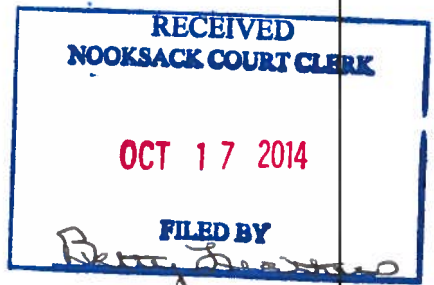


1 **IN THE NOOKSACK TRIBAL COURT**
2 **FOR THE NOOKSACK INDIAN TRIBE**
3 **DEMING, WASHINGTON**



4
5 **MICHELLE ROBERTS, ET. AL**
6 Plaintiffs

7 vs.

8 **ROBERT KELLY, ET. AL.**
9 Defendants.

Case No. 2013-CI-CL-003

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

10 **THIS COURT** held a hearing to address the Defendant's *Motion to Dismiss Plaintiffs'*
11 *Complaint for Prospective Equitable Relief*, filed on August 21, 2013. The Plaintiffs filed an
12 *Opposition to Motion to Dismiss and Request for an Expedited Ruling*. The Court denied the request
13 to expedite the ruling and took the matter under advisement. After reviewing the filings from both
14 sides, holding a hearing, and conducting its own research, the Court issues the following:

15
16 **DECISION**

17 The Plaintiffs in this matter filed a *Complaint for Prospective Equitable Relief* (8/13/13)
18 followed by an *Amended Complaint for Prospective Injunctive Relief* (8/21/13). The Plaintiffs filed
19 a motion to amend their Complaint again, which this Court denied and the Plaintiffs sought
20 reconsideration. Though the case has been open less than two months, volumes of filings have come
21 in from both sides and the Court has issued several orders. For the purposes of clarity, the Court
22 notes that the following Complaints, Motions, and Orders have been filed:

- 23 **1- Complaint** for Prospective Equitable Relief– **August 13, 2013**
24 **2- Motion** to Disqualify Hon. Raquel Montoya- Lewis– **August 13, 2013**

- 1 **3- Order Denying Motion** to Disqualify Hon. Raquel Montoya- Lewis-
2 **Judge Montoya- Lewis - August 13, 2013**
- 3 **4- Motion** for Temporary Restraining Order –**August 15,2013**
- 4 **5- Order** from Hearing – **Judge Montoya- Lewis – August 15, 2013**
- 5 **6- Scheduling Order – Judge Montoya- Lewis – August 15, 2013**
- 6 **7- Order** Denying Emergency Temporary Order Hearing- **Judge Montoya- Lewis- August 21,**
7 **2013**
- 8 **8- Amended Order** Denying Emergency Temporary Order Hearing- **Judge Montoya- Lewis –**
9 **August 21, 2013**
- 10 **9- First Amended Complaint** for Prospective Equitable Relief-**August 21, 2013**
- 11 **10- Def. Motion** to Dismiss- **August 21, 2013**
- 12 **11- Opposition to Motion to Dismiss** and Request for Expedited Ruling- **August 22, 2013**
- 13 **12- Second Amended Order** Denying Emergency Temporary Order – Judge Montoya- Lewis-
14 **August 22, 2013**
- 15 **13- Scheduling Order** on Motion on Def. Motion to Dismiss- **Judge Montoya- Lewis- August**
16 **22, 2013**
- 17 **14- Second Motion** for Temporary Restraining Order– **August 22, 2013**
- 18 **15- Scheduling Order** on Plaintiffs Second Emergency TRO— **August 23, 2013**
- 19 **16- Notice and Emergency Motion** for Permission to Appeal and Acceptance of Appeal- **August**
20 **27, 2013**
- 21 **17- Def. Response** in Opposition to Plaintiffs Second Motion for TRO— **August 27,2013**
- 22 **18- Dec. of Grett Hurley** in Support of Def. Response in Opposition to Plaintiffs Second Motion
23 **for TRO— August 27,2013**
- 24 **19- Order** on Motion for Permission to File an Interlocutory Appeal – Chief Judge Eric Nielsen –
August 27, 2013
- 20- Notice of Appellate Order and Reply RE: Motion** for Temporary Restraining Order— **August,**
28, 2013
- 21- Second Amended Complaint** for Equitable Relief- **Attorney Galanda – August 28,2013**
- 22- Motion** to Leave to Amend Complaint– **August 28,2013**
- 23- Supplemental Memorandum Opposing Motion** to Dismiss – **August 28,2013**

