UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SHAWN LAWRENCE DESAUTEL;
TAMARA DESAUTEL DAVIS;
TONIA RENE DESAUTEL,

Appellant(s),

v.

ANITA B. DUPRIS, in her individual capacity;
DENNIS L. NELSON, in his individual capacity;
DAVID C. BONGA, in his individual capacity;
GARY F. BASS, in his individual capacity;
TRUDY FLAMMAND, in her individual capacity;
STEVEN D. AYCOCK, in his individual capacity;
LEE ADOLPH, in his individual capacity;
TED BESSETTE, in his individual capacity;
TERRY FINLEY, in his individual capacity;
MARGIE HUTCHINSON, in her individual capacity;
JEANNE JERRED, in her individual capacity;
ANDY JOSEPH, in his individual capacity;
GENE JOSEPH, in his individual capacity;
CHERIE MOOMAW, in her individual capacity;
BRIAN NISSEN, in his individual capacity;
DOUG SEYMOUR, in his individual capacity;
VIRGIL SEYMOUR, in his individual capacity;
THOMAS W. CHRISTIE, in his individual capacity;
TIMOTHY W. WOOLSEY, in his individual capacity;
JULIANA C. REPP, in her individual capacity;
WAYNE SVAREN, in his individual capacity;
COLVILLE BUSINESS COUNCIL;
COLVILLE TRIBAL COURT

Appellee(s)

9th Circuit Case No.
11-35926

Originating Court Case No.
2:11-cv-00301-EFS

APPELLANTS' INFORMAL OPENING BRIEF

SHAWN LAWRENCE DESAUTEL;
TAMARA DESAUTEL DAVIS;
TONIA RENE DESAUTEL
Appellant(s)

APPELLANTS' INFORMAL OPENING BRIEF

1. Jurisdiction

a. Timeliness of Appeal:

(i) Date of entry of judgment or order of originating court: October 21, 2011.

(ii) Date of service of any motion made after judgment (other than for fees and costs): N/A.

(iii) Date of entry of order deciding motion: October 21, 2011.

(iv) Date notice of appeal filed: November 7, 2011.

2. Facts. (As summarized from Appellants' Complaint for Damages as submitted to the United States District Court, Eastern District of Washington on August 16, 2011)

A. On **September 7, 2005**, in the Colville Tribal Court, Appellants submitted an **Enrollment Appeal**, as **specifically defined** in the Colville Tribal Code. An **Enrollment Appeal**, as **specifically defined**, provides for **a specific, limited Waiver of Sovereign Immunity under the Colville Tribal Code**, in order to **uniquely** waive the sovereign immunity of Appellee, Colville Business Council, to **a specific Enrollment Appeal civil action** within the Colville Tribal Court; and to establish **subject matter jurisdiction** for a Colville Tribal Court **decision on the merits** in regards to Appellants' **specific Enrollment Appeal civil action** as filed on **September 7, 2005**.

B. On **July 31, 2006**, Appellee Steven D. Aycock, representing Appellee Colville Tribal Court as Chief Judge, entered *Order Granting Respondent's Motion to Dismiss*. This Order purported to dismiss Appellants' **Enrollment Appeal** civil action **on it's merits** despite the **ABSENCE** of an **earlier** or **contemporaneous Colville Tribal Court finding** that **Appellants' original September 7, 2005 Civil Complaint** constituted an "**Enrollment Appeal**", the **only avenue** available to **waive the sovereign immunity** (as defined in the Colville Tribal Constitution and the Colville Tribal Code) of Appellee, Colville Business Council, to a **specific Enrollment Appeal civil action** within the

Colville Tribal Court; and to establish **subject matter jurisdiction** for a **decision on the merits**.

C. On **April 5, 2007**, Appellee Colville Business Council **unanimously passed Resolution No. 2007-214.gov** "authorizing" Appellee Juliana C. Repp to pursue court costs, attorney fees **in the total amount of $19,223.76** for litigating **Case No. CV-OC-2005-25353 Enrollment Appeal** in the Colville Tribal Court (trial court) and **Case No. AP 06-009 Colville Tribal Court of Appeals review** against Appellants; **without the support of a court decision** for **EITHER CASE** as established through a **timely decision on the merits** as the result of a **necessary prior or concurrent finding** of **subject matter jurisdiction** by the Colville Tribal Court or the Colville Tribal Court of Appeals; **which had not occurred as of April 5, 2007**.

D. On **September 27, 2007**, Appellee Steven D. Aycock entered *Order Granting Respondent's Motion for Attorney's Fees*, with an **INITIAL, documented determination by the Colville Tribal Court** that Appellants' original **September 7, 2005 Civil Complaint** constituted an **Enrollment Appeal**; and corresponding **INITIAL finding** of **subject matter jurisdiction** by the **Colville Tribal Court on September 27, 2007**, or over **TWO (2) years** after Appellants' **Enrollment Appeal** civil action **had been initially filed on September 7, 2005**; and after **a full appellate review** (Case No. AP06-009) **had**

occurred through the **Colville Tribal Court of Appeals** as conducted by Appellee(s) Anita B. Dupris, Dennis L. Nelson, and David C. Bonga (*Mandate* ending Case No. AP06-009 as entered on June 4, 2007).

E. Immediately subsequent to the **September 27, 2007 INITIAL finding** of an **Enrollment Appeal** by the **Colville Tribal Court**; and **continuing forward henceforth**; there was a **complete breakdown of mandated due process for Appellants' Enrollment Appeal within the Colville Tribal Court**, and continuing forward to the dispositive order in the Colville Tribal Court for **Appellants' September 27, 2007 declared Enrollment Appeal** as finally entered by Appellee Trudy Flammand on **January 4, 2010**.

F. On **August 18, 2008**, Appellants originally filed **a separate civil action** (Case No. CV-OC-2008-28266 in the Colville Tribal Court) against Appellee(s) Anita B. Dupris, Dennis L. Nelson, David C. Bonga, and Steven D. Aycock, due in part, to **this breakdown of due process and improper award of Attorney's Fees on September 27, 2007**; and **failure to litigate Appellants' Enrollment Appeal** claims under the Colville Tribal Constitution and the Colville Tribal Code; buttressed by Appellees' Anita B. Dupris, Dennis L. Nelson, David C. Bonga, and Steven D. Aycock individual and accumulative action(s) against Appellants in the Colville Tribal Court, **beginning on July 31, 2006**, in **the absence of any acceptance** of **subject matter jurisdiction** by the Colville Tribal Court **prior to September 27, 2007**.

