IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION

Belcourt Public School District and Angel Poitra, Plaintiffs, vs. Ella Davis and Turtle Mountain Tribal Court, Defendants.	)	**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** Case No. 4:12-cv-114

Belcourt Public School District, Plaintiff, vs. Erica Malaterre and Turtle Mountain Tribal Court, Defendants.	)	**RESPONSE IN OPPOSITION TO MALATERRE'S MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT** Case No. 4:12-cv-115

Belcourt Public School District and Chris Parisien, Plaintiffs, vs. Mike Nelson and Judy Nelson on behalf of their Minor Child S.N. and Turtle Mountain Tribal Court, Defendants.	)	**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** Case No. 4:12-cv-116

Belcourt Public School District, Roman Marcellais and School Board Members for the Belcourt Public School District, Plaintiffs, vs. Bruce Allard, Martin Desjarlais, Jeff Laducer, Chad Marcellais, Robert St. Germain, and Turtle Mountain Tribal Court, Defendants.	)	**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** Case No. 4:12-cv-117

Belcourt Public School District, Roman Marcellais and School Board Members for the Belcourt Public School District Plaintiffs, vs. Steve Herman and Turtle Mountain Tribal Court, Defendants.	)	**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** Case No. 4:12-cv-118

The Plaintiff, Belcourt Public School District ("School District"), moves the Court for summary judgment on behalf of it and the other plaintiffs against the defendants in Case Nos. 4:12-cv-114, 115, 116, 117, and 118 ("Defendants") and Turtle Mountain Tribal Court ("Tribal Court") pursuant to Rule 56 of the Federal Rules of Civil Procedure. Separate actions were filed against the Defendants seeking a declaratory judgment that the Tribal Court does not have jurisdiction over a School District which is a political subdivision of the State of North Dakota. This brief is also meant as a response to the Motion for Summary Judgment filed by Erica Malaterre on September 23, 2013 (Case No. 4:12-cv-115, Docket No. 12).

STATEMENT OF FACTS

The School District is a North Dakota public school district, and thus a political subdivision of the state of North Dakota. *See Otter Tail Power Co. v. Baker Elec.*, 116 F.3d 1207, 1211 (8th Cir. 1997) (stating that Four Winds High School is part of North Dakota Independent School District Number 30, a political subdivision of the state of North Dakota); *Baldwin v. Bd. of Educ. of City of Fargo*, 33 N.W.2d 473, 481 (N.D. 1948) (the Constitution of North Dakota recognizes public school districts as political subdivisions of the state). Pursuant to its mandates under the North Dakota Constitution and state law, the School District operates public schools within the exterior boundaries of the Turtle Mountain reservation. By virtue of its status as a North Dakota political subdivision, the District is not a member of the Turtle Mountain Tribe.

The Tribe receives funding pursuant to 25 U.S.C. § 2501 et seq. These funds are to be used by the Tribe to operate schools within the Turtle Mountain Indian Reservation. Rather than operate a school on its own, the Tribe has arranged to have the School District operate the Turtle Mountain Community High School also known as the Grant High School.

In 2006, the Tribe entered into a "Plain of Operations" with the School District, which states in part:

> The Tribe and District agree the District shall have exclusive administrative authority over the day-to-day operations of the School. The District agrees to determine the salaries, employment, termination procedures, and conditions of employment provided that such does not conflict with applicable Tribal, State or Federal laws.

Exhibit 1, p. 1. The Plan of Operations expired on June 30, 2009 but was in effect during the time each of the alleged causes of action accrued in Case Nos. 4:12-cv-114 and 4:12-cv-115.

After the Plan of Operations expired on June 30, 2009, the District and the Tribe entered into a second and similar Plan of Operations. The 2009 Plan of Operations states in relevant part:

> The School District shall administer the day-to-day operations of the Grant High School, subject to and in compliance with the Plan of Operations, the Contract and all Applicable Law. Without limitation, such administration shall include:
> a. The employment, supervision and termination of staff;
> b. Salaries and benefits provided to staff; and
> c. Other conditions of staff employment.

Exhibit 2, p. 4 (labeled page 5 of 10). This version was in effect during the time each of the alleged causes of action accrued in Case Nos. 4:12-cv-116, 4:12-cv-117, and 4:12-cv-118.

