

10-28-13 P01:26 IN

Betty L. Smith

IN THE NOOKSACK TRIBAL COURT

Case No. 2013-CI-CL-003

NOTICE OF APPEAL

MICHELLE JOAN ROBERTS,
Councilmember of the Nooksack Tribal
Council; RUDY ST. GERMAIN, Secretary of
the Nooksack Tribal Council; FRANCINE
ADAMS; ANTHONY ADAMS; BRINA
ALDREDGE; BRITTANY ALDREDGE;
NORMA ALDREDGE; ANGELITA AURE;
DOE AURE; CHELSEA BAKER; KELSEA
BAKER; PRICILLA BAKER; JERIC BAKER;
FLORENTINO BARRIL; CALEB BARRIL-
BOTHELL; CATHALINA BARRILL; BILLIE
BARTLE; ADAM BELLO; EILEEN BELLO;
PATRICK BELLO JR.; ELIZABETH BELLO;
PATRICK BELLO; ELPIDO BELLO JR.;
EUGENA BELLO; JOSEPH BELLO; LUCAS
BELLO; NICHOLAS ELPEDIO BELLO;
DOMINIC BELLO; RICHARD BELLO;
ELEANOR BELMONT; DIONNE BENNETT;
OLIVA BOTHELL; KIRK BROWN;
CHRISTINA BUMATAY; ANDREA
BUMATAY; ROBERT BUMATAY;
ANDREW BUMATAY; JAMES BUMATAY;
JONATHAN BUMATAY; BARTON
BUMATAY; ANGELA BUMATAY;
NOELANI BUMATAY-JEFFERSON;
MARIAH BUMATAY-JEFFERSON; CAROL
CAILING; DONNA CAILING; KEITH
CAILING; NEVEAH CAILING; ANITA
CAMPBELL; ALEXANDREA CARR; LEE
CARR; PRICILLA CARR; ROBLEY CARR;
ANNA CARR; QUOLIA CARR; VANESSA
CASIMIR; CHRISSA CASONO; NINA
CHOW; KYLE COBLE; LISA COBLE;

1 STEVE COBLE; SEAN COLEMAN; GILDA
CORPUZ; PEDRO CORPUZ; VICTORINO
2 CORPUZ; CHRISTINA CORPUZ-PEATO;
JORDAN CRAIN; ROLAND CUATERO;
3 NACISCO CUNANAN; DONALD
EDWARDS; BRIONNA ERICKSON; SETH
4 ERICKSON; TERESA ERICKSON;
MICHAEL FAULKS; VICTORIA FRANZ;
5 ROMA FURUTA; ELEANOR GABRIEL;
JESSICA GABRIEL; ZARIA GABRIEL;
6 AVRILYN GABRIEL; REGINALD
GABRIEL; AYL A GARDIPE; DANCHO
7 GARDIPE; DAVID GARDIPE; DONNA
GASPAR; GUADALUPE GASPAR; JADE
8 GASPAR; JESUS GASPAR; ASIA GILYARD;
LEONARD GLADSTONE; LOIS
9 GLADSTONE; MIKALA GLADSTONE;
RICHARD GLADSTONE; TYRONE
10 GLADSTONE; MAILE GOMEZ-RABANG;
MALAKAI GRIFFETH; MALIA GRIFFETH;
11 MARIE HADDOW; MIRANDA HADDOW;
DOLLY HADDOW; TINA HANCOCK;
12 AMYA HART; ANITA HART; CHARLOTTE
HART; DESTINE HART; EDARAY HART;
13 JENNIFER HART; KIANA HART; LINDA
HART; PHILLIP L. HART; TAYSHUAN
14 HART; ROSE HERNANDEZ; KIMBERLY
ISED A; AUNDREA JAHR; KAYLEENA-
15 RAY JAHR; JUANITA JAVIER; MANUEL
JAVIER; SATURNINO JAVIER; ANDREW
16 JEFFERSON; JOSEPH JEFFERSON;
KALEIOLANI JEFFERSON; JOHNNY
17 JENSEN; MAXIMO KAUFFMAN; MARC
ANTHONY KAUFFMAN; CAMERON
18 LAWRENCE; SONIA LOMIELI; ADRIAN
LOPEZ JR.; ADRIAN LOPEZ SR.; ARSENIO
19 LOPEZ; BERTA LOPEZ (RABANG); TRINA
LOPEZ (HARO); TRENT LOUGHNANE;
20 KIYOMIE MARSHALL; CARLOS MIGUEL;
LAWRENCE MIGUEL; MATIAS MIGUEL;
21 RONALD MIGUEL III; RONALD MIGUEL
JR.; TONI MIGUEL; JUSTIN MUNDEN;
22 ANGELINE NARTE; DANTE NARTE;
FRAZER NARTE; JAIME NARTE; JENAIA
23 NARTE; KAILEE NARTE; MARIO NARTE
JR.; MARIO NARTE; MICAH NARTE;

