

06-06-14 11:52 IN

Betty Lenthers

IN THE TRIBAL COURT OF THE NOOKSACK TRIBE OF INDIANS FOR THE  
NOOKSACK INDIAN TRIBE

BELMONT, *et al.*,

Plaintiffs,

v.

KELLY, *et al.*,

Defendants.

Case No. 2014-CI-CL-007

DEFENDANTS' RESPONSE IN  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION

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COME NOW Defendants in the above-entitled action, by and through the Office of Tribal Attorney, without waiving other defenses and objections, and provide this Response in Opposition to Plaintiffs' Motion for Preliminary Injunction.

**I. INTRODUCTION**

On May 29, 2014, Plaintiffs initiated a sixth lawsuit against Defendants in Tribal Court for equitable relief and a Motion for Preliminary Injunction (PI Motion). The Tribal Court has dismissed two related lawsuits against Defendants based on sovereign immunity and standing. *See Roberts, et al. v. Kelly, et al.*, Case No. 2013-CI-CL-003, Order Granting Defendants' Motion to Dismiss (2013); *Lomeli, et al. v. Kelly, et al.*, Case No. 2013-CI-CL-001, Amended Order Granting Defendants' Motion to Dismiss Second Amended Complaint (2013). The Court

1 of Appeals affirmed this Court's dismissal in *Lomeli*. *Lomeli v. Kelly*, 2013-CI-APL-002,  
2 Opinion (January 15, 2014). The Court of Appeals affirmed in part and reversed in part this  
3 Court's dismissal in *Roberts*. *Roberts v. Kelly*, 2013-CI-APL-003, Opinion (March 18, 2014).  
4 Specifically, the Court of Appeals held that the procedures adopted by Resolution No. 13-111  
5 provided due process,<sup>1</sup> but they had to be approved by the Secretary of the Interior (Secretary).  
6 *Id.* at 9. Here, Plaintiffs allege that two Notices of Meeting (Notice(s)) and Bases for  
7 Commencement for Disenrollment Proceedings (Basis (Bases)) must also be approved by the  
8 Secretary. PI Motion at 5-6. Alternatively, Plaintiffs allege that the lack of "formal procedures"  
9 violates due process. *Id.* at 7-8.

10 Defendants oppose Plaintiffs' Motion for Preliminary Injunction. Plaintiffs are not likely  
11 to succeed on the merits, there is no irreparable injury, and injunctive relief is not in the public  
12 interest.<sup>2</sup> Defendants are immune from suit.<sup>3</sup> The Tribal Council lawfully proceeded under Title  
13 63 to grant two potential disenrollees the meetings they requested.

## 14 II. FACT STATEMENT

15 The Nooksack Constitution gives the Tribal Council the "power to enact ordinances in  
16 conformity with this constitution, subject to the approval of the Secretary of the Interior,  
17 governing future membership in the tribe, including adoptions and loss of membership." *Const.*

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18  
19 <sup>1</sup> Except the provisions prohibiting representation by counsel and allowing for a notice  
period of less than 21 days.

20 <sup>2</sup> Plaintiffs failed to make any efforts to schedule this PI Motion with Defendants or  
Defendants' counsel as required by Title 10, § 10.05.050(e)(1). In addition, Plaintiffs failed to  
21 properly serve the Office of Tribal Attorney under Title 10, § 10.05.040(a), (c), and (d); the  
Office of Tribal Attorney did not receive the summons in this matter. Plaintiffs have repeatedly  
22 failed to comply with these provisions of Title 10.

23 <sup>3</sup> Plaintiffs erroneously include Agripina "Lona" Johnson as a Defendant  
Councilmember, but Ms. Johnson is no longer on the Tribal Council. Plaintiffs did not include  
current Councilmembers Nadene Rapada, David Williams, or Carmen Tageant as Defendants.

