IN THE NOOKSACK TRIBAL COURT OF APPEALS

MICHELLE JOAN ROBERTS, et al., Appellants, 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; and AGRIPINA "LONA" JOHNSON, Councilmember of the Nooksack Tribal Council, in their official capacities, Appellees.	Case No. 2013-CI-CL-003 NOTICE AND EMERGENCY MOTION FOR (1) PERMISSION TO APPEAL AND (2) ACCEPTANCE OF APPEAL ***Hearing Requested By Tuesday, August 27, 2013, at 10:00 AM***

Appellants face disenrollment hearings starting in less than 48 hours – at 10:00 AM on Wednesday, August 21, 2013. As such, Appellants, pursuant to N.T.C. §§ 80.03.020 and 80.04.010, and ask this Appeals Court to grant permission to file and accept review of an interlocutory appeal of the Order Denying Temporary Restraining Order ("Order") issued by the Nooksack Tribal Court ("Trial Court") in the above-captioned and numbered case on August 21,

2013.[1] N.T.C. § 80.04.030(b). Appellants — each of which imminently *and irreparably* face disenrollment proceedings that are governed by procedures that do not comply with the Nooksack Constitution, codified Tribal law, and stipulations between the parties — respectfully request that this Court of Appeals immediately accept review for interlocutory appeal.

I. FACTS

On March 20, 2013, the parties previously before the Trial Court on case number 2013-CI-CL-001 and now under appeal, filed with the Trial Court a stipulation ("Stipulation") executed by Mr. Grett Hurley, counsel for Defendants, and Mr. Gabriel Galanda, counsel Plaintiffs.[2] The Stipulation resulted from promises made on Defendants' behalf by Thomas Schlosser, Esq., in open Court, before Pro Tem Judge Randy Doucet on March 18, 2013. In pertinent part, the Stipulation memorializes the following:

- By April 13, 2013,[3] Plaintiffs were to "furnish a list of those individuals for whom [Galanda Broadman, PLLC is] authorized to act in this matter and in the related proceedings regarding disenrollment of certain Nooksack Tribal Members . . . ."[4]
- "No person will be disenrolled prior to completion of the meetings before Tribal Council, regardless of whether that individual has requested a meeting with the Tribal Council."[5]

On May 13, 2013, Appellants' attorneys furnished a list of individual litigants after Defendants requested assurances that all individual Plaintiffs had been properly named.[6] This

---

[1] The Order, as well as other relevant briefing, is included in the Excerpts of Record filed concurrently with this Notice and incorporated herein. The names of the parties, as required by N.T.C. § 80.04.030, are listed in Plaintiffs' First Amended Complaint. *See also id.* ¶ 8 ("Plaintiffs bring this action on behalf of themselves and on behalf of their minor children, who are also enrolled members of the Tribe against whom impending disenrollment actions have been brought pursuant to procedures that violate Nooksack law, and also on behalf of those other enrolled members of the Tribe who are similarly situated.") The spokespersons of Appellees are Grett Hurley and Rickie Armstrong, of the Nooksack Office of Tribal Attorney; and Thomas Schlosser, of Morisset, Schlosser, Jozwiak & Somerville (although he has not entered a Notice of Appearance). The spokespersons of Appellants are the undersigned. On appeal is the Order Denying Temporary Restraining Order issued by the Nooksack Tribal Court on August 21, 2013, in Case No. 2013-CI-CL-003. The errors of law and procedure committed by the Tribal Court in that Order, and their effect on the outcome of the case, are discussed in thoroughly in this Notice and Motion.

[2] Stipulation dated March 19, 2013, and entered with this Court on March 20, 2013. *See* Second Declaration of Gabriel S. Galanda (filed Aug. 22, 2013) ("Second Galanda Decl."), at ¶ 4; *id.* Ex. A.