RUBY NARTE; ANTONIO NARTE JR.;
PHILLIP D. NARTE; ANTONIO NARTE;
CALEB NARTE; CODY NARTE; ELISAH
NARTE; ANDREW NICOL; TERIA ANN
NICOL; ROY NICOL; ALEXANDER NICOL-
MILLS; DUSTIN OSHIRO; ELIZABETH
OSHIRO; KIYOSHI OSHIRO; MATTHEW
OSHIRO; OLIVE OSHIRO; OLIVIA OSHIRO;
TIANA OSHIRO; STEVEN PARK; EDMUND
PARK; ADELINA PARKER; MALIA PEATO;
PATELESIO PEATO; SOFIA PEATO;
KUAIKA PELETI; RENE PELETI; TINO
PELETI; MORENO PERALTA; ARIEL
PHILLIPS; JOSHUA PHILLIPS; SAMSON
PHILLIPS; AILINA RABANG; SELIA
RABANG; SHALENE RABANG; CLARA
RABANG; LEONARD RABANG; MAXINA
RABANG; MIANA RABANG; REANNA
RABANG; TYRONE RABANG JR.; TYRONE
RABANG; WILLIAM RABANG; ANGEL
RABANG; ANGELITA RABANG;
ANTHONY RABANG; BRIANNA RABANG;
DOMINGO A. RABANG SR.; DOMINGO F.
RABANG; FRANCISCA L.G. RABANG;
FRANCISCA S. RABANG; FRANCISCO A.
RABANG; FRANCISCO D.G. RABANG;
FRANCISCO RABANG JR.; GINA RABANG;
JAMES RABANG; LAJUNE RABANG;
MARTINO RABANG; MICHAEL RABANG;
QUI-SEENUM RABANG; RACHEL
RABANG; ROBERT JAMES RABANG III;
ROBERT JAMES RABANG JR.; ROBERT
JAMES RABANG SR.; SANTANA RABANG;
TIERRA RABANG; TINA RABANG;
CARCIONE RABANG; SUNSIE RABANG;
WILLIAM RABANG JR.; SHARON
RABANG-BROWN; ALEXINA RABANG-
COLEMAN; ALLEN RAPADA; ANDREW
RAPADA; BART RAPADA; CALVIN
RAPADA; DANIEL FRED RAPADA;
DANIEL FELIX RAPADA; DARRELL
RAPADA; EMILY RAPADA; GERALD
RAPADA; HONORATO RAPADA;
HONORATO RAPADA; JAMES RAPADA;
KIMBERLY RAPADA; MELISSA RAPADA;
MILDRED RAPADA; RECONAR RAPADA;

