IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

ALABAMA-QUASSARTE TRIBAL TOWN, Federal-recognized Indian Tribe,

Plaintiff,

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF OKMULGEE, WILSON YARGEE, ROVENA YARGEE, TAHLINA NOFIRE, all Defendants joined individually And in their official capacity for purposes of declaratory relief as may be necessary, and prospective Injunctive Relief only,

Defendants.

Case No.: 22-CV-268-RAW

REPLY IN SUPPORT OF MOTION TO DISMISS

I. SUMMARY

Defendants filed a Motion to Dismiss ("MD", ECF No. 31) Plaintiffs' Amended Complaint ("AC", ECF No. 23) due to a lack of subject matter jurisdiction. Plaintiffs' Response in Opposition ("Resp.", ECF No. 34) does not change the fact that the AC invites this Court to resolve an internal tribal governance dispute over which it lacks jurisdiction. Dismissal pursuant to Fed. R. Civ. P. 12(b)(1) is the appropriate disposition of the AC.

II. ARGUMENT

Plaintiffs try to cure the lack of federal question jurisdiction by arguing that there is no dispute with regard to Town law and that the only dispute involves the interpretation of federal law: to wit the Indian Civil Rights Act ("ICRA"). ECF 34 at 1, 6, 8. Plaintiffs make a similar argument that the legitimacy of the Town Court is a matter of federal law. ECF No. 34 at 1, 9. Plaintiffs argue that the well pleaded complaint rule is not applicable because "'the normal position of the parties is reversed' in an action under the Declaratory Judgment Act." ECF No. 34 at 5. Finally, Plaintiffs graft 25 C.F.R. pt. 83 onto their arguments that the Indian Self Determination Act ("ISDA") and §8(a) of the Small Business Administration Act ("SBA") create a federal question. As discuss *infra*., none of these arguments raise a federal question.

A. Town Law Applies to the Validity of the Resolution of the Removal of the Chief and Second Chief.

Plaintiffs argue that there is no "dispute between the parties regarding the content or application of AQTT law," and that "the core legal dispute between the parties is whether the otherwise-lawful removal of Defendants . . . is void because it violated federal law, specifically the [ICRA]." ECF No. 34 at 6. Plaintiffs contend that Defendants argue that the ICRA "trumps" the Town Constitution. ECF No. 34 at 1. Defendants do not concede that their purported removal was consistent with Town law nor do they argue that ICRA trumps Town law. Rather, Defendants argue that, consistent with the decision in *Rebecca Torres v. Acting Muskogee Area Director, Bureau of Indian Affairs*, 34 IBIA 173 (1999), "*the removal provision of the Town Constitution must be interpreted in a manner consistent with* the due process guarantees of §1302 of the [ICRA]."[1] (emphasis added). ECF No. 31 at 6. Plaintiffs have conceded this point, asserting that "[t]he AQTT Constitution and Bylaws are subject to the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1304 ("ICRA"). ACF No. 23 at ¶25.

B. The Declaratory Judgment Action Exception to the Well Pleaded Complaint Rule Does Not Apply Because Defendants Have Not Threatened to File a Claim in Federal Court That Raises a Federal Question.

Plaintiffs argue that the well pleaded complaint rule is not applicable to the AC because their action is styled (in part) as a declaratory judgment action. ECF No. 34 at 5-7. According to Plaintiffs, *"[i]f Defendants were to bring a lawsuit* to vacate the removal proceedings conducted against them, the basis for such a lawsuit would be that the proceedings purported (*sic*) violated ICRA." ECF No. 34 at 7.

The exercise of federal court jurisdiction is appropriate when "the complaint in an action for declaratory judgment seeks in essence to assert a defense *to an impending or threatened"* action. *Public Service Commission of Utah v. Wycoff Co., Inc.,* 344 U.S. 237, 248 (1952) (emphasis added). Moreover, "[i]f the cause of action, which the declaratory defendant threatens to assert, does not itself involve a claim under federal law, it is doubtful if a federal court may entertain an action for a declaratory judgment establishing a defense to that claim." *Id. See also Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 19 (1983) (noting

[1] Defendants raise §1302 of ICRA and *Torres* not as a defense on the merits to the AC, but rather to demonstrate to the Court that their position that they have not been properly removed has a reasonable basis and is not based on contrariness or obstinance.

that federal courts can exercise jurisdiction "over declaratory judgment suits in which, *if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question*." (emphasis added)).

The Court's pronouncements in *Public Service Commission* and *Franchise Tax Board* are fatal to Plaintiffs' argument that their case is exempt from the well pleaded complaint rule. The declaratory judgment exemption applies only when the declaratory defendant threatens to assert a cause of action; there must be "an impending or threatened action" that the declaratory defendant has made known that it plans to pursue. That a declaratory defendant "might" take such an action is not enough. Instead, "the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy . . . of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (quoting *Maryland Casualty Co. v. Pacific Coal & Oil Co.,* 312 U.S. 270, 273 (1941)). Plaintiffs concede that there is no "impending or threatened action" posed by the Chiefs when they assert that "[i]f Defendants were to bring a lawsuit' it would be based on ICRA. Moreover, Defendants have conceded that they cannot bring an action under ICRA seeking relief from their purported removal. ECF No. 31 at 17. A lawsuit that Defendants cannot file does not raise a federal question and is not of "sufficient immediacy and reality" to warrant the issuance of a declaratory judgment. Thus, the declaratory judgment exception to the well pleaded complaint rule is a refuge beyond the reach of the AC.

