UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

DEAN S. SENECA,

Plaintiff,

V.

Case No.:21-CV-304-WMC

GREAT LAKES INTER_TRIBAL COUNCIL, INC.,

Defendant

DEFENDANT GREAT LAKES INTER-TRIBAL COUNCIL INC, DOES NOT POSSESS SOVEREIGN IMMUNITY

Here comes Mr. Dean S. Seneca, MPH, MCURP, plaintiff, and respectfully summits this brief in support of his complaint and to counter the motion that Great Lakes Inter-Tribal Council (GLITC) holds sovereign immunity.

First, Mr. Seneca is not a serial litigant. He is a person who has been severally wronged by GLITC and is seeking justice and all he wants is a fair trial (that GLITC is running from) but is unable to get any of this due to GLITC's false claims of immunity, lying and many non-Indian legal experts' misinterpretations of applicable Tribal Nation law. He has had to file several complaints because GLITC continues to hide behind the smoke screen of Tribal Sovereignty that it really doesn't hold, nor have the member tribes ever granted. Mr. Seneca just wants a fair trial. That's it! GLITC will go to extensive lengths and will do anything to avoid a trial. All he is requesting is a justice and fairness under the rights provided by the United States Constitution.

The injustices that GLITC inflicted on Mr. Seneca included a violation of a person's protected class, violation of all applicable federal civil rights laws, openly engaged in targeted discrete racial discrimination, no due process, fraud, retaliation, and employment termination. The issues of discrimination, retaliation and no due process have never been investigated. An explicit examination by the WI EEO would unveil a clear pattern of attrition and discrimination targeted at American Indian Heterosexual males by GLITC Tribal Leaders and Management. Since employment in 2018, eight Native males can be identified that have circled through GLITC and were forced to leave their employment due to invalid claims of sexual harassment, lies, humors, bullying by GLITC management and other miscellaneous reasons.

BRIEF IN SUPPORT

Tribal Sovereignty should and can only be awarded to federally recognized Tribal Governments. GLITC is not on the list of federally recognized tribes, (please see attachment A list). Sovereignty in any form cannot be awarded to tribal non-profit organizations, for-profit organization, ad hoc - organizations or even Alaska Native corporations (Yellen v. Confederated Tribes of Chehalis Reservation). In Yellen, Chief Justice Sonia Sotomayor made it clear that Alaska Native Tribes were eligible to receive CARES ACT money due the definition of Alaska Natives in the Indian Self-Determination and Assistance Act, but it was clearly explained that ANCs are not Tribal Nations and do not possess sovereign immunity. Sotomayor went on further to state, this "does not open the door to other Indian groups that have not been federally recognized becoming Indian tribes under ISDA." Moreover, even with respect to the ANCs, Sotomayor stressed that the result did not make the ANCs "Indian tribes" for the purposes of other statutes with different definitions.

In the United States District Court N.D. Oklahoma, Eaglesun Systems Product, Inc (Plaintiff) V. Association of Village Council Presidents (AVCP), (Defendants) where the motion by AVCP to dismiss the case because it is non-profit corporation organized under state law and is entitled to sovereign immunity was denied.

AVCP claims that it should be treated as a federally recognized Indian tribe, because it was formed by Indian tribes for the purpose of carrying out governmental functions. "Indian tribes are 'domestic dependent nations' that exercise inherent sovereign authority over their members and territories." Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 509 (1991). Although Indian tribes no longer "possess the full attributes of sovereignty,' they remain a 'separate people, with the power of regulating their internal and social relations." "Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55 (1978). One of the key attributes of sovereignty that the tribes retain is immunity from suit. Northern Arapaho Tribe v. Harnsberger, 697 F.3d 1272, 1281 (10th Cir.2012). Tribal immunity is similar to the immunity afforded to the states under the Eleventh Amendment, but tribal immunity is a matter of federal common law that is subject to congressional control and modification. Crowe & Dunlevy, P.C. v. Stidham, 640 F.3d 1140, 1154 (10th Cir.2011). Although tribal immunity is not co-extensive with a state's sovereign immunity, the Supreme Court has clearly established that a federally recognized Indian tribe has immunity from suit unless that immunity has been abrogated by Congress or the tribe has waived its immunity. Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 523 U.S. 751, 760 (1998).

