicating.) 7 That was it. 8 And those older Indians, you know, I don't 9 know -- there was some -- there was politeness, but 10 then there was also some pretty directness about 11 them telling you, "Sit down, be quiet." 12 All right. So we're going to begin. 13 You're going to hear this, along with me. One 14 more -- one more thing, then I'm finally -- I know 15 I -- you're thinking, "He's like a Baptist preacher, 16 he keeps saying 'and now I'm going to finish' and 17 'in closing,'" and you're looking at your watch. 18 But this is truly my closing. 19 And that's -- this is a better way to do 20 things. Here's the old way of doing things. Some 21 dispute in the tribe, they -- they -- that side is 22 taking up a collection, gas money. They're coming 23 for the superintendent's office. The spies in the 24 agency see the other side going into the agency -- 25 into the superintendent's office. Back in those</p>	<p style="text-align: right;">Page 16</p> <p>1 say. It's going to go down into a record. It can 2 be played back and then transcribed. There's a lady 3 over here talking down all of these words. Just 4 like everything I say I'm responsible for, because 5 it's going down over here. 6 Whatever decision this Court makes, 7 there's another court above it that will -- that can 8 review it and decide whether I made a mistake or 9 not. 10 Which one of those is better? I'll let 11 you, once again, decide which one of those two is 12 better for the Comanche Nation. 13 All right. And I know you don't -- you 14 don't believe me, but you watch. 15 Mr. Goodman or Mr. Echo-Hawk, the Court is 16 ready for the opening argument on their motion. 17 MR. ECHO-HAWK: Your Honor, may it please 18 the Court, my name is Walter Echo-Hawk. I'm very 19 glad to be here today. Your remarks, Judge Lujan, 20 are very well taken from -- by this side of the 21 table here. It is unfortunate and I regret very 22 much that we're here today in this court regarding 23 an internal tribal government dispute. 24 It's a dispute within Section 5 of the 25 Tribal Jurisdiction Ordinance. And we agree</p>
<p style="text-align: right;">Page 15</p> <p>1 days, they did this (Indicating rotary dialing.) We 2 do this now. (Indicating.) 3 The opposition took up a collection, 4 bought gas. They came in their caravan, they storm 5 into the superintendent's office. They sit there 6 and wait, doors close. (Indicating whispering.) 7 Then the door opens, they come out. Each side goes 8 like this to the other (Indicating.) Give them the 9 look. They go by each other. And then each side 10 says, "I ain't scared." Draw -- men draw themselves 11 up, walk by them. 12 Then that group goes in there, closes the 13 door. (Indicating whispering.) They leave, then 14 the decision comes out of there. (Shrugged 15 shoulders.) (Shook head.) That's the '50s, people. 16 That's the 1950s when the area directors used to 17 talk about "my Indians." 18 If there's anybody in here old enough, 19 that's Wade Head. I don't know if there's anybody 20 old enough to remember the old -- the old area 21 directors when they ran these places like thiefdoms 22 and they were in control -- the bureau was in 23 control of everything. 24 Now, what's different? Both sides are 25 here. You're going to hear what each side has to</p>	<p style="text-align: right;">Page 17</p> <p>1 entirely with your suggestion as to the way that we 2 should proceed here today; that is, to resolve the 3 jurisdiction issue first. We're prepared to do so. 4 That is consonant with the approach that was taken 5 last week by Judge Cauthron in the related IBC case, 6 where she could not entertain any interim relief in 7 that case or do anything until she first heard about 8 her own jurisdiction. So that matter is now being 9 briefed there. We think that's the appropriate 10 approach to take at that time. 11 So I'm going to turn over our argument 12 here shortly to my co-counsel on our Motion to 13 Dismiss for Lack of Jurisdiction. We think that we 14 can be out of here in ten minutes. We think that we 15 can resolve the jurisdiction of this Court as purely 16 a question of tribal law, based on the evidence that 17 is already before the Court, without even having to 18 call a witness. 19 If we -- if we are unable to convince you 20 in the short order here, then I would propose that 21 if we need to actually call a witness, on -- limited 22 to the jurisdictional facts, that we could do so. 23 We have people here. I believe the burden of proof 24 is on the Petitioners, the Hobbs Straus clients to 25 prove the jurisdiction of this Court.</p>

<p style="text-align: right;">Page 18</p> <p>1 We have our rebuttal witnesses, if we get 2 down to that level, if necessary. And then if we 3 can't convince you that you lack jurisdiction, after 4 hearing the witnesses, then I would suggest, at that 5 point, we then turn to our Motion to Vacate as the 6 second Order today to address. And we've got 7 witnesses on that, if necessary, if we get that far. 8 And once that -- if we can't get you to 9 vacate your order, your interim order, then the 10 third and final matter that we would propose is then 11 to go to the show cause motion. Because presumably 12 if we get to that level, you will have ruled that 13 you have jurisdiction and that the interim order 14 should not be vacated and, therefore, we will 15 respond -- should move, at that point, to the show 16 cause order. 17 So with that -- 18 THE COURT: Excuse me. 19 MR. ECHO-HAWK: Yes, sir. 20 THE COURT: And for opposing counsel, what 21 I'm going to do here is I agree with his analysis on 22 the first one. We're going to take care of this. 23 And I may open it up -- you may have a different 24 characterization procedurally of how we'll proceed 25 from there, but -- so I -- when I say -- and "I've</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. GOODMAN: -- of the Comanche Business 2 Committee approving the tribal ordinance, and then 3 the ordinance itself are Exhibit 2. 