UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Sheryl Rae Lightfoot, Plaintiff, v. Sally Jewell as Secretary of the Department of the Interior, or her Successor, United States Department of the Interior, United States, Shakopee Mdewakanton Sioux Community and Kenneth Jo Thomas, Defendants.	Case No. 13-CV-2985 (DWF/JJK)

DEFENDANT SHAKOPEE MDEWAKANTON SIOUX COMMUNITY'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S AMENDED MOTION FOR A TEMPORARY RESTRAINING ORDER

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INTRODUCTION

Plaintiff Sheryl Rae Lightfoot ("Lightfoot") cites no final federal judicial decision that grants preliminary injunctive relief of the extraordinary nature that she requests, divesting a tribal court of the ability to decide its own jurisdiction in the first instance. She offers no basis on which this Court could or should do so. The United States Court of Appeals for the Eighth Circuit affirmed a district court's rejection of just such a request as recently as this past August. *See Dish Network Service, L.L.C. v. Laducer,* 725 F.3d 877 (8th Cir. 2013).

Ms. Lightfoot does not meet either the factual or the legal standard to obtain the "extraordinary remedy" of a preliminary injunctive relief. *Watkins Inc. v. Lewis,* 346 F.3d 841, 844 (8th Cir. 2003) ("A preliminary injunction is an extraordinary remedy, and the burden of establishing the propriety of the injunction is on the movant.") (citations omitted). In particular, her efforts to show irreparable harm to herself or her children are factually unsupported and entirely speculative as to future events. Legally, Ms. Lightfoot's brief is long on opinion and selective quotes, which fail when placed in proper context. But she fails to identify any basis for federal jurisdiction for her putative claim against the defendant Shakopee Mdewakanton Sioux Community ("SMSC" or "Tribe"), a federally recognized Indian tribe.

SMSC has filed a motion to dismiss Ms. Lightfoot's action pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), based on its glaring jurisdictional defects. (Dkt. Doc.16.) That motion is calendared for hearing on February 7, 2014. Likely fearing the outcome of that motion, Ms. Lightfoot boldly seeks a temporary restraining order ("TRO") based on legal arguments which have never been accepted by a federal court. The Court should deny Ms. Lightfoot's motion.

BACKGROUND

The plaintiff Ms. Lightfoot married defendant Kenneth Jo Thomas ("Thomas") on the SMSC reservation in 1996, under the very Domestic Relations Code she now seeks to invalidate. *See* Decl. of [Pltf's Counsel] E. Kaardal (Dkt. Doc. 25-1), Ex. 3 at 1-2. The underlying background to this action—the pending divorce actions in the courts of British Columbia and the Tribal Court—is ably summarized in the Memorandum of defendant Kenneth Jo Thomas ("Thomas") is support of his motion to dismiss. (Dkt. Doc. 13.) Ms. Lightfoot's federal action is designed to short-circuit the usual process outlined in Mr. Thomas's memorandum in opposition to this motion, *see* Dkt. Doc. 33 at 3-5, whereby courts with domestic relations cases pending in two jurisdictions sort out, often through consultation with each other, the issues at stake, and instead asks this Court to declare a peremptory result she favors. This is not a role federal courts undertake.

The Tribe, of course, is not a party to either of the divorce proceedings. The SMSC Tribal Court is currently considering a motion in the Tribal Court action that squarely raises the very subject that Ms. Lightfoot seeks to litigate peremptorily here; namely, the jurisdiction of the Tribal Court over the divorce. *See* Def. Thomas's Ex. List to Mem. Dated 12-06-12 (Dkt. Doc. 34) at Ex. C. The law is clear that actions in federal court designed to avoid tribal courts' initial decisions on their own jurisdiction are precluded. This conclusion is doubly true here, where Ms. Lightfoot's end run is undertaken through an expedited motion based solely on speculative harm, not to mention an artificially short time-fuse created entirely by the plaintiff herself. Notably, the plaintiff has made no effort to request that the Tribal Court continue the hearing scheduled for December 10, 2013. Instead, Ms. Lightfoot rushed to this Court with an

inappropriate request for injunctive relief, based on legal arguments that push the boundaries of candor and good faith.

