24-2798

In The
United States Court of Appeals
For the Eighth Circuit

Brendan LaBatte,

Plaintiff-Appellant,

v.

Karen Gangle, Prosecutor for the SWO, in their official capacity; Gary Gaikowski, Chief of Police for the SWO, in their official capacity; Honorable Ruth Burns, Judge for the SWO Tribal Court, in their official capacity; Honorable Michael Swallow, Judge for the SWO Tribal Court, in their official capacity,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
Case No. 1:24-cv-01014
Hon. Eric C. Schulte

BRIEF OF APPELLEES

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Summary and Request for Oral Argument

Brendan LaBatte is a tribal member of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation ("SWO"). LaBatte was pulled over by state police for driving under the influence. LaBatte assaulted a state police officer, fled to Indian Country within the town of Sisseton, and resisted arrest from a SWO police officer. In state court, LaBatte pleaded guilty to assaulting a law enforcement officer was sentenced to two years of imprisonment in the state penitentiary. Following LaBatte's incarceration, the Tribal court dismissed the driving under the influence charge.

LaBatte did not contest the SWO's criminal jurisdiction in Tribal court or exhaust his Tribal remedies. Instead, he sued Appellees (collectively, the "Tribal Officials") in federal court to challenge the scope of the SWO's criminal jurisdiction to charge him with driving under the influence.

The district court determined that it lacked subject matter jurisdiction over LaBatte's complaint.

The Tribal Officials do not believe oral argument is necessary because federal jurisdiction is plainly lacking. If the Court holds oral argument the Tribal Officials believe that fifteen minutes per side is sufficient.

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Statement of Issues

1. **Do the First and Fourteenth Amendments to the United States Constitution provide federal subject-matter jurisdiction for a claim against an Indian Tribe?**

The district court determined that the United States Constitution did not apply to the SWO, the First and Fourteenth Amendments did not provide a cause of action, and LaBatte failed to establish subject-matter jurisdiction.

Apposite Authorities:

Santa Clara Pueblo v. Martinez
436 U.S. 49 (1978)

United States v. Cavanaugh
643 F.3d 592 (8th Cir. 2011)

2. Does the Indian Civil Rights Act provide a private cause of action for injunctive or declaratory relief in federal court?

The district court determined that a writ of habeas corpus was the exclusive remedy for an alleged violation of the Indian Civil Rights Act ("ICRA") and that ICRA did not provide LaBatte with a private right of action to seek injunctive or declaratory relief in federal court. The district court concluded that LaBatte failed to establish federal subject-matter jurisdiction.

Apposite Authorities:

Indian Civil Rights Act
25 U.S.C. § 1302

Santa Clara Pueblo v. Martinez
436 U.S. 49 (1978)

Cross v. Fox
23 F.4th 797 (8th Cir. 2022)

3. Did LaBatte establish federal court jurisdiction?

The district court did not reach the jurisdictional issues of mootness, intra-tribal disputes, or whether the Tribal Officials enjoyed sovereign immunity. It also did not reach the issue of whether LaBatte failed to exhaust his Tribal court remedies.

Apposite Authorities:

Nat'l Right to Life Political Action Comm. v. Connor
323 F.3d 684 (8th Cir. 2003)

Iowa Mut. Ins. Co. v. LaPlante
480 U.S. 9 (1987)

Runs After v. United States
766 F.2d 347 (8th Cir. 1985)

Baker Elec. Co-op v. Chaske
28 F.3d 1466 (8th Cir. 1994)

Statement of the Case

On October 15, 2022, LaBatte was observed by a City of Sisseton police officer driving "head on with my vehicle," swerving "into a yard," traveling "through two yards, almost hit[ting] another vehicle," and continuing to drive. (App. 23, R. Doc. 1-4 at 2.) After stopping, LaBatte "took off on foot," and ran "towards [tribal] Housing," which resulted in a request for "Tribal units" to assist. (*Id.*) LaBatte admits that the tribal housing in the City of Sisseton is Indian Country. (App. 5, R. Doc. 1 at 5, ¶ 20 n. 4.)

When LaBatte returned to his vehicle, the city police officer "grabbed Mr. LaBatte's right wrist" but LaBatte pushed off and fled. (App. 23, R. Doc. 1-4 at 2.) LaBatte ran towards tribal housing again and "went into a housing unit." SWO police arrested LaBatte in Tribal housing. (*Id.*)

LaBatte was charged by the SWO prosecutor with resisting arrest and driving under the influence. (App. 25, R. Doc. 1-5 at 1.) South Dakota charged LaBatte with simple assault against law enforcement officer. (App. 83, R. Doc. 1-6 at 1.)