The School District filed motions to dismiss the complaints in Tribal Court in the above-referenced cases based on several reasons including the Tribal Court's lack of jurisdiction over a public school district and its employees acting within the scope of their employment. On June 9, 2010, the Tribal Court granted the School District's motion to dismiss *Davis v. Poitra*, finding that the Tribal Court lacks jurisdiction over a state political subdivision and its employees. *See* Exhibit 3 (Judgment of Dismissal). On July 13, 2010, the Tribal Court granted the School District's motion to dismiss *Malaterre v. Belcourt Pub. Sch. Dist.*, finding that the Tribal Court lacks jurisdiction over a state political subdivision and its employees. *See* Exhibit 4 (Order). On March 17, 2011, the Tribal Court granted the School District's motion to dismiss *Nelson v. Parisien*, finding that the Tribal Court lacks jurisdiction over a state political subdivision and its employees. *See* Exhibit 5 (Order for Dismissal). An appeal to the Turtle Mountain Tribal Court of Appeals was filed by Malaterre and Davis. The Court of Appeals consolidated the cases. Subsequent to the consolidation, the Nelsons also appealed. On February 6, 2012, the Turtle Mountain Court of Appeals reversed the Order for Dismissal, finding that the Tribal Court can

exercise jurisdiction over a public school district. *See* Exhibits 6 (Appellate Memorandum Decision) and 7 (Order of Remand).

While the School District was awaiting a decision, two other lawsuits were filed against it – one by a group of individuals (Bruce Allard, Martin Desjarlais, Jeff Laducer, Chad Marcellais, and Robert St. Germaine) that were denied a position in the bussing department and another action brought by an individual that was discharged from the School District, Steve Herman.

On August 27, 2012, Plaintiffs brought a declaratory judgment action against the Defendants and the Tribal Court in federal court, seeking (1) an order declaring that the Tribal Court lacks jurisdiction over the School District and its employees acting in their official capacity, and (2) an injunction prohibiting the Tribal Court from adjudicating the claims brought by the Defendants.

LAW AND ARGUMENT

A. Standard of Review

Summary judgment is appropriate when the evidence, viewed in a light most favorable to the non-moving party, indicates that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law. *Davison v. City of Minneapolis, Minn.*, 490 F.3d 648, 654 (8th Cir. 2007); see Fed. R. Civ. P. 56(c). Summary judgment is not appropriate if there are factual disputes that may affect the outcome of the case under the applicable substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is genuine if the evidence would allow a reasonable jury to return a verdict for the non-moving party.

The court must inquire whether the evidence presents a sufficient disagreement to require the submission of the case to the fact-finder or whether the evidence is so one-sided that one

party must prevail as a matter of law. *Diesel Mach., Inc. v. B.R. Lee Indus., Inc.*, 418 F.3d 820, 832 (8th Cir. 2005). The moving party bears the burden of demonstrating an absence of a genuine issue of material fact. *Simpson v. Des Moines Water Works*, 425 F.3d 538, 541 (8th Cir. 2005). The non-moving party "may not rely merely on allegations or denials in its own pleading; rather, its response must . . . set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2).

B. The Belcourt Public School District Exhausted Its Tribal Court Remedies

Defendant Malaterre argues that the School District must exhaust its tribal court remedies before bringing this action in federal court. The School District did exhaust its tribal court remedies by arguing the Tribal Court did not have jurisdiction at both the trial and appellate court levels. The Turtle Mountain Tribal Court of Appeals is the highest court of the Turtle Mountain Band of Chippewa Indians.

Even if the School District did not exhaust its tribal remedies, exhaustion is not needed. While exhaustion of tribal court remedies is generally required before a federal district court should consider relief in a civil case, the United States Supreme Court has recognized several exceptions to the exhaustion requirement, as noted in *Nat'l Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 856-57 (1985). The Supreme Court added a broader exception in later cases if the exhaustion requirement "would serve no purpose other than delay." *Strate v. A-1 Contractors*, 520 U.S. 438, 453 (1997). The Court in *Nevada v. Hicks* applied this exception to cases where it is clear that the tribal court lacks jurisdiction over state officials for causes of action relating to their performance of official duties, since adherence to the tribal exhaustion requirement would serve no purpose other than delay, and is therefore unnecessary. *Nevada v. Hicks*, 533 U.S. 353, 369 (2001).

