Case No. A150374

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT – DIVISION THREE

BROWN ET AL.,

Plaintiffs and Appellants,

v.

GARCIA ET AL.,

Defendants and Respondents.

Appeal from the Judgment of the Lake County Superior Court
Case No. CV-415928, The Hon. Richard C. Martin, Presiding

RESPONDENTS' BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL First APPELLATE DISTRICT, DIVISION Three	COURT OF APPEAL CASE NUMBER: A150374
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APPELLANT/ PETITIONER: Rose Brown et al RESPONDENT/ REAL PARTY IN INTEREST: Agustine Garcia et al	

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	Full name of interested entity or person	Nature of interest (*Explain*):
(1)	Elem Indian Colony of Pomo Indians	Real Party at Interest
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

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I. INTRODUCTION

Appellants have brought two state law torts (defamation and false light) in state superior court. A California decision on Indian Tribal sovereign immunity and subject matter jurisdiction pertaining to tribal officials is directly on point. The lower court correctly applied that decision, and dismissed appellants' case for lack of subject matter jurisdiction.

Dismissal is also proper under the federal case law advocated by appellants, but not officially adopted by California. Applying both standards—California's *Turner v. Martire* (2000) 82 Cal.App.4th 1042 and the Ninth Circuit's *Maxwell v. County of San Diego* (9th Cir. 2013) 708 F.3rd 1075 —the lower court properly granted the respondent tribal officials' motion to quash. As recently recognized by the United States Supreme Court, appellants' attempt at artful pleading around sovereign immunity, by suing respondents in their personal capacities-only, is not the law.

Appellants have sued all the Executive Committee members of an Indian Tribe that made membership decisions pursuant to a lawful Tribal ordinance. What appellants fail to mention in their opening brief is that they sued the respondent Executive Committee members for money damages, *and injunctive and declaratory relief, as well as attorneys' fees.* Hence, the

real party in interest is the Elem Indian Colony, the Tribe of which defendants were elected to govern. Even under then the un-adopted, remedy-focused sovereign immunity standard in *Maxell*, and the "real party in interest" thrust of *Lewis v. Clarke* (2017) 137 S.Ct. 1285 (decided April 25, 2017), the lower court lacked jurisdiction. It properly granted respondents' motion to quash. The judgment should be affirmed.

II. STATEMENT OF THE CASE

In 2014, Respondents Agustin Garcia, Sarah Brown Garcia, Stephanie Brown, and Nathan Brown II were elected to the Elem Indian Colony's Executive Committee. (CT 018-051) Appellants are members of the Elem Tribe. On March 28, 2016, as Executive Committee members, respondents served notices on the appellants that they were to be disenrolled as Tribe members. (CT 004-019.) The notices said that if found guilty by the Tribe's General Council, appellants may be lose their membership as a punishment. (CT 004-017.) None of the appellants have actually been disenrolled or have been deprived of their Tribal membership. Respondents contend the disenrollment notices were carried out pursuant to a lawful Tribal Ordinance, enacted in 2012. (CT 018-051) Appellants dispute the Ordinance as invalid, and claim the notice made defamatory statements that the appellants had committed crimes. (CT 004-019.) Some six weeks later, on May 10, 2016, to try to rescind the disenrollment

notices, appellants brought two state law torts in the Lake County Superior Court against respondents: defamation and false light. (CT 004-019) They did not bring any federal claims. The complaint sued respondents in their personal capacities only, but sought injunctive relief, declaratory relief, attorneys' fees, as well as money damages. (CT 004-019.)

Respondents moved to quash. They argued that despite the "personal capacity" labeling, they were being sued for engaging in official tribal business, and entitled to sovereign immunity within the context of an intratribal dispute. (CT 018-051.) As a result, the Lake County Court lacked subject matter jurisdiction. On November 1, 2016, the lower court agreed. It granted respondents' motion to quash, resulting in the current judgment now on appeal. (CT 104-112)