[3] *Id.*

[4] *Id.*

[5] *Id.*

list includes, among 271 others: (1) Rose A. Hernandez, (2) Cody M. Narte, (3) Nadine L. Rapada, and (4) Kristal M. Trainor. Appellees promised that all individual litigants identified by Appellants' counsel as their clients would be afforded legal representation in the instant litigation "and in the related proceedings regarding . . . disenrollment."[7]

On August 8, 2013, Appellees met in secret and without notice to Tribal Councilpersons Rudy St. Germain or Michelle Roberts, and passed procedures titled "TRIBAL COUNCIL PROCEDURES FOR INVOLUNTARY DISENROLLMENT MEETINGS."[8] These Disenrollment Procedures:

- Forbid a Disenrollee from being represented by counsel during his or her disenrollment meeting[9] — in contravention of a March 20, 2013 Tribal Court-entered Stipulation whereby the Tribe acknowledged that Galanda Broadman, PLLC was "authorized to act in . . . the related proceedings regarding disenrollment" on behalf of Plaintiffs;
- Forbid any "other persons" such as close family or other relatives from being present for the Disenrollee's disenrollment meeting, in order to provide him or her moral support or other help;[10]
- Allow a Disenrollee "a maximum of ten (10) minutes to present his or her case"[11] — which is a wholly insufficient amount of time for a Tribal Member to, on their own, prepare and advocate a final defense against disenrollment;
- Require a Disenrollee's response papers and supporting evidence to be filed "no later than five (5) calendar days prior to the scheduled Meeting";[12] and
- Require that meetings "be held v [sic] telephonically via conference call," rather than in person[13] – thereby not allowing a Disenrollee any opportunity to confront adverse witnesses and thus practically depriving his or her proverbial day in court.

---

[6] *Id.* Ex. C.
[7] Second Galanda Decl., Ex. C.
[8] Hereinafter ("Disenrollment Procedures").
[9] Sec. VI, C.
[10] *Id.*
[11] Sec. VI, H.
[12] Sec. V. Although a regulation titled "What to Expect for Your Meeting" provides that "[a]t least three (3) hours prior to your meeting you must provide a written response, or any documentation you wish the Tribal Council to consider in anticipation of your meeting (no documentation or response will be accepted after this deadline)." So which is it: five days or three hours? Second Galanda Decl., Ex. H.
[13] Sec. VI, B.

According to Ms. Roberts:

> The Disenrollment Procedures were not written or passed with any appreciation for our nature, customs or ways as Indian people. **The procedures are wholly foreign and non-tribal — and in fact non-Nooksack customarily speaking — in every way.** While on the one hand the procedures deprive me of legal counsel and advocacy, on the other hand they are so legal and technical, especially with page numbering, formatting, spacing, font size, labeling, and other rigid requirements, that they require legal assistance to understand and follow. **The Disenrollment Procedures have obviously been carefully crafted and implemented to cause my disenrollment.**[14]

Also, Appellees' counsel have deliberately refused to timely provide copies of disenrollment notices to Appellants' counsel, which exacerbates Appellants' inability to defend themselves.

August 13, 2013, Appellants filed the above-captioned action, along with a Motion for Temporary Restraining Order ("TRO") seeking prospective relief that would enjoin the Appellees from disenrollment hearings conducted according to the Disenrollment Procedures — to ensure that if disenrollment proceedings were to move forward, that they would be conducted in a lawful manner.

On August 14, this Appeals Court granted the stay of this Court's August 6, 2013, Order in the associated case of *Lomeli v. Kelly*, No. 2013-CI-APL-002, ordering that "disenrollment proceedings . . . shall be stayed." On August 15, the Trial Court in this action, *Roberts v. Lomeli,* issued an Order holding that "the Nooksack Court of Appeals has stayed all disenrollment proceedings. Therefore, this Court need not issue a [TRO] enjoining the disenrollment proceedings as they are already stayed." On August 20, however, this Appeals Court issued an Order on Motion for Clarification in *Lomeli*, holding that its "August 14 Order was intended to apply only to the [six] named Plaintiffs/Appellants" in that action.[15] In response, on August 21,

---

[14] Declaration of Nooksack Tribal Councilwoman Michelle Joan Roberts (filed Aug. 23, 2013) ("Third Roberts Decl."), ¶ 21 (emphasis added).