The federal district court in *Glacier Cnty. Sch. Dist. No. 50 v. Galbreath*, 47 F. Supp. 2d 1167 (D. Mont. 1997), held that a school district did not need to exhaust tribal court remedies before bringing an action in federal court seeking declaratory and injunctive relief. The district court quoted *Strate*:

> When, as in this case, it is plain that no federal grant provides for tribal governance of nonmembers' conduct on land covered by *Montana*'s main rule, it will be equally evident that tribal courts lack adjudicatory authority over disputes arising from such conduct. As in criminal proceedings, state or federal courts will be the only forums competent to adjudicate those disputes. [citation omitted]. Therefore, when tribal-court jurisdiction over an action such as this one is challenged in federal court, the otherwise applicable exhaustion requirement, . . . must give way, for it would serve no purpose other than delay.

Glacier Cnty. Sch. Dist., 47 F. Supp. 2d at 1172 (quoting *Strate*, 520 U.S. at 459, n.14).

In *Glacier Cnty. Sch. Dist.*, the court granted the school district's request for declaratory relief. The Glacier County School District is a political subdivision of the State of Montana and operates a school within the boundaries of the Blackfeet Indian Reservation. *Glacier Cnty. Sch. Dist.*, 47 F. Supp. 2d at 1169. The parents of a student brought an action in the Blackfeet Tribal Court, seeking an order compelling the school district to readmit their daughter after the school district expelled her. The tribal court rejected the school district's assertion that it lacked jurisdiction over the school district. *Id.* The school district then sought declaratory and injunctive relief in the federal district court, regarding the authority of the tribe to interfere with the administration and operation of the school district. The defendants (which included the tribal court) brought a motion to dismiss, claiming in part that the school district failed to exhaust tribal court remedies. The court denied the defendants' motion to dismiss and granted the school district's request for declaratory relief, noting that the State of Montana "is the authority responsible for safeguarding the inalienable right of children to a public education." *Id.* at 1171.

The Tribal Court does not have jurisdiction and the School District has exhausted tribal remedies.

C. Tribal Court Does Not Have Sovereign Immunity

While not pled, this Court in a recent similar action *sua sponte* dismissed the tribal court, finding sovereign immunity. *See Fort Yates Pub. Sch. Dist. #4 v. Murphy for C.M.B. et al.*, Case No. 1:12-cv-135, Docket No. 8 (D.N.D. Oct. 23, 2012) (Order Granting Motion for TRO). However, in an action such as this, in which Plaintiffs are seeking declaratory relief only, the Tribal Court does not have sovereign immunity. *See Comstock Oil & Gas v. Ala. & Coushatta Indian Tribes*, 261 F.3d 567, 571-72 (5th Cir. 2001) (finding that the district court erroneously concluded that the tribe was entitled to sovereign immunity against the plaintiffs' claims for injunctive and declaratory relief); *Sprint Commc'ns Co., L.P. v. Native Am. Telecom, LLC*, CIV. 10-4110-KES, 2010 U.S. Dist. LEXIS 127013 (D.S.D. Dec. 1, 2010) (granting preliminary injunction which prohibits the tribal court from hearing an action in which it has no jurisdiction); *Red Mesa Unified Sch. Dist. v. Yellowhair*, No. CV-09-8071-PCT-PGR, 2010 U.S. Dist. LEXIS 104276, at *5-6 (D. Ariz. Sept. 28, 2010) (granting a school district's request for declaratory judgment against several defendants including current or former members of the Navajo Nation Labor Commission, a tribal administrative tribunal, in which no tribal jurisdiction existed). In *Comstock Oil & Gas*, the Fifth Circuit Court of Appeals noted that the difference between an action for damages and one for injunctive or declaratory relief matters, in that a tribe has "sovereign immunity from an award of damages only." *Comstock Oil & Gas*, 261 F.3d at 571 (quoting *TTEA v. Ysleta Del Sur Pueblo*, 181 F.3d 676, 680 (5th Cir. 1999)). As such, tribal sovereign immunity does not apply in this action in which Plaintiffs are not seeking damages but only declaratory and injunctive relief.

