

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No. 16-1636

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ANNETTE NAWLS and ADRIAN NAWLS,

Plaintiffs - Appellants,

vs.

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY GAMING  
ENTERPRISE ó MYSTIC LAKE CASINO,

Defendant - Appellee.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
MINNESOTA, THE HONORABLE ANN D. MONTGOMERY

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**Appellee's Brief**

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## SUMMARY OF THE CASE

Plaintiff Annette Nawls was subject to a criminal assault while working for the Shakopee Mdewakanton Sioux Community Gaming Enterprise (SMSC Gaming Enterprise). The assault was stopped by a co-worker. Timothy Scott McCaffrey touched and groped Ms. Nawls, resulting in his guilty plea to charges of 5<sup>th</sup> degree assault and disorderly conduct in state court. Because Ms. Nawls was not physically injured, her claims for post-traumatic stress disorder were not covered by the Shakopee Mdewakanton Sioux Community (SMSC or Tribe) Workers' Compensation Ordinance, and were denied. Ms. Nawls dropped her Tribal appeal of this denial and later declined to file a tort claim in Tribal Court under the SMSC Tort Claims Ordinance, which contains a limited waiver of the Tribe's sovereign immunity.

Instead, Ms. Nawls filed the present Title VII case. Appellant Adrian Nawls also contests his dismissal from employment at the SMSC Gaming Enterprise. The district court correctly dismissed the Nawls lawsuit for lack of jurisdiction due to the lack of a federal question and the SMSC Gaming Enterprise's sovereign immunity from suit.

The SMSC Gaming Enterprise believes that oral argument may be unnecessary because no reason has been given for this Court to depart from decades of well-established precedent.

## **CORPORATE DISCLOSURE STATEMENT**

The Shakopee Mdewakanton Sioux Community Gaming Enterprise is not a corporation and is wholly owned and operated by the Tribe.

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## JURISDICTIONAL STATEMENT

This appeal only involves jurisdictional issues. The Nawls assert that Title VII of the Civil Rights Act of 1964 is the basis for federal court jurisdiction. Amended Complaint, ECF 11, p. 3.

The SMSC Gaming Enterprise moved to dismiss on two jurisdictional grounds: sovereign immunity and lack of a federal question. “Sovereign immunity is a jurisdictional question.” *Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1244 (8<sup>th</sup> Cir. 1995). The Nawls have not argued that the SMSC Gaming Enterprise waived its immunity. Further, the Nawls have not established “federal question jurisdiction to resolve this dispute” because the Nawls have “failed to allege a cause of action under Title VII.” *Dillon v. Yankton Sioux Tribe Housing Authority*, 144 F.3d 581, 584 n.3 (8<sup>th</sup> Cir. 1998), *citing*, 42 U.S.C. §§ 2000e(b) and 2000e-2(i).

This Court has jurisdiction under 28 U.S.C. § 1291 to review the district court’s February 12, 2016, final judgment dismissing the Nawls’ complaint for lack of jurisdiction. The Nawls filed their notice of appeal on March 9, 2016.

## STATEMENT OF ISSUES

1. Did the district court correctly determine that the SMSC Gaming Enterprise, a governmental department that is tribally owned and operated in accordance with the Indian Gaming Regulatory Act, is immune from suit under the doctrine of tribal sovereign immunity?

*Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024, 2034 (2014).

*Hagen v. Sisseton-Wahpeton Community College*, 205 F.3d 1040 (8<sup>th</sup> Cir. 2000).

*Allen v. Gold Country Casino*, 464 F.3d 1044, 1047 (9<sup>th</sup> Cir. 2006).

2. Did the district court correctly determine that the SMSC Gaming Enterprise is exempt from Title VII?

42 U.S.C. §§ 2000e(b) & 2000e-2(i).

*E.E.O.C. v. Fond du Lac Heavy Equipment and Const. Co., Inc.*, 986 F.2d 246, 250 (8<sup>th</sup> Cir. 1993).

*Dillon v. Yankton Sioux Tribe Housing Authority*, 144 F.3d 581, 584 n.3 (8<sup>th</sup> Cir. 1998).

3. Did the district court correctly determine that Mr. Nawls' Title VII claims are time barred?

*Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47 (1974).