Appellants claimed sovereign immunity did not apply to respondents for two main reasons: 1) they were sued in their individual capacities and 2) appellants sought money damages from respondents. (CT 018-051.) Following oral argument, the court requested supplemental briefing on the status of the disenrollment notice and respondents' role in the Elem Tribe's government. (CT 018-051.) The supplemental briefing showed the ordinance was still in effect, but on appeal before the Interior Board of Indian Appeals. (CT 097-103.) Appellants also argued a question of fact existed whereby the lower court could not resolve respondents'

motion to quash. (CT 097-103.) The lower court recognized that sovereign immunity implicates federal law. (CT 104-112.) In granting the motion to quash, it relied on both state and federal law. The lower court first distinguished *Maxwell v. County of San Diego* (9th Cir. 2012) 708 F.3d 1075, ruling that while appellants' remedy must be the focus, suits against individual defendants are permissible unless the remedy sought encroaches on the tribe's sovereignty. (CT 104-112.) Citing *Maxwell*, the lower court explained that courts must scrutinize suits against individuals where the relief sought includes money from the tribal treasury, a judgment would interfere with tribal administration, or it would restrain the tribe from acting or forbearing in some manner. (CT 104-112.)

The lower court also found no California court had adopted *Maxwell's* remedy-based approach to decide sovereign immunity when defendants are sued in their individual capacities only for money damages. (CT 104-112.) The lower court, then turned to California law, and in particular *Turner v. Martire* (2000) 82 Cal.App.4th 1042, which was binding law, and applied a two-part test to decide if tribal officials are entitled to sovereign immunity: 1) defendants must show they performed discretionary or policymaking functions; 2) within or on behalf of the Tribe where exposing them to liability would undermine the immunity of the Tribe itself. (CT 104-112.) The lower court decided respondents were entitled to sovereign immunity because under *Maxwell*, simply naming

defendants in their individual capacities and seeking money damages did not end the inquiry. (CT 104-112.) It held the remedy sought is not the dispositive issue. (CT 104-112.)

The court then considered the evidence submitted and noted that all the respondents were duly elected tribal officials; they were recognized by the U.S. Department of Interior; they acted under color of tribal authority when they enacted the Tribal Ordinance at issue; and they were acting within the scope of their tribal authority when they decided issues of tribal membership. (CT 104-112.) By contrast, the lower court noted appellants' evidence—some of which was entirely hearsay—relied on their unverified complaint, and did not dispute respondents' evidence. (CT 104-112.) The court ruled that respondents acted within the scope of their authority on the Tribe's behalf, when they issued the allegedly defamatory statements in the disenrollment notices. (CT 104-112) It held appellants' "two causes of action arise from action that Defendants took because of their official capacities as tribal officials, namely, allegedly disenrolling Plaintiffs on the basis of their alleged violation of tribal law." (CT 104-112)

The court concluded that under the preponderance of evidence standard, where appellants had the burden of proving subject matter jurisdiction, they did not meet their burden. (CT 104-112.)

Lastly the court ruled that to litigate the dispute would require the

court to determine if respondents were authorized to publish the disenrollment notice under tribal law and therefore this matter was a "non-justiciable intra-tribal dispute." (CT 104-112.) The court entered judgment for defendants. (CT 104-112) This appeal followed. (CT 113.)

III. THE JUDGMENT SHOULD BE AFFIRMED

A. The Lower Court Properly Applied California Law When It Decided Respondents Were Sovereignly Immune

By way of their defamation and false light claims, appellants have brought two state law torts against Indian Tribe officials in state court. In an obvious attempt to circumvent the sovereign immunity defense, appellants sued the respondents in their "personal capacities" and not their "official capacities." A California Court of Appeal case, *Turner v. Martire* (2000) 82 Cal.App.4th 1042, is directly on point regarding whether Tribal officials sued in their personal capacities are entitled to sovereign immunity. The lower court applied this case. It applied the case correctly, ruling that respondents were entitled to sovereign immunity.

The rule from *Turner* is clear: "To qualify for [sovereign] immunity, defendants must show they performed discretionary, or policymaking functions within or on behalf of the tribe." (*Id.* at 1044.) In *Turner*, Plaintiff Turner was a union organizer who was in a casino to speak to employees about their legal rights. (*Id.* at 1045.) Defendant Martire was a Tribal security officer who ordered other Tribe employees to assault and batter

Turner, and detain and arrest him without probable cause. (*Id.*) Turner brought state law assault and battery, false imprisonment, and conversion claims against the individual tribal defendants. (*Id.*) Defendants moved to quash based on lack of personal and subject matter jurisdiction. (*Id.*) The *Turner* court explained that if defendants are entitled to sovereign immunity, they must establish 1) they were tribal officials; 2) their alleged tortious acts were committed in a) their official capacity and b) within the scope of their authority. (*Id.* at 1046.)