Even though Alaska Native corporations or regional associations are recognized as tribes for limited purposes, no court has ever found that these corporations or associations possess sovereign immunity from suit, because they do not possess key attributes of an independent and

self-governing Indian tribe. Aleman v. Chugach Support Services, Inc., 485 F.3d 206, 213 (4th Cir.2007) ("While the sovereign immunity of Indian tribes 'is a necessary corollary to Indian sovereignty and self-governance' ..., Alaska Native Corporations and their subsidiaries are not comparable sovereign entities."); see also Seldovia Native Ass'n, Inc. v. Lujan, 904 F.2d 1335, 1350?51 (9th Cir.1990) (Alaska Native Village corporations are not governing bodies and they do "not meet one of the basic criteria of an Indian tribe" just like GLITC).

Tribal governments, as opposed to regional and village corporations, are the only Native entities that possess inherent powers of self-government and that can develop autonomous membership rules. Internal self-government within a village by a state-authorized municipal government is not an effective alternative when control of the government becomes diluted by the growth of a non-Native constituency. The Native regional and village corporations are chartered under state law to perform proprietary, not governmental, functions.

The Bureau of Indian Affairs maintains a list of federally recognized tribes that "are acknowledged to have the immunities and privileges available to other federally acknowledged Indian Tribes by virtue of their government-to-government relationship with the United States...." Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 75 Fed. Reg. 6081001 (Oct. 1, 2010). As to Alaska native entities, the individual tribes or villages are separately listed as Indian tribes, and AVCP is not identified as an Indian tribe. Id. As stated in Cohen's Handbook of Federal Indian Law, it is the native villages that retain the power of self-government:

I understand the courts are trying to do good by protecting Tribal Nation interest, but they are doing more harm than good when this is right is extended to other entities beyond our Tribal

Nations. Especially when this right is extended to unethical, corrupt Tribal non-profit organizations.

In Aleman v. Chugach Support Servs., Inc. a three-judge panel said the same protections did not extend to a different federal law that bars discrimination on the basis of race or national origin. The court said Chugach Alaska, an Alaska Native regional corporation, doesn't fall in the same category as tribal governments. Judge J. Harvie Wilkinson wrote in the 19-page opinion. "While the sovereign immunity of Indian tribes is a necessary corollary to Indian sovereignty and self-governance, Alaska Native Corporations and their subsidiaries are not comparable sovereign entities." The court reinstate the claims of the first plaintiff because the exemption for Alaska Native Corporations from suit under Title VII does not immunize the defendants from suit under the separate and independent cause of action established by Section 1981. Section 1981 functions to "protect the equal right of 'all persons within the jurisdiction of the United States' to 'make and enforce contracts' without respect to race. Domino's Pizza. Inc. V. McDonald. 546 U.S. 470, 474 (2006) (quoting 42 U.S.C.I 1981(a)).

Please understand that there is no Wisconsin Court Decision dealing with the question of whether an entity owned and controlled by an Indian Tribe or group of Indian Tribes and created pursuant to Wisconsin Law, is entitled to sovereign immunity.[1] Also, I must remind the court that not a single published decision involving GLITC can be found. No court precedent exists to support the WI EEO position that "it has for a very long time NOT considered GLITC to be subject to the State and Federal Anti-Discrimination Statutes." Or the opinion that, "generally, Indian tribes are immune from suit under the Wisconsin Fair Employment Law (WFEP) due to

[1] From the Labor and Industrial Review Commission Decision, pg 6., Dean Seneca, Complainant vs Great Lakes Inter-Tribal Council, Inc, Respondent, June 22, 2020.

their sovereign status.[2] There is no place in the WFEP that states that Tribes have Sovereign Immunity.

Due to the facts that the US government considers Tribal Consultation to be based on a "Government -to- Government relationship, that being US Federal Government to Tribal Government, this is really a matter that needs to be handled appropriately in the Federal Courts. Given this reality, I hope the courts understands the severity of the decision the Wisconsin Equal Rights Division, the Labor and Industrial Commission when they granted tribal sovereignty immunity to a non-profit corporation, that is not an arm of the Tribe(s) and created under laws of the State of Wisconsin. This is a very slippery slope and sets a bad precedent that must be reversed. Literally "anyone" that creates a non-profit that works for or with tribes will be granted sovereign immunity. This will get out of hand.