4 We believe that there are three legal 5 reasons, strictly as a matter of law, why that this 6 Court should dismiss this case for lack of 7 jurisdiction over this particular proceeding. 8 As we indicated in our reply brief, there 9 are two additional grounds for lack of jurisdiction, 10 but those relate to factual disputes; that is, the 11 May 19 meeting and the surrounding factual disputes 12 concerning that, and the issue of whether there 13 really is an emergency this Court needs to address. 14 So I'll be addressing just the three legal 15 arguments. 16 THE COURT: All right. 17 MR. GOODMAN: The first reason that we 18 believe that this case must be dismissed is that the 19 Tribal Court Ordinance itself prohibits this Court 20 from exercising jurisdiction. And the reason that 21 it does is that Section 5 of the ordinance says 22 that, "This ordinance shall not be interpreted to 23 grant the Tribal Court jurisdiction to adjudicate 24 election disputes or internal tribal government 25 disputes." And that modifies the rest of the</p>
<p style="text-align: right;">Page 19</p> <p>1 agreed with them," that's as to the first. 2 But as to the order of which we would 3 handle the other matters, I -- I would make a 4 specific ruling after hearing both counsels make 5 their arguments of the matter in which we'll 6 proceed. Okay. 7 MR. ECHO-HAWK: With that, Your Honor, I 8 yield to Mr. Goodman and thank you very much. 9 THE COURT: Good morning, Mr. Goodman. 10 MR. GOODMAN: May it please the Court, 11 Your Honor. It is a privilege to be here today to 12 address the Court in a matter of tribal 13 self-determination, which is of great importance to 14 the Comanche Nation and to its currently duly 15 elected Chief and Tribal Administrator who are with 16 us here today. 17 Does the Court have before it the exhibits 18 that were filed with the Motion to Dismiss? 19 THE COURT: Yes, I have one, two, three, 20 four, five marked for the Court. 21 MR. GOODMAN: Right. And the first 22 exhibit that I'll be referring to, Your Honor, is 23 the second one, which is the Tribal Court Civil 24 Jurisdiction Ordinance. There's a resolution -- 25 THE COURT: Yes.</p>	<p style="text-align: right;">Page 21</p> <p>1 ordinance. 2 That means that nothing under the -- that 3 goes before it can be interpreted to grant this 4 Court jurisdiction. Which means under Section 1(b), 5 where the Comanche Nation is a plaintiff, the Court 6 may not exercise its jurisdiction over election 7 disputes or internal tribal government disputes. 8 The specific limitation was voted upon by 9 the Tribal Council when this was adopted. It's a 10 clear prohibition to prevent this Court from being 11 granted and, thus, asserting jurisdiction to 12 determine the issues the Petitioners seek to have 13 this Court decide, which are clearly election 14 disputes and internal tribal government disputes. 15 And so we believe that the -- the very 16 clear first reason why this case must be dismissed 17 is Section 5 of the Civil Jurisdiction Ordinance 18 itself. 19 In addition, if you look at the ordinance, 20 the second basis for dismissing this case, as a 21 matter of law, when you look at the Tribal Court 22 Civil Jurisdiction Ordinance of 2011 and read it in 23 its entirety, you see in the "whereas resolution" of 24 the Resolution, the fourth whereas, "The Comanche 25 Business Committee intends that nothing in this</p>

<p style="text-align: right;">Page 22</p> <p>1 resolution shall be deemed a waiver of a Comanche 2 Nation sovereign immunity from suit. And, whereas, 3 the Comanche Business Committee intends that nothing 4 in this resolution shall be deemed to supercede or 5 conflict with the provisions of 25 CFR, Section 6 11.118." That's the provision, as the Court is 7 aware, which authorizes the granting of jurisdiction 8 over certain civil matters to this Court. 9 And when you read the ordinance, it says 10 that the tribal -- the Court of Indian Offenses for 11 the Comanche Nation, tribal court, shall have 12 jurisdiction over any civil action arising within a 13 territorial jurisdiction of the tribal court, in 14 which (a) doesn't apply in this case; (b) is the 15 ground upon which Petitioners argue that this Court 16 has jurisdiction under the -- under the 17 resolution -- the Comanche Nation, or any of its 18 boards, commissions, agencies, corporations, 19 enterprises or similar entities is a plaintiff; or 20 (c), which Petitioners aren't urging -- but (c) is 21 where the Comanche Nation or any of its boards, 22 commissions, agencies, corporations, enterprises or 23 similar entities is a defendant. 24 So the Civil Jurisdiction Ordinance, which 25 is an ordinance waving sovereign immunity for</p>	<p style="text-align: right;">Page 24</p> <p>1 Nation is a plaintiff or the Nation is a defendant. 2 Therefore, under the Rule of Construction 3 that applies and waivers of sovereign immunity, 4 where the Court must narrowly construe those, and 5 only find a waiver where it's clear and unequivocal, 6 we submit, respectfully, to Your Honor that this 7 Court cannot reasonably infer that "in re" lawsuits 8 were to fall within the ambit of the limitations in 9 the ordinance where there must be a plaintiff and 10 there must be a defendant. 11 So our second basis is also based on the 12 ordinance, and the Court can look at that and, as a 13 matter of law determine that an "in re" proceeding 14 is not authorized. 15 In addition, on that same point, the CFR 16 Court Rules themselves don't provide for "in re" 17 proceedings. Rule 2.7 requires a complaint or 18 petition and an answer and it provides that a 19 responsive pleading shall be allowed. 20 In this case, no responsive pleading was 21 called for because they were seeking declaratory 22 relief ex parte. 23 And if you look at Blacks, the 9th 24 Edition, "in re," as Latin "In the matter of," it 25 refers -- first definition, "Of a judicial</p>