Plaintiffs seek to find a way around the holdings in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) that federal relief under ICRA is generally limited to *habeus corpus* and that ICRA does not authorize private rights of action. ECF No. 34 at 6, 7. They rely on *Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682, 685 (10th Cir. 1980), arguing that that decision requires that there must be a forum for the resolution of all disputes. Unfortunately, *Dry Creek Lodge* is not helpful to Plaintiffs' plight. In *Ordinance 59 Ass'n v. U.S. Dept. of Interior Secretary*, 163 F.3d 1150 (1998), the Tenth Circuit explained that three conditions must exist in order for the holding of Dry Creek Lodge to apply. "A plaintiff must demonstrate that: the dispute involves a non-Indian party; a tribal forum is not available; and the dispute involves an issue falling outside internal tribal affairs." (Citing *Dry Creek*, 623 F.2d at 685.) 163 F.3d 1156. It is obvious that at least two of these factors are not present in the current case; the dispute over the alleged removal of the Chiefs and the legitimacy of the Town Court does not

involve a non-Indian whose rights are being adversely impacted by tribal action, and the dispute over tribal governance is at the heart, and not outside, of internal tribal affairs. Moreover, *Ordinance 59 Ass'n* makes clear that there is no free standing "absolute necessity" doctrine that requires a federal court to assume jurisdiction over an ICRA case because there is no other forum. *See Ordinance 59 Ass'n*, 163 F.3d at 1157-58, (discussing the so-called "absolute necessity" doctrine and concluding that it exists only in the plaintiffs' "creative advocacy"). Moreover, *Ordinance 59 Ass'n* notes that the "*Dry Creek* exception is to be interpreted narrowly," 163 F.3d at 1157, and that it is of "limited precedential value." 163 F.3d at 1158.

Plaintiffs also argue that *Fletcher v. U.S.*, 116 F.3d 1315, 1331-1332 (10th Cir. 1997) supports the exercise of federal court jurisdiction over the AC. EFC No. 34 at 8. *Fletcher* is simply not on point. In that case, the Tenth Circuit set aside a district court mandated tribal referendum expanding the tribal franchise beyond a congressional statute, thereby restoring the form of government mandated by the federal law. *See Fletcher,* 116 F.3d at 1330-31 (discussing the District Court's inappropriate involvement in the constitutional referendum). *Fletcher* does not involve federal court intervention to provide a non-tribal remedy to an internal dispute, but rather to restore the *status quo ante* that was disturbed by an overreaching federal district court. Plaintiffs (unwittingly) invite this Court to make the same error committed by the District Court in *Fletcher* — exercising subject matter jurisdiction when it has none.[2] In sum, the well pleaded complaint rule applies to the AC, which fails to raise a federal question based on ICRA.

C. Town Law is Determinative of Questions Regarding the Legitimacy of the Town Court.

Plaintiffs also argue that whether the Town Court "legally exists" is a question that arises under federal law. ECF No. 34 at 9. Despite their reliance on the Town Constitution in attacking the legitimacy of Town Court, *see* ECF No. 23 at ¶¶ 3, 23-24, Plaintiffs now assert that the question of the Town Court's legitimacy "is not based on any dispute regarding the

[2] Plaintiffs also cite *Harjo v. Kleppe*, 420 F.Supp. 1110, 1145 (D.D.C. 1976) and *Morris v. Watt*, 640 F.2d 404 (D.C. Cir. 1981) for the proposition that federal courts should exercise jurisdiction "to confirm that tribal constitutions are not ignored." ECF No. 34 at 10-11. These cases do not involve federal court intervention in a tribal leadership dispute and, thus, they are not on point. Both cases involved challenges to the practice of the Department of the Interior recognizing and dealing with the executives of the Creek Nation (*Harjo*, 420 F. Supp. 1114-15) and the Choctaw and Chickasaw Nations (*Morris*, 640 F.2d at 405-06) to the exclusion of their respective legislative branches.

interpretation or application of the AQTT Constitution" or other Town law and that Defendants have conceded that their position regarding the Town Court "has no support under AQTT law and instead rely on federal law for support." ECF No. 34 at 9. Plaintiffs' deliberate attempt to misstate Defendants' argument is unconvincing. Rather than arguing that federal law authorizes the creation of the Town Court, Defendants argue that because "[f]ederal law is clear that tribes can create tribal courts pursuant to their retained, inherent sovereignty without regard to the existence of a constitution, . . . whether the AQTT Constitution requires amendment to authorize the creation of a tribal court depends strictly on the interpretation of Town law." ECF No. 31 at 15.[3] In other words, if federal law does not prohibit the creation of a tribal court in the absence of a constitution (or, a constitutional provision explicitly providing for such creation), any argument that the court system was not created legally can only be based on interpretation of the AQTT Constitution.[4]

Plaintiffs further argue that this Court has jurisdiction over "claims regarding the proper scope of tribal judicial authority." While federal courts do have jurisdiction pursuant to *Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845 (1985) to determine the extent of tribal jurisdiction over non-members, the AC does not allege that the Town Court improperly exercised jurisdiction over a non-member. Instead, the AC challenges the existence and legitimacy of the Court—whether it was properly created under Town law and the Oklahoma Indian Welfare Act (OIWA). See ECF No. 23 at ¶¶ 3 (alleging that creation of the Town Court violates the AQTT Constitution and Corporate charter and the OIWA), 14 (referring to the Court as "illegitimate" and "unlawful"), 71 (referring to the "purported creation" of the Court and listing steps allegedly necessary to the creation of court), 72 (referring to the Court as "illegitimate" because the steps set forth in ¶71 were not followed), 76(b), 78(b) and subparagraph (b) of the Prayer for Relief (seeking a declaration that the Court was not "legally

[3] Plaintiffs argue that Defendants contend that Chief Yargee "retains unilateral power" to create a court system, ECF N0. 34 at 10, and that the Chief alone can create a court system. ECF No. 34 at 11. The Chief did not create the Town Court unilaterally; it was created by the adoption of a resolution by the newly appointed Governing Committee. *See* ECF No. 31 at 7.

[4] Despite their argument that a tribal court system cannot be created without amending the Constitution, Defendants created their own court. On August 22, 2022, Wendall Hayes, the purported Chief Judge of the Marshall faction's Alabama-Quassarte Tribal Town District Court, issued a S*ua Sponte Order* finding that Samuel Marshall is the only "legitimate and legal Chief of the Alabama-Quassarte Tribal Town." *See* Order attached as Exhibit 1 at p. 3.

authorized"), and 77(i) (referring to the Court as "unlawful"). In short, nothing in the AC purports to challenge the Court's jurisdiction.

