IN THE NOOKSACK TRIBAL COURT

SONIA LOMELI; TERRY ST. GERMAIN; NORMA ALDREDGE; RAEANNA RABANG; ROBLEY CARR, individually on behalf of his minor son, LEE CARR, enrolled members of the Nooksack Indian Tribe, Appellants/Plaintiffs, v. ROBERT KELLY, Chairman of the Nooksack Tribal Council; RICK D. GEORGE, Vice-Chairman of the Nooksack Tribal Council; AGRIPINA SMITH, Treasurer of the Nooksack Tribal Council; BOB SOLOMON, Councilmember of the Nooksack Tribal Council; KATHERINE CANETE, Councilmember of the Nooksack Tribal Council and Nooksack General Services Executive; LONA JOHNSON, Councilmember of the Nooksack Tribal Council; and ROY BAILEY, Tribal Enrollment Office official, Appellees/Defendants.	NO. 2013-CI-CL-001 NOTICE OF APPEAL

I. AUTOMATIC STAY

N.T.C. § 80.06.010 grants an automatic stay until the Nooksack Court of Appeals "upholds the judgment or dismisses the appeal." The filing of this Notice triggers such stay, preserves the *status quo*, and halts all Appellees' acts as challenged in Appellants' Second

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Amended Complaint.

II. INTRODUCTION

Come now Appellants,[1] pursuant to N.T.C. §§ 80.03.010 and 80.04.010, and appeal the final judgment of the Nooksack Tribal Court ("Trial Court") in the above-captioned and numbered case dated August 9, 2013. N.T.C. § 80.04.030(b).

This appeal is simple. Under Nooksack law, *Ex parte Young* allows Appellants to sue Appellees, in their official capacity, if they have violated Nooksack law. *Lomeli v Kelly*, Order Denying Permission for Interlocutory Appeal (Nooksack Ct. App. 2013), 4, fn. 4. Appellees have violated Nooksack law in several ways:

- By refusing to hold Constitutionally mandated public meetings of the Tribe for seven consecutive months;
- By depriving Appellants of due process in violation of the Nooksack Constitution;
- By initiating disenrollment proceedings on their own accord; and
- By initiating disenrollment proceedings without first providing any evidence whatsoever that those Nooksacks subject to disenrollment do not meet the membership requirements of Article II, Section 1 of the Nooksack Constitution.

The Trial Court erred in several other ways, but its principal failure to understand and correctly apply *Ex parte Young* overshadows its other errors and requires reversal and remand by the Nooksack Court of Appeals.

III. ASSIGNMENTS OF ERROR

[1] Pursuant to N.T.C. § 80.04.030, Appellants represent that all parties in this matter are listed in the caption. Appellants are represented by Gabriel S. Galanda, Anthony S. Broadman, and Ryan D. Dreveskracht, of Galanda Broadman, PLLC. Appellees are represented by Grett Hurley and Rickie W. Armstrong, Office of Tribal Attorney, Nooksack Indian Tribe, and Thomas P. Schlosser, *et al.*, of Morisset, Schlosser, Jozwiak & Somerville.

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A. Decision And Order Denying Defendant's Motion To Strike In Part And Granting In Part (April 23, 2013)

1. Parts of the Decision Subject to Review and Effects on Case

The Trial Court erred in striking Exhibit A to the Declaration of Diantha Doucette. Decision And Order Denying Defendant's Motion To Strike In Part And Granting In Part, at 5. Therein, Appellees' counsel of record admits "the descendants of Annie George James qualify under other sections of the Constitution, in particular the category in Article II, section 1(H), that 'encompasses 'persons who possess at least 1/4th degree Indian blood and who can prove Nooksack ancestry to any degree.'" The effect of this error led to the Trial Court dismissing Appellants' Complaint and incorrectly refusing to enjoin Appellees from carrying out the illegal , disenrollment of Appellants. Had the Trial Court taken Appellees' public admission against interest into account, it would have revealed the frivolity of Appellees' substantive defenses. Appellees' counsel of record has previously discounted the very arguments Appellees now advance.

2. Legal Mistake

Once Exhibit A was disseminated beyond the attorney-client relationship, it was either not privileged or recipients had the ability to waive such privilege. Appellants respectfully request that this Court of Appeals reverse that part of the Trial Court's April 23, 2013 decision.