<p style="text-align: right;">Page 23</p> <p>1 limited purposes is clear that it only applies where 2 the Nation is a plaintiff or the Nation is a 3 defendant. So the ordinance doesn't permit the 4 Nation, or any of its agencies, sua sponte to 5 initiate proceedings for declaratory relief before 6 this Court of the kind that the Petitioners in this 7 case are seeking, which is declaratory judgment. 8 Although, they're also seeking injunctive relief. 9 But under the terms of the interim order they asked 10 this Court to enter, and this Court did enter, 11 they're seeking to adjoin certain actions for 12 decisions. 13 But, in any event, the -- that limitation 14 is even broader than the limitation about being 15 involved in elections and inner-tribal disputes. 16 That doesn't permit the filing of "in re" 17 declaratory judgment proceedings whatsoever. 18 And, you know, the ordinance is clear. A 19 plaintiff is someone that brings an action against 20 another party, seeking relief against that party. A 21 defendant is someone against whom a plaintiff has 22 brought a lawsuit. 23 There is no plaintiff in this case, there 24 is no defendant in this case, so it doesn't fall 25 within the literal terms of the ordinance where the</p>	<p style="text-align: right;">Page 25</p> <p>1 proceeding, not formally including adverse parties." 2 Whereas, the ordinance talks about proceedings that 3 have adverse parties. They have a plaintiff and 4 they have a defendant. 5 So it's used in uncontested proceedings. 6 Obviously, we believe that this proceeding is 7 grossly misnamed because this is a contested matter, 8 this is an election dispute, this is an inter-tribal 9 governmental dispute. And so to say it's an 10 uncontested proceeding, where they're coming before 11 the Court on uncontested facts, seeking advice of 12 the Court on a declaratory matter of law, it doesn't 13 fall within Section 1(b) or Section 1(b); and, 14 because of the subject matter, it violates Section 5 15 of the ordinance. 16 So we believe that the second basis, this 17 Court, as a matter of law, should dismiss, for lack 18 of jurisdiction, is based on the fact that the 19 ordinance itself does not provide for the "in re" 20 proceedings. 21 Now, I turn to the third basis for 22 dismissal, as a matter law. And I would refer, 23 Your Honor, to an attachment to the petition that was filed 24 in this case. It should be Exhibit 3 to the petition, and 25 that is the Resolution 3-12.</p>

<p style="text-align: right;">Page 26</p> <p>1 THE COURT: I'll find it here. Okay. 2 MR. GOODMAN: Have you got that? 3 THE COURT: Yeah. 4 MR. GOODMAN: All right. If you look at 5 Resolution 3-12, this is a resolution that was voted 6 upon at a gathering on May 19th of 2012, of some 7 members of the Comanche Nation. It has been 8 represented by the Petitioners and they'll get -- if 9 we get to the facts, they'll get a chance to prove 10 whether or not that was a valid meeting and that the 11 resolution should be recognized. 12 But even just looking at the resolution on 13 its face and construing it narrowly, as the Court 14 must, we believe that it does not give the Court 15 jurisdiction to get into the many issues that the 16 Petitioner seeks to have this Court determine in 17 this case. 18 The resolution authorizes, "Therefore, be 19 it resolved that the Tribal Council, directly 20 Comanche Business Committee --" of course, there is 21 an ongoing dispute as to who the Comanche Business 22 Committee was at this moment, but they direct that 23 committee to seek resolution of the current dispute 24 of Mr. Johnny Wauqua to be addressed in the CFR 25 court.</p>	<p style="text-align: right;">Page 28</p> <p>1 Court must interpret that limitation and must do so 2 narrowly. It may not infer, it may not fill in the 3 blanks. If it's not clear and unequivocal, the 4 Court is not supposed to go there. 5 And so when you read that, it address -- 6 the petition addresses things going far beyond 7 whether Mr. Wauqua was chairman and could act as 8 chairman and whether Mr. Wauqua violated the 9 Constitution or the recall ordinance. It requested 10 a declaratory finding that the six members who had 11 been recalled in April had been properly restored. 12 That's not in Resolution 312, the 13 authority for the Court to make determinations of 14 election disputes. That's not in 312. And it's 15 probably not in there because the people that 16 drafted it knew you weren't supposed to get into 17 election disputes and you're not supposed to get 18 into inter-tribal governmental disputes. 19 It asked this Court to find who the duly 20 authorized and serving members of the Business 21 Committee are. Once again, an inter-tribal -- an 22 intra-tribal matter. And it asks this Court to find 23 that Robert Komahcheet was the duly hired Tribal 24 Administrator of the Comanche Nation. That's not 25 anywhere in Resolution 312.</p>
<p style="text-align: right;">Page 27</p> <p>1 And then if you look at the whereas, the 2 last whereas, that whereas describes what the 3 current dispute of Johnny Wauqua is. The current 4 dispute involving Johnny Wauqua acting as the 5 chairman, and violating the Comanche Nation 6 Constitution and the Comanche Nation recall 7 ordinance. 8 Now, what -- the evidence will show, of 9 course, that Johnny Wauqua is no longer chairman, so 10 that part of it is moot and nothing before the 11 Court. 12 And the question -- 13 THE COURT: The Court -- and the Court, 14 Mr. -- to interrupt you just a minute, the Court 15 notes on the record that in its order, that's the 16 subject of this show cause hearing, that may or may 17 not be heard later on, the Court recognized that the 18 election of Mr. Coffey was one of the valid election 19 outcomes of that particular date. 20 MR. GOODMAN: Correct. 21 THE COURT: So I agree with that and I 22 think that's -- that's an uncontrovertible fact. 23 MR. GOODMAN: Okay. So if you look at the 24 resolution itself, it's limited. And like any 25 waiver of sovereign immunity that's limited, the</p>	<p style="text-align: right;">Page 29</p> <p>1 You have to -- to get to the breadth and 2 the scope of what Petitioner is trying to do in this 3 petition, you have to fill in the blanks, you have 4 to assume all of these other things were included in 5 a reference to the current dispute of Johnny Wauqua. 6 None of that is clear and none of that is 7 unequivocally granted to this Court. 8 And they refer, in their response papers, 9 the Petitioner refers to a Business Committee 10 Resolution. Said, "Well, even if that's not valid, 11 we've got this Business Committee resolution." But 12 the Business Committee resolution is even more 13 limited, as well as it's legally unauthorized. 14 The Civil Jurisdiction Ordinance provides 15 that -- 16 THE COURT: I'm just going to -- to 17 interrupt you. 18 MR. GOODMAN: Yes. 19 THE COURT: Legally unauthorized, are you 20 saying then that under that Section 118, for the 21 Court to be authorized, that the governing body that 22 can give that authorization is not the Business 23 Committee, but the Tribal Council? 24 MR. GOODMAN: Correct, Your Honor. 25 THE COURT: Okay.</p>



