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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 16-0282

ROBERT CRAWFORD,

Plaintiff and Appellant,

V.

CASEY COUTURE; FLATHEAD TRIBAL POLICE OFFICER; FLATHEAD TRIBAL POLICE DEPT.; CONFEDERATED SALISH KOOTENAI TRIBAL GOVERNMENT; and OTHERS UNKNOWN,

Defendants and Appellees.

BRIEF OF APPELLEES

On Appeal from the Montana Twentieth Judicial District Court, Lake County, The Honorable James A. Manley, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES....................3

STATEMENT OF THE ISSUES....................7

STATEMENT OF THE CASE....................7

STATEMENT OF THE FACTS....................9

STANDARDS OF REVIEW....................10

SUMMARY OF THE ARGUMENT....................11

ARGUMENT....................13

I. STATE COURTS LACK SUBJECT MATTER JURISDICTION OVER THIS ACTION AGAINST THE TRIBES, A TRIBAL PROGRAM, A TRIBAL OFFICER AND A TRIBAL MEMBER....................13

A. State jurisdiction is preempted by federal law....................14

B. State jurisdiction would infringe on tribal self-governance....................16

II. CRAWFORD'S CLAIMS ARE BARRED BY THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY....................18

CONCLUSION....................25

CERTIFICATE OF COMPLIANCE....................25

TABLE OF AUTHORITIES

CASES

American Indian Agricultural Credit Consortium, Inc. v. Standing Rock Sioux Tribe,
780 F.2d 1374 (8th Cir. 1985)..20

Atkinson Trading Co., Inc. v. Shirley,
532 U.S. 645 (2001) 16, 17

Big Spring v. Conway,
2011 MT 109, 360 Mont. 378, 255 P.3d 126..................11, 13, 14, 17, 24

BNSF Railway Co. v. Cringle,
2010 MT 290, 359 Mont. 20, 247 P.3d 706..10

California v. Cabazon Band of Mission Indians,
480 U.S. 202 (1987) 20

Commissioner of Political Practices for State ex rel. Motl v. Bannan,
2015 MT 220, 380 Mont. 196, 354 P.3d 603......................................10

Cook v. AVI Casino Enterprises,
548 F.3d 718 (9th Cir. 2008)..12, 22, 23

Guardipee v. Confederated Tribes of the Grand Ronde Community,
19 Ind. L. Rept. 611 (Gr. Ronde Tr. Ct., June 11, 1992).........................20

Harlow v. Fitzgerald,
457 U.S. 800 (1982)..24

Kennerly v. District Court,
400 U.S. 423 (1971)..11, 14

Kiowa Tribes of Oklahoma v. Manufacturing Technologies, Inc.,
523 U.S. 751 (1998)..12, 18, 19, 23

TABLE OF AUTHORITIES
(Cont.)

Linneen v. Gila River Indian Community,
276 F.3d 489 (9th Cir.2002)..23

Malley v. Briggs,
475 U.S. 335 (1986)..24

Meagher v. Butte–Silver Bow City–County,
2007 MT 129, 337 Mont. 339, 160 P.3d 552..11

Michigan v. Bay Mills Indian Community,
134 S.Ct. 2024, 188 L.Ed.2d 1071 (2014)..12, 20

Miller v. Wright,
705 F.3d 919 (9th Cir. 2013)..23

Montana v. United States,
450 U.S. 544 (1981)..16, 17

Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe
498 U.S. 505 (1991)..19

Santa Clara Pueblo v. Martinez,
436 U.S. 49 (1978)..12, 19, 21, 22

Smith v. Salish Kootenai College,
434 F. 3d 1127 (9th Cir. 2006)..16, 17

State v. Robert Lee Crawford,
2016 MT 96, 383 Mont. 229, 371 P.3d 381..7, 8, 9, 10, 24

Thebo v. Choctaw Tribe,
66 F. 372 (8th Cir. 1895)..19

Three Affiliated Tribes v. Wold Engineering,

476 U.S. 877 (1986)..21

TABLE OF AUTHORITIES
(Cont.)