The amendment of the AC to include allegations that the Court exceeded its jurisdiction would be pointless. The non-Indian entity over which the Town Court exercised jurisdiction—First National Band of Okmulgee—appeared in the proceeding and did not challenge the Town Court's authority. *See* ECF No. 31 at 8 (discussing Bank interpleader action before the Town Court). Additionally, Sam Marshall, an AQTT member claiming to be the Chief of the Town, was named as a third-party defendant in the interpleader action and was properly served but failed to appear. Having failed to exhaust tribal court remedies regarding the Court's jurisdiction, Plaintiffs cannot challenge its jurisdiction in this Court. *See, e.g.*, *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 17 (1987) (after initial finding of jurisdiction, party wishing to remove proceeding from tribal court must complete tribe's appellate process*); Bank of Oklahoma v. Muscogee (Creek) Nation*, 972 F.2d 1166, 1169 (10th Cir. 1992) ("The law of this circuit is that a federal court should not hear a challenge to tribal court jurisdiction until tribal court remedies have been exhausted." (citations omitted)).

D. The ISDA and Section 8(a) of the SBA Do Not Create a Federal Question.

Plaintiffs continue to assert that the Indian Self-Determination Act ("ISDA"), and Section 8(a) of the Small Business Act create federal question jurisdiction, although they do not explain how either of those laws provide guidance regarding whether the Chiefs were properly removed from office or whether the AQTT Constitution must be amended in order to specifically authorize the creation of a tribal court system. ECF No. 34 at 11-13. They do make the curious—and legally incorrect— argument that the Procedures for Federal Acknowledgment of Indian Tribes found at 25 CFR pt. 83 govern the question of whether a tribe "is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians" within the meaning of the ISDA and its implementing regulations. ECF No. 34 at 12. They make the same argument with regard to determining whether a tribally-owned business is eligible to participate in the Section 8(a) program. *Id.* They argue that the "criteria for determining whether a particular group should be acknowledged as a tribe" set forth in 25 C.F.R. §83.11 are applicable to determining whether Plaintiffs or Defendants are "eligible to obtain the contracts and grants authorized by ISDEAA." *Id* at12. Similarly, they argue that those criteria apply when determining whether a small business qualifies as "socially and economically

disadvantaged small business concern[]" because it is owned by a tribe. *Id* at12-13. According to Plaintiffs, determining whether a tribe is "recognized" for the purposes of the ISDA and Section 8(a) "turns on application of these federal regulations [25 C.F.R. §83.11]." *Id* at12. The supposed applicability of 25 C.F.R. pt. 83 raises "a federal question for this court to resolve." *Id* at13.

The only flaw in Plaintiffs' arguments is that 25 C.F.R. pt. 83 has absolutely nothing to do with determining whether a tribe is "recognized" for the purposes of the ISDA and Section 8(a). The regulations at 25 C.F.R. pt. 83 are applicable "only to indigenous entities that are not federally recognized Indian tribes." 25 C.F.R. §83.3. They establish a process through which a non-federally recognized tribe can demonstrate that it should be recognized by the United States and placed on the list of federally-recognized tribes maintained by the Department of the Interior. *See* 25 C.F.R. §83.2 ("A positive determination will result in Federal recognition status and the petitioner's addition to the Department's list of federally recognized Indian tribes.")[5] *See also* Felix Cohen, Cohen's Handbook of Federal Indian Law § 3.02 [3] (2012 Edition) (discussing the significance of the recognition of a government-to-government relationship between a tribe and the United States, the differences between the rights of federally recognized and non-federally recognized tribes, and the role of the Part 83 regulations, which are implemented by the Office of Federal Acknowledgement, in determining whether a non-federally recognized tribe should be recognized and placed on the list of such tribes). Simply put, the Part 83 regulations govern how a non-federally recognized tribe can become recognized, but they have nothing to do with deciding which group of purported leaders the BIA should recognize for contracting or other federal purposes in the context of a tribal governance dispute.

In sum, nothing in the ISDA or Section 8(a) speaks to whether the Chiefs were legally removed or whether the Town Court was validly created and thus, neither law has any application to the intra-tribal leadership dispute that is the subject of the AC or raises a federal question. The Part 83 regulations are completely irrelevant to the claims raised in the AC and they also fail to raise a federal question.

[5] The list is published annually in the Federal Register pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792). The last list was published at 88 Fed. Reg. 2112 (January 12, 2023).

E. The Defendants Request for Assistance from the BIA is Consistent with Federal Law and Does not Create a Federal Question.

Plaintiffs argue that Defendants have attempted to invoke the assistance of the Bureau of Indian Affairs ("BIA") and that such effort "show[s] that this has long since ceased to be a purely intra-tribal dispute." ECF No. 34 at 2. They assert that there is a "clear role for the federal government in resolving a dispute between two parties," but argue that the Defendants' effort to have the BIA decide to recognize Chief Yargee as the legitimate leader of the Town, in order to carry out federal contracting obligations and their motion to dismiss this lawsuit, "is legally untenable." *Id*.

Plaintiffs' first error is their failure to distinguish between "the federal government," *i.e.,* the BIA, and a federal district court, which is, axiomatically, not "the government." Despite Plaintiffs' protestations, federal law is remarkably clear on two points. First, the BIA has a "responsibility for carrying on government relations with the Tribe [and] is obligated to recognize and deal with some tribal governing body in the interim before resolution of the election dispute." *See Goodface v. Grassrope*, 708 F.2d 335, 339, (8th Cir. 1983). Second, a federal district court should not address the merits of a tribal governance dispute and would "overstep[] the boundaries of its jurisdiction in interpreting the tribal constitution and bylaws and addressing the merits of the election dispute." *Id. See also Attorney's Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d 927, 943 (8th Cir. 2010) (noting that tribal election disputes are governed by tribal law and thus "fall within the exclusive jurisdiction of tribal institutions," and also noting that "the BIA may at times be obliged to recognize one side in a dispute as part of 'its responsibility for carrying on government relations with the Tribe,' [but that] such recognition is made only on 'an interim basis'"). In short, Defendants' efforts to have the BIA recognize Chief Yargee on an interim basis for the purpose of carrying out federal contracting obligations is not only legally tenable, but completely consistent with federal law.