ARGUMENT

Injunctive relief "is an extraordinary remedy never awarded as a matter of right." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). When considering a motion for a temporary restraining order, a federal court weighs the following four factors: (1) the presence or risk of irreparable harm, (2) the likelihood of success on the merits, (3) the balance of the harms of granting or denying an injunction, and (4) the public's interest. *Calleros v. FSI Int'l, Inc.*, 892 F. Supp. 2d 1163, 1167 (D. Minn. 2012) (citing *Dataphase Sys., Inc. v. CL Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc). Here, each of the four factors weighs heavily against injunctive relief.

I. Ms. Lightfoot Has Not Demonstrated That She Will Suffer Irreparable Harm If A TRO Is Not Entered

A TRO movant is required to show that she will suffer irreparable harm if the court does not enter a TRO. The movant's failure to sustain her burden of proving irreparable harm is alone sufficient to deny the motion for a temporary restraining order. *See Baker Elec. Coop., Inc. v. Chaske*, 28 F.3d 1466, 1472 (8th Cir. 1994) ("No single factor in itself is dispositive . . . . However, a party moving for a preliminary injunction is required to show the threat of irreparable harm.") (internal quotation and citation omitted); *Watkins*, 346 F.3d at 844 ("Failure to show irreparable harm is an independently sufficient ground upon which to deny a preliminary injunction."). Moreover, "[i]rreparable harm must be certain and imminent such that there is a clear and present need for equitable relief." *Anytime Fitness, Inc. v. Family Fitness of Royal, LLC*, Civil No. 09-3503 (DSD/JSM), 2010 U.S. Dist. LEXIS 1583, at *5 (D. Minn. Jan. 8, 2010). Ms. Lightfoot fails to make this showing.

Ms. Lightfoot's brief simply asserts in conclusory fashion, and with no relevant citation to legal authority, that, "if the SMSC Tribal Court hearing proceeds on December 10th as scheduled, Ms. Lightfoot—and the children—will be irreparably harmed." Pl's Mem. (Dkt. Doc. No. 23) at 26. There is no explanation as to what the irreparable harm will consist of, nor of its imminence or certainty. Irreparable harm will not result from motion practice before the Tribal Court, which is in the process of determining whether it has jurisdiction. Ms. Lightfoot really only asserts speculative disagreement with the potential result.

The only factual assertions presented in support of plaintiff's motion are those contained in the affidavit of the plaintiff herself. (*See* Dkt. Doc. 24.) Professor Lightfoot is gainfully employed. Her affidavit states that she is employed "as a permanent, tenure-track professor at the University of British Columbia."[1] (*Id.* ¶ 9.) As to the children, she states, "I live with my children in the Province of British Columbia, Canada." (*Id.* ¶ 3.) The children "have lived with me in British Columbia since 2009." (*Id.*¶ 8; *see also Id.* ¶ 6 (same).) The implication of the plaintiff's affidavit is that prior to 2009, since their adoption, the children had lived on the SMSC reservation with their parents, and the affidavit states that since 2009 defendant Mr. Thomas "kept his house in SMSC, and the family has spent time there during school breaks and holidays." (*Id.* ¶ 9.)[2]

[1] Defendant Thomas's Petition for Dissolution of Marriage filed on October 16, 2013, in the SMSC Tribal Court states that Professor Lightfoot, "upon information and belief, has a gross annual income of approximately $100,000." *See* Dkt. Doc. 25-1, Ex. 3 at ¶ 12. According to the University of British Columbia's financial reports, the University paid Ms. Lightfoot remuneration of $88,972, as well as expenses of $12,509, in the 2010-2011 fiscal year. University of British Columbia, *Consolidated Financial Statements* 70 (2011), *available at* http://universitycounsel.ubc.ca/access-and-privacy/public-information/ (last visited Dec. 6, 2013).

[2]Mr. Thomas's affidavit, filed in the Tribal Court action, provides additional factual background regarding the children's involvement with the SMSC reservation and culture. *See* Dkt. Doc. 34, Ex. D at ¶¶ 5-32.