On January 23, 2024, LaBatte filed a motion to dismiss with the SWO tribal court. (App. 26-27, R. Doc. 1-7 at 1-2.) On January 25, 2024, the SWO

prosecutor filed a response opposing the motion to dismiss relying upon a 2019 Tribal Council Resolution, which provides that a tribal member should not be charged under tribal law if they have "been convicted and sentenced by the Federal or a State government for the same offense arising out of the same incident." (App. 20, R. Doc. 1-3 at 1.) At the time of these filings, LaBatte had yet to be convicted or sentenced by the state court. (App. 79, R. Doc. 28-1 at 2 ¶4.)

On February 28, 2024, LaBatte pleaded guilty in state court to simple assault against a law enforcement officer. (App. 83-84, R. Doc. 1-6 at 1-2.) LaBatte's guilty plea stated he would "be incarcerated in the South Dakota State Penitentiary for a period of two (2) years" with a year suspended if LaBatte met several conditions. (*Id.*)

On July 17, 2024, the tribal court dismissed LaBatte's DUI charge based on his state incarceration. (App. 82, R. Doc. 28-2 at 2.)

Summary of Argument

The district court correctly rejected LaBatte's challenge to the SWO's jurisdiction. The amended complaint only alleged violations of the United States Constitution, which does not apply to the SWO, and a violation of the Indian Civil Rights Act, which does not provide a private cause of action. LaBatte has not presented a viable federal cause of action.

LaBatte has never established federal jurisdiction. Instead, he asked the district court—and now asks this Court—for an advisory opinion that the SWO lacks criminal jurisdiction over LaBatte (and unspecified others) for future hypothetical tribal charges.

The district court did not address the myriad other reasons why LaBatte's amended complaint failed as a matter of law. This Court can affirm on any basis in the record. Accordingly, even if the district court erred in its analysis—which it did not—this Court should still affirm the order and judgment dismissing LaBatte's amended complaint.

Standard of Review

"A district court's dismissal of a complaint for lack of subject matter jurisdiction is subject to de novo review." *LeMay v. U.S. Postal Serv.*, 450 F.3d 797, 799 (8th Cir. 2006); *Cross v. Fox*, 23 F.4th 797, 800 (8th Cir. 2022). "The plaintiff bears the burden to establish subject matter jurisdiction." *Two Eagle v. United States*, 57 F.4th 616, 620 (8th Cir. 2023). Dismissal may be affirmed "on any basis supported by the record." *Moffit v. State Farm Mutual Automobile Ins. Co.*, 11 F.4th 958, 960 (8th Cir. 2021).

Argument

I. The district court correctly ruled that the United States Constitution does not provide a private right of action against the Tribal Officials.

The district court observed that "the Fourth and Fourteenth Amendments provide no cause of action that invokes this Court's subject matter jurisdiction." (Add. 8, R. Doc. 32 at 7). That conclusion is correct. In fact, LaBatte concedes that "[i]t is well settled law that Indian tribes are not under the United States Constitution." (Appellant's Br. at 8).

Neither the First nor the Fourteenth Amendment provides LaBatte a federal cause of action against the SWO. "As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978); *see also United States v. Bryant*, 579 U.S. 140, 149 (2016); *Duro v. Reina*, 495 U.S. 676, 693 (1990) ("It is significant that the Bill of Rights does not apply to Indian tribal governments."); *Talton v. Mayes*, 163 U.S. 376, 384 (1896) (noting that the United States Constitution does not apply to proceedings in Tribal courts). "Although Indians are citizens of the United States entitled to the same constitutional protections against

federal and state action as all citizens, the Constitution does not apply to restrict the actions of Indian tribes as separate, quasi-sovereign bodies." *United States v. Cavanaugh*, 643 F.3d 592, 595 (8th Cir. 2011) (citing *Santa Clara* and *Twin Cities Chippewa Tribal Council v. Minn. Chippewa Tribe*, 370 F.2d 529, 533 (8th Cir. 1967)).

Despite conceding that the United States Constitution does not apply to the SWO, LaBatte now argues that *Santa Clara Pueblo* is distinguishable because that case involved membership decisions and not the territorial extent of Tribal jurisdiction. But *Santa Clara Pueblo* did not contain any language limiting its holdings. LaBatte's brief presents no authority whatsoever supporting his self-crafted limitation on *Santa Clara Pueblo*. LaBatte cannot bring a claim against the SWO or the Tribal Officials based on the Fourth or Fourteenth Amendment, regardless of where the alleged violation of those Amendments occurred.

Furthermore, LaBatte argues that "the exercise of extraterritorial criminal jurisdiction violates the Sovereignty of the State of South Dakota and of the United States." (Appellant's Br. at 9.) But LaBatte does not represent the State of South Dakota or the United States, and he may not bring a claim based on the interests of others—much less the sovereign

interest of a government. *See Warth v. Seldin*, 422 U.S. 490, 499 (1975) (noting that a litigant "generally must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties"). Further, a "court does not obtain subject-matter jurisdiction just because a plaintiff raises a federal question in his or her complaint." *Biscanin v. Merrill Lynch & Co.*, 407 F.3d 905, 907 (8th Cir. 2005).

