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2 JUN 27 2014

IN THE NOOKSACK TRIBAL COURT

FOR THE NOOKSACK INDIAN TRIBE

Galanda Broadman PLLC

DEMING, WASHINGTON

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NOOKSACK COURT CLERK

JUN 26 2014

FILED BY  
*Betty [Signature]*

Case No.: 2014-CI-CL-006

ADAMS, *et. al.*,  
Plaintiffs,

vs.

KELLY, *et. al.*,  
Defendants.

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

ADAMS II

**THIS COURT** held a hearing to address the Defendants' *Motion to Dismiss* in this matter. Ryan Dreveskracht appeared for the Plaintiffs and Tom Schlosser and Rickie Armstrong appeared for the Defendants. After reviewing the records and hearing from the parties, the Court hereby issues the following:

**DECISION AND ORDER**

The Plaintiffs filed a *Complaint* on January 23, 2014 alleging that the Defendants, Tribal Council members and Enrollment Officers, violate the Nooksack Indian Tribe's Tribal Constitution by using a "base enrollee" requirement that "does not exist in the Constitution to disenroll Plaintiffs" and violate the Constitution by removing Tribal Council Secretary Rudy St. Germain and Council Member Michelle Roberts. This Court issued an *Order Denying Plaintiffs' Motion For Preliminary Injunction/Writ of Mandamus* on February 7, 2014. The Plaintiffs sought permission to file an interlocutory appeal with the Nooksack Court of Appeals, which that Court denied on March 18, 2014. Defendants filed this *Motion to Dismiss*, which the Court heard on April 9, 2014.

1 As this Court already held in the *Order Denying Plaintiffs' Motion For Preliminary*  
2 *Injunction/Writ of Mandamus*, the issue of whether and how the Tribal Council Defendants removed  
3 the two Plaintiff Tribal Council members remains a non-justiciable political question. In that  
4 decision, the Court held that:

5  
6 The Constitution states in Article V, Section 1:

7 If any officer or member of the tribal council shall be absent from any three (3) consecutive  
8 regular or special meetings without sufficient reason, *the other members may declare the*  
9 *council position vacant by a four-seventh vote of the tribal council*. The council member  
subject to the removal may not participate in the vote of the tribal council. (Emphasis  
added.)

10 The Court finds that the decision to remove a Tribal Council Member under Article V,  
11 Section 1 of the Nooksack Constitution rests solely with the Tribal Council. The  
12 Constitution specifically states that only the Tribal Council members not subject to the  
13 removal vote may vote to declare the position vacant; no review power or other powers of  
14 intervention are given to the Tribal Court. There is simply no other reading of this section of  
15 the Constitution that makes sense given the structure provided in *Lomeli*. The power of  
16 removal of a Tribal Council member due to absence lies solely with the Tribal Council as a  
17 function of the tribal government. It is not up to the Tribal Court to define what a sufficient  
reason is; that authority rests with the Tribal Council and the Tribal Council made that  
finding in Resolutions 14-03 and 14-04. This is exactly the kind of political question *Lomeli*  
contemplates in footnote 26. The function of removal from office under Article V, Section 1  
lies with the Tribal Council and it is the very definition of an allegation that concerns the  
establishment and functions of the tribal government over which this Court has no subject  
matter jurisdiction.

18 The Tribal Council defendants' decision to remove Plaintiffs St. Germain and Roberts lies  
19 within its power and is, in fact, action *required* by the Constitution. In *Lomeli*, the Court  
20 held "A duty, however, is an obligation. While the manner or means of performing a duty  
21 allows for discretion and value judgments, its performance is nonetheless required." *Lomeli*  
22 at 11. The Defendants here were required to act under the Constitution when the Plaintiff  
23 Tribal Council members failed to appear at the meeting. The Tribal Council defendants  
24 could have declared the stated reasons for their failure to appear sufficient, but they did not.  
Plaintiffs argue that the situation was "engineered" in order to replace them with Tribal  
Council members who are sympathetic to the political positions taken by the Tribal Council  
defendants. The intentions behind these actions are the kind of political questions that are  
non-justiciable, as held by the Court of Appeals in *Lomeli*. The Plaintiffs failed to appear at  
these meetings. They provided reasons to Chairman Kelly and the Tribal Council declared

1 those reasons to be insufficient. It is not for this Court to delve into the political judgments  
2 of the Tribal Council when those matters are specifically reserved to that branch of  
government by the Constitution.

3 This Court repeats that analysis here for the sake of brevity and hereby dismisses that part of  
4 the Complaint.

5 The Plaintiffs further ask this Court to enjoin the Defendants from using a "base enrollee"  
6 requirement set out in Title 63, 63.00.004, in the course of making determinations regarding  
7 eligibility for enrollment. 63.00.004 defines a "base enrollee" as:

8 Those individuals from whom all persons applying for membership must prove direct  
9 descent. For this Tribe, the base enrollees are those persons who are original Nooksack  
Public Domain allottees and/or persons of Indian blood whose names appear on the official  
10 census roll of the Nooksack Tribe dates January 1, 1942.