Complainant-Appellant Dean Seneca (Seneca") respectfully requests that this Court take control of, or review and reverse the decision of the Labor and Industry Review Commission ("Commission"), captioned *Seneca v. Great Lakes Inter-Tribal Council, Inc.*, ERD Case No. CR201802438 (LIRC June 22, 2020) ("LIRC Decision"). This decision should be reversed for the following reasons:

First: GLITC does not pass the balancing test laid out for determining whether Sovereign Immunity applies to an 'arm of the tribe' as laid out in *McNally CPAs and Consulting v. DJ Host, Inc.,* 2004 WI App 221, 277 Wis. 2d 801, 692 N.W.2d 247.

[2] From the Labor and Industrial Review Commission Decision, pg 2., Dean Seneca, Complainant vs Great Lakes Inter-Tribal Council, Inc, Respondent, June 22, 2020.

Second: If GLITC has Sovereign Immunity, it did by its own actions waive that Sovereign Immunity.

Third: An allegedly multi-tribal actor such as GLITC deprives the plaintiff of a forum in which it can be sued for redress, violating the due process clauses of the Wisconsin and United States Constitutions.

PROCEDURAL HISTORY

On September 18, 2018, Mr. Seneca filed a complaint with the Equal Rights Division ("Division") of the Department of Workforce Development, alleging that the Great Lakes Inter-Tribal Council, Inc. ("GLITC"), an entity incorporated under Wisconsin law, did discharge him for discriminatory reasons. He previously worked for GLITC. In his complaint, he alleged GLITC discriminated against him because of his inclusion in several protected classes and retaliated against him for engaging in protected activity.

The Division assigned the case to an Equal Rights Officer ("ERO") who issued a Preliminary Determination and Order dismissing the complaint because the Division did not have jurisdiction over GLITC. The ERO found that GLITC was protected by sovereign immunity.

Mr. Seneca timely appealed the Preliminary Determination and Order and the matter was assigned to the Division's Administrative Law Judge Beverly Crossen ("ALJ Crossen"). On September 20, 2019, ALJ Crossen issued her Decision and Order ("Crossen Order") which affirmed the Preliminary Determination and Order on the grounds that GLITC is immune from suit because it is an arm of its member tribes; that there was no evidence that GLITC expressly waived its sovereign immunity; and that the Division lacked subject matter jurisdiction because the alleged actions took place on tribal land.

Mr. Seneca then filed a timely petition for Commission review. The Commission reviewed the petition and issued its Fair Employment Decision dated June 22, 2020 ("LIRC Decision"). In it, the Commission affirmed the Crossen Order and adopted the findings and conclusions in that decision as its own.

ARGUMENT

1. Incorrectly Applied *McNally CPAs and Consulting v. DJ Host, Inc.*

This matter is either a case of first impression or one very close to it. The question of whether a corporation, formed under state laws and controlled by a compact of sovereign tribes, enjoys sovereign immunity is not one that has been addressed by another Wisconsin court. It is not a matter of dispute that 'arms' of a tribe share the same sovereign immunity afforded their parent tribe, but the question as to whether an entity is an 'arm' of a parent tribe is one open to dispute and litigation. Under the scenario of "One Tribe, one corporation;" yes, then tribal sovereign immunity would apply. But multiple tribes under the cloak of one corporation; there is no comprehendible means in which immunity can exist. Given the number of tribal stakeholders in GLITC, arguably any stakeholder could object and claim sovereign immunity if a discrimination claim were brought in any Court, including the tribal Court of a fellow stakeholder of GLITC. In this case, under GLITC's argument, Sovereign Immunity precludes any remedy for the violation of anti-discrimination proceedings despite GLITC explicitly stating that it would follow relevant anti-discrimination laws.