1 art. II, § 2. The Constitution also states that the Tribal Council “shall, by ordinance, prescribe  
2 rules and regulations governing involuntary loss of membership.” *Const.* art. II, § 4. Title 63  
3 was approved by the Secretary in 2006. Decl. of S. Steadle, Exh. A at 105. Title 63 governs  
4 involuntary disenrollment, and it provides for a meeting, when properly requested, with the  
5 Tribal Council to contest an involuntary disenrollment:

6 Procedure for disenrollment: A member identified as subject to disenrollment  
7 pursuant to the above sub-section shall be notified by certified mail, return receipt  
8 requested, of the intent to disenroll. Included in the notice shall be the option to  
9 request a meeting with the Tribal Council within thirty (30) days of the receipt of  
10 the letter. If no request is received within thirty (30) days the person is  
automatically removed from the roll book by resolution. If a meeting is requested  
with the Tribal Council, the member must contact the Tribal Council secretary to  
obtain a date for the meeting. The Tribal Council shall determine if the member  
is to be disenrolled. The decision of the Nooksack Tribal Council is final.

11 § 63.04.001(B)(2).

12 Eleanor Belmont and Olive Oshiro requested individual meetings with the Tribal Council  
13 to contest their respective disenrollment. Decl. of S. Steadle, Exh. A at 12-13 and Exh. B at 12-  
14 13.

15 On August 8, 2013, the Tribal Council adopted Resolution No. 13-111, which provided  
16 detailed procedures for meetings described under Title 63, § 63.04.001(B)(2). *See Roberts*,  
17 2013-CI-APL-003, Opinion at 1. On November 22, 2013, the Tribal Council amended  
18 Resolution No. 13-111 through adoption of Resolution No. 13-163B. *Id.* On March 18, 2014,  
19 the Court of Appeals upheld nearly all of the “details of the procedures” in Resolution No. 13-  
20 111, and the Court found that the procedures had to be approved by the Secretary. *Id.* at 9. The  
21 Tribal Council rescinded Resolution No. 13-111 and Resolution No. 13-163B on June 5, 2014  
22 pursuant to Resolution No. 14-084. Decl. of C. Bernard, Exh. B.

23 On May 16, 2014, the Tribal Council mailed a Notice and Basis to Ms. Belmont and

1 Ms. Oshiro. Decl. of S. Steadle, Exh. A at 1-4 and Exh. B at 1-4. The Notices set out the date,  
2 time, and place of the meetings requested by Ms. Belmont and Ms. Oshiro. *See id.* The Notices  
3 explain that a response to the Basis may be submitted prior to the meeting, that Ms. Belmont and  
4 Ms. Oshiro may be represented by counsel at the meeting, that Ms. Belmont and Ms. Oshiro will  
5 each have 15 minutes to present oral testimony to the Tribal Council, and that the Council will  
6 provide written notice of its determination regarding disenrollment. *See id.* at Exh. A at 1-2 and  
7 Exh. B at 1-2. The Bases note that the Tribal Council has the burden of proof in disenrollment  
8 meetings under Title 63, § 63.04.001(B) and explain the evidence obtained by the Council  
9 indicating erroneous enrollment. *See id.* at Exh. A at 3-4 and Exh. B at 3-4.

10 The Notice and Basis sent to Ms. Belmont only applies to Ms. Belmont. *See id.* at Exh.  
11 A at 1-4. Similarly, the Notice and Basis sent to Ms. Oshiro only applies to Ms. Oshiro. *See*  
12 *id.* at Exh. B at 1-4. Each respective Notice and Basis merely initiates the meeting outlined in  
13 Title 63. Contrary to Plaintiffs' allegations, Title 63 provides the rules and regulations governing  
14 involuntary disenrollment, and Title 63 was approved by the Secretary. *See* PI Motion at 3:13-  
15 17. Also contrary to Plaintiffs' allegations, the Disenrollment Procedures contained in  
16 Resolution No. 13-111 have not been submitted to the Secretary for approval, and Resolution  
17 No. 13-111 has been rescinded along with Resolution 13-163B. *See* PI Motion at 2:18-19; Decl.  
18 of C. Bernard at ¶4 and Exh. B.

