

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

CLEONE WHALEN

Plaintiff,

Case. No. 5:20-cv-5070-JLV

v.

RESPONSE TO BRIEF OF
MOTION TO DISMISS

OGLALA SIOUX TRIBE EXECUTIVE
OFFICER, et al.,

Defendants

Defendants introduced to the court an unusual rationale equating “original, inherent right to self-government” though treaties as transferable to Indian governments acting in “accordance” with the Indian Reorganization Act. This notion places Oglala Sioux Tribal Members between a rock and a hard spot. Ancient “Indian” signatories held original, inherent powers in the first instance to entertain Good Faith Contracts between Nations.

One nation shall not promulgate laws and enforce them against the next. Indian Signatories did not foresee that on March 2, 1889, the United States Congress would unilaterally promulgate laws and enforce them in opposition to Article XII of the 1868 Fort Laramie Treaty, without the required three-quarter adult male signatures approving any such ceding.

Congress acted with Plenary Powers and diminished the agreement established in Article XII by adopting laws describing new metes and bounds for tribal clans to be removed to while simultaneously declaring as surplus the remainder of land. South Dakota attained statehood on November 2, 1889, and claimed jurisdiction over the so-called surplus land. So much for “original, inherent right to self-government.”

It is a stretch of imagination for the Defendants to reserve the original, inherent right to self-government through treaties when such standing was not recognized to prevent interruption to

continuous jurisdiction over so-called surplus land. The term surplus land is not identified in the 1868 Fort Laramie Treaty. Defendants admit that "The Tribe exercises inherent powers of tribal self-government on the Pine Ridge Indian Reservation." Plaintiff introduces that the Pine Ridge Indian Reservation was established by Congress on March 2, 1889, that Defendant's jurisdiction goes no further beyond exterior boundaries and beyond provisions reserved for the Secretary of Interior.

The Defendants state that it reserves original, inherent right to self-government, however, the Oglala Sioux Tribe Constitution adopted in accordance with the Indian Reorganization Act prohibits that notion. Defendants are limited in claiming original, inherent right to self-government as stated in part within the Preamble of the Oglala Sioux Tribe Constitution, we "secure to ourselves and our posterity the power to exercise certain rights of home rule not inconsistent with Federal laws and our treaties."

Defendant is confined to language of the Oglala Sioux Tribe Constitution and By-Laws and is limited to maintaining consistency with federal law. Entitled Indian voters established by Section 19 of the Indian Reorganization Act, participated with Section 16 of the same act to adopted Article I – TERRITORY, of the Oglala Sioux Tribe Constitution, as amended which in part states, "original confines of the Pine Ridge Indian Reservation boundaries", which was established by Congress on March 2, 1889. This provision in the Oglala Sioux Tribe Constitution abrogated Article XII of the 1868 Fort Laramie Treaty and is in opposition to what ancient Indian Signatories to the treaty desired.

Defendants stand as an emperor without clothing by claiming original, inherent right to self-government while using their Oath of Office to govern within four walls of federal laws that diminished the Good Faith Contract ancient Indian Signatories approved though the 1868 Fort Laramie Treaty.

Plaintiff introduces that Defendants misrepresent the claim to original, inherent right to self-government since election results adopting the Oglala Sioux Tribe Constitution and By-Laws by "those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934", as approved by Harold L. Ickes, the Secretary of the Interior of the United States of

America on January 15, 1936. Defendants act in the manner of the mythical god, Janus, by proclaiming to hold original, inherent right to self-government while simultaneously disregarding expressed will of entitled voters as adopted by constitution.

Plaintiff informs the court that Defendants have not established District Boundaries by Secretarial Election since 1997, respective to each district, as prescribed by:

The 1996 Constitution of the Oglala Sioux Tribe ARTICLE III GOVERNING BODY Section 2.

Each community of the reservation as follows, shall be entitled to representation on the tribal council according to population as hereinafter provided:

Oglala community: Comprised of present White Clay Farm District ie., Wakpamni community, Wounded Knee community, Porcupine community, Medicine Root Creed Community, Eagle Nest community, Pass Creek community and La Creek community. That on July 11,1997 amendments were approved to the Constitution of the Oglala Sioux Tribe included ARTICLE III GOVERNING BODY Section 2.

Each district of the reservation as follows, shall be entitled to representation on the tribal council according to population as hereinafter provided:

Oglala District: The tribal council shall describe boundaries by ordinance with local participation, through district hearing. ie. Wakapamni District, Wounded Knee District, Porcupine District, Medicine Root District, Eagle Nest District, Pass Creek District, LaCreek District and newly added Pine Ridge District. That the approved amendments to describe boundaries by ordinance with local participate through district hearing are not enforced and neglected.

Defendants also omitted additional duties related to census and apportionment of representation stated in ARTICLE III GOVERNING BODY Section 4., "Recognized communities with less than 500 members shall be consolidated by the tribal council with an adjacent recognized community." An obstacle to completing an accurate census stems from division of recognized tribal communities subject to jurisdiction of the Oglala Sioux Tribe that are commonly interrupted by Fee Patent tracts of land

(and other ceding mechanisms) subject to jurisdiction of the State of South Dakota. For example, Lacreek District voters permanently residing in Martin, South Dakota, are subject to state jurisdiction, yet enjoy casting a vote to elect tribal representation while remaining exempt to jurisdiction of the Oglala Sioux Tribe. In contrast, Oglala Membership permanently residing in Rapid City, South Dakota, is prohibited from voting in elections for tribal representation even though Defendants claim “original, inherent right.”