Littered throughout the decisions and briefs on this matter you will see appeals to persuasive authority from other jurisdictions regarding the question as to whether an entity is an 'arm' of a tribe. Currently there are no clear definitions as to what constitutes an 'arm of a/the

Tribe,' and GLITC is an organization that employs many non-tribal members that work on and off Tribal lands (reservations). Luckily, there is a case to provide more generalized guidance to this Court, namely *McNally CPAs and Consulting v. DJ Host, Inc.* 2004 WI App 221, 277 Wis. 2d 801, 692 N.W.2d 247. Given that the application of the generalized balancing test in *McNally* is a question of law, the Plaintiff does ask that this matter be reviewed *de novo*.

McNally deals with the Ho-Chunk Tribe purchasing a company and then attempting to use sovereign immunity to escape debts owed by that company. The *McNally* Court did then establish a 'nonexclusive' list of factors to be considered, namely:

> "(1) Whether the corporation is organized under the tribe's laws or constitution;
>
> (2) Whether the corporation's purposes are similar to or serve those of the tribal government;
>
> (3) Whether the corporation's governing body is comprised mainly or solely of tribal officials;
>
> (4) Whether the tribe's governing body has the power to dismiss corporate officers;
>
> (5) Whether the corporate entity generates its own revenue;
>
> (6) Whether a suit against the corporation will affect the tribe's fiscal resources;
>
> (7) Whether the corporation has the power to bind or obligate the funds of the tribe;
>
> (8) Whether the corporation was established to enhance the health, education, or welfare of tribe members, a function traditionally shouldered by tribal governments; and
>
> (9) Whether the corporation is analogous to a tribal governmental agency or instead more like a commercial enterprise instituted for the purpose of generating profits for its private owners." *McNally* at para 12.

The LIRC Decision did analyze these factors, but it is the plaintiff's contention that this analysis was severely flawed and incomplete. LIRC only addressed few factors and ignored the rest. LIRC relied heavily upon factor 8 while giving little weight to factors 1, 4, 5, 6, 7 and 9. Functionally these factors boil down into three categories: tribal purpose, control, and liability.

The plaintiff is not contesting that the health and welfare aspects of GLITC advance tribal purposes (although the portions of GLITC's work that impact and involve travel outside of tribal lands do mitigate these factors). The plaintiff does highly contest that GLITC is organized under a tribe's law and is tribally controlled. Namely, the lack of a single tribe controlling GLITC complicates its governance and venue (a factor to be addressed below). Organizing under Wisconsin law should be considered a prima-facie waiver of Sovereign Immunity. It shows a clear and unambiguous submission of GLITC to the laws of the State of Wisconsin, including to all relevant anti-discrimination laws.

This brings *into* question *whether* the corporate entities generate their own funding, whether a suit against the entity will impact tribal resources (which it will not), whether the governing body can dismiss corporate officers (it has never), whether the entity has the power to bind funds of a Tribe (it has no ability to impasse funds of a Tribal Stakeholder) and whether the corporation is analogous to the Tribe(s). Finally, and the plaintiff believes dispositively, tribal liability weighs heavily against extending sovereign immunity to GLITC.

It is important to note, that there is precedent for considering tribal liability to be the most important factor of the *McNally* balancing test. The *McNally* Court itself was "particularly persuaded by the fact that, when a tribe purchases stock in an existing corporation, the tribe can choose to limit its risk to its investment in the stock." *Id.* At para 13. In short, the dispositive factor in that case was the use of DJ Host's corporate structure under state law to limit the liability to the controlling tribe.

Although the decision in *McNally* argues in favor of weighing the 'tribal liability' portion of the balancing test heavily, the plaintiff asks this Court to adopt the standard laid out in *Runyan v. Assn. of Village Council Presidents*, 84 P.3d 437 (Alaska 2004). *Runyan* identifies an

entity to be protected by sovereign immunity as "a subdivision of tribal government or a corporation attached to a tribe may be so closely allied with and dependent upon the tribe that it is effectively an arm of the tribe. It is then actually a part of the tribe per se, and, thus, clothed with tribal immunity." In determining this relationship "The entity's financial relationship with the tribe is therefore of paramount importance if a judgment against it will not reach the tribes assets or if it lacks the power to bind or obligate the funds of the [tribe], it is unlikely that the tribe is the real party in interest. If, on the other hand, the tribe would be legally responsible for the entity's obligations, it may be an arm of the tribe. In such a case other factors, relating to how much control the tribe exerts or whether the entity's work is commercial or governmental, may assist in the determination." In short, when choosing how to weigh the nine *McNally* factors, this Court should look first at the financial impact of a suit on the constituent tribes. Here, where the corporate structure would wholly shield the actual tribes themselves from liability, the constituent tribes of GLITC are not actual parties in interest. As such this Court need not look to the other *McNally* factors which should be treated as more informative than dispositive.