<p style="text-align: right;">Page 30</p> <p>1 MR. GOODMAN: And I'm also saying that 2 that's true under the ordinance. So when the Tribal 3 Council acted to pass the Civil Jurisdiction 4 Ordinance, I referred to earlier, they put in there 5 that only the Tribal Council can pass the resolution 6 authorizing a case to proceed before this Court. So 7 they didn't -- they didn't pass that on to the 8 Business Committee; they retained that, which is 9 what they've always had a right as a -- as a matter 10 of Constitutional law, to make those waivers of 11 sovereign immunity owned by the Tribe unless they 12 specifically granted it. 13 So the ordinance doesn't permit the CBC to 14 pass such a resolution. It's totally invalid. Even 15 if you get beyond the fact that whether or not those 16 six persons were properly acting as a CBC at the 17 moment. 18 But more important, if you read their 19 resolution, it's even more proscribed than 20 Resolution 312, because it says the CBC, to take to 21 CFR court, the current dispute of whether Johnny 22 Wauqua is the Tribal administrating -- 23 Administrator acting as chairman, or whatever 24 ellipses, if the dispute cannot be resolved 25 internally.</p>	<p style="text-align: right;">Page 32</p> <p>1 They're asking you, in this petition and 2 in the interim order, to proscribe the authority and 3 actions of Wallace Coffey. 312 doesn't say anything 4 about Mr. Coffey, 3 -- 37, whatever, doesn't say 5 anything about Mr. Coffey. It doesn't authorize the 6 Court to determine the validity of the recall 7 hearings on April 21st and 26th. And to get to 8 where they have to get, they've got to have you 9 determine that the recalls, on April 21st and 10 April 26th, were not validly held. And neither of 11 those resolutions can be, if narrowly construed, 12 interpreted to clearly and unequivocally give you 13 jurisdiction to go back to April and make those 14 determinations. It's not in either one of those. 15 You have to fill in the blanks, you have 16 to assume what was meant, you have to let counsel 17 and witnesses come back and amplify the language. 18 They're not permitted to do that. They're stuck 19 with the language that's in here. That's what the 20 Court is bound by, in terms of looking at the waiver 21 of sovereign immunity. 22 And I -- and as I point out again, the -- 23 neither resolution addresses the right of this Court 24 to entertain jurisdiction over the financial -- 25 alleged financial emergency facing the Comanche</p>
<p style="text-align: right;">Page 31</p> <p>1 Well, there is no remaining dispute with 2 respect to Johnny Wauqua acting as chairman or 3 Tribal Administrator. He's acting as Tribal 4 Administrator and he's no longer acting as chairman. 5 And there is no -- there is no question whether he's 6 acting as one or the other, which is -- which was 7 the question that this CBC committee resolution was 8 purported to address, so -- 9 And in addition, of course, they've 10 alleged -- they've gone into the fact that there's 11 some sort of a purported financial emergency and 12 that this Court -- there's an emergency and a crisis 13 and this Court must intervene to act. 14 Well, it -- you can't read Resolution 312 15 to give this Court the authority to make financial, 16 emergency decisions; you can't read Resolution 37-12 17 of CBC to give you jurisdiction to decide tribal 18 financial emergency decisions. 19 And so as a matter of law, we believe that 20 the -- neither the resolution of the -- of the 21 purported Tribal Council meeting, nor the resolution 22 of the CBC, when narrowly construed, as the Court 23 must on waivers of sovereign immunity, when narrowly 24 construed, grants this Court the authority they're 25 asking you to.</p>	<p style="text-align: right;">Page 33</p> <p>1 Nation. 2 So, Your Honor, simply put, for those 3 three reasons, we think that this Court narrowly 4 construing the ordinance and resolutions the way 5 they should be, and giving the deference to 6 Section 5 of the ordinance that indicates that 7 nothing else in the ordinance, that said -- it 8 doesn't say this section shall not be construed, it 9 says, "This ordinance shall not be interpreted in 10 such a way that a Tribal Court can exercise 11 jurisdiction over election disputes or inter-tribal 12 government disputes." 13 And we submit that case to Your Honor and 14 look forward to a chance to reply. 15 THE COURT: Thank you, Mr. Goodman. 16 All right. Mr. Burson or Mr. Norman. 17 MR. BURSON: Thank you, Your Honor. The 18 Court has a very highly unusual circumstance before 19 it. The Court's jurisdiction is completely entwined 20 with the underlying merits of the case that was 21 brought to you. The only way for you to determine 22 whether you have jurisdiction is to delve into the 23 facts and the law, determine the issues that the 24 Comanche Business Committee and the other -- and the 25 people of the Comanche Nation, through its</p>