Ironically, Plaintiffs take the exact opposite position in a proceeding before the United States Postal Service, Judicial Officer Department, stemming from the same governance dispute. In that case, both Samuel Marshall and Chief Wilson Yargee sought to be the recipient of mail addressed to the Town. Plaintiffs repeatedly claimed that the matter was an intra-tribal dispute between the Yargee and Marshall factions, and that the federal government had no business

deciding its outcome. Plaintiffs claimed that "Tribes have the legal authority to determine their own governance structure…and to resolve all intra-Tribal Disputes according to intra-Tribal Remedies and according to intra-Tribal law." *See* Appeal of Initial Decision attached as Exhibit 2 at 1. Plaintiffs asserted that there is no need for outside interference because the Town has its "own… intra-Tribal remedies that govern all intra-Tribal Disputes" and "members use [Town laws] to resolve intra-Tribal Disputes." *Id*. at 2 and 3. Plaintiffs also recognized that "[u]nder well-established federal case law, the principles of self-determination and deference to Tribal Sovereignty strictly prohibit the Federal government . . . from interfering into the internal matters and internal disputes of a Tribe government. [Citation omitted.]" *Id*. at 8. They further note that "[t]his law applies with particular force to intra-Tribal disputes regarding the proper composition of a Tribe's governing body. [Citation omitted.]" *Id*. Finally, Plaintiffs admonished the Judicial Officer Department that the Postal Service had no right to intervene in the matter because "your action directly interferes with an internal matter and with an internal dispute of the AQTT." *Id*. at 9. Plaintiffs' own assessment is that this matter is an internal dispute and it is only when Plaintiffs desire the intervention of a federal court that they frame it as anything else. It is only Plaintiffs' contradictory arguments in these related proceedings that are "legally untenable."

F. The Anti-Injunction Act Prohibits the Plaintiffs' Request That This Court Order Any State Court Not to Domesticate an Order of the Town Court

Plaintiffs argue that the Anti-Injunction Act does not apply to the AC despite the fact that their application for injunctive relief alleges that they are "entitled" to preliminary and permanent injunctive relief "ordering any state court not to domesticate or otherwise honor any orders from" the Town Court. ECF. No. 23, ¶85. Plaintiffs then cite *Dombrowski v. Pfister*, 380 U.S. 479, 484 n2 (1965) for the proposition that the Anti-Injunction Act does not preclude injunctions against the institution of state court proceedings. ECF No. at 13-14. In *Dombrowski,* the plaintiffs sought to enjoin state officers—the Governor, police and law enforcement officers, and the Chairman of the Legislative Joint Committee on Un-American Activities in Louisiana—from prosecuting or threatening to prosecute plaintiffs for advocating for the civil rights of African American citizens of Louisiana. *Id.* at 482. There was no attempt to enjoin a state court or a state court judge from hearing a case filed before it. The Plaintiffs' claim to relief ordering a state court to refrain from domesticating or otherwise honoring an order from the Town Court is distinguishable from the facts in *Dombrowski*. That decision offers them no relief from the Anti-Injunction Act's prohibition against the enjoining of state court proceedings by federal courts.

G. The Amendment of Plaintiffs' Complaint Would Be Futile and Should not Be Permitted.

Plaintiffs request leave to file any new claims they may have included in the AC in violation of the Court's October 24, 2022 order pursuant to Fed. R. Civ. P. 15(a)(2). ECF No. 34 at 15. The amendment of the AC would be futile because none of the claims raised in it, whether they are new claims or the same ones raised in the original complaint (ECF No. 23), raise a federal question. Plaintiffs have already been given a second bite at the apple and have failed again to raise a federal question. They should not be given yet another do-over. Despite Plaintiffs' glib statement that there has been no "undue prejudice," ECF No. 34 at 15, Defendants have experienced considerable expense and prejudice in responding to Plaintiffs' repeated failures in this regard and also, by Plaintiffs' failure to provide a redlined version of the AC.

III. CONCLUSION

It is time that the Plaintiffs be held accountable for their repeated failure to file a claim over which this court has subject matter jurisdiction. Plaintiffs' argument that only one federal question is needed for the court to assert subject matter jurisdiction over the whole case is irrelevant because the AC does not raise even one federal question. Defendants renew all the arguments made in EFC No. 31 regarding the failure of the AC to raise a federal question.[6] None of the federal statutes cited by the Plaintiffs, including the ISDA, ICRA, the OIWA and Section 8(a), give rise to a federal question because none of them provide any guidance in deciding whether the Chiefs were properly removed, or if the Town Court was validly created pursuant to Town law. Likewise, the federal common law doctrine of tribal sovereign immunity is of no consequence in deciding these issues. Defendants once again urge this Court to dismiss the AC due to its failure to raise a federal question and the resulting lack of subject matter jurisdiction.

[6] Upon the receipt of Plaintiffs' Exhibits 3 and 4 regarding the election of Elton Smith as Solicitor, counsel for Defendants conducted an additional inquiry into this matter. Chief Yargee does not remember the election or signing the resolution but acknowledges that the signature on the Resolution is his. However, for the reasons discussed in ECF No. 31 at 14, the Governing Committee has authority only to fill a vacancy in the office of Solicitor but has no authority to appoint a Solicitor in the first instance.

Dated: January 26, 2023.

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EXHIBIT 1

ALABAMA-QUASSARTE TRIBAL TOWN

DISTRICT COURT

SAM MARSHALL,
CHIEF
PETITIONER,

VS.

WILSON YARGEE, INDIVIDUALLY AND
TAHLINA NOFIRE, INDIVIDUALLY

RESPONDENTS.