The Constitution of the Oglala Sioux Tribal, adopted November 4, 2008 PROPOSED AMENDMENT I. ARTICLE XII-Bill of Rights; “The Tribal Council in exercising it's inherent powers of self-governance, shall not make any tribal law or enforce any tribal, state or federal law that:

A. Prohibits the full exercise...to Petition for redress of grievances.

H. Denies to any person within it's jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

That the Indian Self Determination and Education Act (PL 93-638) signed into law by President Gerald Ford on January 4, 1975, allowed the Oglala Sioux Tribal Council, Oglala Sioux Tribal Executive Board and body of government, to partial self governance. That the (PL 93-638) gave Indian tribes the authority to contract designated allocated monies earmarked to provide services to tribal members and other eligible persons from the Federal government. The Bureau of Indian Affairs maintains oversight of (PL 93-638) contracts. Prior to (PL 93-638) the Bureau of Indian Affairs was sole signatory to administer services to tribal members of the Oglala Sioux Tribe.

The Oglala Sioux Tribal Court is a (PL 93-638) contract program from the Federal Government. The Oglala Sioux Tribal Court also is awarded grants through the United States Department of Justice and other United States Agencies, the Oglala Sioux Tribal Lower Court and Oglala Sioux Tribal Supreme Court responsibility is to uphold the Constitution of the Oglala Sioux Tribe, ordinance and laws adopted by the Defendants, and not inconsistent with Federal laws.

The Oglala Sioux Tribal Supreme Court, a less competent court of Federal District Court, failed to

protect Plaintiff's procedural due process expressed in the Fifth Amendment of the United States Constitution and the Constitution of the Oglala Sioux Tribe Article XII Bill of rights. That Plaintiff's denial in procedural due process included a unbiased tribunal, oral hearing, fair and impartial hearing, right to present evidence and witnesses.

That a statement by the Defendant's Conclusion of Law item 7. "The requirement of receipts has been the custom and practice in past elections." The Deprivation of rights under Color of Law, the Defendant's (Election Commissioners) in their public official lawful authority enforced a non-existence law in Ordinance No. 20-13. To further enhance the Deprivation of rights under the Color of Law, the Oglala Sioux Tribal Supreme Court upheld the custom and practice in past election ruling by Ordinance Ordinance No. 18-14 which is revoked and rescinded on the 25th day of February, 2020.

That Ordinance 20-13 2020 cites codified as amended at 25 U.S.C. 5123. That 25 U.S.C. 5123 d. **Approval or disapproval by Secretary; enforcement** (2) If the Secretary does not approve or disapprove the constitution and by-laws or amendments within the forty-five days, the Secretary's approval shall be considered a given. Action to enforce the provision of this section may be brought in the appropriate Federal district court.

That Ordinance No. 20-52 was adopted on August 11, 2020 after the elections were officially being conducted. Which is odd and peculiar to change a law during an event of elections. That the Defendant's (Election Commissioners) didn't have the capabilities to conduct a back ground check. It is a normal process that candidates pay the fees for background checks and drug test, otherwise the Defendant's would not receive candidates required information such as background checks and drug test results.

That Ordinance No. 15-16 Sovereign Immunity Clause of the Oglala Sioux Tribe only protects the governing body of the the Oglala Sioux Tribe which includes, the Oglala Sioux Tribal Council, departments, programs, agencies, officers, employees and agents of the Tribe. The protection includes the performance or nonperformance of their legislative duties. Ordinance No. 15-16 is unconstitutional

it voids the right of the Oglala Sioux Tribal members to redress grievance against a protected class for the performance or nonperformance of their legislative duties. The Oglala Sioux governing body is quick to waive Sovereign Immunity in contracts beyond the Pine Ridge Indian Reservation boundaries, but is readily, to use Sovereign Immunity against the members of the Oglala Sioux Tribe, who rights are deprived as a member of the Oglala Sioux Tribe.

It's understandable that the Defendant's failed to act, do to Ordinance No. 15-16, the Sovereign Immunity Clause. Ordinance No. 15-16 protected each Defendant for nonperformance in their legislative duties. Each Defendants with the exception of Defendants Election Commissioner were candidates in the Oglala Sioux Tribal Elections. As, candidates and legislators why rock the boat to correct a election with numerous violation or lack of performance in legislative duties when as defendant's are on the ballot. That the Defendants - Election Commissioners are also considered to have sovereign immunity. Do to the fact Defendants fall within the category of department, program, officers, and employee. That Defendants, lacked performance in legislative duties to follow the Ordinance No. 20-13 and enforced made up verbal rules only to be protected by Ordinance No. 15-16.

That precedent is set is Federal District Court, as the Court ruled on Oglala Sioux Tribe vs. Anthony Whirlwind Horse 603 F.2d 707 (8th Cir. 1979) and Shortbull vs. Looking Elk 67 F.2d 645.

That attorney Steven Gunn for Oglala Sioux Tribal Council and Oglala Sioux Tribal Executive Committee admitted to utilizing Pace to obtain the complaint, and did receive the exhibits.

That Plaintiff desires United States District Court move forward with complaint.



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Dated: December 28, 2020

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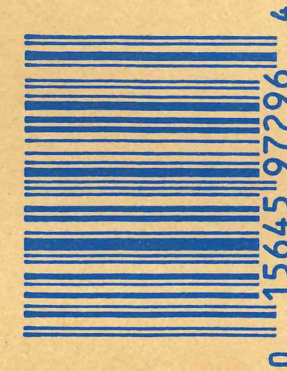
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