<p style="text-align: right;">Page 34</p> <p>1 resolutions -- 312 was specifically mentioned and 2 others. There was four specific resolutions passed 3 by a Tribal Council May 19th to permit this Court to 4 enter this, to allow the Comanche Nation to come to 5 you to determine what is correct, what is proper for 6 the Comanche Nation to operate.</p> <p>7 The dispute poses several questions. And 8 what I think is embodied in the Resolution 312 is 9 this question: Did the actions of the former 10 chairman Wauqua, while he was chairman, which the 11 Tribal Council believed violated the law and a fair 12 deliberating petition process that those laws were 13 intended to ensure, did it render the convening 14 Tribal Council recall meetings void and without 15 effect? That's one of the questions embedded in 16 that resolution.</p> <p>17 That resolution was drafted by tribal 18 members, not by lawyers. And so we'd ask the Court 19 to take that into consideration in rendering a 20 decision of whether or not you believe it -- that 21 resolution, or any other resolution, gives you the 22 authority to hear this case.</p> <p>23 The other question that's embedded in this 24 dispute, that needs answering, and it alludes to it, 25 0312 alludes to violations of the Constitution,</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. ECHO-HAWK: Your Honor, I -- if I may. 2 THE COURT: It's unusual, as you're aware, 3 to interrupt when the Court is hearing -- 4 MR. ECHO-HAWK: I apologize -- I -- 5 THE COURT: -- argument from opposing 6 counsel. 7 MR. ECHO-HAWK: I apologize, and I 8 apologize to counsel. But I -- I just wonder, are 9 we going to -- I'm hearing facts not in the record 10 here and facts that go to the merits of the case 11 rather than jurisdictional questions. And I'll sit 12 down with that. 13 THE COURT: Thank you. And the -- and the 14 Court -- 15 Mr. Burson, what the Court has been 16 listening to this as setting the stage for what the 17 Court presumes will be the more direct legal 18 argument on the technical issue before the Court. 19 And I have been -- I have been -- I will say just a 20 little bit indulgent, because the Court indulged 21 itself to begin with, so -- 22 But, Mr. Burson, I presume that very soon 23 now you'll move specifically to the technical issue 24 of the Motion to Dismiss? 25 MR. BURSON: Of course.</p>
<p style="text-align: right;">Page 35</p> <p>1 violations of the petitioning ordinance by Johnny 2 Wauqua, while he was chairman. Is it proper for a 3 chairman to cloak himself in the pretext of 4 following the Constitution in order to bring about 5 the summary destruction of the Comanche Nation 6 government, which the Constitution created?</p> <p>7 You held up the Constitution. You said 8 you'd been studying it. And you've sat in this 9 court long enough to know that the Constitution -- 10 that Constitution creates a form of government, 11 which is a representative form of government. 12 There's a tribal council, supreme governing body, 13 the democratic body of the Comanche Nation 14 representing all adults, and they periodically elect 15 representatives, called Comanche Business Committee 16 members, to conduct the day-to-day government 17 operations of the Comanche Nation.</p> <p>18 And this unique circumstance is born out 19 of an inability of two sides to manage conflict 20 well. And one side of that conflict sought to 21 essentially clean house on the other side because 22 they had a conflict. And instead of solving it by 23 talking it out, by trying to collaborate, cooperate, 24 they decided, "Well, let's just recall six CBC 25 members all at once."</p>	<p style="text-align: right;">Page 37</p> <p>1 THE COURT: And just one other thing. 2 This is for the counsels here. You recall when they 3 told us in law school, when you have the law, pound 4 the law, that's this side; when you have the facts, 5 pounds the facts, that's this side. So I've -- I 6 was indulgent based on that old law school saw that 7 we all heard. 8 But Mr. Burson, I anticipate you will very 9 soon now move to the technical argument. 10 MR. BURSON: Actually, it's not a 11 technical argument, Your Honor. It is legally we 12 have the facts and the law on this side. And the -- 13 to get to the civil jurisdiction ordinance, which 14 that side claims defeats this Court's ability to 15 here an inter-tribal dispute, that ordinance allows 16 the Comanche Nation to use this forum for any kind 17 of dispute it wants to bring here. 18 They would have you read it very 19 limitedly, but all that they've cited to you is just 20 that that piece of paper doesn't allow the Court to 21 take an intra-tribal dispute if it's not properly 22 presented to you. It does not allow you to say 23 there's a waiver in that document, if it's not 24 somehow given it to you, it's not somehow otherwise 25 expressed.</p>

<p style="text-align: right;">Page 38</p> <p>1        They would have a very narrow reading of 2 that -- and that's how they've characterized it -- 3 and I think it's a mischaracterization of the Civil 4 Jurisdiction Ordinance. 5        In order for the Comanche Nation to bring 6 a dispute, under Section 1(b) of that ordinance, it 7 would have to waive its sovereign immunity by coming 8 into court. All sovereigns, who may bring disputes 9 in court automatically waive sovereign immunity for 10 the purposes of resolving that dispute. It's not 11 a -- it's a general concept, it's a fundamental 12 concept, it's -- 13        For the purposes of this Court's criminal 14 jurisdiction, cases are brought daily, weekly in 15 this court in the name of the Comanche Nation. For 16 the purposes of those suits, Comanche Nation has 17 waived its sovereign immunity for the adjudication 18 of those disputes and the processes that are there. 19        If the Comanche Nation were to bring you a 20 dispute over a contract, and the Comanche Nation 21 brought that dispute to you, by bringing it to you, 22 it waives the sovereign immunity for you to resolve 23 the dispute over the contract whether or not the 24 contract said there was a waiver of sovereign 25 immunity.