CASE NO: 22-001

SUA SPONTE ORDER

Now, on this 22nd day of August, 2022, this matter comes before the undersigned Chief Tribal Judge, Wendell Hayes after obtaining and reviewing copies of the Executive Orders and Resolutions entered by Wilson Yargee who purports to be Chief of the Alabama-Quassarte Tribal Town, and after obtaining and reviewing copies of Court Orders entered by Tahlina Nofire who purports to be a Chief Judge of the Alabama-Quassarte Tribal Town District Court, and after obtaining documentation presented by Sam Marshall.

BACKGROUND

This matter concerns various elections disputes and irregularities internal to the Alabama-Quassarte Tribal Town (herein, "the Town."). Under the Alabama-Quassarte Tribal Town Constitution ("Constitution"), the Officers of the Town and their Powers are defined in Article V. Article V states that, "The Officers of this Town shall be the Chief, the Second chief, the Secretary, the Floor speaker, the Solicitor, the Chairman of the Governing Committee, and twelve members of the Governing Committee." It goes on to state that, "the powers of the Town shall be exercised by the Chief with the consent of the Governing Committee." Article VII of the Constitution outlines, "Removal from Office and Filling Vacancies." It states that, "Officers may be removed by a majority vote of the Members of the Town. Vacancies in Office shall be filled for the unexpired term by a majority vote of the Governing Committee."

The Alabama-Quassarte Standing Policy and Rules of Procedure ("Rules") define the legal standards for the Town regarding all official business conducted by the Governing Committee. Under "Non-Delegated Powers," The Rules give the Governing Committee the legal authority to, "carry out such duties that are implied and inherent, including but not limited to: determining its own rules of procedure; the authority to investigate; subpoena and the

EXHIBIT 1

authority to hold in contempt." Under "Removal of Tribal Town Officers," the Rules delineate the proper legal procedure to remove an incompetent or corrupt Officer such as a Chief. It states, "A motion to 'remove [an Officer] for cause' from Office may be made or presented at any regular Tribal Town Membership meeting by any Tribal Town Officer or Tribal Town member." It continues that, "All removals from Office shall be by majority vote of the Tribal Town Members present at a Tribal Town Membership meeting." This language supports the language of Article VII of the Constitution.

Starting in September of 2021, The Alabama-Quassarte exercised their legal authority to investigate Wilson Yargee regarding his alleged incompetence to execute programs such as the Section 638 contracts, mismanagement and abuse of these Section 638 programs and acts unbecoming a Tribal Town Officer. The evidence of this investigation was presented by the Governing Committee to the Tribal town Membership at a regularly scheduled Tribal Town Membership meeting on October 28 of 2021. Proper notice was given to all Parties. The evidence presented by the Governing Committee was considered by the Tribal Town Membership and Wilson Yargee was given the opportunity to respond but declined by voluntarily leaving the Membership meeting. A motion was then made and seconded, to remove Wilson Yargee as Chief of the Alabama-Quassarte Tribal Town. Based upon the evidence presented by the Governing Committee, the Tribal Town Membership then voted by a majority vote to remove Wilson Yargee as Chief of the Town. Wilson Yargee complained that proper notice had not been given so a second Tribal Town Membership meeting was called in December of 2021 where the evidence against Wilson Yargee was presented for a second time and by a majority vote of the Tribal Town Membership, Wilson Yargee was once again removed.

After Wilson Yargee's removal, the Governing Committee of the Town exercised Article VII of the Constitution, and by a majority vote, appointed Sam Marshall to fill Wilson Yargee's unexpired term as Chief of the Alabama-Quassarte Tribal Town.

LEGAL REASONING

The Alabama-Quassarte Tribal Town Constitution, By-Laws and Rules of Procedure provide a democratic check and balance system for the Tribal members of the Town. This check and balance system prevents one branch of government from dominating another branch of government and is the only safeguard provided to the Town Membership to prevent the indefinite rule of a corrupt or incompetent leader. It is a check and balance system modeled after the United States government. If this system is taken away or removed, it would open the door for future leaders to assume unchecked dictatorial powers.

According to the United States Constitution and according to Federal law, the Alabama-Quassarte Tribal Town is a sovereign nation. As such, they have the unimpeded right to follow their own Constitution, By-Laws and Rules of Procedure without interference from outside entities. The Alabama-Quassarte Tribal Town Governing Committee did, in fact, follow their Constitution, By-Laws and Rules of Procedure and utilized their check and balance system to

EXHIBIT 1

remove a Chief "for cause" as per their legal rights. Any attempt to take away this check and balance system is an invasion upon the Tribal sovereignty of the Alabama-Quassarte people and condemns them to the risk of future tyrants.

The Alabama-Quassarte Tribal Town exercised their Constitutional rights under their check and balance system and removed Wilson Yargee as Chief by a majority vote of the Town Membership in October of 2021 and a second time in December of 2021. As a sovereign nation, their decision to remove Wilson Yargee is valid and should stand.

The Alabama-Quassarte Governing Committee also exercised their legal rights to appoint Sam Marshall as Chief of the Town for the remaining portion of Wilson Yargee's term. As a sovereign nation, this decision to appoint Samuel Marshall as Chief is valid and should also stand.

In addition, any resolutions, executive orders and/or decisions made by Wilson Yargee since October 28, 2021 should be declared null and void. This includes Wilson Yargee's attempt to create an Alabama-Quassarte District Tribal Court with a Chief Judge that would always rule in favor of Mr. Yargee. The creation of the Alabama-Quassarte Tribal District Court of Tahlina Nofire is, therefore, illegitimate as per the Constitution of the Alabama-Quassarte Tribal Town and, therefore, all Court orders by Tahlina Nofire are ruled to be null and void, ab initio.

ORDER

IT IS SO ORDERED that the Alabama-Quassarte Governing Committee and Town Membership exercised their sovereign and Constitutional rights per their check and balance system of government and legally removed Wilson Yargee as Chief on October 28, 2021, and again in December of 2021. As of October 28, 2021 Wilson Yargee was no longer Chief of the Alabama-Quassarte Tribal Town, therefore, all resolutions, executive orders and/or decisions made by Wilson Yargee or at the direction of Wilson Yargee after October 28, 2021 are null and void, ab initio.