Thompson v. Crow Tribe of Indians,
1998 MT 161, 289 Mont. 358, 962 P.2d 577....................................11

Turner v. United States,
248 U.S. 354 (1919)..19

United States v. United States Fidelity & Guaranty Co.,
309 U.S. 506 (1940)..19

Williams v. Lee,
358 U.S. 217 (1959)..11, 13, 16, 17

OTHER AUTHORITIES

Montana Code Annotated

§ 2-1-301..15
§ 2-1-302..15
§ 2-1-303..15
§ 2-1-304..15
§ 2-1-305..15
§ 2-1-306..15
§ 2-1-307..15

Montana Rules of Civil Procedure

Rule 12(b)(1)..24
Rule 12(h)(3)..24

Montana Rules of Evidence
Rule 201..9, 10
Rule 202..9, 10

Laws of the Confederated Salish and Kootenai Tribes Laws(*Rev. 4-15-03)*

§ 1-2-105..15

TABLE OF AUTHORITIES
(Cont.)

§ 4-1-401 18
§ 4-1-402 18

United Stated Code

18 U.S.C § 1162 14
25 U.S.C. § 1301 21
25 U.S.C. § 1302 21
25 U.S.C. § 1303 21
25 U.S.C. §§ 450 et seq 9, 22
28 U.S.C. § 1360 14
28 U.S.C. § 2679 22
42 U.S.C. § 1983 .... 15, 23, 24

United States Public Laws

U.S. Public Law 83-280 .... 14, 15
U.S. Public Law 101-512 22

United States Code of Federal Regulations

25 C.F.R. §900.183(b) 22
25 C.F.R. § 900.204 22

Federal Register

81 Fed. Reg. 5019 (Jan 29, 2016) 9

STATEMENT OF THE ISSUES

1. Whether the district court correctly granted the Defendant's Motion to Dismiss for lack of subject matter jurisdiction in recognizing tribal jurisdiction.

2. Whether the district court correctly granted the Defendant's Motion to Dismiss for lack of subject matter jurisdiction pursuant to tribal sovereign immunity.

STATEMENT OF THE CASE

On March 17, 2012, the Appellant, Robert Lee Crawford (Crawford), was arrested on the Flathead Reservation by Lake County Deputy Sheriff Levi Read (Read) upon a warrant issued by Butte-Silver Bow County Probation and for Officer Karly Kump for parole violations. (D.C. Doc. 7 at Ex. 1 at 5.) Crawford was charged with drug violations in the Montana Twentieth Judicial District Court, Lake County. *State v. Robert Lee Crawford*, 2016 MT 96, 383 Mont. 229, ¶ 7, 371 P.3d 381. On December 3, 2013, a jury found Crawford guilty. (D.C. Doc. 7 at 11.)

Following his conviction, Crawford filed his Complaint in this case on October 26, 2015, seeking recovery from the Confederated Salish and Kootenai Tribes (Tribes), Defendant Casey Couture (in his individual capacity and in his capacity as a tribal police officer), and the Confederated Salish and Kootenai

Tribes Tribal Police Department (Department). (D.C. Doc. 2.)[1] Crawford alleged numerous claims, including, libel, slander, false imprisonment, and injuries involving property, apparently, arising from the conviction, which he asserted, resulted due to the inappropriate conduct by Officer Couture. (D.C. Doc. 2.) In January 2016, while this case was pending, Crawford completed briefing on his direct appeal to the Supreme Court of Montana in the underlying criminal action in *State v. Robert Lee Crawford*, 2016 MT 96, 383 Mont. 229, ¶ 44, 371 P.3d 381. (D.C. Doc. 7 at 11.)