</p>	<p style="text-align: right;">Page 40</p> <p>1 get -- and allow this Court to entertain. And that 2 was to block the other party -- to bar the other 3 party saying, "Oh, no, look at 11.116, they don't 4 fit the definition of an Indian," which CFR Court 5 Rules say you have to be an Indian to be in this 6 court. And it blocks the effect of 11.116 saying, 7 "Well, he is not an Indian, so he can't come in here 8 and get you to render a decision on a dispute." 9        So 11 -- or the 3611, the Civil 10 Jurisdiction Ordinance, is not a bar to this Court 11 assuming jurisdiction. It is actually a grant of 12 this Court's authority to assume jurisdiction over 13 those disputes that are brought by the Comanche 14 Nation. So that's the technical argument there. 15        The same thing holds for the waiver, which 16 I've already explained. 17        The Business Committee that -- there's 18 a -- an argument made that "in re" actions are not 19 allowed and that requires you to read in there that 20 it states that "in re" actions aren't allowed. If 21 it doesn't say, "in re actions are permitted, then 22 you must not be allowed." That is the overly narrow 23 interpretation of what the Civil Ordinance -- Civil 24 Jurisdiction Ordinance achieves. 25        It was a clarification. It was passed by</p>
<p style="text-align: right;">Page 39</p> <p>1        Because coming into court, when you're a 2 sovereign, walking in the door with a case 3 automatically means that the sovereign has waived 4 sovereign immunity for the purposes of that dispute. 5 Now, that's the limitation of -- that's embedded in 6 this ordinance, is the limitation that -- for the 7 dispute brought to you and only that dispute is what 8 the sovereign immunity waived, not anything outside 9 of that, but just the core dispute. 10        It does not restrict the Comanche Nation 11 from bringing a inter-tribal dispute to you if 12 that's what the Comanche Nation thought was best, 13 and that's exactly the case here. 14        That ordinance arose out of a time where 15 there was some uncertainty about whether or not the 16 Comanche Nation could even appear in this court as a 17 plaintiff. There had been a ruling in a federal 18 court case -- 19        THE COURT: The Court will take judicial 20 notice of that, yes. 21        MR. BURSON: And so this is sort of a 22 remedial ordinance to assure that the -- if the 23 Comanche Nation thought this Court needed to 24 interpret its laws and handle -- that it could come 25 in here, as a plaintiff and as a petitioner, and</p>	<p style="text-align: right;">Page 41</p> <p>1 the Business Committee, not the Tribal Council. The 2 resolution, I believe that is there on that 3 ordinance, I believe, is a Business Committee 4 resolution. It is completely proper for the 5 Business Committee, as here, to bring a case to this 6 Court if it thinks this Court is the best place for 7 a dispute to be resolved. 8        Now, the Business Committee, as you may 9 know, has already adopted laws that permit this 10 Court to hear tax disputes by the Tax Commission, 11 whether the Comanche Nation is the plaintiff or a 12 tax payer is the plaintiff. That's already in the 13 law, and that's one of the cases that certainly fits 14 under 1(b). This is another case that fits under 15 1(b). 16        The CBC, in this case, is bringing -- and 17 the tribal council from the -- the May 19th meeting 18 wants this Court to determine whether or not 19 Mr. Wauqua acted outside the law in the conduct of 20 recall-hearing meetings, that they would allege resulted in 21 recall and the destruction of the entire government. 22        They would ask you to summarily decide that the 23 recall of their six members was valid on the pretext of you 24 to decide your jurisdiction here, but -- or that the ends 25 justified the illegitimate means.</p>

<p style="text-align: right;">Page 42</p> <p>1 And so we think that the -- in order for 2 you to actually know whether or not you've got 3 jurisdiction, if the CBC was not recalled, as they 4 allege, because of the irregularities, because of 5 the substantive violations of law, then they have 6 the right to ask this Court to render a decision in 7 that regard. 8 If those recalls did result -- those 9 meetings did result in the valid recall of six CBC 10 members then, of course, they have no authority to 11 bring this matter to court. 12 So that's how the -- your jurisdiction is 13 intertwined with the merits of the case. That 14 doesn't happen very often. And this, because it's a 15 unique circumstance, it happens here. 16 If you decide to go ahead and hear the 17 merits of the case, then what we would show is that 18 the result of those meetings were so 19 constitutionally defective that it actually acted 20 as -- operated as an amendment to the Constitution 21 outside the processes of the Constitution. I know 22 that's kind of a weird thing to say, but if -- 23 THE COURT: Well, you -- 24 MR. BURSON: -- the Constitution -- 25 THE COURT: -- caught my eyebrows there,</p>	<p style="text-align: right;">Page 44</p> <p>1 that's the wrong way to interpret the Constitution. 2 Now, as to the one way the Court could 3 juggle, if it's hung up on a technicality that "in 4 re" actions aren't allowed and it's not clear who 5 the plaintiff and who the defendants are, the Court, 6 in order to move forward, if it feels more 7 comfortable, has the authority to align the parties 8 as they appear. 9 If you were handling an "in re" case and a 10 dispute arose out of that case and the parties 11 aligned in a certain way, the Court has the inherent 12 jurisdiction over its own -- how it handles its own 13 cases to align the parties as they appear -- as they 14 seem to appear to the Court. 15 I think, in this case, you could align the 16 parties as the Comanche Business Committee vs. 17 Johnny Wauqua or Wallace Coffey, either one of 18 those, if it -- if it thought that was necessary. 19 That's one way to fix the technical problem on -- 20 brought up by the opposing counsel. 21 They've characterized this dispute as an 22 election dispute. And so far it -- it's not an 23 election dispute, it's a dispute over what happened 24 way ahead of any elections. Those recalls happened 25 back in April, and the events leading up to those</p>