1 RECONAR G.B. RAPADA; SONIA
2 RAPADA; TIERRA RAPADA; ZACK
3 RAPADA; NADINE RAPADA; ANGELA
4 RAPADA; BETSIEBO RAPADA; CATALINA
5 RENTERIA; MARCELLINA RENTERIA;
6 SYLVIA RENTERIA; VINCENT RENTERIA;
7 ALLEN RICHAMIRE; VERONICA
8 RICHMIRE; ANGELO RITUALO; DIANA
9 (MONA) RITUALO; FELIPE RITUALO;
10 TERESA RITUALO; BRITTINIE ROBERTS;
11 RAFFINAND ROBERTS; DEANNA
12 ROMERO; RUDY ROMERO; EMMANUEL
13 ROMERO-DANCEL; KRISTOFFER SILVA;
14 SEVINA SILVA; TYLER SILVA; ENZO
15 SIOSON; JULIETTE SIOSON; ROCCO
16 SIOSON; DEBBIE SMITH (NARTE); ALEX
17 ST. GERMAIN; BREANNA ST. GERMAIN;
18 RUDY ST. GERMAIN; TAYLOR ST.
19 GERMAIN; TERRY ST. GERMAIN JR.;
20 ROSE TOVAR; AND JOCELYN TOVAR;
21 CHERYL TRAINOR; KRISTAL TRAINOR,
22 individually and on behalf of their minor
23 children, enrolled members of the Nooksack
24 Indian Tribe,

25 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; and
AGRIPINA "LONA" JOHNSON,
Councilmember of the Nooksack Tribal
Council, in their official capacities,

Defendants.

COME NOW Appellants, pursuant to N.T.C. §§ 80.03.010 and 80.04.010, and appeal the October 17, 2013 Order Granting Defendant’s [sic] Motion To Dismiss (“Order”) and the underlying decisions in the above-captioned case. N.T.C. § 80.04.030(b).¹

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’ Complaint.²

II. INTRODUCTION

The Trial Court held that Appellees will violate Appellants’ due process, but – incredibly – refused to do anything about it. Critically, the Trial Court made several correct findings necessary to its holding:

- “*Mathews v. Eldridge*, 424 U.S. 319 (1976), sets out the basic requirements of procedural due process” applicable pursuant to the Nooksack Constitution. Order at 6.
- “[P]roposed disenrollees are due a hearing ‘at a meaningful time and in a meaningful manner.’” Order at 7 (citing *Mathews*, 424 U.S. 319).
- “[D]ue process requires notice that explains the reasons for the governmental action, an opportunity to be heard and defend against that action and those reasons, and an opportunity to present an argument orally.” Order at 8.
- “[D]enying proposed Disenrollees from allowing others to represent them, whether they choose to appear with an attorney of someone who is simply a family

¹ Pursuant to N.T.C. § 80.04.030, Appellants represent that all parties in this matter are listed in the caption, and “those other enrolled members of the Tribe who are similarly situated.” First Amended Complaint at 6. 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.

² Appellees’ amendments to N.T.C. § 80.06.010 were illegal, as alleged in the Trial Court and herein; thus the pre-amendment version of that code provision applies to this Appeal.

1 spokesperson, violates the basic due process right to appear with counsel, at the Disenrollees’
2 own expense.” Order at 10.

3 These monumental holdings are critical to the Nooksack rule of law. The Trial Court
4 recognized Appellants’ profound rights, and the Constitutional restriction on Appellees’
5 impending violations of those rights. But, the Trial Court’s correct and very important findings
6 are outweighed by its monumentally erroneous, and even internally inconsistent, holdings.

7 The Trial Court was wrong in ruling that “[t]here is no ‘obvious’ answer[.]” in this case.
8 Order at 14. There is. Despite ample proof and authority to the contrary, some of which exists
9 in the Trial Court’s own written opinions, *Ex parte Young* is the law of the Nooksack Tribe.³
10 The Trial Court erred in (1) being “unclear” whether the *Ex parte Young* exception applies in this
11 case and (2) holding that Appellees’ due process violations were not violations at all.

12 III. ASSIGNMENTS OF ERROR

13 A. Order Clarifying Case Status (October 23, 2013)

14 The Trial Court erred in its Order Clarifying Case Status by continuing to refrain from
15 ruling on a contempt motion in the *Roberts* matter. Order Clarifying Case Status at 1. *Roberts* is
16 a proper case in which to address Appellees’ contempt of the Trial Court by their automatic
17 disenrollment of at least four of Appellants in breach of the Court’s order in *Lomeli* that “[n]o
18 person will be disenrolled prior to the completion of the meetings before the Tribal Council,
19 regardless of whether that individual has requested a meeting with the Tribal Council.” This
20 error led to the Trial Court failing to properly address Appellants’ Motion For Order To Show
21 Cause Re: Contempt.