Turner discusses several cases, including *Davis v. Littell* (9th Cir. 1968) 398 F.2d 83, *Barr v. Matteo* (1959) 360 U.S. 564, and *Westfall v. Erwin* (1988) 484 U.S. 292. (*Turner*, *supra*, 82 Cal.App.4th at 1046-1049.) These cases hold that federal employees have an absolute immunity from state law tort actions when the conduct of the federal official is within the scope of their official duties and the conduct is discretionary in nature. (*Id.*) The *Turner* Court further agreed with *Baugus v. Brunson* (E.D. Cal. 1995) 890 F.Supp. 908, that the tribal officials to whom immunity should extend are those who perform a high-level or governing role in the affairs of the tribe. Such individuals are required to make the kind of discretionary judgments which *Davis* and *Westfall* recognized cannot be made effectively without immunity. (*Id.* at 1049.)

Applying these federal cases, *Turner* held that the defendants, as casino security officers, did not perform discretionary or policy functions

on behalf of the Tribe when they assaulted and detained Mr. Turner. (*Id.* at 1054.) There was no evidence submitted by the defendants that established they had the discretion to respond to labor organizing activity in the Tribe's casino. (*Id.*) The court further determined the defendants did not present evidence establishing that they could use force to detain or arrest casino visitors, and under what circumstances. (*Id.* at 1054.) The record was silent as to why defendants decided to confront plaintiff Turner. (*Id.*)

The *Turner* court therefore denied defendants' motion to quash based on the evidence presented. There was insufficient evidence showing that defendants were vested with discretionary or policymaking authority to assault and detain without probable cause casino patrons interested in promoting the unionization of employees. The *Turner* Court reversed the grant of the tribal officials' motion to quash.

Here, the lower court applied binding law—the *Turner* case. The analysis under *Turner* was quite straightforward. Just as *Turner* evaluated evidence, the lower court did here. The establishment of jurisdiction is based on the preponderance of the evidence. (*Nobel Flora, Inc. v. Pasero* (2003) 106 Cal.App.4th 654, 657.) The burden is met by competent evidence, such as affidavits and authenticated documents. (*Id.* at 657-658.) The unrefuted evidence considered by the lower court established that all the respondents were duly elected tribal officials; they were recognized by the U.S. Department of Interior; they acted under color of tribal authority

when they enacted the Tribal Ordinance at issue; and they were acting within the scope of their tribal authority when they decided issues of Tribal membership—that is, who could be disenrolled and how. (CT 104-112.)

In a case with very similar facts, *Lamere v. Superior Court* (2005) 131 Cal.App.4th 1059, the Court of Appeal, followed *Turner*, and held that members of a Tribe's enrollment committee were entitled to sovereign immunity. (*Id.* at 1065.) The court held that the enrollment committee had initiated "disenrollment procedures" and had substantial discretion. (*Id.*) The committee acted as the arm of the Tribe itself. (*Id.*) "In so far as the committee decides tribal membership, we can hardly conceive a more essential Tribal function." (*Id.*) As here, the *Lamere* court dismissed the case against the enrollment committee based on sovereign immunity. (*Id.* at 1068.)

Here, respondents also implemented disenrollment procedures by issuing the notices of which appellants now complain. As the Executive Committee, respondents were "the Tribe." They acted on behalf of the Tribe's General Council. Respondents issued the offending notices for the Tribe. They had discretion to do so. Deciding tribal membership was (and is) an essential function for respondents. Under *Turner* and *Lamere*, despite the "label" of being sued in their "personal capacity," respondents were entitled to sovereign immunity. Respondents were the Elem Indian

Colony's policymaking officials.

The judgment should be affirmed.

B. Appellants' "Money-Damages Remedy" Is Not The Dispositive Issue Because They Also Seek Injunctive and Declaratory Relief and Attorneys' Fees

Turner/Lamere do not help appellants. It is understandable their opening brief gives short thrift to these governing cases. Instead, appellants focus on *Maxwell v. County of San Diego* (9th Cir. 2012) 708 F.3d 1075 and *Pistor v. Garcia* (9th Cir. 2015) 781 F.3d 1104, for the proposition that appellants' "money damages remedy" is dispositive on the issue of sovereign immunity in the context of Tribe officials sued in their personal capacities. As the lower court concluded, it is not.