<p style="text-align: right;">Page 43</p> <p>1 Mr. Burson. 2 MR. BURSON: One of the things we would 3 show is if the Constitution -- if the Comanche 4 Constitution sets up a governing body that requires 5 five CBC members operate the government, and a 6 situation is created whereby you recall in excess of 7 two members, you go below that point, now you've 8 destroyed the functioning of the government. And no 9 Constitution can be interrupted to allow its own 10 destruction. It's an anathema, it's -- it's 11 irrational to interpret any governing document to 12 permit a small, contingent of tribal members to 13 effectively destroy the government and, thereby, 14 amend the Constitution without a vote of the entire 15 governing body. 16 Because there's a process laid out in the 17 Constitution for how you amend it. If we don't want 18 to have a CBC anymore, then there's a way to do that 19 by amending the Constitution. And that wasn't done 20 here. 21 But what the effect of it was -- illegal 22 recalls was is to, in a way, amend the Constitution, 23 wipe out the CBC and leave only a single-elected 24 officer in charge of the entire Comanche Nation. 25 And the CBC that brought this case to you believes</p>	<p style="text-align: right;">Page 45</p> <p>1 recalls happened also in early April -- March and 2 April. And so the election didn't happen -- any 3 elections didn't happen until May, and so it's not 4 an election dispute. Although, it will have an 5 impact on a forthcoming election if this Court 6 hears -- continues to want to hear the case, to see 7 if it has jurisdiction after hearing the merits, 8 after deciding whether or not the recalls were valid 9 or not -- which we think they were not -- then we're 10 going to ask the Court to enjoin the forthcoming 11 election. 12 And we have to do that because if that 13 election will seek to fill seats -- the vacant seats 14 which if the recalls were invalid would not exist -- 15 and so that election has to stop, because the seats 16 are still occupied by the six members of the CBC. 17 And so that's something to look forward to. 18 But before that time, you have -- 19 THE COURT: There will be -- if I hear 20 anymore laughter, you'll be removed from the 21 courtroom. This is -- 22 And let me interrupt you, Mr. Burson. I 23 hate to interrupt your flow, but this is an 24 important point. 25 As Indians, what do we get mad at white</p>

<p style="text-align: right;">Page 46</p> <p>1 people about? They show disrespect for us as 2 Indians, they don't treat us like equals, we get mad 3 at them for that. Well, to me, until the day we 4 start treating other Indians with respect, let's 5 don't gripe about white people. Let's -- let's 6 treat our own other Indian people with respect and 7 let the other thing take care of itself. 8 Okay. You may continue, Mr. Burson. 9 MR. BURSON: We think the Court has 10 jurisdiction. We firmly believe the Court has 11 jurisdiction under the Civil Jurisdiction Ordinance, 12 under Comanche law because the recalls were invalid, 13 because the chairman, acting as chairman at the 14 time, conducted the recalls and avoided following 15 the law, didn't follow the law, blatantly 16 disregarded the law on multiple occasions and in 17 multiple ways such that it rendered the recalls 18 invalid. 19 That leaves six members of the CBC not 20 recalled. And they have the authority, as the 21 governing -- representative governing body of the 22 Comanche Nation, to come into this Court and put the 23 dispute -- because now we recognize that both 24 Mr. Wauqua and Mr. Coffey are disputing the assertions of 25 the six CBC. They're saying, "No, they were recalled." The</p>	<p style="text-align: right;">Page 48</p> <p>1 status -- and Indians, we're always concerned about 2 status. The first one is "You're nobody until 3 you've been sued in federal court." That's one 4 status and I've been sued in federal court. 5 The second one, and this is even more 6 important because this is the Indian world, and not 7 many white guys can say this, "You're nobody until 8 they spread the blanket at the powwow to raise money 9 to fly to D.C. to complain to get you unhorsed. 10 That's the one I'm most proud of, because 11 they have spread the blanket to raise money to fly 12 to D.C. to get rid of me. Because of the audacity 13 that tribes should follow their governing documents. 14 Now, this 118 is the result of a 15 compromise. I'm still here, but they took away my 16 stick. 17 Here is the other compromise, and I'll 18 just tell you -- and I'll put that on the record 19 over there for the secretary to hear it -- the other 20 compromise is when you don't have this court 21 authorized to hear election disputes and internal 22 disputes the decision remains with guess who? The 23 BIA. 24 So tribes now have to make a choice: You 25 want to live like it was in the 1950s, or do you</p>
<p style="text-align: right;">Page 47</p> <p>1 six CBC saying, "No, we were not recalled." 2 And as the parties have appeared now, it's clear 3 how they are aligned. We have CBC versus chairmen. 4 If you have any questions, I'd be happy to 5 answer them. 6 THE COURT: Okay. Thank you, Mr. Burson. 7 All right. I don't need to hear anything 8 more. All right. 9 Now, where we're at -- there is some 10 history to this 25CFR11.118. And the Court actually 11 doesn't have to go to the documents that have been 12 presented, it has its own limitations on its 13 jurisdiction as prescribed, because this is a court 14 of limited jurisdiction. And this 25CFR11.118 is 15 that limitation. 16 I don't know if I should be proud of that 17 25CFR11.118 because that is sometimes known as the 18 Lujan Provision. When I first started 25-30 years 19 ago, I had the audacity to say that tribes should 20 follow their governing documents. And I will tell 21 you that that was very upsetting. And I was a very 22 brash person at that time. 23 I hope that experience and age have 24 tempered me and I hope that I've gained some wisdom 25 since then. But there's two things that are part of</p>	<p style="text-align: right;">Page 49</p> <p>1 want to authorize this Court to have things done 2 publicly, to have the law enforced. 