The Fourth and Fourteenth Amendments of the United States Constitution do not apply to the SWO. The district court did not err when it determined that LaBatte could not state a federal claim against the Tribal Officials under the United States Constitution.

II. The district court correctly determined that the Indian Civil Rights Act does not provide a private right of action for injunctive or declaratory relief.

The district court also correctly determined that LaBatte could not pursue a claim for declaratory or injunctive relief against the Tribal Officials under the Indian Civil Rights Act, 25 U.S.C. §§ 1301, *et seq.* ("ICRA"). (Add. 9, R. Doc. 32 at 8.) LaBatte does not appear to address this issue in his briefing to this Court.

ICRA "selectively incorporated, and in some instances, modified the safeguards of the Bill of Rights to fit the unique political, cultural, and

economic needs of the tribal governments." *Santa Clara Pueblo*, 436 U.S. at 65. The "exclusive means for federal-court review" of a violation of ICRA is through a petition for habeas corpus. *Id.* at 67. ICRA "does not [expressly or] impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers." *Id.* at 51; *see also Cross v. Fox*, 23 F.4th 797, 802 (8th Cir. 2022) (stating that "ICRA does not contain a private right of action to seek injunctive or declaratory relief in federal court").

"Congress' failure to provide remedies other than habeas corpus was a deliberate one." *Santa Clara Pueblo*, 436 U.S. at 61. "Because private rights of action to enforce federal law must be created by Congress, we must interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy." *Lakes and Parks Alliance of Minneapolis v. Federal Transit Admin.*, 928 F.3d 759, 762 (8th Cir. 2019). LaBatte offers no argument showing that ICRA provides him with a private right of action against the Tribal Officials.

LaBatte did not bring a habeas corpus petition against the Tribal Officials. He could not have done so because he was not in the custody of the Tribal Officials or even the SWO—he was imprisoned by the State of South Dakota. Nor did LaBatte attempt to pursue any remedy in SWO

Tribal court. *See Santa Clara Pueblo*, 436 U.S. at 65 (observing that "Tribal Courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians").

ICRA does not authorize a private right of action for declaratory or injunctive relief. The district court did not err when it ruled that LaBatte could not pursue declaratory or injunctive relief against the Tribal Officials under ICRA.

III. The district court lacked jurisdiction over LaBatte's amended complaint for a litany of other reasons.

The district court did not address the Tribal Officials' other arguments showing that LaBatte's amended complaint failed for a variety of reasons. This Court need not consider those arguments either because LaBatte has not established any claim giving rise to federal jurisdiction. But because this Court can affirm on any basis in the record, the Tribal Officials briefly present those arguments here.

A. LaBatte's amended complaint is moot.

LaBatte is no longer charged by the Tribal Officials with any crime that allegedly occurred on fee land. Because his DUI charge has been dismissed, LaBatte's claim is moot and must be dismissed.

"The Supreme Court has repeatedly described the mootness doctrine as 'the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).'" *Nat'l Right to Life Political Action Comm. v. Connor*, 323 F.3d 684, 691 (8th Cir. 2003) (*quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000)); *McCarthy v. Ozark School Dist.*, 359 F.3d 1029, 1035 (8th Cir. 2004).

There currently exists no real or concrete dispute between LaBatte and the Tribal Officials. Instead, LaBatte presents a purely hypothetical dispute about the scope of the SWO's criminal jurisdiction, which is not concrete or definite. *See Zanders v. Swanson*, 573 F.3d 591, 593 (8th Cir. 2009) ("The difference between an abstract question and a 'case or controversy' is one of degree, of course, and is not discernible by any precise test. The basic inquiry is whether the conflicting contentions of the parties present a real, substantial controversy between parties having adverse legal interests, a

dispute definite and concrete, not hypothetical or abstract."). LaBatte's general aversion to Tribal law is not a cognizable dispute with the Tribal Officials. *See Valley Forge*, 454 U.S. at 471 ("The requirements of Art. III are not satisfied merely because a party requests a court of the United States to declare its legal rights and has couched that request for forms of relief historically associated with courts of law in terms that have a familiar ring to those trained in the legal process."). Any future dispute between LaBatte—or other unnamed Tribal members—and the SWO about the SWO's criminal jurisdiction on fee land is purely hypothetical.

LaBatte may not obtain an advisory opinion on the extent of the SWO's criminal jurisdiction.