D. Tribal Court Lacks Jurisdiction Over Public School District

As a political subdivision of the State of North Dakota, the School District is subject to and guided by the laws of the State of North Dakota, and is not a member of the Tribe nor subject to the jurisdiction of the Tribal Court. This Court recently granted a public school district's motion for temporary restraining order, finding that a tribal court does not have jurisdiction over a public school district. *See Fort Yates Pub. Sch. Dist. #4 v. Murphy for C.M.B. et al.*, Case No. 1:12-cv-135, Docket No. 8 (Order Granting Motion for TRO).

The Defendants have the burden of establishing the existence of tribal jurisdiction. *Red Mesa Unified Sch. Dist.*, 2010 U.S. Dist. LEXIS 104276, at *7 (citing *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008)). Tribal courts are courts of limited jurisdiction and as Supreme Court jurisprudence has consistently held, "absent express authorization by federal statute or treaty, tribal jurisdiction over the conduct of nonmembers exists only in limited circumstances." *Strate*, 520 U.S. at 445. No federal statute or treaty empowers the Tribal Court with regulatory or jurisdictional authority over the School District. Furthermore, "Congress has passed no law which permits the [Tribe] to exercise regulatory authority over nonmember entities or individuals who employ members of the tribe within the confines of the reservation; nor has it passed a broader statute which arguably encompasses nonmember employers." *MacArthur v. San Juan Cnty., Utah*, 497 F.3d 1057, 1068 (10th Cir. 2007).

The Tribe does not have authority to regulate the activities of the School District. If the Tribe cannot regulate the School District's actions, it cannot adjudicate disputes arising out of the School District's actions and dismissal of the claims against the School District is appropriate. *See Hicks*, 533 U.S. at 357-58 (holding the adjudicative jurisdiction of the tribe

cannot exceed its regulatory jurisdiction); *see also Glacier Cnty. Sch. Dist. No. 50 v. Galbreath*, 47 F. Supp. 2d. 1167, 1171-72 (D. Mont. 1997) (pre-dating *Hicks* but using a similar rationale, holding that once enrolled in a public school, tribal members must comply with the procedures established by state law to resolve issues relating to the operation and administration of the school).

Absent an express jurisdictional authority from Congress, the Court must determine if jurisdictional authority stems from the tribe's retained inherent sovereignty. The degree of a tribe's retained inherent sovereignty over nonmembers is governed by the principles set forth in *Montana v. United States*, 450 U.S. 544 (1981). *See Strate*, 520 U.S. at 453 (applying *Montana*'s framework, which was originally applied as a measure of a tribe's civil regulatory jurisdiction, to a tribe's civil adjudicatory jurisdiction). *Montana*'s general rule is that "the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe." *Montana*, 450 U.S. at 565. This presumption applies even when the activities of nonmembers occurred on land owned by the tribe. *Hicks*, 533 U.S. at 360.

"[T]he *Montana* presumption is subject to only two narrow exceptions: the first exception relates to nonmembers who enter into consensual relationships with the tribe or its members, and the second exception concerns activity that directly affects the tribe's political integrity, economic security, health, or welfare." *Red Mesa Unified Sch. Dist.*, 2010 U.S. Dist. LEXIS 104276, at *10 (citing *Montana*, 450 U.S. at 565-66). The *Montana* exceptions "are limited ones and cannot be construed in a manner that would swallow the rule or severely shrink it." *Plains Commerce Bank*, 554 U.S. at 330. Neither of the two exceptions contained in *Montana* are applicable when the nonmember is a State political subdivision, like the School District, and the underlying cause of action does not impact the Tribe's ability to self-govern.

(1) First Exception under *Montana*

The type of relationship existing between a public school district and a tribe was not what the Supreme Court had in mind when it created the first exception in *Montana*. *See Hicks*, 533 U.S. at 372. The first *Montana* exception allows tribes to regulate conduct of a private actor who enters a consensual relationship with the tribe or its members "through taxation, licensing, or other means." *Montana*, 450 U.S. at 565. This exception does not apply to the circumstances here because public school districts are not private actors nor can they freely or voluntarily enter into a relationship with the tribe. Public school districts are mandated to educate all children living in the state regardless of whether the children are also tribal members. *See* N.D. Const. art. VIII, § 1 ("public schools . . . shall be open to all children of the state of North Dakota . . .").