The Tribes, on behalf of the Tribes, the Department, and Couture, filed a Motion and "Brief in Support of Motion to Dismiss or, in the Alternative, for Summary Judgment" on March 2, 2016. (D.C. Doc. 2.) Crawford filed a response on March 22, 2016. (D.C. Doc. 7.) The Montana Twentieth Judicial District Court, Lake County, issued an Order Granting Motion to Dismiss on April 20, 2016. (D.C. Docs. 8, 8.5.) The district court's order dismissed the cause of action based on lack of subject matter jurisdiction and sovereign immunity pursuant to the authority and arguments provided in the Tribes' briefs. (D.C. Docs. 8, 8.5.) Crawford filed a "Notice of Appeal" on May 6, 2016. (D.C. Doc. 11.)

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[1] The correct listing of the Defendants should be the Confederated Salish and Kootenai Tribes, the Confederated Salish and Kootenai Tribal Police Department, and Confederated Salish and Kootenai Tribal Police Officer Casey Couture. Flathead Reservation is the name of the Reservation and is commonly mistaken for the name of the Tribes.

In *State v. Robert Lee Crawford*, 2016 MT 96, 383 Mont. 229, ¶ 44, 371 P.3d 381, this Court, on April 26, 2016, affirmed the district court's conviction for criminal possession of dangerous drugs. This Court found that Crawford was lawfully arrested and that law enforcement did not suppress any exculpatory or relevant evidence. *Crawford,* ¶¶ 22-23, 33-34. This Court may take judicial notice of the law and facts in *State v. Robert Lee Crawford* pursuant to Mont. Code Ann., Title 26. Ch. 10, Rule 201-202.

STATEMENT OF THE FACTS

The Tribes are a federally recognized Indian tribe. *See Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs,* 81 Fed. Reg. 5019 (Jan. 29, 2016). (D.C. Doc.5 at 3.) *See also, Aff. Of Casey J. Couture* at 1. The CSKT Police Department is a governmental program of the Tribes and operated pursuant to a self-governance compact between the Tribes and the United States pursuant to the Indian Self-Determination and Education Assistance Act, 25 USC §§450 et seq. (D.C. Doc. 5 at 3.)

At all times relevant to Crawford's Complaint, Couture was an acting police officer employed with Tribal Law and Order of the Tribes. (D.C. Doc. 7 at Ex. 2 at 3.) Tribal Officer Couture is an employee of a Tribal governmental program and has been employed as a Tribal officer since February 6, 2006. (D.C. Doc. 5 at 3.)

Couture lives on the Flathead Reservation in Ronan, Montana, and is an enrolled member of the Tribes. (D.C. Doc. 2 at 1; Doc. 5 at 3.) Indeed, the Indian status of the defendants in the court below is undisputed. (Brief of Appellant at 13.)

The facts relevant to Crawford's claims of inappropriate conduct have been determined by jury and are set forth in this Court's opinion in *State v. Robert Lee Crawford*, 2016 MT 96, 383 Mont. 229, 371 P.3d 381. Because state court jurisdiction and tribal immunity concern only the Indian status of the defendants, we will not reiterate those facts here. Stated briefly, Crawford was arrested and convicted based upon admissible evidence, and without the suppression of exculpatory or relevant evidence. *Crawford,* ¶¶ 22-23, 33-34. Pursuant to Mont. Code Ann., Title 26. Ch. 10, Rule 201-202, this Court may take judicial notice of the law and facts provided for in *State v. Robert Lee Crawford.*

STANDARDS OF REVIEW

The Court reviews de novo a district court's determination regarding subject matter jurisdiction. *Commissioner of Political Practices for State ex rel. Motl v. Bannan*, 2015 MT 220, ¶ 7, 380 Mont. 196, 354 P.3d 603 (*citing BNSF Railway Co. v. Cringle,* 2010 MT 290, ¶ 11, 359 Mont. 20, 247 P.3d 706).

"A district court must determine whether the complaint states facts that, if true, would vest the court with subject matter jurisdiction. This determination by a

district court is a conclusion of law that the Court will review for correctness." (emphasis in original) *Big Spring v. Conway (In re Estate of Big Spring),* 2011 MT 109, ¶ 20, 360 Mont. 378, 255 P.3d 126 (*citing Meagher v. Butte–Silver Bow City–County,* 2007 MT 129, ¶ 13, 337 Mont. 339, 160 P.3d 552).