B. Order Denying Motion For Preliminary Injunction (May 20, 2013)

1. Parts of the Decision Subject to Review and Effects on Case

The Trial Court erred by holding that tribal sovereign immunity operates as a bar to prospective injunctive relief against tribal officers sued in their official capacity. Order Denying Motion For Preliminary Injunction, at 9. The effect of this error led to the Trial Court dismissing

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Appellants' Complaint and incorrectly refusing to enjoin Appellees from carrying out the illegal disenrollment of Appellants.

The Trial Court also erred by holding that Appellees did not "act[] outside the procedures set out in Title 63" when they initiated disenrollment proceedings on their own volition, against over three hundred Nooksacks, without first providing any evidence whatsoever that those Nooksacks subject to disenrollment do not meet the membership requirements of Article II, Section 1, of the Nooksack Constitution. *Id.* at 13. The effect of this error led to the Trial Court dismissing Appellants' Complaint and incorrectly refusing to enjoin Appellees from carrying out the illegal disenrollment of Appellants.

The Trial Court's errors are found on pages five through thirteen of the Order Denying Motion For Preliminary Injunction. Appellants respectfully request that this Court of Appeals reverse those parts of the Trial Court's May 20, 2013 decision. N.T.C. § 80.04.030(c).

2. Legal Mistakes

a. Tribal Sovereign Immunity

The Trial Court committed an error of law by holding that tribal sovereign immunity operates as a bar to prospective injunctive relief against tribal officers sued in their official capacity, except in those instances where "the actions taken by [tribal officers] clearly and unambiguously violate their official duties" in an "egregious" manner. Order Denying Motion For Preliminary Injunction, at 9. The Trial Court cited no tribal or federal common law authority to support its novel "egregiousness conduct" rule for the application of *Ex parte Young*.[2] To

[2] Nor does it appear to Appellants that any other court in the land has ever held that the application of *Ex parte Young* "only gives rise to prospective injunctive relief when the government officials act *well* outside the scope of their duties." Order Denying Motion For Preliminary Injunction, at 7 (emphasis added). Indeed, the Trial Court cites no legal authority for that standard either.

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Appellants' knowledge, not one court, in any jurisdiction, ever, has held that the application of *Ex parte Young* depends on the egregiousness of the constitutional or statutory violation alleged.

Indeed, in order for the *Ex parte Young* doctrine to apply, the tribal officer need not take any action at all—the mere threat of commencing an unconstitutional or unlawful proceeding is sufficient to trigger the exception. *See Edelman v. Jordan*, 415 U.S. 651, 680 (1974) (*Ex parte Young* applies to "officials with authority to enforce . . . laws '**who threaten and are about to commence proceedings** . . . to enforce against parties affected an unconstitutional act . . . may be enjoined . . . .') (quoting *Young*, 209 U.S. at 156; emphasis added). In short, "the inquiry into whether suit lies under *Ex parte Young* **does not include an analysis of the merits of the claim**." *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 646 (2002) (emphasis added).

As the Nooksack Court of Appeals noted in *Olson v. Nooksack*, 6 NICS App. 49 (Nooksack Tribal Ct. App. June 20, 2001):

> Various tribal courts as well as the Ninth Circuit have adopted [the *Ex parte Young*] rule in order to ensure that the requirements of ICRA and other federal and tribal statutes are enforceable against tribal officials. In *Moran v. Council of the Confederated Salish and Kootenai Tribes*, 22 Ind. L. Rep. 6149 (C.S. & K.T. Ct. App. 1995), the Confederated Salish and Kootenai Tribal Court of Appeals . . . held that **the *Ex parte Young* doctrine applies to permit actions against tribal officials when such officials are alleged to have acted beyond the scope of their authority**. *Id.* at 6157; *see also Burlington Northern R.R. Co. v. Blackfeet Tribe*, 924 F.2d 899, 902 (9th Cir. 1991), *cert. denied*, 505 U.S. 1212 (1992) ("[T]ribal sovereign immunity does not bar a suit for prospective relief against tribal officers allegedly acting in violation of federal law."). The *Moran* case was cited favorably in *Smith d/b/a Frosty's v. Confederated Salish & Kootenai Tribes*, 23 Ind. L. Rep. 6256, 6257-58, (C.S. & K.T. Ct. App. 1996), which held that individual tribal officers and employees have "no immunity to declaratory and injunctive relief." ***"[I]f plaintiff could show that the council policies were contrary to federal law or the tribal constitution*, she would be entitled to injunctive relief** against the individuals charged with enforcement of the policies." *Id.* at 6258. The Eleventh Circuit Court of Appeals has also recognized the *Ex parte Young* doctrine in an action brought against officials acting outside the scope of their authority. In *Tamiami Partners, Ltd. v. Miccosukee Tribe Of*