It has been widely accepted through Supreme Court jurisprudence post-*Montana* that *Montana*'s first exception only applies to private parties that freely enter into agreements with the tribe. In *Strate* the Supreme Court recognized that:

> *Montana*'s list of cases fitting within the first exception, *see* 450 U.S. at 565-566, indicates the type of activities the Court had in mind: *Williams v. Lee*, 358 U.S. 217, 223 (1959) (declaring tribal jurisdiction exclusive over lawsuit arising out of on-reservation sales transaction between nonmember plaintiff and member defendants); *Morris v. Hitchcock*, 194 U.S. 384, 48 L.Ed. 1030, 24 S. Ct. 712 (1904) (upholding tribal permit tax on nonmember-owned livestock within boundaries of the Chickasaw Nation); *Buster v. Wright*, 135 F. 947, 950 (8th Cir. 1905) (upholding Tribe's permit tax on nonmembers for the privilege of conducting business within Tribe's borders; court characterized as "inherent" the Tribe's "authority . . . to prescribe the terms upon which noncitizens may transact business within its borders"); [*Washington v. Confederated Tribes of Colville Indian Reservation*], 447 U.S. 134, 152-54 (1980)] (tribal authority to tax on-reservation cigarette sales to nonmembers "is a fundamental attribute of sovereignty which the tribes retain unless divested of it by federal law or necessary implication of their dependent status").

Strate, 520 U.S. at 457. These cases demonstrate that the Court intended the exception to apply to commercial activities freely entered into by private parties. *Id.*

The Supreme Court also discussed *Montana*'s first exception in *Hicks* and stated that it was not intended to be applied to a state governmental entity or the entity's employees acting in their official capacity:

> The Court . . . obviously did not have in mind States or state officers acting in their governmental capacity; it was referring to private individuals who voluntarily submitted themselves to tribal regulatory jurisdiction by the arrangements that they (or their employers) entered into.

Hicks, 533 U.S. at 372.

The Turtle Mountain Tribal Court of Appeals held that *Hicks* does not apply to political subdivisions because political subdivisions are not state entities. However, political subdivisions are certainly public entitles to which the decision in *Hicks* applies. In a recent decision involving an employment dispute against a public school district operating on tribal lands, one court recognized public school districts:

> are not private actors for purposes of *Montana* – they are instead political subdivision of the state . . . [T]here is a fundamental difference for tribal jurisdictional purposes between governmental actors constitutionally mandated to enter tribal lands to fulfill a governmental obligation and private actors operating commercial enterprises on tribal lands and that the former is not the kind of consensual relationship that subjects a nonmember to tribal jurisdiction over decisions unrelated to the tribal land. Even if the consensual relationship exception were to extend under some circumstances to state actors based on the existence of a state-tribe contract, an issue not resolved in *Hicks*, the [court is] not persuaded . . . that the first *Montana* exception can properly be extended to reach the actions here of [the school district], regardless of their status as tribal lessees, since [it] made the employment decisions at issue while operating in [its] governmental capacities pursuant to [its] state constitutionally-imposed mandate to operate a public school system within the reservation boundaries.

Red Mesa Unified Sch. Dist., 2010 U.S. Dist. LEXIS 104276, at *15-16. The court held that based on the school district's status as a governmental entity, *Montana*'s first exception did not apply and the tribal court did not have jurisdiction. Similarly, other courts have found that the first Montana exception does not apply to public actors. *See MacArthur*, 497 F.3d at 1073-74

(finding the tribal court did not have jurisdiction over the plaintiff's employment claim against health service district that was a political subdivision of the state of Utah); *Cnty. of Lewis, Idaho v. Allen*, 163 F.3d 509, 515 (9th Cir. 1998) (concluding tribal court did not have jurisdiction over state law enforcement officer).

Furthermore, the Plan of Operations does not submit the School District to Tribal Court jurisdiction. The Plan specifically states that it "shall be subject to the requirements of Applicable Law, and in any case of conflict between a provision of the Plan of Operations or Contract and provision of Applicable Law, Applicable Law shall control." *See* Exhibit 1, p. 4 (labeled Page 5 of 10). A political subdivision only has the powers granted to it by the state. *See City of Fargo, N.D. v. Sathre*, 36 N.W.2d 39, 50 (N.D. 1949). North Dakota law provides that a school district cannot "[a]uthorize an agreement that enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either North Dakota or tribal governments located in North Dakota." N.D.C.C. § 54-40.2-08. Hence, the School District cannot, through an agreement, submit itself to the jurisdiction of the Tribal Court. *See Fort Yates Pub. Sch. Dist. #4 v. Murphy for C.M.B. et al.*, Case No. 1:12-cv-135, Docket No. 8 (D.N.D. Oct. 23, 2012) (Order Granting Motion for TRO).