*Williams v. Thomson Corp.*, 383 F.3d 789, 790 (8<sup>th</sup> Cir. 2004).

*Braxton v. Bi-State Development Agency*, 728 F.2d 1105, 1108 (8<sup>th</sup> Cir. 1984).

## STATEMENT OF THE CASE

### A. Factual Background

In 2013, Ms. Nawls was employed as a server at the SMSC Gaming Enterprise., known as Mystic Lake Casino and Hotel. Mr. Nawls worked at the SMSC Gaming Enterprise as a steward supervisor in the sanitation department. The SMSC Gaming Enterprise is owned and operated by the Shakopee Mdewakanton Sioux Community pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, et seq. (öIGRAö).

On August 9, 2013, Ms. Nawls was subject to a criminal assault while at work when casino patron Timothy Scott McCaffrey touched and groped Ms. Nawls.<sup>1</sup> The assault was stopped due to aid rendered by Ms. Nawlsöco-workers. Amended Complaint, ECF 11, p. 6. After the assault, the Gaming Enterprise continued to employ both Ms. Nawls and her husband, Mr. Nawls.

Adrian Nawls was terminated on January 2, 2014, for repeatedly failing to show up for work. Mr. Nawlsörequest for unemployment benefits was denied because the State Administrative Law Judge determined that he had not taken the

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<sup>1</sup> On October 21, 2013, the State of Minnesota charged Mr. McCaffrey with 5<sup>th</sup> degree assault, lewd and indecent behavior, and disorderly conduct. ECF No. 1-1, pp. 1-6. On June 8, 2015, Mr. McCaffrey pled guilty to 5<sup>th</sup> degree assault and disorderly conduct. *Id.* at p. 10.

steps necessary to apply for medical benefits with the Gaming Enterprise. ECF No. 34-1, pp. 7-15.

On October 2, 2015, the Gaming Enterprise notified Ms. Nawls that she was deemed to have resigned her position because, as a part-time employee, she failed to schedule a shift for over two years.

### **B. Procedural Background**

**Annette Nawls**. On July 16, 2014, Ms. Nawls's request of the Tribe for workers' compensation benefits was denied because Ms. Nawls did not suffer physical injuries from Mr. McCaffrey's assault and Tribal law does not cover emotional and mental injuries in the absence of physical injury. ECF No. 34-1, p. 3. On August 21, 2014, Ms. Nawls appealed this denial to the SMSC Workers' Compensation Hearing Examiner pursuant to Tribal law. *Id.* at p. 2. The SMSC Hearing Examiner denied Ms. Nawls's claim for benefits because she did not incur a physical injury when she was assaulted on August 9, 2013. *Id.* at p. 4. Ms. Nawls elected not to appeal this decision to the Shakopee Mdewakanton Sioux Community Tribal Court (the Tribal Court).

Ms. Nawls was informed, through her attorney, that she could file a complaint against the Gaming Enterprise under the SMSC Tort Claims Ordinance, which contains a limited waiver of the Gaming Enterprise's sovereign immunity

from suit in Tribal Court. Transcript, Motion Hearing, ECF No. 44, p. 7, lines 7-12. Ms. Nawls failed to seek any potential remedies with the Tribal Court. *Id.*

On January 27, 2015, Annette Nawls filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission (õEEOCö) and the Minnesota Department of Human Rights (õMDHRö). ECF No. 19-1, pp. 6-7. Ms. Nawls alleged that she was õsexually assaultedö while at work and then õtook time off of work and was discharged.ö Ms. Nawls further alleged that she had suffered discrimination based upon her gender and disability and was subject to retaliation in violation of the Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101, et. seq. *Id.*

On March 18, 2015, the EEOC issued a Dismissal and Notice of Rights to Ms. Nawls. ECF No. 19-1, pp. 8-9. The EEOC was õunable to conclude that the information obtained establishes violations of the statutes.ö The EEOC informed Ms. Nawls of her right to sue and that your õlawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost.ö (Emphasis original.) *Id.* On May 12, 2015, the MDHR also dismissed Ms. Nawlsø complaint and adopted the õfinal disposition made by the EEOC.ö *Id.* at p. 10.

Ms. Nawls timely filed the present lawsuit.