Nothing in these facts show any threat of irreparable harm to anyone that would result from the hearing scheduled before the Tribal Court on December 10, 2013. There is nothing that suggests there will be any harmful disruption in the lives of either Ms. Lightfoot or the couple's children.[3]

Ms. Lightfoot also cannot show that irreparable harm is imminent or that there is a clear and present need for equitable relief. Ms. Lightfoot glosses over the fact that the Tribal Court petition has been pending since October 16, 2013. Ms. Lightfoot waited a significant period of time before filing her motion for a temporary restraining order—just three business days before the hearing that supposedly threatens great injury. Such tactical gamesmanship further diminishes her claim to any threat of irreparable harm. "It has long been recognized that delay in seeking relief 'vitiates much of the force of . . . allegations of irreparable harm.'" *CHS, Inc. v. PetroNet, L.L.C.*, Civ. No. 10-94 (RHK/FLN), 2010 WL 4721073, at *3 (D. Minn. Nov. 15, 2010) (quoting *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977)); *see also St. Marie v. Ludeman*, Civil No. 09-3141 (JNE/AJB), 2010 U.S. Dist. LEXIS 22624, at * 12 (D. Minn. Mar. 11, 2010) (finding that a three-week delay in filing a motion for a temporary restraining order undermined plaintiff's claims of irreparable harm); 11A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* § 2946 (3d ed. 2013) ("Any unnecessary delay . . . may be viewed as inconsistent with a claim that plaintiff is asserting great injury."). The Court should deny the motion for a TRO for lack of any proof of certain and imminent irreparable harm to the plaintiff or her children.

[3]The British Columbia court has entered an interim child support order of $10,000 per month "until further order of the court." *See* Dkt. Doc. 34, Ex. A. There is no imminent threat of lack of support for the children.

II. Ms. Lightfoot Cannot Show A Likelihood Of Success On The Merits

Not only has Ms. Lightfoot failed to show irreparable harm; she cannot demonstrate that her claims are likely to succeed on the merits—were the Court ever to reach the merits of this unusual federal divorce case. Absence of a likelihood of success on the merits is an independently sufficient basis for denying her motion for a temporary restraining order. *See CDI Energy Servs. v. W. River Pumps, Inc.*, 567 F.3d 398, 402-03 (8th Cir. 2009) ("[A]bsence of a likelihood of success on the merits strongly suggests that preliminary injunctive relief should be denied."); *Oglala Sioux Tribe v. C & W Enters., Inc.*, 542 F.3d 224, 233 (8th Cir. 2008) (ceasing the injunction analysis after finding no likelihood of success on the merits). Indeed, "likelihood of success on the merits is most significant" among the four factors. *See Minn. Ass'n of Nurse Anesthetists v. Unity Hosp.*, 59 F.3d 80, 83 (8th Cir. 1995) (quotation and citation omitted). *See also Dish Network*, 725 F.3d at 882 (same).

A. There Is No Federal Law Basis For Jurisdiction Over SMSC In This Action

The first reason why Ms. Lightfoot cannot meet her burden to demonstrate that she is likely to succeed on the merits against the Tribe is because this Court's lack of federal jurisdiction will ensure that it never reaches the merits of her claims against the Tribe. *See* SMSC Motion to Dismiss for Lack of Jurisdiction (Dkt. Doc. 16) (arguing sovereign immunity, lack of an Article III case or controversy, lack of jurisdiction to address a choice of law question between tribal and state courts, and inapplicability of Public Law 280 to an Indian tribe)." Without jurisdiction the Court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Envt.*, 523 U.S. 83, 94 (1998) (quotation and citation omitted).

1. SMSC Has Not Waived Its Sovereign Immunity

"A waiver of sovereign immunity may not be implied, but must be unequivocally expressed by either the Tribe or Congress." *Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1244 (8th Cir. 1995). "Nothing short of an express and unequivocal waiver can defeat the sovereign immunity of an Indian nation." *Id.* at 1245.[4] Here, neither the Tribe nor Congress has expressly waived the Tribe's sovereign immunity from suit.

2. Public Law 280 Does Not Waive SMSC's Immunity

Contrary to Ms. Lightfoot's mercurial waiver claims, the United States Supreme Court has held that "[w]e have never read Pub. L. 280 to constitute a waiver of tribal sovereign immunity." *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Eng'g, P.C.*, 476 U.S. 877, 892 (1986).