On **September 17, 2010**, after over **TWO (2) years of silence and inactivity by the Colville Tribal Court(!)** in this **separate civil action** as set forth in Case No. CV-OC-2008-28266, Appellants submitted their Second Amended Civil Complaint, **naming all of the individual members of the Colville Business Council who had voted in favor of Resolution 2007-214.gov on April 5, 2007**, as Respondent(s) for **Malfeasance in Office**; as well as **all individual officer(s) of the Colville Tribal Court who were complicit with perpetrating multiple act(s) of Fraud upon the Court** against Appellants cause(s) of action within the Colville Tribal Court.

It is **Appellants' September 17, 2010 Second Amended Civil Complaint in Case No. CV-OC-2008-28266 in the Colville Tribal Court** which is **similar and analogous** to Appellants' Complaint as submitted to the United States District Court, Eastern District of Washington on August 16, 2011, and as currently under review by the United States Court of Appeals for the Ninth Circuit.

G. On **February 2, 2011**, Appellee Associate Justice Gary F. Bass of the Colville Tribal Court of Appeals entered *Mandate* which finally closed **Appellants' SIX (6) court cases(!) in the Colville Tribal Court for this simple, straightforward matter of tribal law** (as specifically addressed as a matter of initiating due process by a SINGLE provision of the Colville Tribal Code under CTC 8-1-125(h), or TWO provision(s) in the event of an Enrollment Appeal, including CTC 8-1-126); and **officially exhausted Appellants'**

efforts within the jurisdiction of the Confederated Tribes of the Colville Reservation.

Appellee Associate Justice Gary F. Bass' February 2, 2011 *Mandate* constitutes the **exhaustive confirmation** of **multiple due process violation(s)** and **deprivation of Appellants' rights** under the **Colville Tribal Constitution** and the **Colville Tribal Code**; and **MOST IMPORTANTLY**, **exhaustive confirmation** of **CONTEMPORANEOUS violation(s)** of **Appellants' federally-protected rights** under the **United States Constitution** and the **United States Code** as **United States citizens** where such **CONTEMPORANEOUS violation(s)** have presently established **subject matter jurisdiction** within the **federal courts** of this controversy originating within a sovereign Indian Country jurisdiction.

H. On **August 16, 2011**, Appellants submitted *Complaint for Damages* and attached Exhibit(s) to the United States District Court, Eastern District of Washington.

I. On **October 21, 2011**, the district court entered *Order Denying Plaintiffs' Motions, Granting and Denying in part Defendants' Motion, Entering Judgment, and Closing File*.

3. Relief Requested (What did Appellants ask the originating court to do (for example, award damages, give injunctive relief, etc.)**?)**

A. Complaint for Damages:

1. **Collective and individual Appellees** named in this Complaint **are to be BARRED from utilitizing the official resources of the Confederated Tribes of the Colville Reservation to defend against this action** in the United States District Court, Eastern District of Washington (and within the Ninth Circuit of Appeals).

2. That the court award the Appellants judgment against Appellees in such sums as shall be determined **to fully and fairly compensate the Appellants for all general, special, incidental and consequential damages incurred by the Appellants** as the direct and proximate result of the acts and omissions of Appellees.

3. That the court award the Appellants their respective costs, disbursements and reasonable attorneys' fees incurred. (Note: **Appellants' primary and obvious intent here is the consideration of justice by the federal courts wherein as Appellee Colville Business Council was awarded attorney's fees by Colville Tribal Court Appellees without a court verdict and in direct violation of tribal law, then Appellants are due the same, just consideration of their reasonable representative costs for their time and effort in their pursuit of justice within that same venue as well**). Appellants recognize this rationale may not apply to equivalent representative costs incurred by Appellants for their time and effort within the federal courts.

4. That the court award Appellants **the opportunity to amend or modify the provisions of this complaint** as necessary or appropriate **after additional or further discovery is completed in this matter**, and **after all appropriate parties have been** (properly) **served** (and **after Appellees had properly appeared before the district court**, which Appellants contend **did not occur** as addressed within Appellants' submitted *Motion to Strike Notice of Appearance*); and

5. **That the court award Appellants such other and further relief as it deems necessary and proper in the circumstances**.

B. Motion to Strike Defendants' Notice of Appearance:

1. **Order collective and individual Appellees** to obtain counsel and appearance **on their behalf at their own option** (or proceed *pro se* as Appellants have done), in the present and future in the district court (and the Ninth Circuit Court of Appeals as applicable), based upon collective and/or individual representation agreement(s) with qualified counsel **exclusive of utilization of the official resources of the Confederated Tribes of the Colville Reservation to defend against Appellants' present cause(s) of action in Case No. CV-11-301-EFS and in 9th Cir. Case No. 11-35926.**

2. **Order Evans, Craven & Lackie, PS,** as represented by Everett B. Coulter, Jr., **to immediately cease any and all present and/or future activity(s) on**

behalf of named Appellees in Case No. CV-11-301-EFS (and in Case No. 11-35926) so as to conserve the membership resources of the Confederated Tribes of the Colville Reservation that have been **obviously misappropriated** by collective and individual Appellees **to present a legal defense** in Case No. CV-11-301-EFS (and in Case No. 11-35926).

Appellants assert the necessary corollary is that **collective and individual Appellees** will be required by the federal courts **to reimburse the collective resources of the membership of the Confederated Tribes of the Colville Reservation that have been misappropriated to provide a legal defense in this matter in the federal courts**, such as the legal expenses incurred to Evans, Craven & Lackie, PS to date.

3. Order collective and individual Appellees to receive on an individual basis, and in their **INDIVIDUAL CAPACITY(S)**, all previous and subsequent court document(s) as submitted by Appellants in regards to litigation of Case No. CV-11-301-EFS in the district court (and in Case No. 11-35926 in the Ninth Circuit of Appeals), until such occasion as collective and individual Appellees submit Appearance(s) on their behalf, within their **INDIVIDUAL CAPACITY(S)** in federal court, by qualified counsel **exclusive of the evident basis of alleged**

sovereign and/or official immunity of collective and individual Appellees to allow access to the official resources of the Colville Confederated Tribes within the jurisdiction of the federal courts, of which Appellants maintain such alleged sovereign and/or official immunity does not exist.

4. Grant other such relief as is equitable and just.

4. Claim(s) Appellants raised at the originating court.

A. **Motion to Strike Defendants' Notice of Appearance:**

1. **Evans, Craven & Lackie, PS**, as represented by Everett B. Coulter, Jr., **lack necessary basis** for submitting *Defendants' Notice of Appearance* on behalf of named Appellee(s) in their **INDIVIDUAL CAPACITY(S) outside of the overall finding by the federal courts of any form of applicable immunity for collective and/or individual Appellee(s)**.