**Adrian Nawls.** On June 10, 2014, Adrian Nawls filed a Charge of Discrimination with the EEOC and the MDHR. ECF No. 19-1, pp. 1-2. Mr. Nawls alleged that he "was denied leave, because it was the holiday season and/or I didn't turn in the proper doctor's notes. I was discharged for missing too many days." Mr. Nawls also alleged that he was subject to discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964. *Id.*

On June 19, 2014, the EEOC issued a Dismissal and Notice of Rights to Mr. Nawls. ECF No. 19-1, pp. 3-4. The EEOC was "unable to conclude that the information obtained establishes violations of the statutes." The EEOC informed Mr. Nawls of his right to sue and that your "lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost." *Id.* On November 21, 2014, the MDHR also dismissed Mr. Nawls' complaint and adopted the "final disposition made by the EEOC." *Id.* at p. 5.

Mr. Nawls did not file a lawsuit within 90 days.

Mr. Nawls has not filed any complaints or sought any remedy within the Shakopee Mdewakanton Sioux Community or its Tribal Court.

Throughout this process, the Nawls have "spoken to more than 6 attorneys," but none represented them in the district court or before this Court. Amended Complaint, ECF 11, p. 6.

### **C. The District Court's Decision**

On June 22, 2015, the Nawls filed a pro se civil action in the District of Minnesota alleging employment discrimination in violation of Title VII. ECF No. 1. The Nawls amended their complaint on October 16, 2015. ECF No. 11. The SMSC Gaming Enterprise moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6) for lack of jurisdiction and failure to state a claim. ECF No. 12-18.

On February 12, 2016, the district court granted the SMSC Gaming Enterprise's motion to dismiss the Nawls' complaint for lack of jurisdiction. ECF No. 36. The district court determined that jurisdiction was lacking in two respects. First, the district court determined that Title VII exempts the Tribe and its Gaming Enterprise from coverage. *Id.* at pp. 1-2. Due to the exemption, no federal question was presented. *Id.* at p. 2. Second, the district court determined that the Gaming Enterprise, as a branch of the SMSC Tribal government, is immune from suit. *Id.*

The district court did not rule on whether the Nawls were required to exhaust their remedies under Tribal law, yet the court encouraged the parties to pursue any available remedies in the Tribal Court. ECF No. 36, p. 3.



## SUMMARY OF THE ARGUMENT

The district court correctly determined that it lacked jurisdiction over the Nawlsø lawsuit because Title VII exempts the SMSC Gaming Enterprise from its coverage and because the SMSC Gaming Enterprise is immune from suit.

A district court will ñot abuse its discretion in first determining it lacked federal question jurisdiction,ö *In re Prairie Island Dakota Sioux*, 21 F.3d 302, 305 (8<sup>th</sup> Cir. 1994); however, this Court will generally first address ñthe issue of tribal sovereign immunity,ö *Dillon*, 144 F.3d at 584 n. 3. This Court has ñheld that tribal sovereign immunity is a threshold jurisdictional question.ö *Amerind Risk Management Corp. v. Malaterre*, 633 F.3d 680, 684 (8<sup>th</sup> Cir. 2011). ñ[I]f the Tribe possessed sovereign immunity, then the district court had no jurisdiction.ö *Rupp*, 45 F.3d at 1244. The SMSC Gaming Enterprise is immune from suit and the district court correctly determined that it lacked jurisdiction.

The district court also correctly determined that the Nawlsø complaint failed to present a federal question. This Court has determined that, regardless of sovereign immunity, ñwe still would not have federal question jurisdiction to resolve this disputeö because of Title VII's exemption of Indian tribes. *Dillon*, 144 F.3d at 584 n. 3. ñTitle VII expressly excludes Indian tribes from its scope.ö *E.E.O.C. v. Fond du Lac Heavy Equipment and Const. Co., Inc.*, 986 F.2d 246, 250 (8<sup>th</sup> Cir. 1993).

## STANDARD OF REVIEW

**Tribal sovereign immunity.** Whether a suit is barred by a Tribe's sovereign immunity is an issue of law that we determine de novo. *Baker Elec. Co-op., Inc. v. Chaske*, 28 F.3d 1466, 1471 (8<sup>th</sup> Cir. 1994). *See Fort Yates Public School Dist. No. 4 v. Murphy ex rel. C.M.B.*, 786 F.3d 662, 670 (8<sup>th</sup> Cir. 2015) (Questions of [Tribal] sovereign immunity are subject to de novo review.); *Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1244 (8<sup>th</sup> Cir. 1995) (Sovereign immunity is a jurisdictional question . . . [w]e review the district court's determination of jurisdiction de novo.).