When "a court's determination of a motion to dismiss based on a claim of sovereign immunity is a legal question," this Court's "review is plenary." *Thompson v. Crow Tribe of Indians,* 1998 MT 161, ¶ 10, 289 Mont. 358, 962 P.2d 577.

SUMMARY OF THE ARGUMENT

Generally, state courts lack jurisdiction over claims by non-Indians against Indian tribes and their members in Indian country, and courts have "consistently guarded the authority of Indian governments over their reservations." *Williams v Lee*, 358 U.S. 217, 223 (1959). Unless a tribe consents and the state assumes jurisdiction under a Congressional act such as Public Law 280, Indian tribes, tribal departments and programs, tribal employees, and tribal members on the Reservation are not subject to jurisdiction of state courts. *See e.g., Kennerly v. District Court*, 400 U.S. 423 (1971).

In *Big Spring v. Conway (In re Estate of Big Spring),* 2011 MT 109, 360 Mont. 370, 255 P.3d 121, this Court held that the whether the exercise of

jurisdiction by a state court is preempted by federal law or, if not, whether it infringes on tribal self-government. The district court properly found that it did not have subject matter jurisdiction over the Tribes and tribal members on the Flathead Reservation because such jurisdiction is both preempted by federal law and would otherwise infringe on tribal self-governance.

Moreover, the Tribes, its governmental programs and employees are immune from suit under the well-settled doctrine of tribal sovereign immunity, which prohibits suits against the Tribes, its Department, and its Tribal employee on the Reservation. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), specifically provides that the lawsuit against the Tribes in this case is barred by the Tribe's sovereign immunity since there is no law that subjects the Tribes to jurisdiction of the State.

Furthermore, both *Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024, 2031, 2039, 188 L.Ed.2d 1071 (2014), and *Kiowa Tribe v. Manufacturing Technologies, Inc.,* 523 U.S. 751 (1998), affirm that the Tribe's in this case have inherent sovereign authority of their members, unless the Tribes explicitly waive immunity or Congress has limited Tribal jurisdiction. Neither has occurred in this case. *Cook v. AVI Casino Enterprises*, 548 F.3d 718 (9th Cir. 2008), makes it clear that tribal employee Couture is also extended tribal sovereign immunity from the

Defendant's claims. Therefore, the Tribes, the Department, and the Tribal Officer are all immune from this suit.

ARGUMENT

I. STATE COURTS LACK SUBJECT MATTER JURISDCTION OVER THIS ACTION AGAINST THE TRIBES, A TRIBAL PROGRAM, A TRIBAL OFFICER AND A TRIBAL MEMBER

In repeatedly holding that state courts lack jurisdiction over activities involving Indians in Indian country, the United States Supreme Court has "consistently guarded the authority of Indian governments over their reservations." *Williams v Lee*, 358 U.S. 217, 223 (1959). Absent an express authorization by Congress, state courts lack jurisdiction over Indian tribes and tribal members within their reservation. *Id.* 220-223. The United States Supreme Court has held that the exercise of state court jurisdiction in such instances would interfere with the rights of tribes to make their own laws and be governed by them. *Id.* The Court noted that, "Congress has also acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation." *Id.* at 220.

Accordingly, in *Big Spring v. Conway (In re Estate of Big Spring),* 2011 MT 109, 360 Mont. 370, 255 P.3d 121, this Court recently announced the proper analysis for both regulatory and adjudicatory actions involving tribal members in their territories. Specifically, the Court held that a state court must:

> [a]sk whether the exercise of jurisdiction by a state court or regulatory body is preempted by federal law or, if not, whether it infringes on tribal self government. Moreover, because the barriers are independent of one another, if either one is met a state may not assume civil jurisdiction or take regulatory action over Indian people or their territories within the boundaries of their reservations.

Big Spring, ¶ 46.