2. *Notice of Appearance*, as submitted by Evans, Craven & Lackie, PS, as represented by Everett B. Coulter, Jr., **immediately advanced** the issue of applicable immunity of collective and individual Appellees within the federal courts **to a significant, early decision point**, which the district court promptly, as well as **inappropriately**, decided in favor of the Appellees. Appellants maintained in advance (correctly as it were) **that the district court's decision on Appellants' *Motion to Strike Notice of Appearance* could not be separated from a definitive**

position by the district court regarding applicable immunity of collective and individual Appellee(s) within the federal courts.

3. Appellants' *Motion to Strike Notice of Appearance* necessarily relied upon Appellants' previously submitted, extensive, argument in their Complaint that **collective and individual Appellee(s) in the Colville Business Council have acted sufficiently outside their mandated authority under the Colville Tribal Constitution and Colville Tribal Code so as to deny collective and individual Appellee(s) of sovereign or official immunity in the federal courts for their collective and individual action(s)**; and that **Appellee officer(s) of the Colville Tribal Court have injured Appellants in the complete absence of a prior or contemporaneous finding of subject matter jurisdiction by the Colville Tribal Court so as to deny judicial immunity in the federal courts as a direct result of their collective and individual action(s).**

B. Motion to Dismiss:

1. In renewing **Appellants' objection and denial** that Evans, Craven & Lackie, PS have authority to represent themselves as "defense counsel" for collective and individual Appellee(s); Appellants noted that the timeframe for receipt of an Order granting *Motion to Strike Notice of Appearance* would likely

exceed the required 30-day timeframe for Appellants' Response to Appellees' *Motion to Dismiss*. It was on that basis **only** that Appellants submitted their Response to Defendants' *Motion to Dismiss* to **Evans, Craven & Lackie, PS** in a timely manner in accordance with LR 7.1(c)(1).

2. Appellants' Response to Appellees' alleged grounds for dismissal included:

1) FRCP 12(b)(1) Lack of Subject Matter Jurisdiction Standard for Dismissal

Appellants cited 993 F. 2d 883 - Miller v. Lifestyle Creations Inc, United States Court of Appeals, Ninth Circuit in relevant part in support:

"In response to a Rule 12(b)(1) motion, **the district court has wide discretion to consider affidavits, documents, and even hold a limited evidentiary hearing**. See Wheeler v. Hurdman, 825 F.2d 257, 259 n. 5 (10th Cir.1987). Ordinarily, under Rule 12(b)(1), the burden is on the plaintiff to prove by a preponderance of the evidence that the district court has subject matter jurisdiction. The district court is not precluded from considering conflicting evidence. Moreover, no presumption of truthfulness attaches to the plaintiff's allegations and **the existence of disputed material facts will not preclude the district court from evaluating the merits of the jurisdictional claim**. See Thornhill Publishing Co. v. General Telephone Corp., 594 F.2d 730, 733 (9th Cir.1979)." (Emphasis added)

"However, **when the jurisdictional issue and the merits are "intertwined," or when the jurisdictional question is dependent on the resolution of factual issues going to the merits**, the district court must apply the summary judgment standard in deciding the motion to dismiss. Augustine v. United States, 704 F.2d 1074, 1077 (9th Cir.1983); see also Careau Group v. United Farm Workers of America, 940 F.2d 1291, 1293 (9th Cir.1991). Our case law provides that "**the question of jurisdiction and the merits of an action will be considered intertwined where ...**

'a statute provides the basis for both the subject matter jurisdiction of the federal court and the plaintiff's substantive claim for relief.' " Sun Valley Gas., Inc. v. Ernst Enterprises,

Inc., 711 F.2d 138, 139-40 (9th Cir.1983) (quoting Timberlane Lumber Co. v. Bank of America (Timberlane I), 549 F.2d 597, 602 (9th Cir.1976)). In this case, **Title VII provides the basis for both the subject matter jurisdiction and the substantive claim for relief**. See Clark v. Tarrant County, 798 F.2d 736, 742 (5th Cir.1986) (the question of employee status under Title VII is intertwined with the merits of the Title VII claim) (citing Sun Valley Gas., 711 F.2d at 139). **Thus, the summary judgment standard must be applied**. Augustine, 704 F.2d at 1077; see also Clark, 798 F.2d at 742. (Emphasis added)

Therefore, **if a genuine issue of material fact exists, the motion to dismiss should have been denied** and the question presented to the jury. Id. Otherwise, where "**a statutory right is pursued and the defense raised that the defendant does not come within the statute, judicial acceptance of the statutory defense is the death knell of the litigation and is the same as dismissal on the merits**." Rogers v. Stratton Indus., Inc., 798 F.2d 913, 916 (6th Cir.1986). **Thus, it was improper for the district court to grant the motion to dismiss unless relevant facts as to the status of the out-of-state sales representatives were not in dispute**." (Emphasis added)

2) FRCP 12(b)(6) Failure to State a Claim Upon Which Relief May Be Granted.

In determining whether to grant a motion to dismiss under FRCP 12(b)(6), the court primarily considers the **allegations in the complaint**, matters of public record, orders, items appearing in the record of the case, and **exhibits attached to the complaint**. Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990); Emrich v. Touche Ross & Co., 846 F.2d 1190, 1198 (9th Cir. 1987); Mack v. South Bay Beer Distributors, Inc., 798 F.2d 1279,

1282 (9th Cir. 1986). (Emphasis added) See also 5A Wright & Miller, Federal Practice and Procedure § 1357 (West 1990).

The Complaint should be construed in the light most favorable to the Appellants, and Appellants' allegations are taken as true. Scheuer, 416 U.S. at 237. Appellees asserted an affirmative defense of a qualified immunity in their Rule 12(b)(6) motion in the district court. Vaughn v. U.S. Small Business Adminsitration, 65 F.3d 1322, 1325 (6th Cir. 1995); Sveeggen v. U.S., 988 F.2d 829, 831 (8th Cir. 1993). Dismissal is appropriate where **the Complaint fails to allege ANY facts that would cast doubt on, or invite inquiry as the scope of an immunity based on Appellees' alleged malice or bad faith**. Franklin v. Zuber, 56 F.R.D. 601, 604 (S.D.N.Y. 1972). (Emphasis added)

In contrast to these FRCP 12(b)(6) precedent(s), the district court in this controversy **not only construed Appellants' Complaint in the light most favorable to the Appellees in disregard of established federal court practice for deciding a FRCP 12(b)(6) Motion**; but **the district court also disregarded Appellants' fact(s) and allegation(s) which served to obfuscate and detract from Appellants' obvious** (and **UNIQUE** within federal court jurisprudence) **rationale for federal court jurisdiction for this specific, unique, controversy originating within an Indian Country jurisdiction**.

