

JAN 14 2019

FILED
Stephen C. Dries, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

GLADYS D. DALLAS,
PLAINTIFF,

v.

CASE NO: 18-CV-1657

TEHASSI HILL, BRANDON STEVENS, TRISH KING, LISA SUMMERS,
DANIEL GUZMAN KING, DAVID P. JORDAN, KIRBY METOXEN, ERNIE
STEVENS III, & JENNIFER WEBSTER,

DEFENDANTS.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

BASIS FOR OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

The U.S. Supreme Court decisions and interpretation of the “net effect” rule regarding 42 U.S.C. § 1983 is clear, references to action under color of state law are meant to include action under territorial law. The tribal individuals are being sued as individuals in this Federal Court are within the boundaries of United States such that territorial jurisdiction refers to jurisdiction over cases arising in or involving persons within a defined territory and is the territory or in the alternative known as Indian Country (Indian Intercourse Act of 1834) for which the United States federal government and this federal court have jurisdiction over “dependent domestic nations” see *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831). Because tribal individuals have acted outside the scope-of-their-authority in this Case, to deprive another tribal member of their constitutional rights it is the individuals who are the real target of the lawsuit and not the tribal government and therefore sovereignty is mute. Indeed, a 42 U.S.C. § 1983 claim can be “brought against a tribal employee in their individual capacity, the employee, not the tribe, is the real party of interest and the tribe’s sovereign immunity is not implicated.” See *Lewis v. Clarke*, 137 S.Ct. 1285 (2017) at 1289.

The Supreme Courts’ 42 U.S.C. § 1983 “net effect” or in the alternative equal protections under the law rule, as not to discriminatorily abridge the privileges and immunities of one class of people i.e. Native Americans’ constitutional rights such

Table of Contents

Contents

Table of Authorities	ii
BASIS FOR OPPOSITION TO DEFENDANTS' MOTION TO DISMISS	1
CONCLUSION	7

Table of Authorities

Cases

<i>Burrell</i>	6
<i>Burrell v. Armijo</i> , 603 F.3d 825 (2010).....	5
<i>Cherokee Nation v. Georgia</i> , 30 U.S. 1 (1831)	1
<i>Eddy v. Virgin Islands Water & Power Auth.</i> , 955 F. Supp. 468, 476 (D.V.I. 1997)	2
<i>Iles v. de Jongh</i> , 638 F.3d 169, 177-78 (3d Cir. 2011)	2
<i>Lewis v. Clarke</i> , 137 S.Ct. 1285 (2017).....	1
<i>Ngiraingas v. Sanchez</i> , 495 U.S. 182 (1990)	2
<i>Will v. Michigan Department of State Police</i> , 491 U.S. 58 (1989)	2

Statutes

42 U.S.C. § 1985	4, 5
Indian Civil Rights Act of 1968.....	4
Indian Intercourse Act of 1834	1

Other Authorities

Standing to Sue	7
The Doctrine of Tribal Sovereign Immunity	6

U.S. Constitutional Provisions

First Amendment	3
-----------------------	---

Oneida Nation Constitution

Article VII	2, 3, 6
Oneida Nation Constitution	2, 6

that equal protections are inherent to the entirety of United States territory under 42 U.S.C. § 1983. Why is this so? Because the Supreme Court adjudicates 42 U.S.C. § 1983 by “treating all of the United States of federal jurisdiction the same as states and their officials and their employees”, see *Eddy v. Virgin Islands Water & Power Auth.*, 955 F. Supp. 468, 476 (D.V.I. 1997), *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989), *Ngiraingas v. Sanchez*, 495 U.S. 182 (1990), see also *Iles v. de Jongh*, 638 F.3d 169, 177-78 (3d Cir. 2011).