IT IS FURTHER ORDERED that the Alabama-Quassarte District Court of Tahlina Nofire is illegal and illegitimate as per the Constitution of the Alabama-Quassarte Tribal Town, therefore, all orders issued by Tahlina Nofire are null and void, ab initio.

IT IS FURTHER ORDERED that the only legitimate Alabama-Quassarte District Tribal Court is the District Court recognized by Chief Sam Marshall.

IT IS FURTHER ORDERED that Sam Marshall was legally appointed by the Alabama-Quassarte Tribal Town Governing Committee to complete the remaining term of Wilson Yargee, therefore, Sam Marshall is the only legitimate and legal Chief of the Alabama-Quassarte Tribal Town.

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IT IS FURTHER ORDERED that all Alabama-Quassarte Tribal Town bank depository accounts, section 8A contracts, section 638 contracts and all postal accounts be turned over to the exclusive control of Chief Sam Marshall.

IT IS SO ORDERED.

WENDELL HAYES, CHIEF JUDGE

EXHIBIT 1

EXHIBIT 2

JUDICIAL OFFICER

2101 Wilson Boulevard, Suite 600
Arlington VA 22201-3078
703-812-1900 FAX: 703-812-1901

In the Matter of a Mail Dispute Between

WILSON YARGEE

and

SAMUEL MARSHALL

November 24, 2022

P.S. Docket No. MD 22-341

APPEAL OF INITIAL DECISION

Chief Samuel Marshall appeals the initial decision of the U.S. Postal Service, to deliver mail to Wilson Yargee. This appeal is based upon evidence that proves that the removal of Wilson Yargee and Rovena Yargee as Tribal Town Officers of the Alabama-Quassarte Tribal Town ('**AQTT**" or "**Tribal Town**") was legal and proper as authorized by the 2006 **Alabama-Quassarte Governing Committee Standing Policy & Rules of Procedure, "Removal of Tribal Town Officers," (*See Exhibit 1, Pages 1-2, Paragraph 5),** and as determined by **the AQTT Solicitor** who is legally mandated by the AQTT Constitution and By-Laws to judge and to rule on AQTT intra-Tribal disputes and determine their outcome, (*See Exhibit 2, AQTT Constitution, Article V, 3rd Sentence.)

STATEMENT OF FACTS

1. **The United States Constitution** (Article I, Section 2, Clause 3 and Article I, Section 8) and **the Fourteenth Amendment** recognizes Indian Tribes as Sovereign Nations. As a Sovereign Nation, Indian Tribes have the legal authority to determine

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their own governance structure, to draft and interpret governing laws and to resolve all intra-Tribal Disputes according to intra-Tribal Remedies and according to intra-Tribal law.

2. The Alabama-Quassarte Tribal Town ("AQTT" or "Tribal Town") is a Federally recognized Indian Tribe. As such, they are a Sovereign Nation with their own Constitution, By-Laws, Standing Policies, Rules of Procedure, and intra-Tribal Remedies that govern all intra-Tribal Disputes, (*See **Exhibits 1 & 2**, overview of AQTT Constitution/By-Laws & AQTT Standing Policy and Rules of Procedure, respectively.)

3. AQTT Tribal Members have consistently used their Constitution, By-Laws, Standing Policy, Rules of Procedure and intra-Tribal Remedies to resolve intra-Tribal Disputes since the ratification of their Constitution & By-Laws on January 10, 1939, and approval of the AQTT Governing Committee Standing Policy & Rules of Procedure on March 30, 2006. (*See **Exhibit 3**, Collective Group of AQTT Elder Affidavits.)

4. AQTT Tribal Members have used their legal authority, as a Sovereign Nation, to interpret and give meaning to the words of their Constitution, By-Laws Standing Policy and Rules of Procedure.

5. The AQTT Tribal government is modeled after the United States government. It is a democratic government that is steered by the majority vote of responsible AQTT Members who attend the constitutionally mandated AQTT Membership Meetings the last Thursday of every other month, (*See **Exhibit 3**, Collective Group of AQTT Elder Affidavits.)

6. The AQTT also has a check and balance system that governs the executive and legislative branches (the AQTT Constitution does not have language that

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allows for the creation a Judicial Branch.) This check and balance system is designed to protect the Tribal Town Members from abuse of power or neglect of duty by its AQTT Officers, (*See **Exhibits 1 & 2**, Overview of AQTT Constitution, By-Laws, Standing Policy, Rules of Procedure.), (*See **Exhibit 3**, collective Group of AQTT Elder Affidavits.)

7. All AQTT Tribal Members have notice of all AQTT Membership meetings because they are mandated by the AQTT Constitution to occur on the last Thursday of every other month (*See **Exhibit 1**, AQTT Constitution, Page 4, 2nd Sentence,) and because they have become a custom for the Tribal Town much like going to church on Sunday morning. Current Tribal Town matters are discussed and debated at these Membership Meetings, and Tribal Town Members are given the opportunity to attend and vote on all Tribal matters (*See **Exhibit 3**, Collective Group of AQTT Elder Affidavits.)

8. All AQTT matters are discussed and debated at these constitutionally mandated Membership meetings. Matters are debated and determined by a "majority vote" of AQTT Members present at these Membership Meetings, (* See **Exhibit 2**, AQTT Standing Policy & Rules of Procedure, Page 1-2, Paragraph 5) and (* See **Exhibit 3**, Collective Group of AQTT Elder Affidavits.)