For **Appellees to have prevailed in the district court** on their *Motion to Dismiss* under Federal Rule of Civil Procedure 12(b)(6), **it must have appeared to the district court beyond doubt that Appellants could prove NO SET OF FACTS in support of Appellants' claim(s) which would have entitled Appellants to relief**. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Cervantes v. City of San Diego, 5 F.3d 1273, 1274 (9th Cir. 1993).

Appellants are puzzled that, **despite a multitude of facts to the contrary,** and the **obvious, deliberate conduct by collective and individual Appellees**, the district court ruled under a FRCP 12(b)(6) regime that:

> "**beyond doubt Appellants could prove NO SET OF FACTS in support of Appellants' claim(s) which would have entitled Appellants to relief**"

In summary of the above, Appellants conclude **the contrarian view of the district court** as opposed to **existing precedent within the federal courts** was expressed against Appellants' cause of action in the district court **in order to artificially preserve and support the apparently invincible "doctrine" of tribal sovereign/official immunity in the federal courts when that tribal/official immunity has rightfully come under challenge in the federal courts in controversies involving their United States citizen tribal member constituents**

within an Indian Country jurisdiction; regardless of whatever specific facts or applicable federal law or precedent applies to that specific controversy.

The district court in this matter has apparently decided (pre-determined) that **the conferred sovereign immunity of the Confederated Tribes of the Colville Reservation** (and similarly-situated peers within Indian Country) as conceptualized in actual practice within **federal court jurisprudence TRUMPS the individual civil rights of United States citizens (Appellants) when they come into direct conflict**.

As expressed in Appellant's Complaint, **there is federal precedent for resolving this manner of conflict in federal case law in favor of Appellants** as described below, and which the district court ignored, in conjunction with the previous issues as described above:

"**The power of the tribes to restrict the personal liberty of United States citizens' conflicts with the federal government's overriding interest in protecting its citizens "from unwarranted intrusions on their personal liberty.**" Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 210, 98 S.Ct. 1011, 1021, 55 L.Ed.2d 209 (1978). (Emphasis added)

In reviewing the sufficiency of Appellants' Complaint, the issue was not whether Appellants would ultimately prevail, **but whether Appellants were**

entitled to offer evidence to support the claim(s) asserted. Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974). (Emphasis added)

5. Issues Appellants are raising on appeal and what Appellants think the originating court did wrong?

Appellees' Motion to Dismiss

A. The district court **improperly applied sovereign immunity to collective and individual Appellees** acting in their **INDIVIDUAL CAPACITY(S)** and **outside of their mandated authority as representatives of the sovereign Colville Confederated Tribes**.

B. The district court failed to consider Appellants' **PRIMARY** cause of action, **INDEPENDENT** and **EXCLUSIVE** from **any other cause of action** originating within the jurisdiction of the Colville Tribal Court, that **Appellants' constitutional rights as U.S. citizens were violated by collective and individual Appellees** acting in their **INDIVIDUAL CAPACITY(S)** and **outside of their mandated and jurisdictional authority as representatives of the sovereign Colville Confederated Tribes**.

The district court makes no attempt throughout their dispositive order to **SEPARATELY** address the **PRIMARY** issue of **STANDALONE** violation(s) of Appellants' constitutional rights as U.S. citizens as Appellants had described in their Complaint in order to establish **subject matter jurisdiction** by the district court.

Appellants' **lengthy description** of their activities in the Colville Tribal Court as summarized in the Complaint was **primarily**, and as a **standalone issue**, intended to demonstrate **lack of subject matter jurisdiction**, **malfeasance in office**, and **fraud upon the court** with resulting wrongdoing by collective and individual Appellees which violated Appellants' rights as United States citizens under the United States Constitution and the United States Code **and are actionable within the U.S. federal court system on that basis**.

C. Appellants' enrollment matter within the jurisdiction of the Colville Tribal Court is an **EXCLUSIVE**, **SECONDARY**, **STANDALONE**, issue as originally intended by Appellants, and **as evidenced throughout the Complaint**. Appellants have been clear in their understanding that federal court intervention in the matter of tribal enrollment on it's merits as a matter of tribal law **ALONE** was **excluded** as a matter of federal case law precedent as set forth primarily through the 1978 Supreme Court decision in *Santa Clara Pueblo v. Martinez*, 463 U.S. 49, 58 (1978).

The district court appears to be of the opinion that Appellants were **ONLY** attempting federal court intervention into their intramural enrollment matter through a "backdoor" of alleged violations of the U.S. Constitution and U.S. Code, and thus the District Court improperly combined the **TWO (2)**, **DISTINCT**, **SEPARATE**, matters of (1) **Appellants' rights as United States citizens under the United States Constitution**

and under the United States Code; and (2) **Appellants' enrollment status within the Colville Confederated Tribes strictly as a matter of tribal law**.

D. The district court erroneously presented a discussion of Appellants' adoption membership in the Colville Confederated Tribes as the "essence" of Plaintiffs' Complaint as follows:

1. The district court has determined in it's ruling that it does not have subject matter jurisdiction in this regard, and **therefore has self-voided it's role in regards to a determination on the merits of Appellants' enrollment matter under Colville tribal law within the federal court**. The district court has therefore prohibited itself from addressing, or providing a substantive opinion regarding the merits of Appellants' enrollment matter under the Colville Tribal Constitution and the Colville Tribal Code within the United States District Court, Eastern District of Washington.

2. In conjunction with (1) immediately above, The district court's "substantive opinion" in regards to Appellants' "adoption" tribal membership **is incorrect in regards to correct application of the Colville Tribal Constitution and the Colville Tribal Code** as evidenced throughout Appellants' Complaint and the submitted court record. **NONE** of the extensive court cases and court documents generated in the Colville Tribal Court **throughout SIX (6) separate court**

action(s)(!) pertaining to Appellants' **Enrollment Appeal** were relevant to contesting (appealing) the matter of Appellants' "adoption" tribal membership. Under the Colville Tribal Code, an **Enrollment Appeal** as recognized by the Colville Tribal Court, and as pursued by Appellants of any "adoption" action **is strictly forbidden under the Colville Tribal Code**. (See Colville Tribal Code CTC 8-1-200(b): "**No appeal of decisions regarding adoption shall be allowed**")

3. The **improper reliance** upon a discussion of "adoption" as a matter of tribal law provided the district court with a quick, efficient manner of disposing Appellants' federal civil action with a straightforward **finding of sovereign and official immunity for Appellees** and resulting **lack of subject matter jurisdiction** by the district court under those interpretations that were not only overwhelmingly biased and favorable for collective and individual Appellees, but **such interpretation(s) by the district court were in violation of Chapter 8-1 of the Colville Tribal Code for an Enrollment Appeal as evidenced in Plaintiff's Complaint, Exhibit(s), and the submitted district court record**.