The core of the original complaint arises from the Plaintiffs’ constitutional rights as provided in the Oneida Nation Constitution Article VII. The Defendants’ Memorandum (Doc.# 16) under “Other Authorities” has ignored, or in the alternative deliberately omitted Article VII. Why would the Defendants omit Article VII? Because, Article VII is tenet to this matter before the Court such that the Plaintiff has the right to “enjoy, without hindrance, freedom of worship, conscience, speech, press, assembly, association and due process of law, as guaranteed by the Constitution of the United States.” See Oneida Nation Constitution, Article VII.

Notwithstanding the Defendants’ deliberate Article VII omission, the Oneida Business Committee’ powers cannot deliberately legally abridge or hinder the Plaintiffs’ Article VII rights and thus demonstrates that the Business Committee members have acted far outside the scope-of-their-authority and thus the Defendants are no longer protected by tribal sovereignty.

The Defendants infer the Plaintiff will “compel” the Oneida Nation to spend \$245,000 on a General Tribal Council meeting, however, the Defendants, again, fail to tell this Court that several agenda items are taken up at a General Tribal Council meeting and that the \$245,000 would be spent regardless of Plaintiffs’ petition, and for this reason this argument is doltish and mute.

The Defendants use red herring by suggesting the First Amendment is not applicable to the Nation and Officials, however, Article VII (the document deliberately omitted by the Defendants) directly demonstrates that the Plaintiff indeed has the right to freedoms such as speech, press, and the right to peacefully assemble, and to petition for redress of grievances, such as filing a lawsuit in this Case, in this Court.

The Defendants suggest that the denial of facilitation is not the same thing as directly hindering one’s rights. Is not denying indistinguishable from hindering? Consider, to hinder is to obstruct, hamper, impede, retard, prevent, etc. and to deny is to refuse, repudiate, challenge, counter, contest, decline, dismiss etc. A reasonable and prudent person would believe denying someone of their Constitutional rights is like hindering their Constitutional rights. Therefore, the Plaintiffs’ claims are substantiated by Article VII and cannot, by definition, be frivolous as the Defendants contend.

The Plaintiff argues that the Indian Civil Rights Act of 1968 does create a federal cause of action, because the ICRA states that, “No Indian Tribe in exercising powers of self-government shall make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people (Indian people, like the Plaintiff) to peacefully assemble and to petition for redress.” Thus, the Oneida Business Committee members are barred from abridging the rights of tribal people, and when they do, they act outside the scope-of-their-authority and are no longer protected by tribal sovereignty. In short, the Oneida Business Committee knows better, unfortunately, the tribal member Defendants have taken it upon themselves, as individuals, to take away the rights of another tribal member. And, that is why the Plaintiff demands the right of federal redress; Fourteenth Amendment due process of law to deliberate constitutional deprivations under 42 U.S.C. § 1983 in this Court today.

Plaintiff argues that 42 U.S.C. § 1983 and 42 U.S.C. § 1985 are applicable to the tribal officials acting outside the scope-of-their-authority as demonstrated in *Lewis* at 1289. Indeed, the Defendants have conspired to intentionally deprive Plaintiff of [her] right to free speech “by acting outside the scope of those powers that have been delegated to [them]” and thus actionable under 42 U.S.C. § 1983 and 42 U.S.C. § 1985 because “sovereign immunity does not extend to an official when the official is acting outside the scope of [their] powers” and that tribal governments

are “domestic dependent nations” and thus within federal wardship and territorial law of the United States. See *Burrell v. Armijo*, 603 F.3d 825 (2010) at 832 and *Cherokee Nation* respectfully