1 **24- Def. Reply** to Plaintiffs Opposition to Motion to Dismiss- **August 30, 2013**

2 **25- Declaration** of Grett Hurley In Support of Defendants Response In Opposition to Plaintiffs
3 Second Motion for TRO – **Attorney Hurley- August 30,2013**

4 **26- Declaration** of Chairman Robert Kelly Jr. In Support of Motion to Dismiss- **September 4,**
5 **2013**

6 **27- Order** Accepting Plaintiffs First Amended Complaint for Equitable Relief- **Judge Montoya-**
7 **Lewis – September 6,2013**

8 **28- Order** Denying Plaintiffs Motion to Amend- **Judge Montoya- Lewis – September 4, 2013**

9 **29- Motion** for Reconsideration of Sua Sponte September 6, 2013 Order-**September 9, 2013**

10 **30- Supplemental Memorandum** Supporting Second Motion for TRO-**September 13, 2013**

11 **31- Motion** for Order to Show Cause Re: Contempt-**September 19, 2013**

12 **32- Order** Denying Motion for Order to Show Cause Re: Contempt—**Judge Montoya-Lewis --**
13 **September 20, 2013**

14 **33- Motion** for Reconsideration of September 20, 2013 Order—**September 27, 2013**

15 (This list does not show all of the Declarations and Exhibits that have been filed.)

16 The issues presented in this case have similarities to the matters raised in the *Lomeli v. Kelly*
17 matter, with a few key distinctions. The Plaintiffs argue that “the Disenrollment Procedures violate
18 the Constitution and Title 63,” that the Defendants violate the Nooksack Constitution by “depriving
19 Plaintiffs and their children of back to school support for the 2013 school year,” that the Defendants
20 have violated a March 20, 2013 stipulation in *Lomeli v. Kelly* by disenrolling four Plaintiffs without
21 hearings, as well as other allegations related to the conduct of Tribal Council meetings. The
22 Defendants argue that this suit should be dismissed in its entirety, arguing that sovereign immunity
23 protects the Defendants. Plaintiffs argue that the Defendants are not entitled to the sovereign
24 immunity defense because the Plaintiffs seek only prospective, injunctive relief enjoining the
Defendants from acting outside the scope of their authority.

In this suit, the Plaintiffs base their Complaint on the Disenrollment Procedures promulgated

1 by the Tribal Council, as well as other related actions taken by the Council. They argue that the
2 Defendants, in passing the Tribal Council Procedures for Involuntary Disenrollment Meetings,
3 violated the Nooksack Tribal Constitution and Title 63 of the Nooksack Tribal Code because the
4 procedures themselves violate procedural due process. They further appear to argue that the manner
5 in which those procedures were passed violate the Tribal Constitution. "Plaintiffs are suing
6 Defendants, *in their official capacities*, for prospective injunctive relief barring Defendants from
7 taking affirmative acts that violate Nooksack law-in particular, ICRA as incorporated by the
8 Nooksack Constitution." *Opposition to Motion to Dismiss and Request for Expedited Ruling*, 3.