The Nawls bear the burden of proving that either Congress or [the SMSC Gaming Enterprise] has expressly and unequivocally waived tribal sovereign immunity. *Amerind*, 633 F.3d at 685-86.

**Federal question jurisdiction.** The existence of subject matter jurisdiction is a matter of law that this court reviews de novo. *Husmann v. Trans World Airlines, Inc.*, 169 F.3d 1151, 1152 (8<sup>th</sup> Cir. 1999). Likewise, the existence of a federal question is an issue of law which we review de novo. *Gaming Corp. of America v. Dorsey & Whitney*, 88 F.3d 536, 542 (8<sup>th</sup> Cir. 1996); *Griffioen v. Cedar Rapids and Iowa City Ry. Co.*, 785 F.3d 1182, 1188 (8<sup>th</sup> Cir. 2015).

It is well settled that the plaintiff bears the burden of establishing subject matter jurisdiction. *Nucor Corp. v. Nebraska Public Power Dist.*, 891 F.2d 1343,

1346 (8<sup>th</sup> Cir. 1989). “As federal courts are courts of limited jurisdiction, “[i]t is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.” *Dakota, Minnesota & Eastern R.R. Corp. v. Schieffer*, 715 F.3d 712, 712 (8<sup>th</sup> Cir. 2013) (quoting *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994)).

## ARGUMENT

### I. The SMSC Gaming Enterprise Is Immune From Suit.

The Shakopee Mdewakanton Sioux Community is a federally recognized Indian tribe and possesses sovereign immunity from suit. *Smith v. Babbitt*, 100 F.3d 556 (8<sup>th</sup> Cir. 1996). Congress enacted the *Federally Recognized Indian Tribe List Act* of 1994 (the “List Act”) to require, among other things, that the Secretary of the Interior annually publish a list of federally recognized Indian tribes in the Federal Register. See 25 U.S.C. §§ 479a & 479a-1.<sup>2</sup> The SMSC has always been on this Federal Register list, which acknowledges that the SMSC possesses “the immunities and privileges available to federally recognized Indian tribes by virtue

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<sup>2</sup> In 1980 Congress reaffirmed the SMSC’s governmental status and its Reservation land base. Pub. L. No. 96-557, 94 Stat. 3262 (1980). In 2004, Congress again recognized the SMSC by enacting legislation providing that all of the lands held in trust for the SMSC, including those acquired under Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465, are not subject to alienation or encumbrance. Native American Technical Corrections Act of 2004, Pub. L. No. 108-204, 118 Stat. 542 (2004).

of their government-to-government relationship with the United States.ö *Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 81 Fed. Reg. 5019, 5023 (Jan. 29, 2016).

öFederally recognized Indian tribes enjoy sovereign immunity from suit.ö *Pit River Home and Agric. Coop. Ass'n v. United States*, 30 F.3d 1088, 1100 (9th Cir. 1994). Once an Indian tribe is recognized, öthe United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government.ö 25 U.S.C. § 3601(2). All federally-recognized Indian tribes operate on an equal footing under federal law. 25 U.S.C. § 476(f).

An Indian tribe's gaming operation is uniquely governmental. IGRA requires the Tribe to öhave the sole proprietary interest and responsibility for the conduct of gaming activity.ö 25 U.S.C. § 2710(a)(2)(A). Under IGRA, Tribal gaming is a ömeans of promoting tribal economic development, self-sufficiency, and strong tribal governments.ö 25 USCA § 2702. Other Circuit Courts of Appeals have held that an Indian tribe's sovereign immunity extends to its gaming operation. *Allen v. Gold Country Casino*, 464 F.3d 1044, 1047 (9<sup>th</sup> Cir. 2006); *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718, 725-26 (9<sup>th</sup> Cir. 2008); *Breakthrough Management Group, Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1183 (10<sup>th</sup> Cir. 2010).