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> *Indians Of Florida*, 63 F.3rd 1050 (11th Cir. 1995), the court relied on *Ex parte Young* in affirming the district court's ruling that the Tribe's sovereign immunity did not shield the individual Appellees from Tamiami's suit (emphasis added).

Id. at 54-55 (emphasis added); *see also Cline v. Cunanan*, No. NOO-CIV-02/08-5, at 6 (Nooksack Ct. App. Jan. 12, 2009) (*Ex parte Young* provides the "framework to determine whether injunctive or declaratory relief is available.").[3] Appellants have shown that Appellees' acts are contrary to the Nooksack Constitution and Title 63; that they have acted beyond the scope of their authority; that they threaten and are about to commence unlawfully initiated disenrollment proceedings. The *Ex parte Young* doctrine clearly applies to permit Appellants' claims for prospective injunctive relief.

In formulating its "egregious conduct" rule, it has become readily apparent that the Trial Court has confused **sovereign immunity** with **qualified immunity**:

> In a qualified-immunity setting, the plaintiff bears the burden of showing that the constitutional right allegedly violated was clearly established at the time of the challenged conduct. Such a plaintiff can also prevail by **showing that the conduct at issue is so egregious** that no reasonable person could have believed that it would not violate clearly established rights.

Purvis v. Oest, 614 F.3d 713, 717-18 (7th Cir. 2010) (emphasis added). But "an official sued in his **official capacity** may not take advantage of a qualified immunity defense." *Mitchell v. Forsyth*, 472 U.S. 511, 556 n.10 (2006) (citing *Brandon v. Holt*, 469 U.S. 464 (1985)) (emphasis added). That defense applies only to those tribal officials sued in their **personal capacities**. *See Desalle v. Bickham*, No. 00-3562, 2002 WL 1791550, *1 n.2 (E.D. La. Aug. 1, 2002) ("[T]he qualified immunity defense only applies to personal capacity claims.").

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[3] In *Cline*, *Ex parte Young* did not apply because Appellants were seeking to enjoin the Tribal Council – not named public officials in their official capacity – for merely enacting an unconstitutional law – not acting in furtherance of that law – and were seeking "declaratory relief, damages, costs and attorney fees" – not prospective injunctive relief. No. NOO-CIV-02/08-5, at 1. While the *Cline* Court noted that the application of *Ex parte Young* was "enormously complex" in the federal context – naturally, as the determination of whether **federal law** binds tribal governments in **federal courts** is not as cut and dry as whether **tribal law** is binding in **tribal courts**, *see e.g. N.L.R.B. v. Pueblo of San Juan*, 276 F.3d 1186 (10th Cir. 2002) – it is quite uncomplicated in the tribal context. *Cline*, No. NOO-CIV-02/08-5, at 7; *see e.g. Honyaoma v. Nuvamsa*, 7 Am. Tribal Law 320, 324 (Hopi Ct. App. 2008).