9 As with the *Lomeli* case, the Court begins with the proposition that the Tribe and its officers
10 have not waived sovereign immunity. The Plaintiffs attempt to dispense with the sovereign
11 immunity defense by arguing that they are only seeking declaratory and injunctive relief to enjoin
12 the Defendants from undertaking illegal actions, using an *Ex Parte Young* theory. As the United
13 States Supreme Court held in *Idaho v. Couer d'Alene Tribe of Idaho*, "To interpret *Young* to permit a
14 federal-court action to proceed in every case where prospective declaratory and injunctive relief is
15 sought against an officer, named in his individual capacity, would be to adhere to an empty
16 formalism." 521 U.S. 261, 270 (1997). While applying for declaratory and injunctive relief may
17 give the Plaintiffs a means by which this suit could proceed, that alone is not the only inquiry.

18 As this Court has noted in multiple orders, whether a *Young* theory exists under Nooksack
19 law remains unclear. The Nooksack Court of Appeals has cited to it twice, but in both instances the
20 *Young* decision remains dicta, as the ultimate ruling of the Court centered on other analyses. The
21 *Lomeli* case is now on appeal, with no ruling expected until after oral arguments, now scheduled for
22 late November.

23 Applying a *Young* analysis in the tribal context presents multiple issues because the *Young*
24

1 fiction is employed to vindicate rights under federal law against state officials. In the tribal context,
2 the analogy is inelegant and, quite frankly, fairly tortured. During oral argument, Mr. Broadman
3 stated that there is no question *Ex Parte Young* is the law of the Nooksack Indian Tribe. This Court
4 has made no such unequivocal ruling. The *Young* doctrine requires multiple findings that simply do
5 not apply in the tribal context.¹ Nonetheless, the Court has attempted, on several occasions, to
6 fashion an analysis that would support an intervention by this Court if the Plaintiffs were
7 successfully able to argue that the Defendants were acting outside the scope of their duties as tribal
8 officers. In every instance up to now, the Court has been unable to make that finding.

9 Absent a *Young* type of exception, relief would be unavailable to the Plaintiffs. Sovereign
10 immunity protects tribes and tribal governments as it does states and state officials. When a suit is
11 brought against a government that asserts sovereign immunity, the suit must be dismissed. And,
12 when a suit is brought against governmental officials, if the suit is “in fact a suit against the State,
13 [it] is barred regardless of whether it seeks damages or injunctive relief.” *Pennhurst v. Halderman*,
14 465 U.S. 89, 100 (1984). “The general rule is that relief sought nominally against an officer is in
15 fact against the sovereign if the decree would operate against the latter.” *Id.* (citations omitted).

16 Plaintiffs argue that their suit seeks only to enjoin the Defendants from enforcing what they
17 argue are plainly unconstitutional provisions under the Disenrollment Procedures. Plaintiffs argue
18 that the manner in which the Defendants have acted has been unconstitutional and that the
19 enactments themselves are unconstitutional. Defendants move for judgment on the pleadings,
20 arguing that no issues of material fact exist and that they are entitled to judgment as a matter of law.

21 ¹ There are six qualifications for the *Young* doctrine: “(1) the state officer sued must have a duty to enforce the challenged state law;
22 (2) the action by the state officer under state law must constitute an alleged violation of federal law; (3) the federal law allegedly
23 violated must be the “supreme law of the land”; (4) *Young* will not apply if federal law provides such an intricate remedial scheme that
24 the court concludes that Congress did not intend for cases under *Ex Parte Young*; (5) *Young* will not apply if allowing suit would
interfere with special state sovereignty interests; and (6) the Court has imposed significant restrictions on the remedies available under
Ex parte Young. *Avoiding Sovereign Immunity: The Doctrine of Ex Parte Young*, 13 Fed. Prac. & Proc. Juris. § 3524.3 (3d ed.)