E. Appellants' intramural enrollment matter becomes relevant for the federal courts **not as a sole matter of merit under tribal law alone** (which Appellants have admitted all along would be fatal to their cause in this regard), but because the Colville Tribal Court's dispositive ruling against Appellants' Enrollment Appeal as a matter of

tribal law **SIMULTANEOUSLY** and **CONTEMPORANEOUSLY** violated Appellants' constitutional rights as United States citizens and under the United States within a determination of Appellants' enrollment status in the Colville Tribal Court (referring to Appellee Colville Business Council's April 5, 2007 **initiated pursuit of attorney's fees** for an **UNDECIDED Enrollment Appeal** case to an unjust conclusion within the Colville Tribal Court in the absence of **subject matter jurisdiction** by the Colville Tribal Court prior to September 27,2007).

Therefore, **the matter of Appellants' intramural enrollment controversy** as to **a determination on the merits of whether or not to grant Appellants "Enrolled" membership status or not** within the jurisdiction of the Confederated Tribes of the Colville Reservation **must be set aside** by the federal courts; **or subject to direct intervention** by the federal courts **as Appellants have SEPARATELY proposed in their Complaint**.

Appellants have **TOTALLY EXHAUSTED** their pursuit of justice within the tribal jurisdiction, in **a demonstrated travesty and parody of jurisprudence that must not be repeated into the future within ANY Indian Country sovereign jurisdiction**. This present district case review affords the Ninth Circuit Court of Appeals with **a UNIQUE opportunity to decisively inform the various jurisdictions within Indian Country that such future conduct will not be tolerated within the federal court system**

into the future and **these jurisdictions will be required to adhere to a meaningful RULE OF LAW** when governing their United States citizen tribal member constituents.

The "ruling" by collective and individual Appellees in regard to Appellants' intramural enrollment controversy **has always been inextricably intertwined with CONTEMPORANEOUS violation(s) of Appellants' rights as United States citizens under the United States Constitution and the United States Code, as committed by collective and individual Appellees in the absence of sovereign or official immunity**.

In addition, and **unique** within the **numerous** federal cases filed against sovereign Indian nations of a similar nature (enrollment-related) that Appellants researched prior to submitting their Complaint in the district court, **Appellants in their entirely were able to completely exhaust ALL of their available remedies within the jurisdiction of the Confederated Tribes of the Colville Reservation** prior to recourse in federal court, and by **Appellees' own admission.**

F. In Appellants' Complaint, the considerations of sovereign/official immunity of individual U.S. citizens acting in their **INDIVIDUAL** capacities (Appellees), and with **non-existent affiliations** with a sovereign tribe of Indians **as evidenced by Appellees actions against U.S. citizens (Appellants) outside of their authorized jurisdiction and/or scope of authority, have here come into direct conflict with the United States Constitution and the United States Code**.

The district court has apparently decided that these **non-existent affiliations** allegedly conveying sovereign and official immunity to collective and individual Appellees **have now TRUMPED the United States Constitution and the United States Code as applied to United States citizens! That position is not consistent with federal case law in this regard**, as demonstrated in Appellants' Complaint.

In contrast with the district court's assertion that Appellants are "disappointed and frustrated with (Appellees) decisions", Appellants have been consistent and clear in their understanding, **IN ADVANCE**, that the sole issue of federal court intervention into the merits of an intramural tribal membership matter, **absent the UNIQUE, mitigating factors as presented by Appellants in their Complaint**, has unfortunately been foreclosed upon in advance by *Santa Clara Pueblo v. Martinez*, 463 U.S. 49, 58 (1978).

As Appellants have each predominantly spent their pre and early-adulthood years living on the Colville Indian Reservation, the politics of Appellees' tribal government in an environment of "sovereign immunity" have rendered Appellees' collective action(s) prior to this current civil action in the federal courts **all too predictable** through Appellants' efforts within the Colville Business Council, and subsequently, the Colville Tribal Court, through to exhaustion.

To the contrary, **what is "disappointing and frustrating" to Appellants is that the federal courts have provided such an effective "backstop" to Appellees** (and

similarly-situated peers within Indian Country) **that Appellees** (and similarly-situated peers) **feel empowered to act with impunity and without limits against their United States citizen constituent tribal members**; even when **these action(s) are in direct conflict with the United States Constitution and the United States Code**, and where **these action(s) violate the constitutional and civil rights of United States citizens** in matters **in which collective and individual Appellees have no demonstrated official or jurisdictional authority to INITIATE such adverse action(s) against these United States citizen tribal member constituents WITHIN THEIR OWN JURISDICTION(S)**.

Appellee intramural action(s) of this nature, and **which were opposed in this instance only through a SIGNIFICANT, UNIQUE effort by Appellants**, have an ongoing ***chilling effect*** amongst their governed population and will continue to have a ***chilling effect*** unless these types of Appellee action(s) are held in check by the federal courts with strict enforcement of the United States Constitution and the United States Code, and **on such occasion(s) where tribal government officials and officers of the tribal court of law have decided, on their own accord, to exceed their authority and jurisdiction and thereby *void* their inherent sovereign and official immunity**.

G. The district court failed **to recognize that Appellants Tamara Desautel Davis and Tonia Rene Desautel had fully exhausted** their pursuit of justice within the

Colville Tribal Court **through their documented FAILED attempt to join Appellant Shawn Lawrence DesAutel's ongoing Enrollment Appeal civil action in the Colville Tribal Court**, and **were denied** on April 30, 2008 by order of Appellee Chief Judge Steven D. Aycock **as documented in Appellants' Complaint**.

Appellants Tamara Desautel Davis and Tonia Rene Desautel have **IDENTICAL** issues of controversy against Appellees along with Appellant Shawn Lawrence DesAutel; and **Appellants collectively assert that EACH have equal standing as a Plaintiff/Appellant in this civil action in the federal courts**.

Appellants' Motion to Strike Notice of Appearance

A. The district court relied upon a procedural discussion of service of process issues in order to deny Appellants' *Motion to Strike Notice of Appearance*, **while ignoring Appellants' central argument in their Motion**: That collective and individual Appellees were to be denied access to the resources of the Colville Confederated Tribes in order to defend against this lawsuit, **wherein said resources were clearly procured under a false presumption of sovereign and official immunity of Appellees that would render proper access to such resources**.