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Here, Appellants have filed suit against tribal officials in their **official capacities** and their official capacities only. *See* Complaint at ¶¶ 6-14; First Amended Complaint at ¶¶ 6-14; Second Amended Complaint at ¶¶ 6-13. But the Trial Court mistakenly believes that Appellants have sued Appellees in their personal capacities. *Supra.*

The Trial Court has committed an obvious error of law.

b. Failure to Address Arguments

The Trial Court also committed an obvious error by failing to address the majority of Appellants' argument going to the merits. Although Appellants did argue that Appellees "act[ed] outside the procedures set out in Title 63" when they initiated disenrollment proceedings on their own volition, this was only one piece of the picture. Order Denying Motion for Preliminary Injunction, at 13. Appellants also argued that Appellees improperly deprived Appellants of rights guaranteed by Article II of the Constitution – specifically, that Appellees unconstitutionally instituted disenrollment proceedings upon Appellants **without an initial showing of <u>any</u> evidence that these members are not Nooksack**, as required by N.T.C. § 63.04.001(B), the Indian Civil Rights Act of 1968, 82 Stat. 77 ("ICRA"), and Article IX of the Nooksack Constitution. *See generally U.S. v. Zucca*, 351 U.S. 91, 100 (1956) (requiring that the federal government, "as a prerequisite to the initiation of [denaturalization] proceedings, file an affidavit showing good cause.")[4]; *Gorbach v. Reno*, 219 F.3d 1087 (9th Cir. 2000) (noting that

[4] The *Zucca* Court went on to note that

> The mere filing of a proceeding for denaturalization results in serious consequences to a defendant. Even if his citizenship is not cancelled, his reputation is tarnished and his standing in the community damaged. [A] person, once admitted to American citizenship, should not be subject to legal proceedings to defend his citizenship without a preliminary showing of good cause. Such a safeguard must not be lightly regarded.

351 U.S. at 100. Likewise, the mere initiation of disenrollment proceedings against Appellants has resulted in serious consequences to them; as discussed below, they should not even be subject to proceedings to defend their enrollment without a preliminary "present[ation of] written documentation on how the information was obtained that warrants disenrollment" or "evidence submitted to support a[ny] statement" that they are not Nooksack. N.T.C. §§

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citizenship is safeguarded "from abrogation except by a clearly defined procedure" because "denaturalization may result in loss of both property and life" and "all that makes life worth living" and holding that "where there is doubt it must be resolved in the citizen's favor").

The Trial Court's "summary and conclusory findings," if there were any findings at all on this point – it is not clear – are "simply inadequate to allow for satisfactory review." *Soc'y for Good Will to Retarded Children v. Cuomo*, 902 F.2d 1085, 1089 (2nd Cir. 1990); *see also Neff v. Port Susan Camping Club*, Nos. TUL–CV–GC–2005–0368, TUL–CV–GC–2005–0390, 2007 WL 7011053 (Tulalip Ct. App. Dec. 10, 2007). The Trial Court has committed an obvious error of procedure in failing to address all of Appellants' arguments on the merits.

c. Initiation of Disenrollment Proceedings

The Trial Court also committed an error of law by holding that Appellees did not "act[] outside the procedures set out in Title 63" when they initiated disenrollment proceedings on their own volition, against over three hundred Nooksacks, without first providing any evidence whatsoever that those Nooksacks subject to disenrollment do not meet the membership requirements of Article II, Section 1, of the Nooksack Constitution. Order Denying Motion for Preliminary Injunction, at 13. The Nooksack Constitution grants the Tribal Council the legislative power enact ordinances that "prescribe rules and regulations governing involuntary loss of membership," and to "enact ordinances in conformity with this constitution." Const. Art. II, secs. 2,4. Assuming that the Tribal Council, in exercising the authority to enact membership ordinances, had the power to grant themselves the authority to initiate disenrollment proceedings in Title 63, it is not found there.

63.04.001(B), 63.00.004. No such written documentation, no such evidence, no such showing of good cause, has been made here.

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The initiation of disenrollment proceedings is spelled out unambiguously in N.T.C. § 63.04.001(B), which provides that the disenrollment process is to be initiated by "[a]ny tribal member" upon "present[ation of] written documentation on how the information was obtained that warrants disenrollment." *Id.* "Documentation" is defined as "evidence submitted to support a statement of fact." N.T.C. § 63.00.004. The requirement that there be some initial showing of documentary evidence coincides with the general due process right, guaranteed by the ICRA and Article IX of the Nooksack Constitution, that there be some "showing good cause" prior to being subjected to an adverse disenrollment proceeding.[5] *Zucca*, 351 U.S. 91.