The Court in *Big Spring* held that that the state court did not have jurisdiction in a probate action involving member Indians concerning an estate located within the exterior boundaries of the Blackfeet Reservation. *Big Spring,* ¶ 58. Because there was no Congressional limitation, the Blackfeet Tribe maintained "sovereign power, and therefore exclusive jurisdiction, over the probate of Big Spring's estate." *Big Spring,* ¶ 50.

The district court's decision was correct because assertion of state jurisdiction here is both preempted by federal law and would otherwise infringe on tribal self-governance.

A. State jurisdiction is preempted by federal law.

Jurisdiction over Tribes and tribal members in Indian country may only occur upon the consent of a tribe and state assumption of jurisdiction under a Congressional act such as Public Law 280, *Kennerly v. District Court*, 400 U.S. 423, 426-430 (1971). Contrary to Crawford's assertions, the Tribe's agreement to limited concurrent jurisdiction under Public Law 83-280, 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (P.L. 280) does not authorize state court jurisdiction over

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Crawford's claims. State court jurisdiction under P.L. 280 is limited to compulsory school attendance; public welfare; domestic relations; mental health, insanity, care of the infirm, aged and afflicted; juvenile delinquency and youth rehabilitation, adoption, abandoned, dependent, neglected, orphaned or abused children; operation of motor vehicles upon public streets, alleys, roads and highway; and all criminal laws of the state of Montana pertaining to felony offenses (Class E offenses in the Tribes code). Laws of the Confederated Salish and Kootenai Tribes, Section 1-2-105, *(Rev. 4-15-03)* (*See also* Mont. Code Ann. Sections 2-1-301 through 2-1-307).

Crawford has not and cannot identify any basis Congressional authorization of state court jurisdiction over his causes of action. Crawford even acknowledged in his district court response brief that, "tribal courts have exclusive jurisdiction over a suit by any person against a tribal member for a claim arising in Indian Country." (Brief of Appellant at 3.)

It should be noted that, although Crawford goes into great detail with regard to his 42 U.S.C. § 1983 claims against officer Couture, that analysis is irrelevant because there is no basis for state court jurisdiction over the activities of a tribal member employed by his Tribes for activities occurring entirely within his Reservation even under §1983.

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B. State jurisdiction would infringe on tribal self-governance.

The Indian status of the defendants here is not disputed, and is specifically acknowledged by Crawford on page 13 of his brief. Moreover, Crawford does not dispute that the defendants are located on the Flathead Reservation and that all activities relevant to his Complaint occurred on the Reservation.

Because this case involves Tribal members in Indian country, a state court is not an appropriate forum for Crawford's grievances, which involve direct claims against the Tribal government, a Tribal Department, and a Tribal employee in that Department who is also a Tribal member, all relative to activities that occurred exclusively within the Reservation. It is hard to imagine a situation that would cause more interference with the operations of a tribal government and seeking a monetary award against the Tribal treasury than the present action.

It is immaterial as to whether or not the Crawford is Indian or non-Indian. Indeed, the plaintiff in *Williams* was also a non-Indian and the Court was clear that a state court does not have the ability to assert jurisdiction over tribal members in Indian country. Forcing Tribal members into state court on the Flathead Reservation would strip tribes from the power to govern their members.

Crawford argues at length that tribal courts do not have jurisdiction over him under *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645 (2001), *Montana v. United States*, 450 U.S. 544 (1981), and *Smith v. Salish Kootenai College*, 434 F.

3d 1127, (9th Cir. 2006),[2] because he does not have a "consensual relationship" with the Tribes. However, those arguments have no application here because the Tribes are not seeking to assert jurisdiction over Crawford. Instead, Crawford is suing the Tribes and its members in their territories in a state court, which is guided by *Williams* and *Big Spring. Montana* and its progeny, including *Atkinson,* have no application here. Crawford is attempting to assert state court jurisdiction over Tribal members, not the other way around.