[15] Appellants object to the notion that only six individuals were Plaintiffs in the *Lomeli* litigation due, in part, to the Stipulation regarding a representation list that Plaintiffs furnished to Defendants in that matter, then supplemented upon Defendants' request, and due to the fact that Plaintiffs always maintained that their lawsuit was on behalf of them individually and all other individuals similarly situated.

2013, the *Roberts* Trial Court, without notice to Appellants, issued an Order denying Appellants' requested TRO. In that Order, the Trial Court held that the Disenrollment Procedures provide the minimum standards of Due Process required by the Nooksack Constitution and tribal law. In so ruling, the Trial Court made an "obvious error." N.T.C. § 80.03.020.

The *Roberts* Trial Court's error "substantially limits the freedom" of the Appellants in this action—if the Trial Court's ruling is allowed to stand, Appellants will be non-Nooksacks. *Id.* The *Roberts* Trial Court's error also "render[s] further proceedings useless." *Id.* Indeed, Nooksacks are currently being disenrolled and/or have already been disenrolled vis-à-vis these unlawful Disenrollment Procedures:

- On August 12, 2013, Appellees summarily disenrolled (1) Rose A. Hernandez, (2) Cody M. Narte, (3) Nadine L. Rapada, and (4) Kristal M. Trainor without any hearing or meeting whatsoever.[16]
- On August 13, 2013, Appellants Adeline Gladstone Parker, Anthony Eugenio Rabang, Daniel Rapada, Francine Adams, Gerald Rapada, Gilda Corpuz, Honorato Roberto Rapada, James Dean Rapada, Olive Theresa Oshiro, Priscilla Carr, Reconar Andrew Rapada, Robert James Rabang Sr., and Sonia Marie Lomeli were mailed notices indicating that their disenrollment hearings are set for August 30.[17] Under one of the response-date requirements — one of three, which are in conflict — written materials for those hearings were due August 22. Until August 21, these hearings were stayed by the *Lomeli* appellate court. That means, effectively, these Appellants were given a mere one day's notice to prepare their responses to the disenrollment hearing notices.
- On August 21, 2013, Appellants Michelle Joan Roberts and Rudy St. Germain were served by Tribal Police with disenrollment notices that set their hearing for August 28 — at 3:00 and 10:10 PM, respectively — leaving mere hours, under the Disenrollment Procedures, to prepare and file written materials that will determine the fate of their identity and livelihood, for generations to come. Ms. Roberts was also immediately fired, "at will," from the casino HR Manager position that she held with the Tribe for six years.[18] Mr. St. Germain was likewise terminated without cause on August 2, 2013, from

[16] Second Galanda Decl., Ex. E

[17] Post-Hearing Declaration of Gabriel S. Galanda in Support of Motion for Temporary Restraining Order (filed Aug. 14, 2013) ("First Galanda Decl."), Ex. A. Of this group, this Appeals Court's Order on Motion for Clarification in *Lomeli,* reinstated a stay of disenrollment proceedings for Sonia Lomeli and Norma Aldredge, only.

[18] Declaration of Nooksack Tribal Councilwoman Michelle Joan Roberts (filed Aug. 22, 2013) ("Second Roberts Decl."), Ex. A.

his Landscape Manager position, after seven years of impeccable Tribal employment.[19] That after Appellees "systematically deprived" them both of their elected seats on the Nooksack Tribal Council for the last six months.[20]

Thus, Appellants seek to hereby appeal the Trial Court's August 21, 2013, Order on an emergency basis. Contrary to the Trial Court's Order, Appellants *did* meet the four threshold elements for a TRO, and therefore, the Trial Court erred in failing to issue the requested TRO. Orderly and lawful disenrollment proceedings are in the best interests of all Nooksacks.

III. ARGUMENT

A. Legal Standard.

"A [party] seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC*, 129 S.Ct. 365, 374 (2008).