22 //

23 ³ The Trial Court stated that its repeated applications, as well as the Court of Appeals’ prior and most recent
24 applications, of the *Ex Parte Young* doctrine are “dicta.” Order at 4. However, the Trial Court misunderstands and
misuses the word “dicta.”

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B. Order Denying Motion For Reconsideration (October 22, 2013)

The Trial Court erred in its Order Denying Motion For Reconsideration by failing to reconsider, or adequately address the basis for its Order Denying Second Motion For Temporary Restraining Order. Fed. R. Civ. Proc. 52(a)(2), as adopted by the Trial Court, requires that, “[i]n granting or refusing an interlocutory injunction, the court must similarly state the [fact] findings and conclusions [of law] that support its action.” The Trial Court failed to do so. This error led to the Trial Court not reconsidering its Order Denying Second Motion For Temporary Restraining Order.

C. Order Denying Second Motion For Temporary Restraining Order (October 18, 2013)

The Trial Court erred in its Order Denying Second Motion For Temporary Restraining Order by refusing to enforce the Trial Court’s authority in the *Roberts* matter. *Roberts* was a proper case in which to address Appellees’ above-mentioned contempt of the Trial Court. Further, here too Fed. R. Civ. Proc. 52(a)(2) requires that, “[i]n granting or refusing an interlocutory injunction, the court must similarly state the [fact] findings and conclusions [of law] that support its action.” The Trial Court failed to do so. These errors led to the Trial Court erroneously Denying Appellants’ Second Motion For Temporary Restraining Order.

D. Order Granting Defendant’s [sic] Motion To Dismiss (October 17, 2013)

The parts of the decision subject to review, errors, and effects on case include:

- The Trial Court’s most critical error, and the one beyond which the Court of Appeals need not proceed, was its failure to enjoin Appellees despite holding they will violate due process. Order at 13. The Trial Court held expressly that “denying the proposed disenrollees the right to have a representative at their hearing violates due process.” *Id.* But the

1 Trial Court refused to enjoin Appellees from violating Appellants' rights because, "passage of
2 the Procedures [does not] give rise to a *Young* like exception." *Id.* The Trial Court also held that
3 imposing the illegal rules on Appellants "might" give rise to the *Ex parte Young* exception. But
4 this misses the point of *Ex parte Young*. The Trial Court is powerless to rectify past violations; it
5 can only enjoin future violations of the Constitution. Appellants have never argued that
6 Appellees cannot pass illegal legislation. Plainly, Appellants have the ability to draft vague,
7 tyrannical, right-violating legislation. Yet under *Ex parte Young*, when acts in furtherance of
8 such legislation are presented to the Trial Court, it must enjoin the law's application. The Trial
9 Court erred in failing to do so. This error led to the dismissal of Appellants' First Amended
10 Complaint For Equitable Relief.

11 • The Trial Court believes Appellants' claims hinge on whether Appellees are
12 "acting outside the scope of their authority." Order at 3. While Appellees may be acting outside
13 the scope of their authority, Appellants' *Ex parte Young* claims stem simply from Appellees'
14 violations of the law. *Ex parte Young* requires no more. The Trial Court failed to correctly
15 apply *Ex parte Young*. This error led to the Trial Court's dismissal of Appellants' First
16 Amended Complaint For Equitable Relief.

17 • The Trial Court held, "whether a [*Ex parte*] *Young* theory exists under Nooksack
18 law remains unclear." Order at 4. The Trial Court incorrectly held that its application, and the
19 application by the Court of Appeals, of *Ex parte Young* was *dicta*. Where a court "confronts an
20 issue germane to the eventual resolution of the case, and resolves it after reasoned consideration
21 in a published opinion, that ruling becomes the law . . . regardless of whether doing so is
22 necessary in some strict logical sense." *Miranda B. v. Kitzhaber*, 328 F.3d 1181, 1186 (9th Cir.
23 2003) (*citing United States v. Johnson*, 256 F.3d 895, 914 (9th Cir. 2001) (en banc)). *Dicta*