Crawford provides several citations to the Montana Constitution and to federal case law in an effort to formulate an argument that the state courts are constitutionally required to protect him and should force Tribal members into state courts. However, constitutional or other obligations on state governments do not confer state court jurisdiction. Crawford' interpretation would divest the ability of tribes to govern tribal member in their territories, and are therefore prohibited as a matter of both federal and Montana law. *See Williams v. Lee*, 358 U.S. 217, 222-223 (1959).

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[2] Contrary to how it is characterized by Crawford, *Smith*, very clearly recognizes *Williams* and holds that a Tribal court, and not a state court, is the proper forum in cases involving Tribal members or Tribal entities. *See Smith v. Salish Kootenai College*, 434 F. 3d 1127, 1136-1337 (9th Cir. 2006).

II. CRAWFORD'S CLAIMS ARE BARRED BY THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY

The Tribes, like all sovereign governments, possesses common law immunity from suit. The Laws of the Confederated Salish and Kootenai Tribes Codified makes clear that the Tribes' immunity is absolute:

> **4-1-401 Immunity from suit.** The Confederated Salish and Kootenai Tribes, as a sovereign government and landowner, and its elected Tribal Council in either their official or personal capacity, as well as Tribal officers, agents and employees acting within the scope of their authority, share sovereign immunity from suit and may not be made parties defendant to a lawsuit without the express, written consent of the Tribal Council.

Laws of the Confederated Salish and Kootenai Tribes, Section 4-1-401, *(Rev. 4-15-03).* Under this immunity the Tribes, and its governmental programs, agencies, entities, officials and employees acting within the scope of their authority, are not subject to suit. While the Tribes have provided for a limited waiver of immunity by statute in certain instances, no such waiver has ever occurred with regard to proceedings in state courts. *See e.g.,* Laws of the Confederated Salish and Kootenai Tribes, Section 4-1-402.

Tribal law is in complete accordance with an unbroken line of United States Supreme Court decisions that unequivocally hold that absent abrogation by Congress or an express waiver by a tribe, it is wholly immune from suit. *See e.g., Kiowa Tribe v. Manufacturing Technologies, Inc.,* 523 U.S. 751, 426-430 (1998);

Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978); *Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991); *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512 n.11 (1940); *Turner v. United States,* 248 U.S. 354, 358 (1919). As the United States Supreme Court has held, "Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58 (1978). Under this well settled doctrine, "[s]uits against Indian tribes are...barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation." *Oklahoma Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991). The principles governing tribal sovereign immunity have been recognized and applied by the courts for more than a century, *See United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512 n.11 (1940) (citing, *inter alia, Thebo v. Choctaw Tribe*, 66 F. 372, 375-76 (8th Cir. 1895); *Turner v. United States* , 248 U.S. 354, 358 (1919), and were most recently reaffirmed by the Supreme Court in *Kiowa Tribe v. Manufacturing Technologies Inc.*, 523 U.S. 751 (1998); *see also, Potawatomi Indian Tribe*, 498 U.S. at 509-11 (rejecting arguments that the tribal sovereign immunity be abandoned or limited).

Sovereign immunity is an "aspect of tribal sovereignty." *Santa Clara Pueblo*, 436 U.S. at 58. "Indian tribes enjoy sovereign immunity because they are

sovereigns predating the Constitution." *American Indian Agricultural Credit Consortium, Inc. v. Standing Rock Sioux Tribe*, 780 F.2d 1374, 1378 (8th Cir. 1985); *accord Guardipee v. Confederated Tribes of the Grand Ronde Community*, 19 Ind. L. Rept. 611 (Gr. Ronde Tr. Ct., June 11, 1992). The United States Supreme Court recently reaffirmed the immunity doctrine in *Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024, 2031, 2039, 188 L.Ed.2d 1071 (2014), noting that tribal immunity is not subject to diminution by the States and may only be waived by the tribe or Congress.