Once such documentation had been presented—it was wholly and indisputably wanting here—the Enrollment Department was then free to "conduct genealogical research . . . to verify information presented on enrollment applications" and to "provide recommendations through the Government Services Executive to the Tribal Council regarding necessary changes to the membership rolls based on research findings, as necessary." Declaration of Roy Bailey, at 2. If the Enrollment Department finds that the nominated Tribal Member does not meet the "eligibility requirements" and the Tribal Council agrees with that finding, the Tribal Council issues a resolution to disenroll that tribal member. *Id.* at 2-3. If the Tribal Member disagrees with the Enrollment Department and Tribal Council's findings, he or she may "request a meeting" with the Tribal Council. N.T.C. § 63.04.001(B)(2).

At this meeting, "[t]he burden of proof . . . rest[s] with the Tribe" to prove that the tribal member "fail[s] to meet the requirements set forth for membership in [the] constitution." N.T.C. § 63.04.001(B); Constitution, Art. II, sec. 4. If the Tribal Council finds that the Tribe has met this burden, "[t]he decision of the . . . Tribal Council is final." N.T.C. § 63.04.001(B)(2); *see*

[5] As noted above, the Trial Court failed to address the merits of this constitutional argument.

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also N.T.C. § 63.04.001(B) ("The Tribal Council will have the final say on loss of membership.").

There is simply no other way to read N.T.C. § 63.04.001. The Trial Court's holding that N.T.C. § 63.04.001 somehow implicitly allows that Tribal Council may initiate disenrollment proceedings at its will—that the Tribal Council may target specific identifiable groups of Nooksacks for disenrollment simply because they feel like it, without guidance from the law and without providing any evidence to substantiate its allegations—was an obvious error of law.

Appellants, therefore, respectfully request that this Court of Appeals reverse those parts of the Trial Court's April 23, 2013 decision. N.T.C. § 80.04.030(c).

C. Decision And Order Denying Plaintiff's (sic) Motion For Temporary Restraining Order As To Issues Related To Resolution 13-38 (June 17, 2013)

1. Parts of the Decision Subject to Review and Effects on Case

The Trial Court erred in denying Appellants' Second Emergency Motion for Temporary Restraining Order. Each part of the Decision And Order Denying Motion For Temporary Restraining Order As To Issues Related To Resolution 13-38 leading to this result is subject to review, including the following instances at the noted parts of the Court's decision:

The Court held that "Appellants ask this Court to enjoin Appellees from acting in furtherance of Resolution 13-38. Appellants argue that Appellees are not covered by sovereign immunity because their actions in passing Resolution 13-38 and otherwise supporting the proposed Constitutional Amendment constitute actions outside of their official duties as Tribal Council members, giving rise to an *Ex Parte Young* theory." Decision And Order Denying Motion For Temporary Restraining Order As To Issues Related To Resolution 13-38, at 4.

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The effect of these parts of the Trial Court's decision is that the Trial Court dismissed Appellants' Complaint and incorrectly refused to enjoin Appellees from carrying out the illegal disenrollment of Appellants.

2. Legal Mistakes

As explained above and below, the Trial Court's ongoing misapprehension of *Ex Parte Young* is legal error. The doctrine applies when an official does something illegal, not only when an official does something illegal outside the scope of their authority.

D. Order Denying Appellants' Second Emergency Motion For Temporary Restraining Order As To Issues Relating To Tribal Council Meetings (June 19, 2013)

1. Parts of the Decision Subject to Review and Effects on Case

The Trial Court erred in denying Appellants' Second Emergency Motion for Temporary Restraining Order. Each part of the Order Denying Appellants' Second Emergency Motion for Temporary Restraining Order As To Issues Relating To Tribal Council Meetings leading to this result is subject to review, including the following instances at the noted parts of the Court's decision:

The Trial Court held that Appellants sued Appellees in their individual capacity. Order Denying Appellants' Second Emergency Motion For Temporary Restraining Order As To Issues Relating To Tribal Council Meetings, at 4.

The Trial Court held that Appellees did not violate Nooksack Law by refusing to hold regular meetings. *Id.* at 1-7.

The Trial Court held that Appellees did not violate Nooksack Law by refusing to hold special meetings. *Id.* at 7-9.

The Trial Court held that *Ex parte Young* "might apply when the relief is against the individual Appellees acting outside the scope of their authority[.]" *Id.* at 1-7.