Tribal sovereign immunity extends to tribal officials when acting in their official capacity and within the scope of their authority. (*Cook v. AVI Casino Enterprises, Inc.* (9th Cir. 2008), 548 F.3d 718, 725, quoting *Linneen v. Gila River Indian Cmty.* (9th Cir. 2002) 276 F.3d 489, 492 [same]; *Miller v. Wright* (9th Cir. 2013) 705 F.3d 919, 927-928 [same].) "Tribal officials are immunized from suits brought against them *because of* their official capacities—that is, because the powers they possess in those capacities enable them to grant the plaintiffs relief on behalf of the tribe." (*Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.* (10th Cir. 2008) 546 F.3d 1288, 1296, emphasis in original.)

Maxwell involved two paramedics who worked for an Indian Tribe's fire department. They were accused of negligently putting a gunshot victim, who had been shot in the face, on a gurney, causing her to bleed to death (the victim appeared stable before being put on the gurney). (*Maxwell, supra.,* 708 F.3d at 1080-1081.) The two paramedics were sued individually for money damages. (*Id.* at 1090.) "This case concerns allegedly grossly negligent acts committed outside tribal land pursuant to an agreement with a non-tribal entity." (*Id.*) The *Maxwell* court noted that the grossly negligent, low-ranking paramedics were the "real party in interest," and not the Tribe, as any damages would come from the individuals and not the Tribe. (*Id.* at 1088-1089.) This is the remedy-focused analysis espoused by appellants.

In *Pistor*, gamblers in a Tribal casino were detained and their property seized by Tribal police and a casino manager. (*Pistor*, *supra*, 708 F.3d at 1108-1109.) The gamblers sued the chief of the Tribe's police, a Tribal Gaming Officer Inspector, and the general manager of the casino, in their individual capacities for money damages. (*Id.* at 1108.) In support of their Rule 12(b)(1) motion to dismiss for want of subject matter jurisdiction, the tribal defendants submitted declarations establishing that they acted in accordance with the official duties and a gaming ordinance. (*Id.* at 1109-1110.) The *Pistor* court denied the defendants' motion to dismiss (based on sovereign immunity) for the simple reason that plaintiffs

sought money damages from the defendants personally. (*Id.* at 1113.) The *Pistor* court held that the "tribal defendants have not shown the Tribe is the 'real, substantial party in interest.'" (*Id.*)

Maxwell and *Pistor* have a common thread—non-policymaking fire and police employees of an Indian Tribe were sued only for money damages. The facts of this case our quite different, as the lower court discerned. Here, appellants also sought injunctive and declaratory relief, as well as attorneys' fees. (CT 104-112.) That appellants fail to mention this additional requested relief in their "remedy-focused" analysis speaks volumes. It is a very bad fact for appellants. With their expansive desired remedies, the Elem Tribe is the "real party in interest." Only respondents, as agents of the Tribe can be compelled to provide injunctive and declaratory relief. Further, since it is undisputed that respondents have been sued for engaging in official, discretionary, policymaking acts, any attorneys' fees would come from the Tribe's treasury, as opposed to the respondents' own pockets.

The lower court pointed out that no California court had adopted *Maxwell's* remedy-based approach. (CT 104-112) So it properly harmonized governing state law (*Turner*) with *Maxwell*. Given that appellants' case did not only seek money damages, their exclusive focus on *Maxwell* and minimalistic consideration of *Turner*, is misplaced. The judgment should be affirmed.

C. The Court Properly Weighed The Evidence Under The Preponderance of Evidence Standard—There Is No Need To Conduct Jurisdictional Discovery

Appellants take issue with the lower court's consideration of the evidence. Under both state and federal law, a court may consider jurisdictional evidence. In *Pistor*, evidence was properly considered in the context of a Federal Rule of Civil Procedure 12(b)(1) motion to dismiss. (*Pistor, supra*, 708 F.3d at 1109-1110.) In this case, appellants had the burden of proving the facts that gave the Court jurisdiction by a preponderance of the evidence. (*Nobel Flora, Inc. v. Pasero* (2003) 106 Cal.App.4th 654, 657.) To reiterate what the lower court found, this evidence must be competent, including affidavits and authenticated documents. (*Id.* at 657-658.) Respondents submitted both types of evidence in support of their motion to quash. (CT 018-051.) Unverified complaints, like that relied upon by appellants, are not jurisdictional evidence. (*Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1232.) The Court may consider all admissible evidence before making its jurisdictional determination. (*Great W. Casinos v. Morango Band of Mission Indians* (1999) 74 Cal.App.4th 1407, 1418.)