Tribal sovereign immunity, and the right of tribes to determine for themselves whether and how to waive that immunity, plays a vital role in protecting and promoting Indian tribal self-government and self-determination. Sovereign immunity protects tribes against unconsented lawsuits that would drain tribal treasuries, interfere with tribal government operations, and handicap the tribe's ability to provide much-needed services to its people. It is a part of a larger federal policy to protect and preserve tribal resources. As the Supreme Court concluded: "Congress has consistently reiterated its approval of the immunity doctrine," reflecting its "desire to promote the 'goal of Indian self-government, including its "overriding goal" of encouraging tribal self-sufficiency and economic development.'" *Potawatomi Indian Tribe*, 498 U.S. at 510 (*quoting California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216 (1987)). Sovereign

immunity is "a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes v. Wold Engineering*, 476 U.S. 877, 890 (1986).

In *Santa Clara Pueblo*, 436 U.S. 49, 58 (1978), the Supreme Court refused to find that the Indian Civil Rights Act, which contained no express waiver of tribal sovereign immunity, operated as an implied waiver of the Tribe's absolute immunity from suit. In that case, a tribal member brought suit against the tribe asserting that a tribal ordinance, which denied tribal membership and related property rights to children of female tribal members who married non-members of the tribe, violated the equal protection clause of the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1303. *Id.* at 51. The Supreme Court held the suit against the Tribe barred by tribal sovereign immunity. *Id.* at 58-59. The Court found that nothing in either the text of the Indian Civil Rights Act or its legislative history expressly authorized a cause of action against an Indian tribe, much less waived the tribe's immunity for purposes of a suit to enforce the rights established by that Act. *Id.* Since neither the Act nor its legislative history reflected an intent to subject tribes to suit, the Court reversed the court of appeals decision and held the tribe immune. *Id.* at 72. As the Court in *Santa Clara Pueblo* stated:

> the provisions of...[the Indian Civil Rights Act] can hardly be read as a general waiver of the tribe's sovereign immunity. In the absence here of any unequivocal expression of contrary legislative intent, we conclude that suits against the tribe under the ICRA are barred by its sovereign immunity from suit.

436 U.S. at 59.

Sovereign immunity is particularly controlling in the instant case. Here, Crawford is seeking monetary damages from the Tribes as a result of injuries he believes are associated with another sovereign's criminal justice system. He was charged and convicted in state court and now seeks to bring the Tribes, a Tribal program, a Tribal officer, and Tribal member into state court. Crawford made no attempt to make claims in either a Tribal or federal forum.[3]

The Ninth Circuit has even applied tribal immunity to tribal corporate entities. In *Cook v. AVI Casino Enterprises*, 548 F.3d 718, 725-726 (9th Cir. 2008), the Circuit held that a tribal corporation and an arm of a tribe enjoy sovereign immunity from suit. The *Cook* court found that, "[t]ribal sovereign immunity protects Indian tribes from suit absent express authorization by Congress or clear waiver by the tribe" and that sovereign "immunity applies to the tribe's commercial

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[3] The Federal Tort Claims Act ("FTCA") provides the exclusive remedy for tort claims against tribal employees carrying out duties under a self-governance compact or self-determination contract entered into between a tribe and the United States Secretary of Interior under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§450, et seq. "Except as explained in [25 C.F.R.] §900.183(b), no claim may be filed against a self-determination contractor or employee based upon performance of non-medical-related functions under a self-determination contract. Claims of this type must be filed against the United States under FTCA." 25 C.F.R. § 900.204. The Tribes is deemed to be a part of the Bureau of Indian Affairs while carrying out its functions under the Contract, and its employees are deemed employees of the Bureau while acting within the scope of their employment in carrying out the contract. 25 U.S.C. §450, *et seq.*, Pub. L. No. 101-512, Title III, §314, 104 Stat. 1915, 1959 (Nov. 1990). The proper defendant for claims against the Tribal employees is the United States, and the proper process to make those claims is through the FTCA administrative procedures. *See* 28 U.S.C. §2679.

as well as governmental activities." *Id.* at 725 (citing *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 754-55 (1998)) (*see* also *Miller v. Wright,* 705 F.3d 919, 927-29 (9th Cir. 2013). Thus, the Tribes and the Department are clearly immune from suit here.