3. The Administrative Procedure Act Provides No Claim Against An Indian Tribe

Apart from Public Law 280, the federal statutes cited in the "Jursidiction And Venue" section of Ms. Lightfoot's Complaint, notably the Administrative Procedure Act, 5 U.S.C. §§ 551-559, 701 706, *see* Complaint (Dkt. Doc. 1) ¶14; *see also id.*, ¶ 65, waive the United States' sovereign immunity in federal court for certain causes of action against federal agencies, but do not waive the sovereign immunity of Indian tribes.

B. The Indian Child Welfare Act Does Not Foreclose Tribal Court Jurisdiction Over The Underlying Divorce Proceeding

The exercise of tribal court jurisdiction in this case is not dependent on the Indian Child Welfare Act ("ICWA") or any other federal statute. Nowhere does ICWA's statutory language state that it provides the exclusive vehicle for tribal court jurisdiction over domestic relations

[4]SMSC's memorandum in support of its motion to dismiss fully dispenses with the canard advanced by Lightfoot that SMSC is not a federally recognized Indian tribe on an equal footing with all other such tribes. *See* Dkt. Doc. 18 at 5.

actions involving tribal members and non-members, and Ms. Lightfoot's memorandum cites no federal judicial decision so holding.

The Supreme Court has recognized Indian tribes as "distinct, independent political communities, retaining their original natural rights" in matters of self-governance. *Worcester v. Georgia*, 31 U.S. (6 Pet) 515, 559 (1832). Part of this authority includes the "power of regulating . . . internal and social affairs." *United States v. Kagama*, 118 U.S. 375, 381-382 (1886). Tribes also retain the power to make substantive laws, *see Roff v. Burney*, 163 U.S. 218 (1987); and to enforce that law in their own forum, *see, e.g. Williams v. Lee*, 358 U.S. 217 (1957). It is under this authority that the tribal courts retain jurisdiction over matters related to the domestic affairs of tribal members. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). Such jurisdiction may be exercised in cases brought by Indian plaintiffs residing on the reservation whether the non-Indian defendant consents to jurisdiction or not. *Sanders v. Robinson*, 864 F.2d 630 (9th Cir. 1988), *cert denied*, 490 U.S. 1110 (1989).

Ms. Lightfoot's only rebuttal is that ICWA somehow divests or preempts the tribal court of jurisdiction. However, even beyond the lack of any support in ICWA's language or in case law for this contention, it is flawed for many reasons. Ms. Lightfoot correctly points out that ICWA does not even apply in this action. ERT and CET are clearly not "Indian children" under the Act. 25 U.S.C. § 1903(4). The Eighth Circuit has held that ICWA does not apply in divorce proceedings. *Dement v. Oglala Sioux Tribal Court*, 874 F.2d 510 (8th Cir. 1989). Finally, ICWA does not apply in tribal courts unless the tribe has enacted a similar statute.

Nor can ICWA be construed to limit or preempt tribal court jurisdiction in any way. Generally speaking, ICWA bolsters tribal court authority by creating a presumption of exclusive tribal jurisdiction in matters related to Indian children. 25 U.S.C. § 1911. The preemption of

tribal court jurisdiction would be at odds with the Congressional finding that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." 25 U.S.C. § 1901(3). By enacting ICWA, when Congress provided exclusive tribal court jurisdiction in certain child welfare matters (not present here), it did not deprive tribal courts of their traditionally exercised authority over domestic relations.

C. The SMSC Domestic Relations Code Does Not Violate 28 U.S.C. § 1360 As This Federal Law Does Not Apply To Indian Tribes

Ms. Lightfoot's sole reliance on 28 U.S.C. § 1360 (commonly cited as "Public Law 280") to support her claims against SMSC is fatal to her lawsuit. Ms. Lightfoot cannot explain how a law that does not apply to Indian tribes, could serve as a basis to obtain relief against the Tribe. The United States Supreme Court has repeatedly held that 28 U.S.C. § 1360 does not apply to an Indian tribe. "[T]here is notably absent any conferral of state jurisdiction over the tribes themselves . . . ." *Bryan v. Itasca Cnty., Minn.*, 426 U.S. 373, 388-89 (1976); *Three Affiliated Tribes*, 476 U.S. at 892 (same). Minnesota courts recognize this limitation. "While Public Law 280 applies to actions involving 'Indians,' this grant of jurisdiction does not apply to Indian *tribes*." *Cohen v. Little Six, Inc.*, 543 N.W.2d 376, 381 (Minn. Ct. App. 1996) (emphasis original). By itself, the fact that 28 U.S.C. § 1360 does not apply to the Tribe is dispositive that Ms. Lightfoot has no chance of success on the merits.