11 Plaintiffs argue that this provision is unconstitutional as a basis to disenroll the proposed  
12 disenrollees.

13 Title 63 was amended in full on January 25, 2004 on a unanimous vote of the Tribal  
14 Council<sup>1</sup>. Title 63 was submitted to the Secretary of the Interior for approval, which was granted.  
15 The determination of who is and who is not a member of any Indian tribe is reserved to the tribal  
16 government, as this Court has discussed in multiple decisions. Plaintiffs appear to be attempting to  
17 use a different argument to relitigate matters that have been addressed by this Court and the  
18 Nooksack Court of Appeals. In the Court of Appeals' *Order Denying Petition for Fed. R. App. P. 40*  
19 *Relief*, the Court of Appeals states:

20 Moreover, in the footnote, Appellants claimed NTC 63.00.04 violates the former  
21 Article II, Section 1.H of the Nooksack Constitution. . . That constitutional provision  
22 required a person prove Nooksack "ancestry to any degree." NTC 63.00.04 requires a person  
claiming enrollment by direct descent show their ancestor was a base enrollee (an original  
Nooksack Public Domain allottee or a person named on the 1942 census roll). Appellants  
contended that because under NTC 63.00.04 a person is required to show descent from a base

23 <sup>1</sup> The Nooksack Tribal Council consisted of different members at that time, with Chairman Narcisco Cunanan signing  
24 the attestation that the Resolution was duly passed by the Council.

1 enrollee it conflicts with former Article II, Section 1.H. which only requires a showing of  
2 ancestry to any degree.

3 The Nooksack Constitution was amended repealing Article II, Section 1.H. We  
4 rejected Appellants' challenge to that repeal, and Appellants conceded they were not enrolled  
5 under that provision. . . Any conflict between former Article II, Section 1.H and NTC  
6 63.00.04 is simply irrelevant. *Lomeli, Order Denying Petition, 2.*

7 Here, Plaintiffs attempt a different argument to challenge the base enrollee requirement. Plaintiffs  
8 obviously had notice of this issue, as it was not only addressed by the Court of Appeals, it was  
9 addressed *because the Plaintiff/Appellants sought reconsideration by the Court of Appeals when they*  
10 *believed the Court of Appeals had not properly resolved it.*

11 Further, Resolution 13-02, adopted by the Tribal Council that initiated the disenrollment  
12 proceedings and spawned six lawsuits, and Title 63 both use the language of "base enrollee" to  
13 which the Plaintiffs object. The Nooksack Court of Appeals in *Lomeli* specifically upheld the  
14 constitutionality of Resolution 13-02. Plaintiffs attempt to re-open litigation that has already been  
15 heard and addressed both by this Court and the Court of Appeals. In *Lomeli*, the Court of Appeals  
16 stated

17 We have reviewed Appellants' arguments and find those are either political questions not  
18 subject to judicial review; directly related to the functions of the tribal government that the  
19 court did not have jurisdiction over absent a waiver of sovereign immunity; do not violate the  
20 Tribe's constitution, laws or Bylaws, or are moot given our decision.<sup>30 30</sup> We note a number  
21 of arguments have no bearing on the issues the court had jurisdiction to resolve-whether the  
22 Appellee Tribal officers' initiation of proceedings to disenroll Appellees [sic] violates  
23 provision of the Nooksack Constitution or the Tribe's laws, and whether Title 63 is  
24 unconstitutional . . . We urge counsel for the Appellants to heed the admonition that "Losers  
in a trial can go hunting for relief on appeal with a rifle or a shotgun," and "the rifle is  
better," because "the shotgun approach may hit the target with something but it runs the risk  
of obscuring significant issues by dilution." *Lomeli, 23 and footnote 30.*

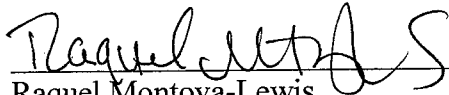
Plaintiffs litigated the constitutionality of Resolution 13-02, sought reconsideration of this issue and  
were denied by the Court of Appeals. They cannot continue to attempt new arguments over the

1 same issues and actions taken by the Defendants by a new lawsuit with an argument they either have  
2 already made, or already should have made. "Res judicata, or claim preclusion, prohibits the  
3 relitigation of claims and issues that were litigated, or could have been litigated, in a prior action."  
4 *Pederson v. Potter*, 11P.3d 833, 835 (Wash.App. 2000). That doctrine applies in this matter and this  
5 Court and the Court of Appeals has already issued decisions and opinions on these questions.

6 Therefore, the Defendants' *Motion to Dismiss* is **HEREBY GRANTED**.

7 **IT IS SO ORDERED.**

8 **DATED** this \_\_26\_\_ day of \_\_June\_\_, 2014\_\_.

9   
10 Raquel Montoya-Lewis  
11 Chief Judge, Nooksack Tribal Court  
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