In choosing to avail themselves of the protections inherent to incorporating under Wisconsin law, namely protecting the tribes themselves from suit in state or federal court, either via waiver or congressional authorization, the tribes have voluntarily distanced themselves from GLITC. This is not a choice that was forced upon them. They chose to avail themselves of the benefit of state law and in doing so, they should be bound by it.

The Eighth Circuit has not established a specific test or set of factors to consider when deciding whether an organization is entitled to tribal sovereign immunity. J.L. Ward. 842 F. Supp. 2d at 1173. In J.L. Ward, however, this Court—looking to decisions like Wright v. Prairie Chicken. 579 N.W.2d 7 (S.D. 1998), Gavle Vs. Little Six. Inc., 555 N.W.2d 284 (Minn. 1996),

and Breakthrough Management Group. Inc. v. Chukchansi Gold Casino & Resort, 629 F.3d 1173 (10th Cir. 2010)— used a multi-factor test to decide whether a nonprofit corporation created by sixteen tribes enjoyed sovereign immunity. J.L. Ward, 842 F. Supp. 2d at 1171-77. The non-exhaustive factors this Court considered were: (1) the entity's method of creation; (2) the entity's purpose; (3) the entity's structure, ownership, and management, including the level of tribal control; (4) the tribe's intent to extend its sovereign immunity to the entity; (5) the financial relationship between the tribe and the entity; and (6) whether the purposes of tribal sovereign immunity are served by granting immunity to the entity. Id. at 1176. Courts have referred to these factors as the "subordinate economic entity analysis" id at 1173 (cleaned up and citation omitted), or the "arm-of-the-tribe" test, Williams v. Big Picture Loans, LLC, .929 F.3d 170,177 (4th Cir. 2019). Formation under tribal law favors sovereign immunity, while incorporation under state law can preclude an entity from sharing in a tribe's immunity, Somerlott v. Cherokee Nation Distribs., 686 F.3d 1144, 1149-50 (10th Cir. 2012).

Sovereign immunity protects a tribe and any subordinate governmental and commercial entities that are considered to be a true "arm of the tribe." When you fairly weight the factors, when you look at all the evidence, the true results are overwhelmingly against GLITC. The United States Supreme Court has not set forth guidance under federal law as to the question of what constitutes an arm of the tribe. In fact, the great weight of authority supports a conclusion that only tribal corporations, not state corporations, can possess the sovereign immunity of a tribe.

The courts of the State of Colorado were recently faced for the first time with the issue of sovereign immunity of tribally owned entities. In its undertaking of this task, the Supreme Court of Colorado performed a thorough review of federal and state court precedents. “Cash Advance v. State of Colorado” ex. rel. Suthers, 242 P.3d 1099 (Colo. 2010). Based on its

detailed analysis of pertinent precedent across many jurisdictions, the Court determined that a tribal entity of a tribe has sovereign immunity of the tribe if (1) the tribe created the entity pursuant to tribal law; (2) the tribe owns and operates the entity, and (3) the entity's immunity protects the tribe's sovereignty. Cash Advance, 242 P.3d at 1111.

Applying the recent and well-reasoned approach articulated in "Cash Advance" to the facts and circumstances that exist here, GLITC absolutely fails the test. Although GLITC could, and probably should, have been created under tribal law, but bottom line, it wasn't! GLITC is a creature of the laws of the State of Wisconsin. It is a state nonprofit corporation, availing itself to the laws of the State of Wisconsin, it is subject to the laws, rules, regulations, and jurisdiction of the State of Wisconsin, including the Wisconsin Fair Employment Law. A tribe's sovereign immunity cannot extend to an entity not created under tribal law. In choosing to become a state corporation, GLITC cannot assume the immunity of its Tribal Stakeholders that have never been granted.