B. Plaintiffs Are Likely To Succeed On The Merits.[21]

1. Appellees Are Violating Nooksack Law And Appellants' Constitutional Rights.

At a minimum, Nooksack members have the statutory right within thirty days of receiving a notice of intent to disenroll to request a meeting with the Tribal Council. N.T.C. § 63.04.001(B)(2). The law does not allow Defendants to unilaterally set a hearing on "shortened time" as they have done. Instead, the applicable law allows the targeted Nooksack set a hearing date with the Tribal Council Secretary that ensures the potential disenrollee has reasonable time

[19] Declaration of Nooksack Tribal Council Secretary Rudy St. Germain (filed Aug. 21, 2013).
[20] Second Roberts Decl., ¶ 5.
[21] Because Nooksack Tribal Council Members and their agents were being sued for nonmonetary injunctive relief in their official capacities and for acting unconstitutionally as tribal officers, the Tribe's sovereign immunity is not implicated in this action. The Trial Court correctly agreed: "If the Procedures of Title 63 and Resolution 13-111 violate procedural due process, . . . then the Court may provide injunctive relief, prohibiting the Defendants from proceeding under Title 63 and Resolution 13-111." Order, at 8.

to make scheduling arrangements and, for example, seek time to be absent from their place of employment. *Id.*[22]

The Disenrollment Procedures also flagrantly violate Plaintiffs' fundamental due process rights. Article IX of the Nooksack Constitution requires that all governmental agencies and agents comply with Title II of the Civil Rights Act of 1968, 82 Stat. 77 ("ICRA"). Relevant sections of ICRA state that the Tribe may not: (a) "deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law"; or (b) "make or enforce any law prohibiting . . . the right of the people peaceably to assemble and to petition for a redress of grievances." 25 U.S.C. §§ 1302(a)(1),(8).

Appellees do not seriously contest the applicability of due process principles to the disenrollment hearings in this matter,[23] as the hearings immediately and irreparably affect legal rights and are not merely investigatory proceedings. *Hannah v. Larche*, 363 U.S. 420 (1960); *Goldberg v. Kelly*, 397 U.S. 254, 263-64 (1970). What is contested is what scope of process must be afforded. *See e.g. Devine v. Cleland*, 616 F.2d 1080, 1086 (9th Cir. 1980).

As the Trial Court correctly observed, the due process balancing test delineated by the Supreme Court in *Mathews v. Eldridge*, is generally utilized to determine the scope of procedural process due in civil proceedings. 424 U.S. 319 (1976). In *Mathews*, it was held that identification of the specific dictates of due process generally require consideration of three distinct factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal

[22] The applicable law provides that "[i]f a meeting is requested with the Tribal Council, the member must contact the Tribal Council secretary to obtain a date for the meeting." N.T.C. § 63.04.001(B)(2).

[23] *See* Defendants' Brief in Opposition to Plaintiffs' Emergency Motion for a Temporary Restraining Order, *Lomeli v. Kelly*, No. 3013-CI-CL-001, at 8 (Nooksack Tribal Ct. Apr. 11, 2013) ("Defendant Kelly informed Council that Resolution 13-02 would start the disenrollment process, and that the process would be fair and provide due process.").

> and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 334-35.

Here, contrary to the Trial Court's Order, the Disenrollment Procedures promulgated by Appellees, and their acts and omissions in carrying out the disenrollment process, do not meet the level of due process required by *Mathews*. *See* Order, at 8-9. In the case of *Prosser v. Butz*, for example, a farmer who had been assessed penalty in administrative proceedings brought suit against a government agency, alleging deprivation of his procedural due process. 389 F.Supp. 1002, 1004 (D.C. Iowa 1974). The Court was asked to determine exactly what was required in administrative proceedings where a mere penalty was at issue. *Id.* at 1004-1005. The *Prosser* Court held as follows:

> Due process entitles plaintiff to the following in the instant situation: (1) notice of the specific charges or allegations at a time reasonably prior to the hearing in order to allow preparation of a defense; (2) right to retain private counsel and be represented by such counsel at a hearing; (3) right to present a reasonable quantum of argument and evidence at a hearing on the charges; (4) right to confront and cross-examine adverse witnesses at the hearing; (5) a brief written statement of reasons and evidence relied upon to support the determination of (6) an impartial adjudicative body.
>
> While it is axiomatic that the elements of due process vary with the situation and the due process clause does not guarantee any unchanging forms, *Dohany v. Rogers*, 281 U.S. 362 (1930), the "fundamental requirements of fairness which are of the essence of due process in a proceeding of a judicial nature" mandate a hearing in this case with the safeguards stated above. *Morgan v. United States*, 304 U.S. 1 (1938). Especially is this true where, as here, "the evidence consists of the testimony of individuals whose memory might be faulty . . . or persons motivated by malice, vindictiveness . . . or jealousy." *Greene v. McElroy*, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959).
>
> The availability here of an extensive administrative appeal process does not remedy the due process deficiency. None of the appellate determinations are *de novo*, and thus the denial of plaintiff's procedural rights is perpetuated through the appeal process. Review, however often repeated, of a determination arrived at by unconstitutional procedure cannot correct the defect unless the review itself includes the requisite procedural safeguards. This is not the case here.

Id. at 1006.[24] Surely, if (1) notice; (2) a right to retain private counsel and be represented by such counsel at hearing; and (3) a right to present a reasonable quantum of argument and evidence at hearing is required when assessing a penalty for permitting cattle grazing on federal lands, a right to these same processes must be required here, where the fate of 275 Appellant-Nooksacks — where the fate of a Nation — is at stake.[25]

As to representation by counsel, as Supreme Court noted in *Turner v. Rogers*, the *Mathews* "'private interest that will be affected' argues strongly for the right to counsel." 131 S.Ct. 2507, 2518 (2011). Indeed, while it is crystal clear that tribal governments have no due process obligation to appoint counsel in civil (or criminal)[26] matters, it is also clear that "the government may not deny civil litigants their right to obtain counsel." *KindHearts for Charitable Humanitarian Development, Inc. v. Geithner*, 647 F.Supp.2d 857, 914 (N.D. Ohio 2009). It has been consistently held that a "refusal to hear a party represented by counsel would amount to 'a denial of a hearing, and, therefore, of due process in the constitutional sense.'" *American Airways Charters, Inc. v. Regan*, 746 F.2d 865, 873 (D.C. Cir. 1984) (quoting *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)); *see also Goldberg*, 397 U.S. at 270 (civil litigant "must be allowed to retain an attorney [in benefits termination hearing] if he so desires"); *Mosley v. St. Louis Southwestern Railway*, 634 F.2d 942, 945 (5th Cir.) ("The right to the advice and assistance of retained counsel in civil litigation is implicit in the concept of due process, and extends to administrative, as well as courtroom, proceedings.") (citation omitted), *cert. denied*,

[24] *See also Gardner v. Pierce County Bd. of Com'rs*, 617 P.2d 743, 745 (Wash. Ct. App. 1980) (citing *Prosser* for the proposition that a mere ten days does not constitute sufficient notice).

[25] *See also Morrissey v. Brewer*, 408 U.S. 471 (1972) (where a person is being deprived of a more important interest, due process requires, at minimum, written notice of the claimed violations, disclosure of the evidence against one, opportunity to be heard in person and to present witnesses and evidence, the right to confront and cross examine adverse witnesses, an impartial hearing body and a written statement of findings and reasons for the action taken). Needless to say, tribal membership is "most important" interest that a tribal member can possess. *Wabsis v. Little River Band of Ottawa Indians, Enrollment Com'n*, No. 04-185-EA, 2005 WL 6344603, at *1 (Little River Tribal Ct. Apr. 14, 2005).

[26] Unlike the broader right recognized under the Sixth Amendment, there is no federal right to appointed counsel in tribal courts. *Tom v. Sutton*, 533 F.2d 1101 (9th Cir.1976).

452 U.S. 906 (1981); *Martin v. Lauer*, 686 F.2d 24, 32 (D.C. Cir. 1982) ("[W]hile private parties must ordinarily pay their own legal fees, they have an undeniable right to retain counsel to ascertain their legal rights."). It is thus clear that, here, Appellants are entitled to be represented by counsel — not that the Tribe appoint counsel, but that, at minimum, Plaintiffs are allowed to retain counsel that might represent them in the disenrollment hearings. The Trial Court's ruling that Appellants' have no due process right to be represented by council was obvious error. *See* Order, at 7 ("[T]he Court cannot find that [Appellants] are entitled under the Nooksack Constitution or Code to have an attorney represent them at disenrollment hearings in front of the Tribal Council.").