As for the specific allegation that the SMSC Domestic Relations Code violates 28 U.S.C. § 1360, there is no requirement that any Tribal law must be consistent with State law, and Ms. Lightfoot cites no case so holding.[5] Ms. Lightfoot ignores the plain language of 28 U.S.C.

[5] Ms. Lightfoot's memorandum asserts misleadingly, that Minnesota's version of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") "recognizes . . . the SMSC tribal court as a state court," *see* Dkt. Doc. 23 at 5, implying that this state statute has turned the tribal court into a branch of the Minnesota state courts. The Minnesota statute does no such thing, nor could it. Rather, Minn. Stat. § 518D.104(b) directs the Minnesota courts to treat tribal courts on a

§ 1360, which applies solely to civil disputes among private persons when in state court. The words "tribal court" never appear in the statute. Because 28 U.S.C. § 1360 does not apply to Indian tribes and because it only applies to how a state court resolves a civil dispute among private parties *in state court*, the Tribe's sovereignty to enact, maintain, and enforce its Domestic Relations Code has not been affected:

> The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers. In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.

U. S. v. Wheeler, 435 U.S. 313, 323-324 (1978). The United States Supreme Court has determined that 28 U.S.C. § 1360 does not "represent an abandonment of the federal interest in guarding Indian self-governance." *Three Affiliated Tribes*, 476 U.S. at 892. In short, relying on 28 U.S.C. § 1360 to apply state law to an Indian tribe or to affect an Indian tribe's exercise of its sovereignty is an argument with no legal support.

1. 28 U.S.C. § 1360 Does Not Grant Jurisdiction To The Federal Courts

Public Law 280, 28 U.S.C. § 1360, constitutes a grant of jurisdiction to certain states' courts, not Federal courts. It follows, as the United States Court of Appeals for the Ninth Circuit has held, that Public Law 280 is not a grant of jurisdiction to Federal courts. "Although Public Law. 280 necessarily preempts and reserves to the Federal government or the tribe jurisdiction not so granted, the law plainly did not confer subject matter jurisdiction upon federal courts." *K2 America Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024, 1028 (9th Cir. 2011). Again, Ms. Lightfoot's exclusive reliance on 28 U.S.C. § 1360 is fatal to her chances of success on the merits in her claims against SMSC.

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co-equal basis, "as if [the tribal court] were a state of the United States . . . ," for purposes of applying the UCCJEA in Minnesota courts.

Ms. Lightfoot intentionally avoids the many cases determining that tribal courts possess concurrent jurisdiction over divorces, which are the same as her present divorce. As the United States Court of Appeals for the Eighth Circuit has determined, "[n]othing in the wording of Public Law 280 or its legislative history precludes concurrent tribal [court jurisdiction]." *Walker v. Rushing*, 898 F.2d 672, 675 (8th Cir. 1990). The Ninth Circuit has made a similar determination and took note that "[t]wo leading treatises on Indian law have assumed that tribal courts would have at least concurrent jurisdiction in divorce cases involving an Indian plaintiff and non-Indian defendant, where the non-Indian defendant resided on the reservation during the marriage." *Sanders v. Robinson*, 864 F.2d 630, 633 (9th Cir. 1988), *cert. denied*, 490 U.S. 1110 (1989). In *Sanders*, the Ninth Circuit held that "the tribal court can at least exercise concurrent jurisdiction." *Id.* Specifically, Public Law 280 "did not divest tribal courts of concurrent jurisdiction over child custody matters." *Confederated Tribes of the Colville Reservation v. Superior Court of Okanogan Cnty.*, 945 F.2d 1138, 1140 n.4 (9th Cir. 1991). There is just no support for Ms. Lightfoot's insistence to the contrary.