Here, the lower court found the weight of respondents' evidence persuasive. The unrefuted evidence showed that all the respondents were duly elected tribal officials; they were recognized by the U.S. Department of Interior to engage in government-to-government relations, and still are;

they acted under color of tribal authority when they enacted the Tribal Ordinance at issue; and they were acting within the scope of their tribal authority when they decided issues of Tribal membership—that is, who could be disenrolled and how. (CT 104-112.) Further, the alleged offending Tribal Ordinance was enacted in 2012; it is still the law of sovereign Elem and has not been rescinded by the Tribe or made inactive by the Bureau of Indian Affairs. (CT 104-112.)

The evidence showed that respondents were acting within the scope of their authority pursuant to the ordinance on the question of who should be disenrolled. (CT 104-112.) The lower court determined appellants' evidence was sparse, consisting of constitutional interpretation and hearsay. (CT 104-112) In sum, appellants' evidence could not overcome a key fact—although in dispute, the ordinance was in effect at the time respondents issued the disenrollment notices appellants now claim are defamatory.

Lastly, the lower court did not err when it issued its ruling based on the submitted evidence and did not permit additional jurisdictional discovery. Appellants had the opportunity to present evidence establishing jurisdiction as part of its underlying opposition brief, as part of the supplemental briefing, and at the hearing on the motion. Appellant's submitted and non-verified evidence simply could not prove jurisdiction.

The lower court correctly granted respondents' motion to quash. The judgment should be affirmed.

D. Merely Pleading "Individual Capacity" and "Money Damages" Would Decimate the Sovereign Immunity Doctrine

The judgment should be affirmed based on public policy, as well. Under appellants' theory, a plaintiff who wishes to sue an Indian Tribe can easily overcome the sovereign immunity bar. A plaintiff need only sue governing tribal officials in their "personal capacities," seek money damages from them, and state the money is not sought from the Tribe's treasury. If that were the law, sovereign immunity would no longer be a meaningful defense. It would be decimated. The sovereign immunity defense has a long and robust history, dating back to *Schrimpscher v. Stockton* (1902) 183 U.S. 290. Mere artful pleading should not be all that is required to overcome a Native American Tribe's ability to protect its sovereignty. For decades, Tribes have been resisting court intrusions in their tribal affairs.

This public policy rationale is especially applicable here, where appellants have not limited their requested relief to money damages, but injunctive and declaratory relief as well. They have also sought attorneys' fees which would be paid out of the Tribe's treasury since respondents have been sued for discretionary, policymaking acts made in their official

capacities.

Lastly, the United States Supreme Court recognized sovereign immunity must be evaluated case-by-case and the analysis cannot merely rely on the characterization of the parties in the complaint. (*Lewis v. Clarke* (2017) 137 S.Ct. 1285, 1291.) The sovereign immunity defense is appropriate. The judgment should be affirmed.

E. The Elem Tribe Is The "Real Party In Interest"—*Lewis v. Clarke* Does Not Change Outcome

After appellants submitted their opening brief, the United States Supreme Court published *Lewis v. Clarke* (2017) 137 S.Ct.1285 (decided April 25, 2017). This case concerned a limousine driver employed by an Indian Tribe who rear-ended appellants on an Interstate. (*Id.* at 1290.) This decision did not involve tribal officials being sued in their individual capacities for making decisions under lawful tribal law, and within the scope of their official positions.

The limousine driver claimed sovereign immunity. (Id.) Importantly, the Supreme Court noted that in making the sovereign immunity assessment, "courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign." (*Id.* at 1291.) The High Court concluded that the limousine driver, as a mere

employee sued for negligence on non-Tribal land, was not a suit brought against the driver in his official capacity. (*Id.* at 1292.) It was a suit brought against the driver "to recover for his personal actions which will not require action by the sovereign or disturb the sovereign's property." (*Id.*) The driver was the "real party in interest" and "in these circumstances" the Tribe's immunity did not bar suit against him. (*Id.* at 1292-1293.)