As to notice and the right to present a reasonable quantum of argument and evidence at hearing, the Supreme Court has held, in multiple instances, that the opportunity to be heard must occur at a "meaningful time and in a meaningful manner." *City of Los Angeles v. David*, 538 U.S. 715, 717 (2003) (quoting *Mathews*, 424 U.S. at 333)). This requires, at minimum, that notice "be given *sufficiently in advance* of scheduled court proceedings so that reasonable opportunity to prepare will be afforded." *In re Gault*, 387 U.S. 1, 33 (1967) (emphasis added). When, for instance, an attorney is given a mere twenty four-hour notice, counsel lacks an opportunity to investigate the case in violation of due process principles — "'[t]o decide otherwise, would simply be to ignore actualities.'" *Gray v. Netherland*, 518 U.S. 152, 182 n.10 (1996) (quoting *Powell v. Alabama*, 287 U.S. 45, 58 (1932)). Likewise, where, as here, the "suspension of welfare benefits" will result, the Supreme Court has held that "an evidentiary hearing giving the recipient an opportunity to confront witnesses and present evidence and argument orally" is required. *Brock v. Roadway Exp., Inc.*, 481 U.S. 252, 261 (1987) (citing *Goldberg*, 397 U.S. at 266-71).

The ability to gather and present evidence clearly weighs in favor of Appellants in regard to the *Mathews* test. As the High Court ruled in *Loudermill v. Cleveland Bd. of Educ.*, "[w]ith more information, in particular that provided by the [Plaintiff] whose record is in dispute, the government presumably would be better equipped to make . . . decisions." 721 F.2d 550, 561 (6th Cir. 1983). The Disenrollment Procedures — as codified, but especially in practice — do not allow Appellants to present a reasonable quantum of argument and evidence at hearing at a "'meaningful time and in a meaningful manner.'" *City of Los Angeles*, 538 U.S. at 717 (quoting *Mathews*, 424 U.S. at 333)). As discussed above, Appellants have been limited to ten minutes to present a plethora of evidence to the decisionmaker; Appellants have been given inadequate time to prepare their evidence (or even determine what timeframe is applied to their hearing); and Appellants' attorneys have been denied access to the hearings at all, and, thus, the ability to adequately prepare their clients for the meetings. Indeed, in the cases of disenrolled Plaintiffs Rose A. Hernandez, Cody M. Narte, Nadine L. Rapada, and Kristal M. Trainor, there was no notice or an opportunity be heard even given, let alone a hearing conducted at "meaningful time and in a meaningful manner." *See e.g. Goldberg v. Kelly*, 397 U.S. 254. And while the Disenrollment Procedures purport to provide twenty-one days notice, as discussed above, the "shortened time" exception[27] has thus far become the rule.

The "private interest that will be affected by the official action" — tribal membership — could not be more compelling. *Mathews*, 424 U.S. at 344-35. There is also a serious risk of an erroneous deprivation of such interest through the procedures used. The notice period required by the Disenrollment Procedures is not "reasonably calculated under all the circumstances to apprise petitioner" of the impending hearing and the charges levied against him, nor does it allow "'meaningful time and in a meaningful manner.'" *City of Los Angeles*, 538 U.S. at 717 (quoting

[27] Sec. IV.

Mathews, 424 U.S. at 333)). On the other hand, affording Nooksacks the right to be represented by counsel of their own expense, allowing Appellants more than ten minutes to present his or her case, providing Appellants with adequate notice of the allegations against them, and respecting Appellants' right to present evidence will come to no expense to Defendants. The fiscal and administrative burdens that upsetting the scheduled and procedurally defective hearings required was little to none. There were only 21 of nearly 300 hearings that would be upset by providing the procedural requirements due. Considering what was at stake, an order that does nothing other than order Defendants to maintain the *status quo* pending resolution of a controversy could hardly be deemed invasive.

The Disenrollment Procedures codified by defendants do not — in practice or as codified — meet the minimum procedural due process requirements required by the Nooksack Constitution and the ICRA. The Trial Court's ruling to the contrary was obvious error.