1 Tribal governments are empowered to make decisions about the standards for tribal
2 membership by both federal Indian law and the individual laws of each tribe. Tribal membership
3 rules vary widely from tribe to tribe, but it's undisputed that the authority to makes those rules lies at
4 the heart of tribal governance and sovereignty. *Santa Clara Pueblo v. Martinez*, 436 U.S. 39 (1978).
5 Under the Nooksack Constitution, the Tribal Council is empowered to enact ordinances governing
6 loss of membership. Nooksack Constitution, Article II, Section 2. Section 4 requires the Tribal
7 Council to prescribe "rules and regulations governing involuntary loss of membership." Section 4
8 states "The reasons for such loss shall be limited exclusively to failure to meet the requirements set
9 for membership in this constitution." Article II, Section 4. The Tribal Council enacted Title 63,
10 which this Court analyzed extensively in *Lomeli*. On August 8, 2013, the Tribal Council passed
11 "Tribal Council Procedures for Involuntary Disenrollment Meetings."

12 These Procedures were adopted by a quorum of the Tribal Council, with a vote of 5 in favor,
13 0 opposed and 1 abstention, with six members of the Tribal Council present. The passage of the
14 Procedures complies with the Bylaws of the Tribal Council, having occurred with a quorum present,
15 and under the authority of the Constitution, which expressly reserves to the Council the
16 responsibility of adopting rules and regulations governing involuntary loss of membership. The
17 Procedures adopted lay out, in detail, the manner in which disenrollment proceedings will be heard.

18 The Plaintiffs argue that several of the provisions in the Procedures violate substantive and
19 procedural due process. With one exception, the Court disagrees.

20 As the Court has already found in this case, *Matthews v. Eldridge*, 424 U.S. 319 (1976) sets
21 out the basic requirements of procedural due process. "Some form" of a hearing is due to a person
22 who's property interest may be deprived by the action of the government. In the tribal context, very
23 few cases have been reported that analyze the reach of due process in the tribal arena and none of
24

1 those cases discuss the kind of procedural due process due in disenrollment proceedings. Plaintiffs
2 argue that the Court should apply the law as it applies to the divestment of United States citizenship.
3 Like many of the analogies made in this case, that one is unsatisfying. While the Court recognizes
4 the important entitlements at stake for the proposed disenrollees, this is a fundamentally different
5 proceeding than a loss of United States' citizenship. If a U.S. citizen is divested of U.S. citizenship,
6 that person becomes stateless, unable to travel, unable to participate in the democratic process,
7 unable to live legally in the United States, unable to obtain legal employment, unable to apply for or
8 obtain any of the privileges of citizenship. In the case of tribal disenrollees, the disenrollee loses
9 critical and important rights, but they are not equal to the loss of U.S. citizenship. A person who is
10 disenrolled from her tribe loses access to the privileges of tribal membership, but she is not stateless.
11 While she loses the right, for example, to apply for and obtain tribal housing through the Tribe, her
12 ability to obtain housing in general is unaffected. Though she loses the right to vote in tribal
13 elections, she does not lose the right to vote in federal, state and local elections. While the impact on
14 the disenrollee is serious and detrimental, it is not akin to becoming stateless.

15 The proposed disenrollees are due a hearing "at a meaningful time and in a meaningful
16 manner." *Id.* at 333. However, there is no mechanical solution to what meaningful time and manner
17 means and defining that generally requires the application of the following guidelines: "the private
18 interest that will be affected by the official action; second, the risk of an erroneous deprivation of
19 such interest through the procedures used, and the probable value, if any, of additional or substitute
20 procedural safeguards; and finally, the Government's interest, including the function involved and
21 the fiscal and administrative burdens that the additional or substitute procedural requirement would
22 entail." *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976).

1 In most of the relevant cases on procedural due process, the termination of the property
2 interest had already occurred and the hearing sought by the plaintiffs involved a review of the
3 termination of property interest. In all but one of those cases, the U.S. Supreme Court held that due
4 process required something less than a full blown judicial hearing similar to a trial. *Goldberg v.*
5 *Kelly*, 397 U.S. 254 (1970). It's clear from the case law that due process requires notice that
6 explains the reasons for the governmental action, an opportunity be heard and defend against that
7 action and those reasons, and an opportunity to present an argument orally.