Lastly, the Tribal Nations that are part of GLITC have not uniformly granted sovereign immunity to GLITC. If so, we would see tribal resolutions by each tribal nation extending their sovereign status to GLITC. Not one of the 11 Tribes in Wisconsin has ever done this. There are tribal protocols in place (Oneida Nation of Wisconsin) for Tribal Nations when extending their sovereign status to other entities.

2) If GLITC Had Sovereign Immunity, That Immunity Has Been Waived

The plaintiff further argues that GLITC waived its immunity regarding federal antidiscrimination laws by accepting money from the Federal Government. Every contract, cooperative agreement or grant with the U.S. Department of Health and Human Services

("HHS") requires the recipient, as a condition of receiving the money, to agree to abide by federal antidiscrimination laws such as Title VI of Civil Rights Law of 1964 42 U.S.C. §2000 et seq. ("Title VI"). Title VI is implemented through the regulations found at 45 Code of Federal Regulations ("C.F.R.") Part 80. 45 C.F.R. §80.1. Title VI and the regulations apply to any entity that accepts federal money through an HHS contract or grant. 45 C.F.R. §80.2. Discrimination based on race, color or national origin in employment practices is prohibited. 45 C.F.R. §80.3(c).

As a condition of receiving the money, the receiving entity agrees to allow a complaint to be filed against it for, *inter alia*, engaging in prohibited employment practices; to allow an investigation of the complaint; to have a hearing to resolve the complaint; and to allow judicial review of decisions. 45 C.F.R. §§80.7-11. Retaliation is prohibited 45 C.F.R. 80.7(e). One way to resolve a complaint is through any applicable proceeding under State or local law. 45 C.F.R. §80.8(a)(2).

Most importantly, the entity receiving the money knowingly and expressly agrees to abide by the federal antidiscrimination laws. The recipient of federal money must provide assurances, at the time of contracting and on an annual basis for the duration of the contract, that the entity is in full compliance with federal antidiscrimination laws. 45 C.F.R. §80.4. "Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement." *Id.* Every HHS contract contains a form clause and checklist (collectively, "HHS Form") for the recipient to provide the written assurances of compliance to HHS. In agreeing to comply literally allows GLITC to be sued in federal court.

In the present matter, GLITC waived its sovereign immunity with regard to federal civil rights laws prohibiting discrimination in the workplace by accepting these grants and cooperative

agreements. GLITC was under no obligation to accept this money, instead proactively seeking out these grants and affirmatively agreeing to be bound by the terms of said grants.

GLITC receives millions in Federal and State money that are now subject to retraction and recuperation by the Internal Revenue Service because they claim sovereign immunity where they refuse to abide by Federal and State Civil Rights laws and thus should be asked to return this funding. By accepting federal and state funding they must abide by federal and state civil rights laws and EEO regulations or return the funding.

As a condition for entering into a contract with HHS and accepting the money, GLITC repeatedly gave its written assurance to HHS that it would comply with Civil Right Law of 1964 and the regulations enforcing them. By doing so, GLITC made a knowing and express waiver of its sovereign immunity regarding antidiscrimination laws in employment practices. On an annual basis, GLITC certifies that it is following the antidiscrimination laws. There is no question that GLITC expressly and repeatedly waived its sovereign immunity regarding these antidiscrimination laws. You cannot have both, the funding and no compliance (your cake and eat it too).

Either you're a sovereign thus return the taxpayer dollars to the federal government for non-compliance of federal EEO laws or you're not sovereign by accept federal funding thus fulfilling those contracts and abiding by federal EEO laws. GLITC has accepted the funding thus its corporation is not immune.

When you are purposely not abiding by the EEO provisions in the contract, (and many of the components of the Civil Right Laws) you are essentially stealing/cheating the (US taxpayer) government and intentionally misleading the public. Because of non-compliance of EEO Laws, GLITC is blatantly disregarding the stated requirements stipulated by the US government to attain and administer all grants and cooperative agreements. Not only are they not complying

with the EEO requirements, but they are also giving their prospective employees a false sense of security that GLITC complies with all US EEO requirements. These are both serious acts of injustice and in this case GLITC is purposely/intentionally committing multiple criminal felonies.