2. Defendants Are Violating the March 20, 2013, Stipulation Entered in *Lomeli*.

"An agreement made on the record, in open court, and under the eyes of the Court, is a most solemn undertaking requiring the lawyers and the parties to make every reasonable effort to carry out all the terms to a successful conclusion." *Scharf v. Levittown Public Schools*, 970 F.Supp. 122, 129 (E.D.N.Y. 1997) (internal quotation omitted). Stipulations "are favored by the courts and are not lightly cast aside, and this is all the more so in a case of open court stipulations where strict enforcement not only serves the interest of efficient dispute resolution but is also essential to management of court calendars and integrity of the litigation process." *Purcell v. Town of Cape Vincent*, 281 F.Supp.2d 469, 473 (N.D.N.Y. 2003). Indeed, "[a]n agreement made on the record, in open court and 'under the eyes of the Court' is a most solemn undertaking requiring the lawyers and the parties to make every reasonable effort to carry out the terms to a successful conclusion." *Id.* (quoting *Warner v. Rossignol*, 513 F.2d 678, 682 (1st Cir. 1975)). It

is thus that when a court enters a stipulation into the record, "it does accept some obligations. The clearest obligation is a duty to enforce the stipulation that it has approved." *Id.* (citing *Sanchez v. Maher*, 560 F.2d 1105, 1108 (2nd Cir. 1977)).

Here, as discussed *infra*, it is clear that Appellees are violating the March 20, 2013, Stipulation entered by the Trial Court in the *Lomeli* matter. The Trial Court had a direct duty to enforce that contractual promise, *id.*, and was obligated do so by ordering Appellees to refrain from violating said Stipulation and the related preceding promises made to the Court by Appellees' counsel in the very first hearing in this dispute on March 18, 2013. The Trial Court's failure to enforce the Stipulation and those promises made in open court was clear error. *See* Order, at 9.

D. The Equities Tip Sharply In Plaintiffs' Favor.

Membership disputes generally weigh "heavily" in the citizen's favor because: (1) the government has an interest in ensuring that its actions do not result in unnecessary and irreparable harm; and (2) the government incurs "no expense while [the citizen] seeks judicial review." *Leiva-Perez*, 640 F.3d at 963-64, 971. Here, it cannot be questioned that the Nooksack government has an interest in ensuring that people are not unnecessarily and wrongly forcibly disenrolled. Nor will Appellees incur any significant expense due to a temporary moratorium of their efforts to purge Tribal Members. Hence, the equities weigh sharply — if not entirely — in Appellants' favor. Again, Appellants asked that the Trial Court order Defendants to do nothing; to take no action; to maintain the *status quo*. The Trial Court's Order to the contrary was clear error. *See* Order, at 9.

E. The Nooksack Public Interest Favors Injunction.

The Nooksack People have a profound interest in the constitutional application of their laws, the protection of individuals from abuse of governmental power, and the orderly review by

of government action. Indeed, there is no apparent public interest weighing in favor of permitting Appellants to continue bulldozing their way towards disenrollment. There is no legitimate purpose in expediting a process certain to result in profound and far-reaching injuries.

IV. CONCLUSION

Appellants respectfully request that this Court of Appeals accept review for interlocutory appeal. The Nooksack Tribal Court has committed obvious error in sanctioning an illegal and unconstitutional disenrollment of Appellants vis-à-vis hearings that do not meet requisite threshold Nooksack Constitutional and legal protections.

DATED this 26th day of August, 2013.

Gabriel S. Galanda
Anthony S. Broadman
Ryan D. Dreveskracht
Attorneys for Plaintiffs
GALANDA BROADMAN, PLLC
8606 35th Ave. NE, Suite L1
P.O. Box 15146
Seattle, WA 98115
(206) 691-3631 Fax: (206) 299-7690
Email: gabe@galandabroadman.com
Email: Anthony@galandabroadman.com
Email: ryan@galandabroadman.com

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 counsel of record for Plaintiffs.

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

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 26th day of August, 2013.

GABRIEL S. GALANDA