### 19 III. LEGAL ARGUMENT

20 To be entitled to injunctive relief, a movant must demonstrate (1) that s/he is likely to  
21 succeed on the merits, (2) that s/he is likely to suffer irreparable harm in the absence of  
22 preliminary relief, (3) that the balance of equities tips in his or her favor, and (4) that an  
23 injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008);

1 *National Meat Ass'n v. Brown*, 599 F.3d 1093, 1097 (9th Cir. 2010); *see also Beardslee v.*  
2 *Woodford*, 395 F.3d 1064, 1067 (9th Cir. 2005). The burden of persuasion falls on the movant,  
3 and the movant must make “a clear showing.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)  
4 (*per curiam*). An injunction is an “extraordinary remedy never awarded as of right.” *Winter*,  
5 555 U.S. at 24.

6 A plaintiff may obtain a preliminary injunction by demonstrating either: “(1) a likelihood  
7 of success on the merits and the possibility of irreparable injury, or (2) the existence of serious  
8 questions going to the merits and the balance of hardships tipping in [the movant's] favor.”  
9 *MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511, 516 (9th Cir. 1993). Plaintiffs cannot  
10 meet their high burden.

11 **A. Plaintiffs Are Not Likely to Succeed on the Merits.**

12 1. Defendants are immune from suit.

13 This Court cannot grant the requested relief because the Nooksack Indian Tribe, the  
14 Council, and tribal officials are immune from this suit. The Court of Appeals held in *Lomeli*  
15 that:

16 Where a suit is brought by a Tribal member against an officer, employee or agent  
17 of the Tribe acting in his or her official capacity and alleges the law or policy the  
18 officer, employee or agent is enforcing or threatening to enforce is  
19 unconstitutional, the Tribal Court has subject matter jurisdiction under both  
Article VI, § 2.A.3 of the Nooksack Constitution and Title 10 of the Nooksack  
Tribal Code to order declaratory or injunctive relief.

20 2013-CI-APL-002, Opinion at 14. The Court of Appeals also held that in such a suit, “the Tribal  
21 Court must make a threshold finding on the constitutionality of the law or policy the member  
22 seeks to have Tribal officers or employees enjoined from enforcing. That finding dictates  
23 whether the Tribal Court has jurisdiction to enter an order enjoining or restraining its

1 enforcement[.]...” *Id.* A plaintiff must show that “such an order is warranted as a matter of  
2 equity or law” as well. *Id.*

3 Here, Plaintiffs challenge the constitutionality of the Notices and the Bases on the ground  
4 that they have not been approved by the Secretary.<sup>4</sup> PI Motion at 5-6. However, it is plain that  
5 nothing requires Secretarial approval of the Notices and Bases at issue, and they do not constitute  
6 rules or regulations governing disenrollment. In *Roberts*, the Court of Appeals looked to Black’s  
7 Law Dictionary to determine whether the former Disenrollment Procedures constituted a rule or  
8 regulation. 2013-CI-APL-003, Opinion at 3. The Court of Appeals noted that “Black’s defines  
9 ‘rule’ as generally, ‘an established and authoritative standard or principle; a general norm  
10 mandating or guiding conduct or action in a given type of situation.’” *Id.* (quoting Black’s Law  
11 Dictionary 1330 (7th ed. 1999)). A regulation “is defined as the ‘act or process of controlling by  
12 rule or restriction.’” *Id.* (quoting Black’s Law Dictionary 1330 (7th ed. 1999)). The fact that  
13 two Notices are relatively similar does not turn them into general norms mandating conduct. The  
14 Notices and Bases here are simply unlike administrative laws.

15 Section 63.04.001(B)(2) governs the disenrollment procedures, and it was approved by  
16 the Secretary in 2006. Decl. of S. Steadle, Exh. A at 105. The Court of Appeals stated that  
17 § 63.04.001(B)(2) “includes procedures governing disenrollment, including notice of the intent  
18 to disenroll, the manner the notice is served, a deadline for a response, provisions for a meeting  
19 to contest the disenrollment, and requests for reconsideration of an adverse decision.” *Roberts*,  
20 2013-CI-APL-003, Opinion at 4. The Notices and Bases merely initiate the meeting described in

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21 <sup>4</sup> Plaintiffs misquote Article II, § 4 of the Constitution by omitting “, by ordinance,”. See  
22 PI Motion at 5:21-22. Article II, § 4 states, “Loss of Membership: The Tribal Council shall, by  
23 ordinance, prescribe rules and regulations governing involuntary loss of membership.” The  
24 Council has adopted such rules and regulations by ordinance in Title 63, which has been  
25 approved by the Secretary. See Decl. of S. Steadle, Exh. A at 105.