To the same issue as referenced above, in all its job announcements to date, GLITC has a declaration at the bottom of each announcement stating that they are:

> "An equal opportunity employer that applies Native American Preference as defined in Section 703(i) of the Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e- 2(i). Consistent with the referenced Native American Preference, it is the policy of GLITC to provide employment, compensation, and other benefits related to employment based on qualifications of the job applied for, without regard to race, color, religion, national origin, age, sex, veteran status or disability, or any other basis prohibited by federal or state law. As an equal opportunity employer, GLITC intends to comply fully with all federal and state laws and the Information requested on this application will not be used for any purpose prohibited by law."

This statement appears to be yet another clear and unambiguous waiver of sovereign immunity, done at GLITC's own will. On the question of employment discrimination and Title VII they are falsely presenting to comply with the provisions of employment. I did rely on this statement to my own detriment when I took the position of Epidemiology Director at GLITC. Believe me, I would have never come to work for an employer (GLITC) without some federal oversight and EEO protection which the above quote did assure me.

3. In This Matter Due Process Demands A Forum

While in general, multiple tribes may band together to form an 'arm' of the tribe, it is important to note that by doing so the tribes may run afoul of the Fifth and Fourteenth Amendments to the United States Constitution. Namely, applying sovereign immunity under these circumstances amounts to a violation of the due process clause.

There is little question that the plaintiff has been deprived of property (namely his employment, contrary to the guarantees of nondiscrimination made by GLITC above). The problem arises as to whether there is a process available for the plaintiff to redress these concerns.

It is all well and good for the respondent to claim sovereign immunity, but that begs the question. Who is the sovereign? GLITC is a council made up of twelve different sovereign tribes. Should the plaintiff have brought his claims in one of the seven Chippewa tribal courts? Would the Menominee, Potawatomie, Ho-Chunk, Oneida, or Stockbridge-Munsee tribes and communities have then claimed sovereign immunity against one of the Chippewa courts?

The LIRC Decision brushed off this question as 'practical concerns,' but that is unfair to the gravity of the question. Due process requires there to be *some* process. If sovereign immunity can be used by the eleven other tribes and communities against any action brought in the court of one tribe, there is fundamentally no procedure to seek redress against GLITC for any of its actions.

Further, by claiming sovereign immunity, the respondent is positioning itself as a quasi-state actor. The plaintiff would argue that the 14th Amendment applies not only the State of Wisconsin in ensuring the plaintiff's right to due process, but also to GLITC.

Luckily, congress has provided a solution to this problem. Public Law 280 (18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321–1326) is a federal statute enacted in 1953. It enabled states to assume criminal, as well as civil, jurisdiction in matters involving Indians as litigants on reservation land. Public Law 280 grants civil jurisdiction in matters such as this to the State of Wisconsin.

The Attorney General of the State of Wisconsin has recognized that, under Public Law 280, the jurisdiction of the State of Wisconsin extends to its civil laws of general application. 70 Op. Att'y Gen 237 (1981). There can be no doubt that the civil rights laws of Wisconsin are enforceable here under authority granted to state by Public Law 280. The civil right laws represent major public policy of Wisconsin.

It should be noted that Public Law 280 does not grant states any authority to regulate civil activities in Indian country through P.L. 280. *Bryan v. Itasca County*, 426 U.S. 373 (1976) (no authority under P.L. 280 to tax personal property of tribal member). In repudiating these attempts to regulate Indian Country, the *Bryan* Court stated that it "was not the Congress's intention to extend to the States the 'full panoply of civil regulatory powers,' but essentially to afford Indians a judicial forum to resolve disputes among themselves and with non-Indians." *Id.*

If the State refuses to exert jurisdiction, what laws exist that will protect GLITC employees, patrons or supporters? Which of the 11 Wisconsin-based tribal laws are to be applied? Which of those tribe's laws provide protection? There is no tribal law that would protect a GLITC employee from offensive discriminatory employment practices. A tribal agency does not exist with expertise to adequately investigate, administer, and enforce applicable civil rights violations, including those violations arising under federal and state EEO law. GLITC has, in fact, demonstrated that it refuses to investigate and enforce the policies articulated by the very same civil rights laws.