In addition, Officer Couture, while acting in his official capacity, is immune from suit. *Cook*, specifically identified that "[t]ribal sovereign immunity 'extends to tribal officials when acting in their official capacity and within the scope of their authority.'" *Id.* at 727 (*citing Linneen v. Gila River Indian Community,* 276 F.3d 489, 492 (9th Cir.2002)). *Cook*, further established "that tribal immunity protects tribal employees acting in their official capacity and within the scope of their authority" and refused to permit the circumvention of sovereign immunity by naming an officer of the tribe. *Id.* at 727.

Crawford attempts to achieve exactly what the Circuit Court in *Cook* prohibited—circumventing tribal sovereign immunity by alleging a claim under 42 U.S.C § 1983 against Officer Couture. Pleading a claim under 42 U.S.C § 1983 neither invokes the jurisdiction of a state court, nor waives the officer's immunity in that state court. Crawford's allegations against Couture are clearly related to his capacity as a law enforcement officer. Accordingly, there is absolutely no basis for state court jurisdiction here, even under a § 1983 claim.

Moreover, even if there were a colorable § 1983 claim, which there is not, Tribal Officer Couture would still be entitled qualified immunity.[4] Qualified immunity protects officials when their conduct, "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). This very same immunity extends to law enforcement officers. *Malley v. Briggs,* 475 U.S. 335, 340 (1986).

Similar allegations and claims by Crawford have been raised as his defenses in *State v. Robert Lee Crawford*, 2016 MT 96, 383 Mont. 229, 371 P.3d 381. Crawford was found to be lawfully arrested and to have been provided all relevant information by the State. *Id.* at ¶¶ 22-23, 33-34. Crawford is simply recasting many of his claims in the civil arena. Therefore, Tribal Officer Couture would be protected by qualified immunity.

Accordingly, even if the district court had jurisdiction over Crawford's claims, those claims are barred by the immunity of the Tribes.

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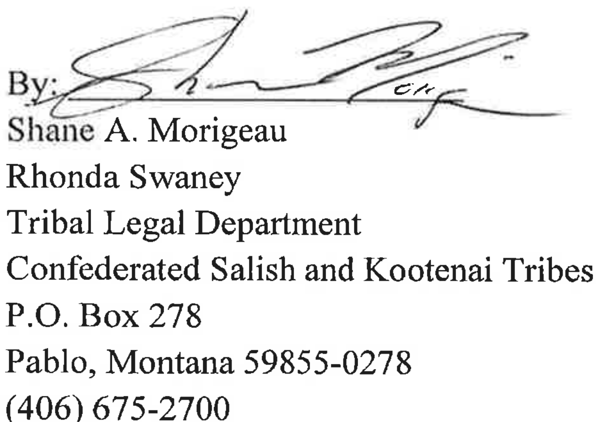
[4] Pursuant to Mont. R. Civ. P. 12(b)(1) the Defendants assert this defense now it was not pled in prior pleadings with the district court. For "motions to dismiss for lack of **subject matter jurisdiction** may be raised at any time by any party or by the court, and once a court determines that it lacks **subject matter jurisdiction,** it must dismiss the action." (emphasis in original) *See Big Spring v. Conway (In re Estate of Big Spring),* 2011 MT 109, ¶ 23, 360 Mont. 370, 255 P.3d 121, and M.R.Civ.P., Rule 12(h)(3).

CONCLUSION

The district court correctly dismissed Crawford's complaint for lack of jurisdiction and in accordance with the doctrine of tribal sovereign immunity for the reasons set forth above. Accordingly, we respectfully request that the Court affirm the decision of the district court.

Respectfully submitted this __5th_day of August, 2016.



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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is __4,766__ words, excluding certificate of service and certificate of compliance

CERTIFICATE OF SERVICE

I, Shane A. Morigeau, hereby certify that I have served a true and accurate copies of the foregoing **Brief of Appellees** to the following on __5th__ day of August, 2016, via United States mail, postage prepaid, to the following:

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