1 § 63.04.001(B)(2) for Ms. Belmont and Ms. Oshiro.<sup>5</sup> Neither Notice nor the Basis is applicable  
2 to anyone other than the addressee. There are no general norms prescribing conduct in a certain  
3 type of situation. Rather, the Notices and Bases inform Ms. Belmont and Ms. Oshiro about the  
4 meeting and the reasons for the involuntary disenrollment proceedings. The meeting described  
5 in § 63.04.001(B)(2) would become meaningless if the Tribal Council could not provide notice  
6 of the meeting date, including basic information about the meeting, without obtaining Secretarial  
7 approval. Moreover, if the Notices and Bases constitute rules or regulations, every memorandum  
8 of the Council, no matter how limited in scope, will turn into a rule or regulation, which is an  
9 absurd result.

10 The former Disenrollment Procedures spanned eight pages and delineated, in great detail,  
11 how all disenrollment meetings would be conducted in an expedited fashion. In contrast, the  
12 Notices are less than two pages and simply give notice to Ms. Belmont and Ms. Oshiro of the  
13 date, time, and place of the meetings they requested. *See* Decl. of S. Steadle, Exh. A at 1-2 and  
14 Exh. B at 1-2. The Notices also explain that Ms. Belmont and Ms. Oshiro may provide a written  
15 response to the Tribal Council, may be represented by counsel at the meeting, and have 15  
16 minutes for any oral presentation to the Council. *Id.* This basic information, which only applies  
17 to the addressees, certainly does not rise to the level of a rule or regulation requiring Secretarial  
18 approval. Similarly, each Basis is particular to the addressee and only explains the evidence the  
19 Council has indicating erroneous enrollment.

20 Additionally, the Court of Appeals has held that the “Tribal Council has the sovereign

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21 <sup>5</sup> Title 63 must be interpreted “in order that the substantive intent of the Tribal Council is  
22 ensured.” Title 10, § 10.01.020. The Tribal Court must not “indulge in highly technical or  
23 legalistic interpretations of tribal ordinances, regulations, and policies when such interpretation  
would defeat the overall legislative goals of the Tribal Council.” *Id.* By analogy, the Notices  
and Bases should not be interpreted through a highly technical or legalistic lens either.

1 authority to determine its meeting procedures[ ]” under Article VI, § 1(j) of the Constitution.  
2 *Lomeli*, 2013-CI-APL-002, Opinion at 21. Under the Bylaws, “[s]pecial meetings of the tribal  
3 council shall be held at such times as are designated by the chairman ....” Bylaws, art. II, § 3.  
4 During special meetings, “the tribal council may proceed to transact any business that may come  
5 before it.” Bylaws, art. II, § 4. The two scheduled disenrollment meetings are special meetings,  
6 and Article VI, § 1(j) of the Constitution and Article II, §§ 3-4 of the Bylaws demonstrate the  
7 Council’s authority to set its meeting procedures.<sup>6</sup> *See Lomeli*, 2013-CI-APL-002, Opinion at  
8 21-22. Importantly, Ms. Belmont and Ms. Oshiro requested the meetings to contest their  
9 disenrollment, and there could be no meetings without scheduling them.

10 In *Cline*, the Court of Appeals found that, “[t]he Nooksack Tribal Council and its officers  
11 need to be able to enact ordinances and conduct business without constantly having to defend  
12 themselves against suit.” *Cline v. Cunanan*, Case No. NOO-CIV-02/08-5, 1 (Nooksack Ct. App.  
13 2009). Here, the Council must be able to give effect to § 63.04.001(B)(2) by providing basic  
14 information to potential disenrollees without a constant court battle. The Council’s actions lie  
15 within its “authority to determine ‘loss of membership[ ]’” under Nooksack law. *Lomeli*, 2013-  
16 CI-APL-002, Opinion at 19. The Constitution does not require Secretarial approval for Council  
17 actions giving effect to previously approved disenrollment procedures, and the Council has acted  
18 within the scope of its authority under Title 63.