Without such **Appellee sovereign or official immunity** (the central tenet of Appellant's underlying civil action in the federal courts) and **resulting Appellees' inability to directly access the legal resources of the Colville Confederated Tribes**,

Appellants argued that **Appellees must either represent themselves individually before the district court** (as Appellants have done), **procure these legal resources individually on their own behalves**, or to **collectively pool together in an agreement formed outside of the official involvement of the sovereign Colville Confederated Tribes**.

6. Appellants have presented all issues listed in #5 to the originating court, the United States District Court for the Eastern District of Washington.

7. Law in support of the issues on appeal (reference to cases and statutes.)

Federal statutory and case law

A. Appellants claimed **federal jurisdiction of this matter** pursuant to Article III § 2 **which extends jurisdiction to cases arising under the United States Constitution**.

B. Appellants brought this action against Appellees pursuant to Title 28 U.S. Code § 1331, Federal Question Jurisdiction, for **violation(s) of federal constitutional rights guaranteed in the First, Fifth, Thirteenth, and Fourteenth Amendments to the U.S. Constitution**, according to Title 42 U.S. Code § 1983, Civil Action for Deprivation of Rights, for **violations of protections guaranteed by the First, Fifth, Thirteenth, and Fourteenth Amendments of the United States Constitution**, by collective and individual Appellee(s).

Title 42 U.S. Code § 1983:

"**Every person** (collective and individual Apellee(s)) who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or **causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof** (Appellants) **to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress**." (Emphasis added)

C. Appellants further claim Federal Question Jurisdiction of this court for violation(s) by collective and individual Appellee(s) of Title 42 U.S. Code § 1985, **Conspiracy to Interfere with Civil Rights**, and Title 18 U.S. Code § 241, **Conspiracy against Rights**.

D. Power of the tribes to affect personal liberty of U.S. citizens as opposed to overriding federal authority:

"**The power of the tribes to restrict the personal liberty of United States citizens' conflicts with the federal government's overriding interest in protecting its citizens "from unwarranted intrusions on their personal liberty.**" Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 210, 98 S.Ct. 1011, 1021, 55 L.Ed.2d 209 (1978). (Emphasis added)

E. McClendon v. United States, 885 F.2d 627, 633 (9th Cir.1989):

"**The issue of tribal sovereign immunity is jurisdictional in nature**. Chemehuevi, 757 F.2d at 1051; Puyallup Tribe, Inc. v. Washington Dept of Game, 433 U.S. 165, 172, 97 S.Ct. 2616, 2621, 53 L.Ed.2d 667 (1977)." (Emphasis added)

"**Initiation of a lawsuit** (action) necessarily establishes **consent to the court's adjudication of the merits of that particular controversy**. By initiating the 1972

action, **the Tribe accepted the risk that it would be bound by an adverse determination** of ownership of the disputed land" (Emphasis added)

"Thus, **a tribe's waiver of sovereign immunity may be limited to the issues necessary to decide the action brought by the tribe.**" (Emphasis added)

F. United States v. Oregon, 657 F.2d 1009, 1012 (9th Cir.1981):

"**We thus hold that Indian tribes may consent to suit without explicit Congressional authority. At least three other circuits have so held**. See Merrion v. Jicarilla Apache Tribe, 617 F.2d 537, 540 (10th Cir. 1980) (en banc), cert. granted on other issues, 449 U.S. 820, 101 S.Ct. 71, 66 L.Ed.2d 21 (1980), restored to calendar, --- U.S. ----, 101 S.Ct. 3156, 69 L.Ed.2d 1003 (1981); Fontenelle v. Omaha Tribe of Neb., 430 F.2d 143, 147 (8th Cir. 1970); Maryland Cas. Co. v. Citizens Nat'l Bank of W. Hollywood, 361 F.2d 9th Cir. Case 517, 520-21 (5th Cir.), cert. denied, 385 U.S. 918, 87 S.Ct. 227, 17 L.Ed.2d 143 (1966).11" (Emphasis added)

"The parties have advanced two theories of consent. **Under the first, it is asserted that the Tribe's intervention** (collective and individual Appellees' initiation of an adverse action against Appellants' civil and constitutional rights as United States citizens under the United States Constitution and the United States Code) **constitutes consent**." "Both theories are sound." (Emphasis added)

"**Intervenors** (collective and individual Appellees' initiation of an adverse action against Appellants' civil and constitutional rights as United States citizens under the United States Constitution and the United States Code) under Fed.R.Civ.P. 24(a)(2), **such as the Yakima Tribe**, **enter the suit with the status of original parties and are fully bound by all future court orders**. Marcaida v. Rascoe, 569 F.2d 828, 831 (5th Cir. 1978); 7A C. Wright & A. Miller, Federal Practice and Procedure § 1920 (1972); 3B Moore's Federal Practice P 24.16(6), at 24-671 to 24-673 (2d ed. 1981). **By successfully intervening, a party "makes himself vulnerable to complete adjudication by the federal court of the issues** (Appellants interpret "issues" to mean ALL issues in controversy between the parties, which includes the "issue" of proper resolution of Appellants' Enrollment Appeal within the Colville Tribal Court, in conjuction with the "issue" of collective and individual Appellee violation(s) of Appellants' constitutional and civil rights as United States citizens) **in litigation between the intervener and the adverse party**." Id. at 24-671." (Emphasis added)

"Here, the Tribe intervened to establish and protect its treaty fishing rights; a basic assumption of that action was that there would be fish to protect. **Had the original decree found the species to be in jeopardy, and enjoined all parties from future fishing in order to conserve the species, the Yakimas could not have then claimed immunity from such an action**. **Otherwise, tribal immunity might be transformed into a rule that tribes may never lose a lawsuit.**" (Emphasis added).

"The only difference here is **the court retained post-judgment jurisdiction to modify its decree. Retention of jurisdiction is characteristic of equitable decrees**. See Developments in the Law Injunctions, 78 Harv.L.Rev. 994, 1081-84 (1965). As Mr. Justice Frankfurter stated, an equitable injunction is " 'permanent' only for the temporary period for which it may last." Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc., 312 U.S. 287,298, 61 S.Ct. 552, 557, 85 L.Ed. 836 (1941). **To hold at this stage that tribal immunity blocks modification of an equitable decree would impermissibly violate a central tenet of equity jurisprudence, that of flexible decrees**. By seeking equity, **this Tribe assumed the risk** that any equitable judgment secured **could be modified if warranted by changed circumstances**. **By intervening, the Tribe assumed the risk that its position would not be accepted, and that the Tribe itself would be bound by an order it deemed adverse.**" (Emphasis added).