exists only “[w]here it is clear that a statement is made casually and without analysis, where the statement is uttered in passing without due consideration of the alternatives, or where it is merely a prelude to another legal issue that commands the [court]’s full attention.” *Johnson*, 256 F.3d at 915. Each previous application of *Ex parte Young* was absolutely germane, if not critical, to the resolution of the cases in which it was cited. There is no definition of the word “dicta” that makes the Trial Court’s use of it correct. Order at 4. The Trial Court chose to ignore previous application of the doctrine as “dicta” rather than carefully analyze it. The Trial Court incorrectly failed to apply the correct law, i.e. the *Ex parte Young* exception. Order at 4-5. This error led to the Trial Court’s dismissal of Appellants’ First Amended Complaint For Equitable Relief.

- The Trial Court looked beyond the allegations to the merits of the claim. Order at 4-14. There are only two straightforward requirements necessary to defeat a motion to dismiss on immunity grounds: (1) an allegation respondents have violated applicable law; and (2) that the suit seeks an injunction that would prospectively abate the alleged violation. *Verizon Maryland, Inc. v. Public Service Commission*, 535 U.S. 635, 646 (2002); *Hill v. Kemp*, 478 F.3d 1236 (10th Cir. 2007). The Trial Court erroneously looked beyond these two questions. This error led to the Trial Court’s dismissal of Appellants’ First Amended Complaint For Equitable Relief.

- The Trial Court relied on a U.S. Supreme Court case that has been long overruled by the Supreme Court. Order at 5. The Trial Court cites *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 85 (1984), for a pseudo real-party-in-interest theory justifying dismissal. *Id.* But “[i]t is error to read the language about the ‘party in interest’ as an extension of [sovereign] immunity to actions seeking injunctive relief against a[n] officer who is violating federal law. . . . To the extent the text of *Pennhurst* supports such a reading, it [has been] overruled.” *Nelson v. Miller*, 170 F.3d 641, 646 n.5 (6th Cir. 1999) (quotation omitted). Relying

1 on a case that has been overruled for over a decade led to the Trial Court’s dismissal of
2 Appellants’ First Amended Complaint For Equitable Relief.

3 • The Trial Court held that “Tribal governments are empowered to make decisions
4 about the standards for trial membership by . . . the individual laws of each tribe.” Order at 6.
5 The Trial Court cites select provisions of Tribal Law regarding these powers. But in doing so the
6 Trial Court ignores Article IX of the Nooksack Constitution, which affords to the Nooksack
7 membership “equal rights pursuant to tribal law” and “[t]he protection guaranteed to persons by
8 Title II of the [Indian] Civil Rights Act of 1968 (82 Stat. 77).” Const., Art. IX. These rights are
9 enforceable “against actions of the Nooksack Indian Tribe in the exercise of its power of self-
10 government.” *Id.* Title II of the Indian Civil Rights Act (“ICRA”) states, in relevant part, that
11 “[n]o Indian tribe . . . shall deny to any person within its jurisdiction the equal protection of its
12 laws or deprive any person of liberty or property without due process of law.” 25 U.S.C. §
13 1302(a)(8). In addition to providing a *Young* basis for liability, Article IX likely provides a
14 waiver for ICRA/constitutional claims in Tribal Court. *See e.g. McGee v. Spirit Mountain*
15 *Gaming, Inc.*, 5 Am. Tribal Law 85, 88 n.1 (Grand Ronde Tribal Ct. 2004) (allowing an
16 ICRA/constitutional claim to move forward because, as here, “[t]he Tribal Constitution
17 incorporates the ICRA by reference . . . and charges the Tribal Court with enforcing its
18 provisions.”) The Trial Court erroneously failed to follow, apply, and enforce the Nooksack
19 Constitution. This error led to the Trial Court’s dismissal of Appellants’ First Amended
20 Complaint For Equitable Relief.