What can be gleaned from *Lewis* is the following: sovereign immunity cannot be avoided simply by the characterization of the parties in the complaint; sovereign immunity does not automatically apply to tribal "employees"; and each case must be evaluated to decide who the "real party in interest" is. Under the facts of this case, the real party in interest is the Tribe. Its Executive Committee was sued for implementing a lawful ordinance. Appellants seek injunctive relief to rescind the disenrollment notices, as well as attorneys' fees, which would be paid from the Tribe's treasury as respondents have been sued for actions they took in the scope of their duties as tribal officials. Lewis's car accident on an interstate is a far cry from an Executive Committee implementing an ordinance related to Tribal membership. Appellants should not be rewarded for citing this case to advance their fraud on the court. In sum, under *Lewis*, the Elem Tribe is the real party in interest. Appellants' "personal capacity" labels are not dispositive. Respondents are entitled to sovereign immunity. The judgment should be affirmed.

F. Subject Matter Jurisdiction Also Fails Because This is An Intra-Tribal Dispute

Even if respondents are not entitled to sovereign immunity, there is a separate reason why the lower court has no jurisdiction. This matter, concerning a tribal ordinance, involving only Elem tribal members, is a non-justiciable intra-tribal dispute. The lower court explained: "[F]or the Court to litigate the dispute, the Court would have to determine whether Defendants were authorized to publish the document and disenroll Plaintiffs, which itself requires an impermissible analysis of Tribal law and constitutes a determination of a non-justiciable intra-tribal dispute. (*Longie v. Spirit Lake* (8th Cir. 2005) 400 F.3d 568, 589; *Kaw Nation v. Phil Lujan* (10th Cir. 2004) 378 F.3rd 1139, 1143.) (CT 104-112)

In *Longie*, the Eighth Circuit Court of Appeal considered whether jurisdiction existed regarding a quiet title dispute between Mr. Longie, a tribe member, and the Tribe's tribal council. (*Id.* at 587-588.) The court noted there were many reasons why it lacked subject matter jurisdiction over Longie's dispute with the Tribe's counsel. For purposes here, the court noted "if the dispute centers on discretionary tribal action that affects tribal members, it is not a federal question, even if the discretionary act was taken pursuant to a federal statute and with approval of the Secretary of the Interior. (*Id.* at 590, citations omitted.)

In *Kaw Nation*, the Tenth Circuit Court of Appeal ruled it did not

have jurisdiction over an intra-tribal dispute about the appointment of certain persons to two Tribal courts. (*Id.* at 1140.) Plaintiffs were members of the Executive Council for the Tribe and defendants were three Tribal judges and the Tribal chairman. (*Id.* at 1141.) Plaintiffs wanted the district court to declare that three tribal judges were not lawfully appointed. (*Id.* at. 1141.) The court dismissed the case because it lacked subject matter jurisdiction, concluding that it could not "resolve what was essentially an intratribal dispute." (*Id.* at 1142.) The Court noted that tribal law dictated the dispute, e.g., who may exercise tribal judicial authority. (*Id.* at 1143.) Federal courts have no jurisdiction over intratribal disputes. (*Motah v. United States* (10th Cir. 1968) 402 F.2d 1, 2; *Prairie Band of Pottawatomie Tribe Indians v. Udall* (10th Cir. 1966) 355 F.2d 364, 366.)

This case is purely intratribal. On the one hand, appellants claimed respondents were misapplying the Tribe's constitution when they issued the disenrollment notices and the alleged offensive Tribal Ordinance was invalid. On the other hand, respondents claimed the ordinance was valid and the Tribe's Constitution permitted the disenrollment notices. Accordingly, the lower court properly applied the non-justiciable intra-tribal dispute doctrine. This separate rationale for granting respondents' motion to quash warrants affirming the judgment below.

IV. CONCLUSION

The order and judgment granting respondents' motion to quash for lack of subject matter jurisdiction based on sovereign immunity should be affirmed.

Respectfully submitted,
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Dated: June 26, 2017

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CERTIFICATE OF WORD COUNT

Respondents certify that this brief consists of less than 14,000 words as counted by the Microsoft Word version 2010 word-processing program used to generate this document.

DURAN LAW OFFICE
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Dated: June 26, 2017

By: */s/ Jack Duran, Jr.*
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CERTIFICATE OF SERVICE
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RESPONDENTS' BRIEF

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Court of Appeal, First Appellate District

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/s/Jack Duran
Signature

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