G. "**Fraud upon the Court**" (Appellee officer(s) of the Colville Tribal Court):

Defined by the 7th Circuit Court of Appeals as meaning to:

"embrace that species of fraud which does, or attempts to, **defile the court itself**, or is **a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication**." Kenner v. C.I.R., 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. (Emphasis added)

The 7th Circuit further stated: "**a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final**." (Emphasis added).

H. "**Subject Matter Jurisdiction**" (Appellee officer(s) of the Colville Tribal Court): Mutual of Omaha Ins. Co. v. Blury-Losolla, 952 P.2d 1117 (Wyo. 1998), Case Number 96-304, decided on 01/22/1998 in the Supreme Court of Wyoming:

> "It is fundamental, if not axiomatic, that**, before a court can render any decision or order having any effect in any case or matter, it must have subject matter jurisdiction**. Jurisdiction is essential to the exercise of judicial power. **Unless the court has jurisdiction, it lacks any authority to proceed, and any decision, judgment, or other order is, as a matter of law, utterly void and of no effect for any purpose. Subject matter jurisdiction**, like jurisdiction over the person, **is not a subject of judicial discretion**. There is a difference, however, because the lack of jurisdiction over the person can be waived, but **lack of subject matter jurisdiction cannot be**. **Subject matter jurisdiction either exists or it does not and, before proceeding to a disposition on the merits, a court should be satisfied that it does have the requisite jurisdiction**." (Emphasis added).

I. "**Judicial Immunity**" (Appellee officer(s) of the Colville Tribal Court): Rankin v. Howard, 633 F.2d 844 (1980):

> "**JUDICIAL IMMUNITY IS LOST** whereby Respondent(s) **knowingly lacked jurisdiction**, and **acted in the face of clearly valid statutes expressly depriving Respondent(s) of jurisdiction**. Rankin v. Howard, (1980) 633 F.2d 844, cert den. Zeller v. Rankin, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326." (Emphasis added)

J. "**Malfaesance in Office**" (Individual Appellees in the Colville Business Council): Daugherty v. Ellis, 142 W. Va. 340, 357-8, 97 S.E.2d 33, 42-3 (W. Va. 1956) (internal citations omitted).

The West Virginia Supreme Court of Appeals has summarized a number of the definitions of "**Malfeasance in Office**" applied by various appellate courts in the United States as follows:

> "Malfeasance has been defined by appellate courts in other jurisdictions as **a wrongful act which the actor has no legal right to do**; **as any wrongful conduct which affects, interrupts or interferes with the performance of official duty**; **as an act for which there is no authority or warrant of law**; **as an act which a person ought not to do; as an act which is wholly wrongful and unlawful**; **as that which an officer has no authority to do and is positively wrong or unlawful; and as the unjust performance of some act which the party performing it has no right, or has contracted not, to do**." (Emphasis added)

The court then went on to use yet another definition:

"**malfeasance** is the **doing of an act which an officer had no legal right to do at all** and that when an officer, through ignorance, inattention, or **malice**, **does that which they have no legal right to do at all**, or **acts without any authority whatsoever, or exceeds, ignores, or abuses their powers**, they are guilty of malfeasance." (Emphasis added)

A few "elements" can be distilled from those cases:

First, **malfeasance in office requires an affirmative act or omission**;

Second, the act must have been done in an official capacity—under the **color of office**; and

Third, that **act somehow interferes with the performance of official duties**.

Colville Tribal Code pertaining to subject matter jurisdiction and due process of Appellants' "Enrollment Appeal" within the Colville Tribal Court as opposed to the substantive discussion of "adoption" as presented by the district court in their dispositive order

K. Chapter 8-1, Membership.

ENROLLMENT PROCEDURE

8-1-125 Determination Procedure of the Enrollment Committee

(h) A final denial of enrollment shall not be reopened by the Tribes without a showing that the Applicant denied enrollment **has available for immediate presentation substantial, credible, new evidence** (fulfilled by Appellants on March 25, 2004). A decision by the Executive Department **or the Enrollment Committee that substantial, credible, new evidence does not exist to reopen an enrollment** (fulfilled by Appellees on September 2, 2005), **shall be appealable only on that specific issue** under the **Subchapter on Appeals** under this Chapter (fulfilled by Appellants on September 7, 2005). (Emphasis added)

8-1-126 Final Decision, Tribal Rights, Appeals, Per Capita Payments

The decision of the Enrollment Committee shall be final for the Tribes and a person admitted to membership by vote of the Enrollment Committee, or by operation of this Chapter, shall be entitled to exercise tribal rights on the date of favorable enrollment action by the Committee or by operation of this Chapter. **Persons denied enrollment shall be permitted to appeal as provided below** (fulfilled by Appellants on September 7, 2005). **Persons obtaining membership in the Tribes by enrollment shall be entitled to receive per capita payments, if any were made, from the date that the completed Relevant Data Form was filed with the Tribes** (Relevant Data Form filed prior to September 1965 for Appellant Shawn Lawrence DesAutel; prior to April 1967 for Appellant Tamara Desautel Davis; and prior to March 1970 for Appellant Tonia Rene Desautel).

APPEALS

8-1-200 Who May Appeal

(a) This section applies only in cases where:

(1) **A person has applied for enrollment and has been denied by majority vote of the Enrollment Committee**; (fulfilled prior to

September 1965 for Appellant Shawn Lawrence DesAutel, prior to April 1967 for Appellant Tamara Desautel Davis, and prior to March 1970 for Appellant Tonia Rene Desautel) (Emphasis added)

(2) A person has been disenrolled under this Chapter by majority vote of the Enrollment Committee; or

(3) **A finding of no substantial new evidence to open an enrollment has been made** (fulfilled by Appellees on September 2, 2005). (Emphasis added)

(b) **No appeal of decisions regarding adoption shall be allowed***. (Emphasis added)

* - **CTC 8-1-200(b) above invalidates and voids the district court's discussion and dispositive basis of support pertaining to Appellants' October 2000 "adoption" into the Colville Confederated Tribes**.

8-1-201 **Tribal Court Jurisdiction—Limited Waiver of Sovereign Immunity**
The Tribal Court of the Confederated Tribes **shall have exclusive jurisdiction to hear all appeals of disenrollment or enrollment decisions in the manner set out in this Chapter**. No jury shall be allowed in disenrollment or enrollment matters.