9. AQTT Members have used their legal authority, as a Sovereign Nation, to interpret the words "majority vote" to mean a majority vote cast by responsible AQTT Members present at Tribal Town Membership meetings (*See **Exhibit 2,** Standing Policy & Rules of Procedure) **&** (*See **Exhibit 3** , Collective Group of AQTT Elder Affidavits)

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10. The AQTT Membership reinforced and memorialized their interpretation of "majority vote," (especially as it relates to removal of Tribal Town Officers), on March 30, 2006 through approval of the Alabama-Quassarte Tribal Town Governing Committee Standing Policy & Rules of Procedure. On Page 1, under "**Removal of Tribal Town Officers**," the AQTT Governing Committee Standing Policy & Rules of Procedure states that, "**All removals from office shall be by majority vote of the Tribal Town members present at a Tribal Town Membership Meeting." (*See Exhibit 2, Pages 1-2, Paragraph 5.)**

11. The **2006 AQTT Governing Committee Standing Policy & Rules of Procedure** clears up any confusion over the interpretation of the term, "majority vote" and how it relates to Removals of AQTT Officers from Tribal Town Office. It also validates the "majority vote" taken by the AQTT Membership that Removed Wilson Yargee and Rovena Yargee from AQTT Chief and Second Chief at the October 28, 2021 Tribal Town Membership Meeting.

12. AQTT Members passed the Governing Committee Standing Policy & Rules of Procedure in 2006 because they knew interpreting "majority vote of the Tribal Membership" to mean half of the Tribe plus one, would be impractical, inefficient and would result in the complete shutdown of the Tribal Town (*See **Exhibit 3**, AQTT Elder Affidavits.).

13. On October 28, 2021, a constitutionally mandated Membership Meeting was held to discuss the AQTT financial crisis, the missing $718,000 dollars that was transferred to Wilson Yargee to prevent a Tribal Town shutdown, and the ultimate October 2021 shut down of the Tribal Town initiated by Wilson & Rovena Yargee (*See

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Exhibit 3, Group of Collective AQTT Elder Affidavits.)

14. At this AQTT Membership Meeting, Wilson Yargee and Rovena Yargee were asked to account for the AQTT financial crisis, the "missing" $718,000 dollars, and for the October 2021 AQTT shutdown, (*See **Exhibit 3**, Collective Group of AQTT Elder Affidavits.)

15. Wilson Yargee showed up one hour and five minutes late to the October 28, 2021 Membership Meeting. He smelled of cannabis and appeared to be under the influence of this drug, (*See **Exhibit 4 & Exhibit 5**, Affidavits of Mary Tiger & Lena Wind, respectively.)

16. The AQTT Membership demanded answers to their questions regarding the AQTT crisis but neither Wilson Yargee nor Rovena Yargee could answer definitive questions or account for the AQTT financial crisis, the missing $718,000 dollars or for the October 2021 Tribal Town shutdown. (*See **Exhibit 3**, Collective Group of AQTT Elder Affidavits.)

17. As authorized by the AQTT Governing Committee Standing Policy and Rules of Procedure approved on March 30, 2006, "**Removal of Tribal Town Officers**," an AQTT Member made a Motion to Remove both Wilson Yargee and Rovena Yargee "for cause" from AQTT Office. This Motion was properly seconded by a second AQTT Member. (*See **Exhibit 2**, Standing Policy & Rules of Procedure, Page 1, Paragraph 5, "**Removal of Tribal Town Officers**.")

18. Wilson Yargee and Rovena Yargee were given the opportunity to speak but Wilson Yargee responded by stating, "I don't care if I'm impeached," then both Wilson & Rovena Yargee abruptly left the Meeting (*See **Exhibits 4 & Exhibit 5**,

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Affidavits of Mary Tiger & Lena Wind, respectively.)

19. The legal grounds for Removal of Wilson Yargee and Rovena Yargee as AQTT chief and Second Chief were read to the Tribal Town Membership. Legal grounds labeled "For Cause" included, willful neglect of duty, incompetence, conduct unbecoming a Tribal town Officer, mismanagement, and abuse of authority, (*See **Exhibit 6**, List of "For Cause" Removal Charges.)

20. As required by the AQTT Governing Committee Standing Policy and Rules of Procedure, "**Removal of Tribal Town Officers**," a vote was taken by those Tribal town Members present at this Meeting, and by a majority vote of those AQTT Members attending the October 28, 2021 Membership Meeting, Wilson Yargee and Rovena Yargee were removed from AQTT Office (*See **Exhibit 2**, AQTT Governing Committee Standing Policy and Rules of Procedure), (*See **Exhibit 7**, Minutes of the October 28, 2021 Membership Meeting, Pages 18-19.)

21. Both Wilson Yargee and Rovena Yargee subsequently disputed their Removal from AQTT Office.

22. According to the AQTT Constitution and By-Laws, when an intra-Tribal Dispute exists within the Tribal Town, the AQTT Solicitor weighs the evidence and decides the intra-Tribal Dispute. (*See **Exhibit 1**, AQTT Constitution, Article V, Sentence 3).

23. On November 3, 2021 an Extra-Ordinary Meeting was called by the Chairperson of the AQTT Governing Committee (Legislative Branch). The AQTT Solicitor, Elton Smith, was asked to review the evidence relating to the Removal of Wilson Yargee as AQTT Chief and the Removal of Rovena Yargee as AQTT Second

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Chief. Because this was an AQTT intra-Tribal Dispute, the AQTT Solicitor was required to rule on whether the Removal procedure that occurred at the October 28, 2021 Membership Meeting was done properly and whether met legal standards according to AQTT law. If the Solicitor ruled that the Removal procedure was done properly and that legal standards were met according to AQTT law then the Governing Committee requested permission to proceed with the Removal Process through a formal Resolution removing Wilson Yargee and Rovena Yargee as Chief and Second Chief, respectively.

24. Solicitor Smith reviewed the evidence and ruled that the Removal of Wilson Yargee as Chief and the Removal of Rovena Yargee as Second Chief was done properly under AQTT law, and that the Governing Committee could continue the Removal process by memorializing the Removals through an AQTT Removal Resolution. (***See Exhibit 8, Affidavit of AQTT Solicitor, Elton Smith**.)

25. The AQTT Governing Committee then passed a Resolution formally removing Wilson Yargee and Rovena Yargee from AQTT Office, (*See **Exhibit 9**, Removal Resolution.)