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The Trial Court held that Appellants lacked standing to challenge Appellees' refusal to hold special meetings. *Id.* at 9.

The effect of these parts of the Trial Court's decision is that the Trial Court dismissed Appellants' Complaint and incorrectly refused to enjoin Appellees from carrying out the illegal disenrollment of Appellants.

2. Legal Mistakes

The Court erred in holding that Appellants sued Appellees in their individual capacity. Order Denying Appellants' Second Emergency Motion For Temporary Restraining Order As To Issues Relating To Tribal Council Meetings, at 4. Appellants sued Appellees as officials. *Ex parte Young* requires a suit in a government agent's official capacity. Here, again, Appellants sued the tribal officials in their official capacities and their official capacities only. *See* Complaint at ¶¶ 6-14; First Amended Complaint at ¶¶ 6-14; Second Amended Complaint at ¶¶ 6-13.

The Trial Court erred in applying *Ex parte Young* incorrectly. The Trial Court held that *Ex parte Young* "might apply when the relief is against the individual Appellees acting outside the scope of their authority[.]" *Id.* at 1-7. As set forth above and below, the Trial Court's serial errors related to *Ex parte Young* make its entire approach to this case problematic. *Ex parte Young* applies under Nooksack Law, when an official violates Nooksack law—not only when an official violates the law and that illegal conduct is egregious, or intentional. *Lomeli v Kelly*, Order Denying Permission For Interlocutory Appeal (Nooksack Ct. App. 2013), at 4, fn. 4.

Appellants, therefore, respectfully request that this Court of Appeals reverse those parts of the Trial Court's June 19, 2013 decision. N.T.C. § 80.04.030(c).

E. Amended Order Granting Appellees' Motion to Dismiss Second Amended Complaint (August 7, 2013)

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1. Parts of the Decision Subject to Review and Effects on Case

The Court erred in dismissing Appellants' Second Amended Complaint. Each part of the Amended Order Granting Appellees' Motion To Dismiss Second Amended Complaint[6] leading to this result is subject to review, including the following instances at the noted parts of the Court's decision:

The Trial Court did not take the non-moving parties' facts as true, and resolve all factual disputes in the non-moving parties' favor. Order Granting Appellees' Motion To Dismiss Second Amended Complaint, 2.

The Trial Court held that the Constitution "now allows membership based on seven possible claims, A through G." *Id.*

The Trial Court held, again, that "[e]ach of the Appellees were sued in their personal capacity as the Appellants allege that the Appellees lost their sovereign immunity protection by virtue of their actions being outside the scope of their official duties." *Id.* at 8.

The Trial Court held that for it to apply *Ex parte Young*, it was required to "find first that the Appellees acted outside the scope of their authority." *Id.* at 9, 13, 14-15.

The Trial Court held that requests for disenrollment can be made by those other than individual tribal members; it held that Enrollment Staff can bring such actions. *Id.* at 10-12.

The Trial Court held that even though Appellants qualify for membership under Section 1(H) of the Constitution, Appellees did not violate the Constitution in disenrolling them. *Id.* at 14.

[6] The Trial Court amended its August 6, 2013 Order Granting Appellees' Motion To Dismiss Second Amended Complaint in order to correct more than one "drafting and typographical errors" therein. Amended Order Granting Appellees' Motion To Dismiss Second Amended Complaint, at 1, fn.1

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The Trial Court held that refusing to hold public meetings does not violate the law. *Id.* at 17-18.

The Trial Court held that Appellants lack standing. *Id.* at 18-19.

The effect of these parts of the Trial Court's decision is that the Trial Court dismissed Appellants' Complaint and incorrectly refused to enjoin Appellees from carrying out the illegal disenrollment of Appellants.

2. Mistakes

The Trial Court was required to accept Appellants' facts as true and resolve all factual disputes in Appellants' favor. It failed to do so.

The Trial Court held that the Constitution "now allows membership based on seven possible claims, A through G," but members who were enrolled before the recent election remain eligible for membership under the Constitutional provisions applicable when they were enrolled.