8 The private interest affected by the action of the Tribal Council here is enrollment in the
9 Nooksack Indian Tribe. The Court has discussed the nature of enrollment in other orders and
10 decisions and need not detail the same here. Enrollment is extremely important for practical reasons,
11 as well as deeply personal ones. It is not, as the Court has already addressed, equal to U.S.
12 citizenship, though it entitles the member to many privileges the removal of which will cause harm
13 and have serious and detrimental impacts. However, the risk of erroneous deprivation is minimal, as
14 the Court discusses in greater detail below.

15
16 At this stage of this case, the Defendants have not held any disenrollment hearings, though
17 some had been scheduled. The Nooksack Court of Appeals in *Lomeli*, following the Nooksack
18 Tribal Code, issued an automatic stay in that case prohibiting the commencement of disenrollment
19 hearings. Thus the Court cannot analyze the application of the Disenrollment Procedures, but only
20 the Procedures as they have been issued.

21 With one exception, the Disenrollment Procedures meet the basic safeguards of procedural
22 due process. The Procedures are issued under the authority of the Constitution (Section I). Notice is
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1 provided to each of the Disenrollees, with notice of the date, time and method of the meeting, with
2 notice by personal service, registered mail with return receipt requested or with its Canadian
3 equivalent. Notice is provided with 21 calendar days prior the scheduled hearing. Response
4 requirements are listed in Section V. (A). Responses may be filed in writing or via email as long as
5 they are signed. Evidence must be provided five days prior to the meetings that have been
6 scheduled.

7 The meetings themselves are discussed in Section VI. Meetings are held via telephone. The
8 Plaintiffs argue this fails to conform with due process requirements. Due Process requires an
9 opportunity to provide evidence at a hearing orally. There is not a requirement, as Plaintiffs argue,
10 that this meetings occur in person. Telephonic hearings are scheduled for these purposes likely for
11 the sake of efficiency, as well as for reasons of safety and orderliness. Due process requires that the
12 respondent be able to provide evidence orally, but doing so in person in this case is not required.
13 The issues in these hearings are entirely factual in nature; the Tribal Council must prove that the
14 Disenrollees are not eligible for enrollment. Each of the Disenrollees have received detailed
15 ancestral histories showing their lineage back several generations. The Disenrollees have the
16 opportunity to show that the facts presented are incorrect, via written submission and oral
17 presentation. If errors have been made in the Tribal Council's documentation, the Disenrollees have
18 the opportunity to correct it. (That opportunity that has never been limited to the Disenrollment
19 Procedures alone. Many of the proposed disenrollees have known of these questions surrounding
20 their eligibility for enrollment for nearly a year and the opportunity to provide evidence to the
21 Enrollment Department showing their eligibility has been available from the beginning. For
22 example, prior to any of the cases filed in this Court, the Tribal Council notified both Plaintiffs St.
23
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1 Germain and Roberts that there were questions about their eligibility for enrollment and the Tribal
2 Council asked them to correct their records with the department.) While the nature of the
3 disenrollment involves enormously significant and complex impacts on the disenrollee and the
4 Tribe, the factual questions have direct and simply addressed answers. Either the Tribe can prove
5 that the proposed disenrollee is ineligible for enrollment or not. The Disenrollee has the opportunity
6 to show that they have contrary factual evidence. This can be done via written submission and oral
7 presentations and having this done via telephone does not offend due process.