26. On December 30, 2021, thirty-three members of the AQTT met outside AQTT facilities for the Membership Meeting mandated by the AQTT Constitution. Upon arrival, Tribal Town Members discovered that the AQTT facility had been illegally blocked and locked by Wilson Yargee. Despite being locked out of the building by Wilson Yargee, the 33 members (the largest turnout of Tribal Members every recorded at a Membership Meeting), unanimously voted to approve a Motion to "re-enforce" the Removal of Wilson Yargee and Rovena Yargee from AQTT Office. (*See **Exhibit 10**, December 30, 2021 AQTT Meeting Minutes at 4-5) and (*See **Exhibit 3**, Collective

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Group Affidavits of AQTT Elders.)

27. AQTT Members used their governmental check and balance system and the legal authority of their Constitution, By-Laws, Standing Policy and Rules of Procedure, to protect the AQTT people from an incompetent and neglectful Chief and Second Chief who had led the AQTT into financial disaster. As a Sovereign Nation, the AQTT had the legal right to Remove these Tribal Town Officers. The Alabama-Quassarte Tribal Town governmental system and their Constitution worked, as intended, to protect the safety, health and welfare of their Members.

LEGAL ARGUMENT

Under well-established federal case law, the principles of self-determination and deference to Tribal Sovereignty strictly prohibit the Federal government or any of its Federal entities from interfering into the internal matters and internal disputes of a Tribal government. *See **Nero v. Cherokee Nation**, 892 F. 2d 1457, 1463 (10th Cir. 1989). This law applies with particular force to intra-Tribal disputes regarding the proper composition of a Tribe's governing body. *See **Bucktooth v. Acting Eastern Area Director**, 29 IBIA 144, 149 (1996).

The U.S. Postal Service is unequivocally part of the Federal government and the dispute between Chief Samuel Marshall and Wilson Yargee is unequivocally an intra-Tribal dispute. This intra-Tribal dispute is directly related to the proper composition of the Tribe's governing body. As a Sovereign Nation, the AQTT has the legal right to decide its own intra-Tribal Disputes. Under the AQTT Governing Committee Standing Policy & Rules of Procedure, an AQTT Member properly motioned for the removal of

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Wilson Yargee and Rovena Yargee as AQTT Officers, (***See AQTT Governing Committee Standing Policy and Rules of Procedure**, Pages 1, Sentence 1, under "**Removal of Tribal Town Officers**.") By a majority vote of the AQTT Members present at the Tribal Town Membership Meeting held on October 28, 2021, Wilson Yargee was Removed as AQTT Chief and Rovena Yargee was Removed as AQTT second Chief. These Removals were done in accordance with AQTT law, and in accordance with the AQTT Constitution, By-Laws and the 2006 AQTT Governing Committee Standing Policy & Rules of Procedure.

In your Initial Decision, you chose one purported governing body over another governing body by selecting Wilson Yargee to receive mail over Chief Samuel Marshall. Your action directly interferes with an internal matter and with an internal dispute of the Alabama-Quassarte Tribal Town, as it relates to the proper composition of its governing body. According to Federal case law you do not have this legal authority, (*See **Nero v. Cherokee Nation** and **Bucktooth v. Acting Eastern Area Director**.) You do not have the legal authorization to pick between two competing Tribal governmental bodies. Your Initial Decision is an illegal action that flies in the face of well-established federal case law. Your decision also creates substantial legal liability for your federal institution.

The Alabama-Quassarte Tribal Town has filed a federal lawsuit in the District Court for the Eastern District of Oklahoma (Case No. 6:22-CV-00268), and a federal judge will determine if proper procedure was followed by the Alabama-Quassarte Tribal Membership, and their Governing Committee, regarding the removal of Wilson Yargee and Rovena Yargee from AQTT Office. The U.S. Post Office does not have the legal authority to make this decision.

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Under Article V, Sentence 3 of the Tribal Town Constitution, (*See **Exhibit 1**) the Tribal Town Solicitor, not the U.S. Post Office, decides all disputes between the Chief and the Governing Committee. In this dispute, the matter was presented to the Tribal Town Solicitor and the Solicitor decided that Wilson Yargee and Rovena Yargee were properly removed from AQTT Office, *(**See Exhibit 8, Affidavit of Solicitor Elton Smith**.)

In your Initial Decision, you state that Chief Samuel Marshall has the burden of proving that Mr. Yargee was lawfully removed as the AQTT's Chief. *See Twohatchet and Poolaw*, MD 11-264 (citing *Sylvia T. Arzate and John Marcus*, MD 04-181, 2005 WL 8152943 (I.D. February 28, 2005)). In this AQTT Appeal, Chief Marshall has submitted conclusive evidence proving that Wilson Yargee and Rovena Yargee were legally removed. You also state that the AQTT has 351 adult members (Finding 1), and that it needs "a majority vote of the members of the town" (or 176 Members) to remove Mr. Yargee as chief as required by Article VII of the AQTT Constitution. Your reading of AQTT law is an inaccurate reading, and your interpretation of the required AQTT "majority vote" is an inaccurate interpretation.

As previously shown and proven, the **2006 AQTT Governing Committee Standing Policy and Rules of Procedure**, under "**Removal of Tribal Town Officers**," allows a Tribal Town Member to make a Motion at Membership Meetings to Remove AQTT Officers. It also authorizes Removal of AQTT Officers through a "majority vote" of Members present at the Membership Meeting. The AQTT law was followed by Tribal Town Members at the October 28, 2021 Membership Meeting and the Removal of Wilson Yargee as Chief and Rovena Yargee as Second Chief was legal. Chief Samuel

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Marshall's burden has been met.

Accordingly, the AQTT prays for the following relief:

1. That the Judicial Officer issue an Order directing the Wetumka Postmaster to deliver all past, present and future AQTT mail to Chief Samuel Marshall.

2. That the Judicial Officer issue an injunction barring the Wetumka Postmaster from delivering AQTT mail to anyone other than Chief Samuel Marshall.

Respectfully submitted,

_____

Chief Samuel Marshall

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