In this situation where we have a potential dispute between many different tribes, it only seems appropriate to turn to the State of Wisconsin as an independent forum to decide what has the potential to be a dispute between twelve different sovereign entities. At a minimum, Public

Law 280 should answer any questions about disputes arising on tribal land (notwithstanding the properties GLITC rents away from historical tribal land).

Further, the word 'tribe' in all caselaw is singular. GLITC's argument is that it exists as an arm of a conglomeration of tribes which raises an interesting question as to whether multiple tribes claim immunity jointly. Given the incorporation of Title VI provisions into each tribes' ordinances, it is clear that GLITC is allowed to be sued for discrimination, the question is just in which Court such suit should occur. Unfortunately, under GLITC's reasoning any suit brought under any shareholder tribe's ordinances in tribal court would be subject to dismissal from the other shareholder tribes under sovereign immunity grounds as each tribe's court has no authority to force another tribe to submit to their jurisdiction. Ultimately, by creating a conglomeration of tribes under Wisconsin law and by agreeing to comply with Title VI, GLITC has created a situation where it either cannot abide by Title VI (to which it has contractually agreed) or in which a cause of action must be allowed in a venue where one of its shareholders can claim sovereign immunity.

GLITC's organization documents contain no reference to sovereign immunity or the process and procedure for approving a limited waiver of sovereign immunity. Some of the consent forms where you agree to be silent on a particular issue, problem or disciplinary measure have an agreement clause in them "to sue or be sued." This section in itself is a waiver of sovereign immunity. No evidence of tribal action, tribal resolutions or tribal ordinances has been offered to suggest even a faint hint that the member tribes of GLITC intended to extend sovereign immunity to GLITC. Alarmingly, GLITC apparently only raises a defense of sovereign immunity when former employees claim violations of civil rights laws. GLITC will

urge that it is under the ultimate control of tribes and as a result can violate civil rights laws with reckless abandonment because it has the sovereign immunity of those tribes.

The United States Supreme Court has explained how paramount tribal sovereignty is in relation to state sovereignty, when a tribe conducts activities within state boundaries; it is subject to state law. You simply cannot grant sovereign immunity to a Tribal entity where all the violators are non-Indian. Tribes cannot prosecute non-members. This, by far is not the intention of Tribal Sovereignty.

Suffice it to say that GLITC's activities on behalf of a tribe(s) are far from being purely "intramural" or solely involving "internal tribal disputes" so as to treat it or its activities as being governed only by tribal law is literally absurd. The employees, patrons, and supporters of GLITC have an expectation that the State of Wisconsin will protect them, especially with respect to the civil rights laws of the State. Since non-Indians cannot be protected or prosecuted under tribal laws, then where are they accountable, if not by the states in which they work? Now it is the undeniable responsibility of the federal government to assume jurisdiction for civil and criminal matters when it pertains to Tribal non-profit organization like GLITC.

State ex. rel. Dept. of Human Services v. Jojola, 660 P.2d 590,593 (New Mex. 1983), cert. denied, 464 U.S. 803 (1983). No law or policy concern exists that is more compelling than the protection of the civil rights of American citizens. The Federal Government is required to show deference to activities having a nexus to tribal lands when the activities constitute an egregious violation of a person's civil rights.

CONCLUSION

In reviewing this matter, the plaintiff asks that this Court find that *McNally* weighs against a finding of sovereign immunity in favor of GLITC. Further, the list in *McNally* is meant to be nonexclusive. Given the due process concerns detailed in this request, it seems appropriate to consider the multi-tribal nature of GLITC and weigh that against it. Finally, if this Court does find GLITC to be an arm of a tribe (or tribes), the plaintiff is requesting that it find that such immunity was waived due to GLITC's actions or otherwise voided by the Fifth and Fourteenth Amendment.

This court has jurisdiction over this matter pursuant to Wis. Stat. § 227.53.

Wherefore, the plaintiff demands judgment that the findings and decision complained of be set aside, and for such other or further judgment, order or relief as the circumstances may warrant.

Dated this 25th day of October, 2021.

(Signature of Plaintiff)

TARA D. LOWRY
Notary Public, State of New York
Registration #01LO6193743
Qualified In Erie County
Commission Expires 09/22/2024

Tara D. Lowry