3 I will tell you this -- and I don't want 4 to build the drama here. It's very straight 5 forward: In these documents and laws that have been 6 passed by the tribe, one of the canons -- you've 7 heard some canons of construction mentioned here, 8 one of the important canons of construction is the 9 specific controls over the general. 10 The Comanche -- whereas the Comanche 11 Business Committee intends that nothing in this 12 resolution shall be deemed to supercede or conflict 13 with the provisions of 25CFR11.118, and it says it 14 very strongly at once again in Internal Tribal 15 Government Disputes. 16 Now, this -- this is a question that has 17 gone up -- also some background -- this has gone up 18 to the Appellate Court, because I have argued and I 19 have written and made decisions consistent with the 20 principle that when a -- when a tribal official 21 violates a tribal constitution, that's not a 22 dispute, it's either lawful or it's unlawful. 23 The Appellate Court, I'll just tell you, 24 to use slang, has slam dunked me three times on 25 that. They do not agree with me.</p>

<p style="text-align: right;">Page 50</p> <p>1        So this is where -- and remember I told 2 you earlier, I have made decisions that are 3 distasteful for me. It's distasteful if, in fact -- 4 which we don't know -- if, in fact, the Comanche 5 Constitution has been violated, and that violation 6 can continue with impunity, it's a sad day for the 7 Comanche people. And until -- this is going to take 8 a political decision. If enough Comanche people are 9 outraged by that sufficiently to give the proper 10 authorizing legislation by the Tribal Counsel to 11 this Court, that will continue until that is 12 accomplished. 13        I can be outraged. It's diametrically 14 opposed to everything that I've lived for, 15 philosophically, and what I've done for 30 years, 16 for tribal officials to violate their own governing 17 documents. I'm not saying -- you see, I can't say 18 that that's what's happened here, because that's not 19 before the Court. I'm just saying the idea of that. 20        But each. This -- this law that's come 21 down -- not law, this CFR regulation that limits 22 this Court's jurisdiction has said each individual 23 tribe must do that specifically in order to bring it 24 into the Court. And until it does that, I'm 25 (Indicating.) I'm like this. No matter what outrage</p>	<p style="text-align: right;">Page 52</p> <p>1    like I always say for -- we're all Plains Indians 2 here -- until the Comanche people hand me the pipe. 3 You hand me the pipe and I promise you I'll hold 4 that and I will do whatever is necessary. But I 5 don't have the pipe. 6        That would be the Order of the Court. 7        I would like for -- Counsel, if you would 8 prepare the appropriate order. 9        MR. GOODMAN: We would, Your Honor. We 10 will submit it to the other side for review and then 11 submit it to Your Honor. 12        THE COURT: All right. Thank you, 13 gentlemen. 14        And that means that -- what that means for 15 everybody, for the lay people here, my Order is 16 withdrawn automatically because this Court has no 17 jurisdiction in this matter. That's what I found 18 today. 19        (Applause.) 20        THE COURT: And you're excused. 21        No demonstrations, please. Go ahead and 22 leave in an orderly manner. 23        MR. GOODMAN: Thank you, Your Honor. Are 24 we adjourned? 25        THE COURT: You're adjourned.</p>
<p style="text-align: right;">Page 51</p> <p>1    or whatever I may think or whatever I see, see I'm 2 like this. (Indicating.) 3        So I'm going to grant the motion they've 4 carried today here, because there is no 5 authorization. The obligation was on -- was on this 6 party to show me affirmatively where I have been 7 given the authority. And all of the things and 8 events -- those of you who know more about what 9 happened than me, you may be -- you may be outraged 10 about this. But the solution is not for me to 11 violate the law in order to enforce the law. That 12 can never be done. That's part of -- that's part of 13 an oath that you take. And that's why police -- 14 police are dangerous when they violate the law to 15 enforce the law. Judges are dangerous when they 16 violate the law to enforce the law. It's not 17 sufficient to say, "I'm doing good." It is not 18 sufficient in a lawful society to say, "I'm going to 19 do this for good. Forget the law, I know what's 20 good." 21        Well, that's a temptation for people who 22 have authority and power. But I want you to know I 23 am resisting that temptation. And I'm not able to 24 reach the facts, the merits, whatever the 25 circumstances were, I'm unable, until I'm handed --</p>	<p style="text-align: right;">Page 53</p> <p>1        (Proceeding adjourned.) 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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1           C E R T I F I C A T E  
2   STATE OF OKLAHOMA   )  
3           ) SS:  
4   COUNTY OF OKLAHOMA   )  
5

6           I, JENESSA K. KALSU, a certified shorthand  
7   reporter within and for the State of Oklahoma,  
8   certify that the above proceeding was taken by me in  
9   stenotype and thereafter transcribed by computer and  
10   is a true and correct transcript of the proceeding;  
11   that the proceeding was taken on the 22nd day of  
12   June, 2012, in Anadarko, Oklahoma; that I am not an  
13   attorney for or a relative of any party, or  
14   otherwise interested in this action.

15           Witness my hand and seal of office on this  
16   the 24th day of June, 2012.  
17

18                               \_\_\_\_\_  
19                               JENESSA K. KALSU, CSR  
20                               Oklahoma CSR No. 01654  
21                               Expiration Date December 31, 2012  
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