8 The one area where the Procedures do offend due process is in the area of representation.
9 Section VI(C) prohibits Disenrollees from having “another person to represent him or her,” with the
10 exception of Minor Disenrollees, who must be represented by a legal guardian. The Court
11 recognizes that the Tribal Council is seeking to streamline the proceedings. However, denying
12 proposed Disenrollees from allowing others to represent them, whether they choose to appear with
13 an attorney or someone who is simply a family spokesperson, violates the basic due process right to
14 appear with counsel, at the Disenrollees’ own expense. As the U.S. Supreme Court held in
15 *Goldberg*, “The right to be heard would be, in many cases, of little avail if it did not comprehend the
16 right to be heard by counsel . . . We do not anticipate that this assistance will unduly prolong or
17 otherwise encumber the hearing.” *Goldberg*, 397 U.S. at 270. The Tribal Council is not required to
18 accommodate the scheduling of each Disenrollee’s representative; given the large number of
19 hearings and the complexity of scheduling multiple people’s schedules for these proceedings, the
20 Court recognizes the enormous logistical nightmare at hand. Proposed disenrollees must be allowed
21 to bring a representative to the telephonic hearings; they may not, however, use such representation
22 as a means by which to delay and otherwise stymie the proceedings.
23
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1 Plaintiffs argue that the time limit on each Disenrollees' presentation of ten minutes violates
2 due process. Due process requires that the respondent have an opportunity to challenge the evidence
3 presented by the Tribal Council, which each Disenrollee is provided in writing in exhaustive detail.
4 Errors in that evidence may be corrected in writing by the Disenrollee, as well as orally. These
5 hearings are not like trials, where the judge or jury acts as the fact finder. These hearings are to
6 determine whether the Tribal Council can show that the proposed Disenrollee does not meets the
7 criteria for enrollment set out in the Nooksack Constitution. Again, while the impacts on the
8 Disenrollees and the Tribe are legion, the questions of eligibility are simple questions of fact: does
9 the proposed Disenrollee meet the criteria of enrollment or not? If the answer is no, the Tribal
10 Council meets its burden. If the answer is yes, the Tribal Council has not and the proposed
11 Disenrollee remains enrolled. The risk of erroneous deprivation under these circumstances is
12 minimal.

13
14 Though the Plaintiffs have stated on the record that they are not asking this Court to adjudge
15 "who is and who is not" Nooksack, they have filed volumes of material attempting to force this
16 Court by its rulings to make that determination. That determination is for the Tribal Council alone.
17 Whether the census at the heart of these issues contains an error is not an issue in front of this Court,
18 nor is it really an issue in front of the Tribal Council. The issue to be resolved by the Council is
19 whether or not the proposed Disenrollee meets the criteria for enrollment or not, not whether the
20 census itself is correct. Some tribes no longer rely on census data for enrollment and rely instead on
21 DNA evidence. Some tribes rely entirely on census data and family trees, even when that census
22 data was never intended for such purposes. Any way a tribe determines membership will result in
23 what some will determine to be unfair and what others will determine to be protective of a tribe's
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1 interests. As the Court has stated repeatedly in various forms, there are no winners in this case. The
2 issues before the Council boil down to simple factual questions. The fact that the proposed
3 Disenrollees have been accessing the privileges and responsibilities of enrollment does not entitle
4 them to continued enrollment. Individuals are entitled to enrollment when they meet the criteria for
5 enrollment and that question is one to be determined by the Tribal Council on the basis of facts
6 alone. The risk of erroneous deprivation on the basis of factual data is small and the procedures set
7 out by the Tribal Council reasonably balance the various interests.

8 The Court finds that the Procedures passed by the Tribal Council sufficiently address due
9 process concerns and, as a result, the Court finds that the cloak of sovereign immunity protects the
10 Defendants. Further, the Court finds that real party in interest here is the Nooksack Indian Tribe, a
11 party that is not subject to joinder. The interest of ensuring that only those who qualify for
12 enrollment in a tribe are enrolled is an interest that extends far beyond the Defendants. Tribes
13 provide services to their members, they represent their members' interests in all kinds of settings,
14 and they protect their members' rights under treaties. If the Plaintiffs are eligible for enrollment, that
15 eligibility should be protected by the Tribal Council in order to preserve the Tribe itself. If they are
16 not eligible for enrollment, allowing them to continue to be enrolled and accessing services and
17 rights reserved for members may place the Tribe in violation of federal laws and treaties, as well as
18 requiring the expenditure of tribal funds that should be reserved for providing services to members.
19 The Defendants by themselves have no duty to protect the Tribe's and the tribal members' interests
20 in their individual capacity. That responsibility only attaches to them when they act in their official
21 capacity, which, the Court finds, they have done in concert with their responsibilities to the
22 Nooksack Constitution.
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1 With regard to the issue of representation, the Court finds that denying the proposed
2 disenrollees the right to have a representative at their hearing violates due process. While the Court
3 does not find that the passage of the Procedures including this section gives rise to a *Young* like
4 exception, the Court finds that imposing that section of the Procedures on proposed disenrollees
5 during the disenrollment hearings might.