To the extent necessary for the hearing of appeals under this Chapter, and as limited by this Chapter, **the Tribes hereby makes a limited waiver of its immunity from suit in the Colville Tribal Court** (a declaration of an Enrollment Appeal by the Colville Tribal Court is required to establish subject matter jurisdiction for an Enrollment Appeal civil action) **for the purpose of hearing appeals from enrollment decisions of the Enrollment Committee and issuing judgment as provided in this Chapter**. (Fulfilled INITIALLY on September 27, 2007 by Appellee Colville Tribal Court, with SIMULTANEOUS and CONTEMPORANEOUS violation(s) on that date of Appellants' constitutional and civil rights as United States citizens as the result of Appellees' unofficial actions against Appellants prior to September 27, 2007, and thereby establishing Appellants' present federal court cause(s) of action) (Emphasis added)

8-1-202 **Form of Procedure, Time Limit, Effect of Petition for Adoption Appeals from** disenrollments or **denials of enrollment by the Enrollment Committee** shall proceed in the Tribal Court pursuant to the sections of the Colville Tribal Code governing Civil Actions and Civil Rules of Court except where specifically provided in this Chapter. **No** (declared enrollment) **appeal may be brought under this section unless it is filed within one (1) year of the decision of the Enrollment Committee to disenroll or deny enrollment.** (Fulfilled by Appellants' September 7, 2005 Civil Complaint in response to Appellees' September 2, 2005 submitted decision to deny enrollment. In addition to Appellants' discussion of CTC 8-1-200(b) above, **this timeframe eliminates ANY relevance of discussion of Appellants' October 2000 "adoption(s)" occurring FIVE (5) years prior to September 7, 2005**, such as that discussion of "adoption" provided by the district court in their October 21, 2011 dispositive order). The fact that a person has petitioned for **adoption** at the same time as appeal from an enrollment or disenrollment decision is filed **shall have no bearing whatsoever on appeals under this section**." (Emphasis added)

8-1-203 **Grounds for Appeal**
The only grounds for appeal of an enrollment decision under this section shall be:

(a) **That the decision of the Enrollment Committee is unsupported by the facts** (fulfilled by Appellees on September 2, 2005); or

(b) **That the Enrollment Committee has by its actions violated the Constitution of the Confederated Tribes of the Colville Reservation** (fulfilled by Appellees initially on September 2, 2005, and continuing to the present day). (Emphasis added)

8-1-204 **Remedies**
The only remedies which the Court may order in matters appealed under this section are injunctive requiring enrollment or re-enrollment. (**See discussion related to CTC 8-1-126, Final Decision, Tribal Rights, Appeals, Per Capita Payments above**).

8-1-205 **Presumption**
There shall be in all appeals under this Chapter a presumption, **rebuttable by the appellant**, **that the Enrollment Committee has acted properly, consistent with the facts of the case, this Chapter, and the Constitution of the Confederated Tribes of the Colville Reservation**. (fulfilled by Appellants from September 7, 2005 to January 4, 2010 in the Colville Tribal Court) (Emphasis added)

8-1-206 **Standard of Proof—Statutory Construction**
Appellants shall have the burden of proving their case by clear and convincing evidence. **The Court in ruling on an appeal shall strictly construe provisions of this Chapter** (multiple violations of "strictly construe" as documented in Appellants' Complaint). (Emphasis added)

8-1-207 **Court Costs, Attorney Fees**
If the Court rules against an appellant in any appeal under this Chapter, the appellant shall pay all court costs and the reasonable attorneys fees of the Tribes expended in defending against the appeal. **If the Court rules for an appellee in any appeal under this section, each party shall bear his or her own expenses - unless there is a finding that the Tribes acted in bad faith in disenrolling or refusing to enroll***. (Appellee Colville Tribal Court's September 27, 2007 finding in favor of Appellee for $5,742.93 in Attorney's Fees **was not only a violation of Appellants' constitutional and civil rights as United States citizens under the United States Constitution and the United States Code**, but this finding was also in violation of tribal law at CTC 8-1-207, whereby "**each party shall bear his or her own expenses**". **Appellants had an alternative right of action for these fees due to the obvious bad faith actions of the Tribes**, which Appellants sought as an applicable remedy in their Complaint as submitted to the district court) (Emphasis added)

8-1-208 **Bad Faith**
A finding by the Court that the Enrollment Office or the Enrollment Committee **acted in bad faith** under this Chapter **shall permit the Tribal Court to order the Tribes to pay to persons denied due to the bad faith any Tribal per capita payment** or payment derived from land or other claims, **any such payments denied, plus a reasonable rate of interest**

(Appellants have demonstrated multiple, if not ritual, act(s) of bad faith on the part of Appellee Colville Business Council throughout their Complaint, EXCLUSIVE of Appellants' PRIMARY stated basis for a civil action in the federal courts and SEPARATE from the consideration of Appellants' Enrollment status as discussed in detail here. See also CTC 8-1-126 Final Decision, Tribal Rights, Appeals, Per Capita Payments above in conjunction with CTC 8-1-208). (Emphasis added)

8. Appellants do not have any other cases pending in this court.

9. Appellants have not filed any previous cases which have been decided by this court.

RESPECTFULLY SUBMITTED this 4th day of January, 2012.

Signature: Shawn Lawrence DesAutel
Name: Shawn Lawrence DesAutel
Address: 1005 W. North Ave.
Chewelah, WA 99109
Telephone Number: 509-935-4672

Signature: Tamara Desautel Davis
Name: Tamara Desautel Davis
Address: 7315 W. Lund
Rathdrum, ID 83858
Telephone Number: 208-755-1318

Signature: Tonia Rene Desautel
Name: Tonia Rene Desautel
Address: 19029 E. Boone #20
Spokane Valley, WA 99016
Telephone Number: 702-281-7826

CERTIFICATE OF SERVICE

Case Name: DesAutel et al v. Dupris et al
9th Cir. Case No: 11-35926

Appellants certify that on the 4th day of January, 2012, Appellants filed Appellants' Informal Opening Brief in the following manner:

X	U.S. Mail – Postage Prepaid
	Other

Parties Served:

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Seven (7) copies plus One (1) Original

Attn: Everett B. Coulter, Jr.
Evans, Craven & Lackie, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910

Two (2) copies

DATED this 4th day of January, 2012.

Signature: Shawn Lawrence DesAutel
Name: Shawn Lawrence DesAutel
Address: 1005 W. North Ave.
Chewelah, WA 99109
Telephone Number: 509-935-4672

Signature: Tamara Desautel-Davis
Name: Tamara Desautel Davis
Address: 7315 W. Lund
Rathdrum, ID 83858
Telephone Number: 208-755-1318

Signature: Tonia Rene Desautel
Name: Tonia Rene Desautel
Address: 19029 E. Boone #20
Spokane Valley, WA 99016
Telephone Number: 702-281-7826