19 2. Title 63, the Notices, and the Bases comply with procedural due process.

20 The Court of Appeals has held that “due process demands that a deprivation of a right be  
21 preceded by ‘notice and opportunity for hearing appropriate to the nature of the case.’” *Roberts*,

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22  
23 <sup>6</sup> Given the sensitive nature of these meetings and the confidentiality of enrollment files,  
these special meetings are not open to all members of the Tribe. *See* Title 63, § 63.05.001(B)(2).



1 2013-CI-APL-003, Opinion at 6 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S.  
2 306, 313 (1950)). Additionally, “[t]his opportunity ‘must be granted at a meaningful time and in  
3 a meaningful manner.’” *Id.* (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). The  
4 Court of Appeals also adopted the *Mathews* test “for analyzing procedural due process claims  
5 under the Nooksack Constitution, absent a showing Nooksack custom or tradition favors a  
6 different test.” *Id.* The *Mathews* test requires the Court to balance three factors: (1) the private  
7 interest at stake, (2) the risk of erroneous deprivation and any value in providing additional  
8 safeguards, and (3) the government’s interest, which includes the function involved and any  
9 monetary and administrative burdens in providing additional procedures. *Mathews v. Eldridge*,  
10 424 U.S. 319, 335 (1976).

11 Plaintiffs allege that Title 63 does not provide “specific procedural rules” and therefore  
12 “does not meet the due process requirements.” *See* PI Motion at 8:16-17. Plaintiffs rely on a  
13 misleading mash-up of the Court of Appeals’ language in *Roberts*, stating that “In *Roberts*, the  
14 Court noted – without explicitly holding – that without these ‘specific procedural rules’ Title 63  
15 on its own was likely ‘lacking and indeed may not meet the due process requirements.’” PI  
16 Motion at 7:16-19 (quoting *Roberts*, 2013-CI-APL-003, Opinion at 9). The Court of appeals in  
17 fact stated:

18 We do not decide if the current procedures in Title 63 governing disenrollment  
19 proceedings comply with due process. That issue was not before the trial court,  
20 has not been briefed by the parties, and is not properly before us. We note,  
21 however, the Council’s attempt to adopt more specific procedural rules than what  
22 are specified in current Title 63 indicates *its* belief those procedures are lacking  
23 and indeed may not meet due process requirements.

24 *Roberts*, 2013-CI-APL-003, Opinion at 9 (emphasis added).

25 While the Court of Appeals has not decided whether Title 63’s disenrollment proceedings

1 comply with due process, the Court of Appeals' due process determinations related to the former  
2 Disenrollment Proceedings should guide this Court. The Court of Appeals explicitly stated that:

3 If the Tribe decides to adopt these or similar procedure by ordinance, *or revert to*  
4 *the procedures in the current Title 63*, the due process issue will likely result in  
5 future litigation straining the resources of the Tribe, the parties, and the judiciary.  
We find in the interest of justice it is appropriate that we address the due process  
issues raised in this case to provide the Tribe, litigants and trial court guidance.

6 *Id.* at 5 (emphasis added).

7 The Court of Appeals has decided that though Plaintiffs have a strong interest in retaining  
8 membership in the Tribe, the Tribe and its members have an equally strong interest in ensuring  
9 that those who fail to meet the membership requirements are disenrolled. *Id.* at 6-7.

10 Furthermore, the Court of Appeals' holdings related to the former Disenrollment Procedures  
11 demonstrate that Title 63's provisions related to disenrollment proceedings, the Notices, and the  
12 Bases meet procedural due process requirements.

13 Section 63.04.001(B)(2) provides notice of intent to disenroll, the option of a meeting  
14 with the Tribal Council to contest the disenrollment, the deadline for requesting such a meeting,  
15 the consequence of not timely requesting such a meeting, how to obtain a date for the meeting,  
16 and that the Council will determine whether the potential disenrollee will be disenrolled. Thus,  
17 Title 63, § 63.04.001(B)(2) provides notice and an opportunity to be heard.