21 • The Trial Court ruminated on the difference between citizenship cases and the
22 instant matter. Order at 6-7. To the extent the Trial Court is ignoring all cases related to
23 citizenship for guidance on what process is due a person who “loses critical and important
24

rights,” the Trial Court erred. Order at 7. The Trial Court held, “[w]hile the impact on the disenrollee is serious and detrimental, it is not akin to becoming stateless.” *Id.* It is not clear what the Trial Court meant by this statement, but the examples the Trial Court uses to support its statement are factually and internally wrong: “While [a disenrollee] loses the right, for example, to apply for and obtain tribal housing through the Tribe, her ability to obtain housing in general is unaffected.” *Id.* Clearly, Appellants’ “ability to obtain housing in general” is affected, if, in specific, their ability to live in their current Tribal homes is affected. The Trial Court’s internally inconsistent statements are error and appear to have caused it to dismiss Appellants’ First Amended Complaint For Equitable Relief.

- The Trial Court held that “the risk of erroneous deprivation [of membership] is minimal.” Order at 8. But failed to follow any authority or apply any existing law related to such risks. The Trial Court essentially *felt* that the risk of erroneous deprivation is low, without rationale. Although it was error to engage in the *Mathews* balancing test in the first place, by failing to apply *any* standard to the deprivation-risk question, the Trial Court additionally erred. Courts analyze the risk of erroneous deprivation of rights in several ways, none of which was mentioned by the Trial Court. Just a few of those factors are:

- (1) The value of additional procedural protections. *See Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 545-46 (1985), (preliminary predeprivation hearing necessary to ensure that reasonable grounds exist to support governmental action).

- (2) The availability and effectiveness of post deprivation process. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436-37 (1982); *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 20 (1978) (opportunity for injunction no substitute for pretermination hearing).

- (3) The bias of the tribunal. *See Schweiker v. McClure*, 456 U.S. 188, 195-96 (1982).

1 (4) Whether an in-person hearing would reduce the risk of error and allow disenrollees to
2 participate meaningfully in their hearings. *See Goldberg v. Kelly*, 397 U.S. 254, 268 (1970)
3 (failure to provide in-person hearings “fatal to the constitutional adequacy of the procedures.”)

4 Again, the Trial Court held that “proposed disenrollees are due a hearing at a meaningful
5 time and in a meaningful manner. Order at 7. If this is true, the Trial Court was required to
6 apply some standard, some rationale – not simply vapid observations on due process being
7 satisfied because “these hearing are entirely factual in nature.” Order at 9. The Trial Court’s
8 ruling might have made sense if it deemed the hearings to be entirely legal in nature. As it is, the
9 factual nature of the hearings requires Appellees to provide procedures that prevent the
10 erroneous deprivation of their rights. In failing to apply any standard to determine whether
11 Appellees are satisfying due process, the Trial Court erred. That error led to the Trial Court’s
12 decision to dismiss Appellants’ First Amended Complaint For Equitable Relief.

13 • The Trial Court erred in its application of the *Mathews* test to telephonic meetings
14 (Order at 9), time limits (*id.* at 11), and notice (*id.* at 13). These errors led to the Trial Court’s
15 decision to dismiss Appellants’ First Amended Complaint For Equitable Relief.

16 • The Trial Court erred in applying some kind of veiled real-party-in-
17 interest/indispensable party analysis. Order at 12. If the Trial Court was making rulings based
18 on indispensability, it should have made clear rulings from which Appellants could appeal. If
19 the second paragraph on page 12 of the Order is any form of holding, it requires clarification.
20 These errors led to the Trial Court’s decision to dismiss Appellants’ First Amended Complaint
21 For Equitable Relief.

22 • The Trial Court erred in finding that special meetings occurred, when they did not
23 occur; and thus that the Special Meeting and Regular Meetings issues are moot or *res judicata*.

1 Order at 13. These errors led to the Trial Court’s decision to dismiss Appellants’ First Amended
2 Complaint For Equitable Relief.

3 • The Trial Court erred in dismissing Due Process and Equal Protection claims
4 relating to Appellant-children’s back-to-school support. Order at 13. By failing to even address
5 Appellants’ legal arguments regarding the children’s back-to-school support, the Trial Court
6 abused its discretion by failing to use any discretion. These errors led to the Trial Court’s
7 decision to dismiss Appellants’ First Amended Complaint For Equitable Relief.