2. Exhaustion of Tribal Court Remedies Is Required By Federal Law

The United States Supreme Court has reversed a federal court's preliminary injunction restraining the tribe and its tribal court "from attempting to assert jurisdiction over the [non-Indian] plaintiffs." *Nat'l Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845, 848 (1985). The Supreme Court determined that whether the non-Indian was subject to the civil jurisdiction of the tribal court required "a careful examination of tribal sovereignty," which must be "conducted in the first instance in the Tribal Court itself." *Id.* at 855-56. Here, at a minimum, the Tribal Court must be provided with "the first opportunity to evaluate the factual and legal bases for the [jurisdictional] challenge." *Id.* at 856.

Likewise, the Eighth Circuit, just a few months ago, affirmed a district court's denial of a preliminary injunction for failure to exhaust tribal court remedies. In *Dish Network v. Laducer*, a case involving an abuse of process tort claim in the tribal court of the Turtle Mountain Band of Chippewa Indians, the Eighth Circuit rejected the plaintiff satellite TV provider's argument that tribal court proceedings should be enjoined for lack of jurisdiction because, "[u]nless jurisdiction is plainly absent, the question of tribal court jurisdiction is one for the tribal courts to make in the first instance." *Id.*, 725 F.3d. at 885. In so doing, the Eighth Circuit set a "quite high" standard of review, holding that, "the exhaustion requirement should be waived only if the assertion of tribal court jurisdiction is frivolous or obviously invalid under clearly established law." *Id.* at 883. The question of whether tribal court jurisdiction exists in the underlying proceeding here to terminate a marriage on tribal land, under tribal law, involving a tribal member who resides on the reservation cannot be deemed frivolous.

While Ms. Lightfoot does not want the Tribal Court to have the initial opportunity to examine its jurisdiction, that desire cannot support her request that this Court enter an order contradicting *Nat'l Farmers Union Ins. Co. v. Crow Tribe of Indians* and *Dish Network Service v. Laducer*.

III. The Balance Of The Harms Favors Denial Of Ms. Lightfoot's Motion For A TRO

Ms. Lightfoot seeks an extraordinary remedy, an injunction by a federal court against proceedings in another court, specifically a tribal court where the general rule is that the federal courts let the tribal courts first determine questions of tribal court jurisdiction. Ms. Lightfoot has, as detailed above, identified no imminent irreparable harm at all to her or her children if the Tribal Court hearing on December 10, 2013, proceeds as scheduled.

Ms. Lightfoot's brief asserts a speculative concern that "the SMSC tribal court may be able to cut off Ms. Lightfoot and the children from child custody and any benefit or access to []

SMSC per capita payments for the purpose of balancing out the [sic] marital estate, spousal maintenance and child support." Pltf's Mem. (Dkt. Doc. 23) at 38. Ms. Lightfoot is adept at adding hyperbole about "rip[ping] the children from their home in British Columbia," *id.* at 39, but she is unable to identify any reasonably certain harm. Speculative harm does not constitute harm sufficient to justify injunctive relief. *See Winter*, 555 U.S. at 22 ("Our frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction. Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."); *Minn. Chapter of Associated Builders & Contractors, Inc.*, 825 F. Supp. 238, 242 (D. Minn. 1993) (denying temporary injunctive relief where allegations of harm were "speculative"). The lack of substance to Ms. Lightfoot's speculative fear-mongering about what the Tribal Court may do creates no harm on her side of the ledger to balance.

IV. Denying A TRO Will Advance The Public Interest

Federal Indian policy favors the fostering of tribal sovereignty and the development and operation of tribal courts. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14-15 (1987) ("Tribal courts play a vital role in tribal self-government, and the Federal Government has consistently encouraged their development.") (citation omitted); *Nat'l Farmers Union*, 471 U.S. at 856 ("Our cases have often recognized that Congress is committed to a policy of supporting tribal self-government and self-determination."). As recognized by the Supreme Court in those cases, early interference by federal courts with tribal courts' determinations in the first instance of their jurisdiction is against public policy. As argued above, Public Law 280 has no relevance to this action, provides no cause of action in this Court to Ms. Lightfoot, and does not outweigh the

harm to Indian tribes and federal Indian policy of preemptive federal injunctions aimed at tribal courts.

CONCLUSION

For these reasons, Defendant Shakopee Mdewakanton Sioux Community respectfully asks that the Court deny Ms. Lightfoot's motion for a temporary restraining order.

Respectfully submitted,

Dated: December 7, 2013

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