18 The Notices schedule the requested meeting and provide basic information about the  
19 meeting so as to execute the procedure outlined in § 63.04.001(B)(2). The Notices allow for a  
20 documentary response to the Tribe's evidence of erroneous enrollment; the Court of Appeals  
21 ruled that documentary response requirements related to the former Disenrollment Procedures  
22 met due process standards. *See Roberts*, 2013-CI-APL-003, Opinion at 7-8. The Notices  
23 provide 15 minutes each for Ms. Belmont and for Ms. Oshiro to make their responses to the

1 Tribal Council; the Court of Appeals has upheld a ten minute oral presentation. *See id.* at 8. The  
2 Notices provide for telephonic hearings; the Court of Appeals has held telephonic hearings meet  
3 due process requirements. *See id.* The Notices explain that Ms. Belmont and Ms. Oshiro may be  
4 represented by counsel during the meeting, and the Notices give 45 days' notice of the meeting;<sup>7</sup>  
5 the Court of Appeals has held prohibiting representation by counsel at a requested meeting  
6 violates due process and providing 21 days' notice satisfies due process requirements. *See id.* at  
7 8-9.

8 The Bases demonstrate the evidence indicating erroneous enrollment. Section  
9 63.04.001(B)(2), the Notices, and the Bases meet due process requirements. Plaintiffs fail to  
10 allege any shortcoming other than a demand for "formal procedures" at least as robust as  
11 procedures required in the school expulsion context. *See* PI Motion at 8. Plainly,  
12 § 63.04.001(B)(2) provides formal procedures—including notice and an opportunity to contest  
13 the disenrollment in a meeting, which is all that due process requires in the school expulsion  
14 context. *See Los v. Wardell*, 771 F. Supp. 266, 270 (C.D. Ill. 1991); *Barnett ex rel. Barnett v.*  
15 *Tipton Cnty. Bd. of Educ.*, 601 F. Supp. 2d 980, 985 (W.D. Tenn. 2009).

16 3. Plaintiffs lack standing to bring this action.

17 The Court of Appeals has affirmed this Court's requirement of standing, holding that  
18 standing "requires that a plaintiff allege a concrete injury, that there is a causal connection  
19 between the injury and the conduct complained of, and that the injury will likely be redressed by  
20 a favorable decision." *Lomeli*, 2013-CI-APL-002, Opinion at 22. The Court of Appeals  
21 favorably cited the federal Supreme Court's *Lujan v. Defenders of Wildlife* decision, which  
22 explains that standing requires a plaintiff to show a "concrete and particularized" injury that is

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23 <sup>7</sup> Plaintiffs have not objected to the date of either meeting.

1 “actual or imminent[.]” 504 U.S. 555, 560 (1992). Furthermore, “the ‘injury in fact’ test  
2 requires more than an injury to a cognizable interest. It requires that the party seeking review be  
3 himself [or herself] among the injured.” *Id.* at 563 (internal citations omitted); *see also Lomeli,*  
4 *et al.*, Case No. 2013-CI-CL-001, Amended Order Granting Defendants’ Motion to Dismiss  
5 Second Amended Complaint, at 19. A plaintiff raising just a generalized grievance “about  
6 government—claiming only harm to his and every citizen’s interest in proper application of the  
7 Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it  
8 does the public at large—does not state [a]... case or controversy.” *Lujan*, 504 U.S. at 573-74.

9 Federal courts also require prudential standing. Prudential standing requires courts to  
10 consider “whether the alleged injury is more than a mere generalized grievance, whether  
11 [plaintiffs] are asserting [their] own rights or the rights of third parties, and whether the claim  
12 falls within the zone of interests to be protected or regulated by the constitutional guarantee in  
13 question.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1122 (9th Cir. 2009).

14 Ms. Belmont and Ms. Oshiro have not alleged any concrete injury, which means they  
15 lack standing. *See Lujan*, 504 U.S. at 560. Even if Ms. Belmont and Ms. Oshiro alleged such an  
16 injury, all other Plaintiffs plainly lack standing. The Notices and Bases only apply to Ms.  
17 Belmont and Ms. Oshiro. *See Decl. of S. Steadle*, Exh. A and Exh. B. Ms. Belmont and Ms.  
18 Oshiro’s enrollments were based on Article II, § 1(a) of the Constitution, and no other Plaintiff  
19 claims a right to enrollment based on Article II, § 1(a) of the Constitution. *See Decl. of S.*  
20 *Steadle*, Exh. A at 14 and Exh. B at 14. Thus, the vast majority of the Plaintiffs do not even  
21 claim the same basis for enrollment. No other disenrollment meetings have been scheduled. All  
22 Plaintiffs lack standing in this matter, because there is no particularized injury to them, and all  
23 Plaintiffs except Ms. Belmont and Ms. Oshiro are third party bystanders raising a generalized

1 grievance at best.