8 • The Trial Court erred in refusing to enforce a Court-filed Stipulation within its
9 jurisdiction. Order at 14. That Stipulation provided that “[n]o person will be disenrolled prior to
10 the completion of the meetings before the Tribal Council, regardless of whether that individual
11 has requested a meeting with the Tribal Council.” But Appellees automatically disenrolled at
12 least four of Appellees anyway. This error led to the Trial Court’s decision to dismiss
13 Appellants’ First Amended Complaint For Equitable Relief.

14 • The Trial Court erred in holding that, “[t]here is no ‘obvious’ answer.” Order at
15 14. The Trial Court erred in holding that “the law on these issues” is “either non-existent, in
16 flux, or questionably applicable to the present context.” Order at 14. Careful interpretation of
17 the Trial Court’s and the Court of Appeals’ decisions on *Ex parte Young*, dictates the opposite.
18 These errors led to the Trial Court’s decision to dismiss Appellants’ First Amended Complaint
19 For Equitable Relief.

20 **E. Order Denying Motion for Order to Show Cause Re: Contempt (September 20,**
21 **2013)**

22 The Trial Court erred in its Order Denying Motion For Order To Show Cause Re:
23 Contempt by refusing to rule on a contempt motion in the *Roberts* matter. Order Denying
24 Motion for Order To Show Cause Re: Contempt at 1. *Roberts* is a proper case in which to

1 address Appellees' above-discussed contempt of the Trial Court.

2 These errors led to the Trial Court failing to grant Appellants' Motion for Contempt.

3 **F. Order Denying Plaintiffs' Motion to Amend (September 6, 2013)**

4 The Trial Court's refusal to "freely" allow amendment, as allowed under the Court-
5 adopted federal rules, led to the Trial Court refusing to grant leave for Appellants to file a
6 Second Amended Complaint, and erroneously creates the absurd result of requiring parties to file
7 serial lawsuits stemming from the exact same nucleus of facts and law. *See Adams v. Kelly*, No.
8 2013-CI-CL-004 (Nooksack Tr. Ct. Oct. 22, 2013) (alleging many of the same claims in the
9 Second Amended Complaint proposed by Appellants but rejected by the Trial Court in *Roberts*).

10 **G. Order Accepting Plaintiffs' First Amended Complaint For Equitable Relief**
11 **(September 6, 2013)**

12 The Trial Court erred in concluding, *sua sponte*, without notice to the Parties or any
13 opportunity for briefing, that the judicial and appellate code amendments passed mid-litigation
14 by Appellees in August 2013, apply retroactively "to all matters pending before the Court."
15 Order Accepting Plaintiffs' First Amended Complaint For Equitable Relief at 1.

16 The amended Titles 10 and 80 were passed illegally and are otherwise invalid. They
17 should not apply retroactively or at all. Holding otherwise was error and caused the Trial Court
18 to make findings as to the applicability of these laws that prejudiced, and may further prejudice,
19 Appellants.

20 **H. Second Amended Order Denying Emergency Temporary Order Hearing (August**
21 **22, 2013); Amended Order Denying Emergency Temporary Order Hearing (August**
22 **21, 2013); Order Denying Emergency Temporary Order Hearing (August 21, 2013)**

23 The parts of the decision subject to review, errors, and effects on case include:

24 • The Trial Court observed, "Plaintiffs conceded they could seek no affirmative
25 relief, but could only seek injunctive relief." Second Amended Order Denying Emergency

1 Temporary Order Hearing at 2. This observation suggests that the Trial Court believes
2 injunctive relief is something different from affirmative relief. Affirmative or mandatory relief is
3 distinguished from prohibitory relief, which is the only relief Appellants sought. Both are types
4 of injunctive relief. This error suggests the Trial Court believed Appellants were seeking some
5 other type of undefined relief and led to the Trial Court denying Appellants Emergency Motion
6 For Temporary Restraining Order.