This Court has recently stated that *Montana*'s first exception does not apply to political subdivisions because they are public not private actors. *See Fort Yates Pub. Sch. Dist. #4 v. Murphy for C.M.B. et al.*, Case No. 1:12-cv-135, Docket No. 8, p. 9 (D.N.D. Oct. 23, 2012) (Order Granting Motion for TRO) (finding that "[e]ven though a contractual agreement exists here which would arguably place this case within the first *Montana* exception, the case law post-*Montana* . . . has established that the first exception only applies to private entities that freely enter into agreements with the tribe"). Unlike a private individual or company that can freely

enter into agreements with the tribe or a tribal member, the public school district must provide an education to students living within the reservation boundaries pursuant to its State constitutional mandate. N.D. Const. art. VIII, § 1. Since the State has an affirmative duty to provide an education to the students, it cannot be said to have freely entered into an agreement with the tribe and *Montana*'s first exception does not apply to it.

(2) Second Exception under *Montana*

Montana's second exception concerns conduct that "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 450 U.S. at 566. When interpreting *Montana*'s second exception, the United States Supreme Court stated, in *Strate*, that:

> [T]he *Montana* rule's second exception can be misperceived. Key to its proper application, however, is the Court's preface: "Indian tribes retain their inherent power [to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members . . . . But [a tribe's inherent power does not reach] beyond what is necessary to protect tribal self-government or to control internal relations.

Strate 520 U.S. at 459 (quoting *Montana*, 450 U.S. at 564). The Court said that the cases relied upon by the *Montana* Court when formulating the second exception illustrate that the Court intended the exception to apply only when the "State's (or Territory's) exercise of authority would trench unduly on tribal self-government." *Id.* at 458. In other words, *Montana's* second exception is only triggered by nonmember conduct that threatens the Tribe's ability to self-govern. *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 657, n.12 (2001). "[U]nless the drain of the nonmember's conduct upon tribal services and resources is so severe that it actually 'imperils' the political integrity of the Indian tribe, there can be no assertion of civil authority . . ." *Id.* If a tribe were to have jurisdiction over every matter related to the health and welfare of the tribe, the exception would swallow the rule. *Strate*, 520 U.S. at 458.

The State has a strong interest in ensuring that its schools are operated in compliance with its laws. The allegations contained in the Defendants' Tribal Court Complaints directly implicate the State's interests in how its schools are being operated. As such, *Montana*'s second exception will only apply if the exercise of State authority over the matter would "trench unduly on tribal self-government." In this case, allowing the State to exercise its authority would not "trench unduly on tribal self-government." The claims against the School District would not "imperil the political integrity of the tribe" to justify application of *Montana*'s second exception. Tribal self-government is not at issue in these cases, nor are these cases likely to affect any rights of the Tribe as it pertains to its right to educate tribal children. Furthermore, the Defendants are not without remedy absent Tribal Court jurisdiction – the Defendants could pursue their claims against the School District in State Court.

CONCLUSION

The State of North Dakota has a strong interest in the operation and administration of its schools. The State of North Dakota is responsible for providing all children within the state an appropriate education. N.D. Const. art. VIII, § 1. State law and regulations govern the operation of the Belcourt Public School District as it is a political subdivision of the state.

Pursuant to the Supreme Court's decisions in *Montana v. United States*, 450 U.S. 544 (1981), and *Nevada v. Hicks*, 533 U.S. 353 (2001), tribal courts do not have jurisdiction over state entities or officials for causes of action relating to the performance of official duties. The general presumption against Tribal Court jurisdiction has not been overcome in any of the cases being considered in this action.

Based on the foregoing, the Plaintiffs respectfully request the Court grant Plaintiffs' motion for summary judgment and deny Malaterre's motion for summary judgment. Plaintiffs

further request the Court issue an order declaring that the Tribal Court lacks jurisdiction over the School District and its employees acting in their official capacity and issue an injunction prohibiting the Tribal Court from adjudicating the claims brought by Defendants.

DATED this 14th day of October, 2013.

PEARCE & DURICK

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