2 **B. Plaintiffs Fail to Demonstrate Irreparable Harm.**

3 Plaintiffs have not demonstrated irreparable harm. Plaintiffs have a right to due process,  
4 but they do not have the right to block the holding of the meeting they requested. The outcome  
5 of that meeting is speculative. The alleged irreparable injury “must be both certain and great; it  
6 must be actual and not theoretical.” *Wis. Gas Co. v. Fed. Energy Regulatory Comm’n*, 758 F.2d  
7 669, 674 (D.C. Cir. 1985); *see also Associated General Contractors of California, Inc. v.*  
8 *Coalition for Economic Equity*, 950 F.2d 1401 (9th Cir. 1991) (a plaintiff seeking injunctive  
9 relief must do more than merely allege imminent harm sufficient to establish standing; s/he must  
10 demonstrate immediate, threatened injury as a prerequisite).

11 Plaintiffs allege that the balance of hardships tips in their favor, but they fail to allege any  
12 actual damage. *See* PI Motion at 4-5. Plaintiffs also fail to raise any “serious questions going to  
13 the merits ....” *MAISys. Corp.*, 991 F.2d at 516. Ms. Belmont and Ms. Oshiro have meetings to  
14 contest their disenrollment scheduled for July 1, 2014. *See* Decl. of S. Steadle, Exh. A at 1 and  
15 Exh. B at 1. They have ample time to prepare a full defense of their claimed right to enrollment  
16 and to correct any errors in the Bases if they exist. Additionally, if Ms. Belmont and/or Ms.  
17 Oshiro are disenrolled, they can reapply for membership under Title 63, § 63.04.001(B)(3).  
18 There can be no injury when the Tribal Council has adhered to Nooksack law and Plaintiffs have  
19 not demonstrated harm from the operation of that law.

20 **C. The Public Interest Weighs in Favor of Denying Injunctive Relief.**

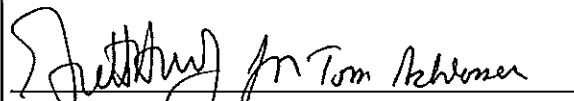
21 The public interest also weighs heavily in favor of denying injunctive relief here.  
22 Granting Plaintiffs’ requested relief would thwart the Council’s authority to disenroll those who  
23 were erroneously enrolled. *See Const.* art. II, §§ 2, 4; Title 63, § 63.04.001(B)(2). As the Court

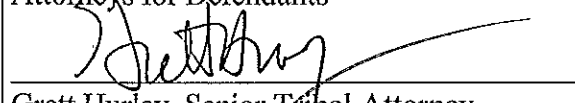
1 of Appeals explained, the "Tribe as well as its members have a vital interest in ensuring only  
2 those who meet the criteria for enrollment are entitled to share the rights and privileges of  
3 membership, and conversely that those who have been erroneously granted membership be  
4 divested of those rights and privileges." *Roberts*, 2013-CI-APL-003, Opinion at 7. Title 63, the  
5 Notices, and the Bases comply with Nooksack law, and this Court must not prevent the Council  
6 from fulfilling its duty.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Defendants request that the Court deny Plaintiffs' Motion for  
9 Preliminary Injunction.

10 Respectfully submitted this 6th day of June, 2014.

11   
12 Thomas P. Schlosser  
13 Rebecca JCH Jackson  
14 Morisset, Schlosser, Jozwiak & Somerville  
15 Attorneys for Defendants

16   
17 Grett Hurley, Senior Tribal Attorney  
18 Rickie Armstrong, Tribal Attorney  
19 Attorneys for Defendants  
20 Office of Tribal Attorney, Nooksack Indian Tribe

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