The Supreme Court has made it clear that the “doctrine of tribal immunity is settled law without any exceptions for commercial or off-reservation conduct” is settled law and controls. *Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024, 2036 (2014). Noting the success of “tribal gaming revenues” and “the flourishing of other tribal enterprises, ranging from cigarette sales to ski resorts,” the Supreme Court once again deferred to Congress to make any alteration in the scope of tribal sovereign immunity. *Bay Mills*, 134 S.Ct. at 2037. “The special brand of sovereignty the tribes retain is both its nature and its extent is rests in the hands of Congress.” *Id.*

“As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.” *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 754 (1998). The Nawls did not argue before the district court that a waiver existed, nor is this argument advanced here. Instead, the Nawls focus on policy related arguments and opinions. By failing to contest the SMSC Gaming Enterprise’s sovereign immunity, the Nawls may have waived such arguments. *See U.S. v. Gonzales*, 90 F.3d 1363, 1369 (8<sup>th</sup> Cir. 1996) (argument abandoned when “[t]here is no specific assignment of error; indeed, there is no discussion whatsoever.”); *Pino v. Higgs*, 75 F.3d 1461, 1463 (10<sup>th</sup> Cir. 1996) (failing “to argue this issue in her brief, she is

deemed to have waived the challengeö). These cases, however, do not involve pro se plaintiffs, such as the Nawls.

On appeal, the Nawlsöbrief is so difficult to understand that this appeal could be deemed frivolous. *Haugen v. Sutherlin*, 804 F.2d 490, 491 (8<sup>th</sup> Cir. 1986). The table of authorities either comes from another document or is contrived. The Nawlsöbrief consists primarily of cutting and pasting in most of the *Gavle v. Little Six, Inc.*, 555 N.W.2d 284 (Minn. 1996), decision, including the dissent. See Appellantsöbrief, pp. 12-17 and 24-46. The Nawls include quotes from the Major Crimes Act, *Id.* at p. 12, and the 1997 Ojibwe News reports on the *Gavle* case, *Id.* at p. 19. The Nawls argument also includes lengthy, selective quotes ó although unattributed ó from the öJudicial Toolkit on Indian Lawö by Judge Joseph Wiseman, *Id.* at pp. 22-24,<sup>3</sup> and from öAmerican Indian Communities in Minnesota, Tribal and State Jurisdiction Over Civil Cases,ö which is published by the Minnesota Senate Counsel, *Id.* at p. 24.<sup>4</sup> None of these sources, however, provide an argument against the SMSC Gaming Enterpriseö's sovereign immunity from suit.

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<sup>3</sup> <http://www.courts.ca.gov/documents/Key-Federal-Indian-Law-Cases.pdf> Last visited on May 26, 2016.

<sup>4</sup> <http://www.senate.leg.state.mn.us/departments/scr/report/bands/CIVIL.HTM> Last visited on May 26, 2016.

Here, it is undisputed that the SMSC Gaming Enterprise is a branch of the Tribe's government. It was created by the Tribe, it is owned by the Tribe, it is controlled by the Tribe, and its purpose is to provide economic development and governmental revenue to the Tribe. *See Hagen v. Sisseton-Wahpeton Community College*, 205 F.3d 1040, 1043 (8<sup>th</sup> Cir. 2000) ("It is also undisputed that a tribe's sovereign immunity may extend to tribal agencies."). The SMSC Gaming Enterprise is "a branch of the sovereign tribal government" *Prescott v. Little Six, Inc.*, 387 F.3d 753, 757 (8<sup>th</sup> Cir. 2004), and the "Gaming Enterprise, like its predecessor Little Six, Inc., is a branch of the tribal government . . . [a]s such, it enjoys sovereign immunity." *Ferguson v. SMSC Gaming Enterprise*, 475 F.Supp.2d 929, 931 (D.Minn. 2007).

The decision of the district court to dismiss the Nawl's case because the SMSC Gaming Enterprise is immune from suit is well-reasoned and consistent with all precedent, and should be affirmed.

## **II. The SMSC Gaming Enterprise Is Exempt From Title VII.**

In the area of federal civil rights laws, Congress has legislated specifically for Indian tribes, which occupy a special status under the U.S. Constitution. "As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority." *Santa Clara Pueblo v. Martinez*, 436

U.S. 49, 56 (1978). *See also Talton v. Mayes*, 163 U.S. 376 (1896) (5<sup>th</sup>

Amendment to the United States Constitution does not apply to Tribes's exercise of sovereignty).