6 The Complaint also raises several other issues that the Court will address briefly. The
7 Plaintiffs argued that the conflict between the notice provisions in the Procedures and the notice
8 provisions in their individual letters constituted violations of due process. Those issues have been
9 rendered moot by the stay issued in *Lomeli*. Plaintiffs St. Germain and Roberts have argued that the
10 Tribal Council has failed to comply with Special Meeting requests. As noted during oral argument
11 in this case, those Special Meetings occurred and that issued is rendered moot. Plaintiffs St.
12 Germain and Roberts further argue that the Tribal Council has failed to meet on First Tuesdays in
13 accordance with the Bylaws. That issues is res judicata by this Court's orders in *Lomeli*.
14

15 With regard to the Back to School Support resolution, the Court finds that the resolution was
16 duly passed and that the proposed disenrollees have not lost access to such support if the proceedings
17 conclude with their continued tribal enrollment. Back to School Support is not an entitlement, but is
18 discretionary as a yearly amount issued by the Tribal Council if the treasury is capable of supporting
19 it. Denying that support to the proposed disenrollee minor children enrolled in school is distasteful,
20 but it is not a violation of the law.
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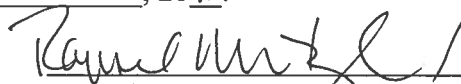
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2 The Plaintiffs seek enforcement of a stipulation related to the *Lomeli* matter. As the Court
3 has noted in a prior Order denying the *Plaintiffs' Motion for Contempt*, this case is not the
4 appropriate vehicle by which to address the Stipulation or the actions taken with regard to it. As the
5 Court attempted to make plain to the Plaintiffs, filing a motion regarding matters in *Lomeli* should be
6 filed under the *Lomeli* caption. It's unclear how the Plaintiffs sought enforcement of that Stipulation
7 in this case when the underlying theory of their suit is action for declaratory, injunctive *prospective*
8 relief, but the fact that they sought enforcement under this case rather than the original case to which
9 the Stipulation applies is fatal to this claim.
10

11 This case presents difficult and complex issues for this community. All of us who have a
12 role in these matters must take that role seriously, with a view toward the future of this tribe.
13 Though the Court recognizes the importance of deciding these questions quickly, it has taken the
14 time necessary to ensure that the analysis represented careful thought to each of the arguments
15 presented by the parties. There is no "obvious" answer, despite the entreaties of both sides that the
16 answers to these issues are settled and obvious. They are neither. The parties have a responsibility
17 to their clients, the community, and the public at large to fairly represent the state of the law on these
18 issues, which is either non-existent, in flux, or questionably applicable to the present context. Any
19 representation to the contrary is inaccurate at best and disingenuous at worst. As this Court noted in
20 other orders and decisions, the Court is charged here with interpreting and developing the law in
21 these cases, and it does so with the best interests of this community at heart. The Court continues to
22 encourage the parties in this case to approach these matters similarly.
23
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1 For the above reasons, the Court hereby grants the Defendants' *Motion to Dismiss*.

2 **IT IS SO ORDERED.**

3 **DATED** this 17 day of Oct., 2013.

4 

5 Raquel Montoya-Lewis

6 Chief Judge, Nooksack Tribal Court