7 • The Trial Court held that a party seeking an injunction must show that he is likely
8 to proceed on the merits but he need only show serious questions going to the merits. Second
9 Amended Order Denying Emergency Temporary Order Hearing at 2. Certainly, by virtue of the
10 fact that Trial Court later ruled in Appellants' favor on at least the representation/due process
11 issue, there were serious questions going to the merits in this case. The Trial Court applied the
12 wrong standard and thus abused its discretion, which led to the Trial Court denying Appellants'
13 Emergency Motion For Temporary Restraining Order.

14 • The Trial Court erred in finding that it had "not found the doctrine of *Ex parte*
15 *Young* applies in this Court." Second Amended Order Denying Emergency Temporary Order
16 Hearing at 4. The Trial Court has applied *Ex parte Young*, and indeed applied *Ex parte Young*
17 (or a tortured version of it) in the very same paragraph. *See id.* ("[I]n order for them to lose their
18 sovereign immunity, they must be acting outside the scope of those capacities.") This error led
19 to the Trial Court denying Appellants' Emergency Motion For Temporary Restraining Order.

20 • The Trial Court erred in holding that *Ex parte Young* turns on whether an official
21 is acting in the "scope of those capacities." *Id.* at 4. *Ex parte Young* applies to illegal conduct,
22 not simply conduct outside the scope of an official's authority. Even the Trial Court's order is
23 inconsistent in this regard as it held Appellees could lose "their protection of sovereign immunity
24

1 by committing an act which violates the law.” *Id.* This confusion and error led to the Trial
2 Court denying Appellants’ Emergency Motion For Temporary Restraining Order.

3 • The Trial Court erred in holding that “Plaintiffs are not entitled to attorneys in
4 civil hearings in the Tribal Court.” *Id.* at 7. The Trial Court made clear in its dismissal order
5 that Appellants clearly are entitled to representation. The Trial Court appears to have applied the
6 wrong standard. *Id.* (questioning criminal versus civil right-to-counsel standard). It thus abused
7 its discretion, which led to the Trial Court denying Appellants’ Emergency Motion For
8 Temporary Restraining Order.

9 • The Trial Court erred in finding that Appellants were asking the Trial Court to
10 dictate how long hearings took or force Appellees to have in-person hearings. *Id.* at 7.
11 Appellants were simply asking the Trial Court prohibit illegal hearings. It materially misstated
12 the facts underlying Appellants’ claims, created a straw man, and thus abused its discretion,
13 which led to the Trial Court denying Appellants’ Emergency Motion For Temporary Restraining
14 Order.

15 • The Trial Court failed to correctly apply the *Mathews* standard to the facts at issue
16 in Appellants’ Emergency Motion for Temporary Restraining Order. *Id.* at 9. The Trial Court’s
17 balancing of interests was cursory and inserted improper facts in the scale. *Id.* (discussing cost
18 of addressing “these matters” and burden of “additional time for hearings”). The risk of
19 erroneous deprivation of rights was not minimal, as the Trial Court later held in finding the lack
20 of representation violated Nooksack due process. These errors led to the Trial Court denying
21 Appellants’ Emergency Motion For Temporary Restraining Order.

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23 //

1 DATED this 28th day of October, 2013.

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Gabriel S. Galanda
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Ryan D. Dreveskracht
Attorneys for Appellants
5 GALANDA BROADMAN, PLLC
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1 **DECLARATION OF SERVICE**

2 I, Gabriel S. Galanda, say:

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

6 2. Today, without waiver of any objection regarding the illegality of Appellees'
7 recent amendments to the service requirements in N.T.C. Titles 10 and 80, I caused the attached
8 documents to be delivered, including via certified mail, to,

9 Chairman Robert Kelly
10 Nooksack Tribal Council
11 Nooksack Indian Tribe
12 5016 Deming Road
13 Deming, WA 98244

14 Grett Hurley & Rickie Armstrong
15 Office of Tribal Attorney
16 Nooksack Indian Tribe
17 5047 Mt. Baker Hwy
18 P.O. Box 63
19 Deming, WA 98244

20 and emailed to:

21 Thomas Schlosser
22 Morisset, Schlosser, Jozwiak & Somerville
23 1115 Norton Building
24 801 Second Avenue
25 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 28th day of October, 2013.



GABRIEL S. GALANDA