The Trial Court erred in finding, yet again, that Appellants sued Appellees in their personal capacities. Appellees were sued in their official capacity. *See* Complaint at ¶¶ 6-14; First Amended Complaint at ¶¶ 6-14; Second Amended Complaint at ¶¶ 6-13. This continuing and repeated error illustrates the Trial Court's failure to apprehend *Ex parte Young*.

Under Nooksack law, when "an official commits an act prohibited by law, he acts beyond his authority and is not protected by sovereign immunity." *Lomeli v Kelly*, Order Denying Permission For Interlocutory Appeal (Nooksack Ct. App. 2013), 4, fn. 4. To be clear, (a) when an official violates the law (b) he acts beyond his authority and (c) is not protected by sovereign immunity. Future illegal official acts can be enjoined. While the Trial Court quoted this passage, it erred in utterly failing to apply it. *See* Order Granting Appellees' Motion To Dismiss Second Amended Complaint, at 9. Instead, the Trial Court reversed the calculus, perverting the

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Nooksack Court of Appeals' directive, and making its application of *Ex Parte Young* a kind of legal Möbius strip that can never be applied.

Ex parte Young, everywhere, in every court, including the Nooksack Court of Appeals and therefore the Trial Court, dictates that when officials violate the law, they are not immune. They can be sued. Sovereign immunity does not prevent suits against them to bar future violations of the law. The Trial Court, however, erred by asking first whether Appellees were acting in their official capacity. Its application of the doctrine is backwards and, again, appears to stem from confusion between *Ex parte Young* and suits against officials in their personal capacities.

Under the applicable Tribal statute, requests for disenrollment must be made by individual tribal members, not enrollment staff or elected leaders. The Trial Court erred in holding to the contrary.

The Trial Court erred in holding that even though Appellants qualify for membership under Section 1(H) of the Constitution, Appellees did not violate the Constitution in disenrolling them. *Id.* at 14. Appellees conduct is clearly unconstitutional and the Trial Court erred in holding to the contrary.

The Trial Court erred in holding that refusing to hold public meetings does not violate the law. Nooksack law requires meetings that Appellees have illegally refused to hold.

The Trial Court erred in holding that Appellants lack standing. The Trial Court's application of the doctrine of standing is incorrect. Appellants clearly have standing because they have been injured (disenrolled) in particular by Appellees' illegal conduct—these were not generalized meetings but meetings that Appellants' were entitled to. Had Appellees met and

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acted legally as required by Nooksack law, Appellants would not now be subject to disenrollment.

Appellants, therefore, respectfully request that this Court of Appeals reverse those parts of the Trial Court's August 7, 2013 decision. N.T.C. § 80.04.030(c).

F. Judgment (August 9, 2013)

1. Parts of the Decision Subject to Review and Effects on Case

The Judgment is subject to review to the extent it incorporates and relies on previous erroneous decisions by the Trial Court. The Judgment terminated Appellants' case.

The effect of the Judgment is that the Trial Court dismissed Appellants' lawsuit and incorrectly refused to enjoin Appellees from carrying out the illegal disenrollment of Appellants.

2. Legal Mistakes

The Trial Court erred in the Judgment to the extent the Judgment incorporates and relies on previous erroneous decisions by the Trial Court as set forth above. Appellants, therefore, respectfully request that this Court of Appeals reverse the Trial Court's August 9, 2013 Judgment. N.T.C. § 80.04.030(c).

DATED this 12th day of August, 2013.

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DECLARATION OF SERVICE

I, Gabriel S. Galanda, say:

1. I am over eighteen years of age and am competent to testify, and have personal knowledge of the facts set forth herein. I am employed with Galanda Broadman, PLLC, counsel of record for Appellants.

2. Today, I caused the attached documents to be delivered to the following:

Grett Hurley
Rickie Armstrong
Tribal Attorney
Office of Tribal Attorney
Nooksack Indian Tribe
5047 Mt. Baker Hwy
P.O. Box 157
Deming, WA 98244

A copy was emailed to:

Thomas Schlosser
Morisset, Schlosser, Jozwiak & Somerville
1115 Norton Building
801 Second Avenue
Seattle, WA 98104-1509

The foregoing statement is made under penalty of perjury under the laws of the Nooksack Tribe and the State of Washington and is true and correct.

DATED this 12th day of August, 2013.

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