In 1964, Congress exempted Indian tribes and businesses on or near Indian reservations from the employment discrimination prohibitions of Title VII:

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, was the first major piece of federal legislation prohibiting discrimination in private employment on the basis of race, color, religion, sex, or national origin. Significantly, §§ 701(b) and 703(i) of that Act explicitly exempted from its coverage the preferential employment of Indians by Indian tribes or by industries located on or near Indian reservations. This exemption reveals a clear congressional recognition, within the framework of Title VII, of the unique legal status of tribal and reservation-based activities.

*Morton v. Mancari*, 417 U.S. 535, 545-46 (1974) (internal citations omitted). The district court correctly held that the Navajo cannot state a Title VII claim against the SMSC Gaming Enterprise.

Against the backdrop of the U.S. Constitution not applying to an Indian tribe's exercise of its sovereignty and Congress's determination in 1964 to exempt Indian tribes from Title VII, Congress enacted the Indian Civil Rights Act in 1968. 25 U.S.C. §§ 1301 et. seq.

To this day, Congress's sole expression of applying federal civil rights laws to Indian tribes is the Indian Civil Rights Act ("ICRA"). The ICRA established



“Constitutional norms to tribal self-government.” *Martinez*, 436 U.S. at 65. In extending constitutional-type limitations to tribal governments, however, Congress “selectively incorporated, and in some instances, modified the safeguards of the Bill of Rights to fit the unique political, cultural, and economic needs of the tribal governments.” *Id.* at 62. For example, the ICRA’s modification of the Equal Protection Clause “guarantees ‘the equal protection of *its* [the tribe’s] laws,’ rather than of *the* laws.” *Id.* at 63 n. 14 (emphasis in original).

“Congress’ failure to provide remedies other than habeas corpus [in the ICRA] was a deliberate one.” *Martinez*, 436 U.S. at 61. Instead, “[t]ribal forums are available to vindicate rights created by the ICRA.” *Id.* at 65.<sup>5</sup> “Tribal Courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians.” *Id.* While the Nawls cannot utilize Title VII as a basis to establish federal court jurisdiction to hear her claims, Ms. Nawls may pursue her claims in Tribal Court.

Here, Ms. Nawls and her former attorney were informed that the SMSC maintains a Tort Claims Ordinance, which contains a limited waiver of immunity. But Ms. Nawls has refused to pursue those remedies. Simply put, Ms. Nawls “has

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<sup>5</sup> Further, nothing in ICRA can “be read as a general waiver of [a] tribe’s sovereign immunity.” *Martinez*, 436 at 59.

not been deprived of her day in court, but only of her day *in the court of her choice*.ö *Cohen v. Little Six, Inc.*, 543 N.W.2d 376, 381 (Minn. Ct. App. 1996) (emphasis original). Now, Ms. Nawls may have waited so long to pursue a Tribal remedy, that her claims ó *e.g.* discrimination or failure to maintain a safe work environment -- may be time barred. That determination, of course, lies with the Tribal Court.

### **III. Mr. Nawls' Title VII Claims Are Time Barred.**

Title VII öspecifies with precision the jurisdictional prerequisites that an individual must satisfy before he is entitled to institute a lawsuit.ö *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47 (1974); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798 (1973) (referring to the 90-day right to sue timeline as a öjurisdictional prerequisiteö). Failure to file within the statutory 90-day timeline, 42 U.S.C. § 2000e-5(f)(1), results in the underlying claims being time barred. *Williams v. Thomson Corp.*, 383 F.3d 789, 790 (8<sup>th</sup> Cir. 2004); *Braxton v. Bi-State Development Agency*, 728 F.2d 1105, 1108 (8<sup>th</sup> Cir. 1984). Mr. Nawls failed to timely file his lawsuit, thus, his Title VII claims are time barred.

## CONCLUSION

The district court's judgment should be affirmed.

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14 point Times, a proportionally spaced font.

I further certify that this brief has been scanned for viruses and that the brief is virus-free.

I further certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4249 words, excluding the parts of the brief exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

Dated: May 31, 2016

/s/ Greg S. Paulson

## **CERTIFICATE OF SERVICE**

I hereby certify that on May 31, 2016, I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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