This Court does not lack 42 U.S.C. § 1983 and 42 U.S.C. § 1985 jurisdiction because tribal courts are not a court of general jurisdiction and therefore barred from hearing 42 U.S.C. § 1983 and 42 U.S.C. § 1985 constitutional deprivation claims. In other words, 42 U.S.C. § 1983 and 42 U.S.C. § 1985 is the basis for the claim and provides the mechanism to apply the appropriate relief in federal court such that this Court can Order a remedy upon the tribal individual Defendants to the Plaintiffs’ claim of intentional constitutional deprivation, i.e. hindering Plaintiffs’ “guaranteed” right to freedom of speech, *inter alia*. In other words, 42 U.S.C. § 1983 provides the legal remedy to the Plaintiff to the individuals who have deprived [her] of [her] constitutional rights to address and speak to the General Tribal Council. And, that two and only two allegations or causes of action are necessary to bring a 42 U.S.C. § 1983 claim being, 1) The Defendants deprived the Plaintiff of [her] federal constitutional right to freedom of speech and assembly, and 2) the Plaintiffs acted under color of territorial law. With that, the failure to state a claim is smoke and mirrors-mute.

Finally, Oneida Business Committee officials, can only act within their delegated powers given to them from the Oneida Nation General Tribal Council and

it is inferred that the Oneida Business Committee as Defendants ought to be well versed in the Oneida Nation Constitution that they are fully aware of Article VII (albeit it, Article VII was purposefully omitted from Memorandum Doc.#16) such that the Defendants know, that General Tribal Council will not allow them to deliberately hinder a tribal members' rights to the guaranteed freedoms that the General Tribal Council themselves demand as demonstrated in Oneida Nation Constitution Article VII. This means the Defendants do not have the delegated power to intentionally deprive another tribal member of their guaranteed U.S. constitutional rights. And therefore, "sovereign immunity does not extend to an official when the official is acting outside the scope of the powers that have been delegated to [them]" see *Burrell* at 832. In other words, the Plaintiffs' claims are not barred by The Doctrine of Tribal Sovereign Immunity as the Defendants contend. Simply, tribal officials cannot intentionally violate tribal members' constitutional rights than cower behind a shredded sovereignty veil to escape a federal 42 U.S.C. § 1983 remedy because this Court can see through the holes in the Defendants' muddled arguments. The Plaintiff deserves better than third-world civil rights oppression and for this and the above reasons, this Court has jurisdiction in this Case.

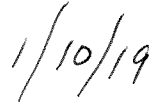
CONCLUSION

The Supreme Court decisions and interpretation of territorial law under 42 U.S.C. § 1983 is a “catch-all”; to ensure that everyone, including Native Americans, is treated equally within all United States territory and the Oneida Nation, in the State of Wisconsin, is clearly within the United States and under federal territorial jurisdiction. The Defendants conspired to deprive and did deprive the Plaintiff as demonstrated in writing, the Plaintiffs’ constitutional right to address the General Tribal Council in speech and assembly and the Defendants did so under color of territorial law. This Court can remedy Plaintiffs’ injury by a favorable decision under 42 U.S.C. § 1983.

The above outlines the two allegations necessary for the Plaintiff to bring a 42 U.S.C. § 1983 claim and this Court can remedy Plaintiffs’ injury in fact by a favorable decision is the last element of three to show the Plaintiff has met the minimum requirements for the federal Standing to Sue. Indeed, the Plaintiff has 1) suffered a concrete injury, being constitutionally barred from speech and assembly, 2) the Defendants have injured the Plaintiff in writing and thus is directly traceable to them, and 3) this Court can find in favor of the Plaintiff under 42 U.S.C. § 1983 to redress the Plaintiffs’ constitutional deprivation claim and thus is a concrete remedy as opposed to mere speculation.

The Plaintiff has met all the minimum federal requirements to bring a 42 U.S.C. § 1983 lawsuit. Since individuals are the target and not the tribe, tribal sovereignty is mute, thus, Plaintiff argues that 42 U.S.C. § 1983 is a federal claim upon which this Court can grant relief.

Based on the information *supra*, **Plaintiff hereby opposes Defendants' Motion to Dismiss** and requests this case continue as a matter of Fourteenth Amendment constitutional equal protections and due process of law.

A handwritten signature in cursive script that reads "Gladys Dallas".A handwritten date in cursive script that reads "1/10/19".

Gladys Dallas, Plaintiff, Pro Se