B. LaBatte is required to bring this intra-tribal dispute in SWO Tribal court, not federal court.

LaBatte's dispute is between a tribal member and the SWO over Tribal law. Specifically, LaBatte's suit attacks the SWO Supreme Court's decisions (App. 2, R. Doc. 1 at 2 ¶ 5); the SWO's Code of Laws (App. 2, R. Doc. 1 at 2 ¶ 5 n.1); Tribal Council Resolutions (App. 2, R. Doc. 1 at 2 ¶ 6 n.2); the SWO's interpretation of its 1867 Treaty with the United States (App. 3, R.

Doc. 1 at 3 ¶ 14); and the SWO's inherent sovereignty (App. 7, R. Doc. 1 at 7 ¶ 33).

LaBatte's suit must be dismissed because federal courts lack jurisdiction to resolve intra-tribal disputes. *See Runs After v. United States*, 766 F.2d 347, 352-53 (8th Cir. 1985) (holding that interpretation of tribal resolutions was a matter for tribal courts); *Sac and Fox Tribe of the Miss. in Iowa v. Bear*, 258 F. Supp. 2d 938, 944 (N.D. Iowa 2003) (rejecting an attempt to frame an alleged violation of tribal law as a RICO claim), *aff'd* 340 F.3d 749 (8th Cir. 2003). LaBatte's lawsuit "would necessarily require the district court to interpret the tribal constitution and tribal law. We believe the district court correctly held that resolution of such disputes involving questions of interpretation of the tribal constitution and tribal law is not within the jurisdiction of the district court." *Runs After*, 766 F.2d at 352. "Because tribal governance disputes are controlled by tribal law, they fall within the exclusive jurisdiction of tribal institutions." *Attorney's Process and Investigation Services, Inc. v. Sac & Fox Tribe of Mississippi of Iowa*, 609 F.3d 927, 943 (8th Cir. 2010)*; see also Goodface v. Grassrope*, 708 F.2d 335 (8th Cir. 1983). "Jurisdiction to resolve internal tribal disputes [and] interpret

tribal constitutions and laws . . . lies with Indian tribes and not in the district courts." *Meskwaki Casino Litig.*, 340 F.3d 749, 763 (8th Cir. 2003).

"[T]he Supreme Court has determined that tribal courts are best qualified to interpret and apply tribal law. Thus, in this Circuit, we defer to the tribal courts interpretation of tribal law." *Prescott v. Little Six, Inc.*, 387 F.3d 753, 756 (8th Cir. 2004) (internal citations omitted); *see also Runs After*, 766 F.2d at 352 ("[D]isputes involving questions of interpretation of the tribal constitution and tribal law is not within the jurisdiction of the district court."); *Weeks Const., Inc. v. Oglala Sioux Housing Authority*, 797 F.2d 668, 673 (8th Cir. 1986) ("dispute arose on the reservation and raises questions of tribal law interpretation within the province of the tribal court."). LaBatte's dispute concerning the SWO's Constitution, laws, tribal court precedent, and policy must be brought in tribal court.

C. The Tribal Officials are protected by sovereign immunity.

LaBatte's amended complaint specifies that each Tribal Official is sued in his or her official capacity. The Tribal Officials share in the SWO's immunity because "[a] suit against a governmental actor in his official capacity is treated as a suit against the government itself." *Brokinton v. City of Sherwood, Ark.*, 503 F.3d 667, 674 (8th Cir. 2007). It is well established that

"tribal officers are clothed with the Tribe's sovereign immunity," *Baker Elec. Co-op v. Chaske*, 28 F.3d 1466, 1471 (8th Cir. 1994), and "extends to tribal officials who act within the scope of the tribe's lawful authority." *Kodiak Oil & Gas (USA) Inc. v. Burr*, 932 F.3d 1125, 1131 (8th Cir. 2019); *see Miller v. Wright*, 705 F.3d 919, 927-28 (9th Cir. 2013) ("Tribal sovereign immunity extends to tribal officials when acting in their official capacity and within the scope of their authority.").

Ex parte Young does not apply here because LaBatte fails to allege that any Tribal Official is continuing to violate a federal law. *See Cory v. White*, 457 U.S. 85, 91 (1982). *Ex Parte Young* would not apply to the Tribal Officials' actions taken under SWO law. *Montgomery v. Flandreau Santee Sioux Tribe*, 905 F. Supp. 740, 746 (D.S.D. 1995). And *Ex parte Young* does not apply when the judgment sought "implicates special sovereignty interests," such as the SWO's treaty rights. *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 287 (1997). Nor does *Ex parte Young* apply when "the [SWO] is the real, substantial party in interest, as when the judgment sought would expend itself on the public treasury or domain, or interfere with public administration." *Virginia Office for Protection and Advocacy v.*

Stewart, 563 U.S. 247, 255 (2011) (internal citations and quotation marks omitted).

LaBatte's claims are therefore barred by sovereign immunity.

D. LaBatte failed to exhaust his Tribal court remedies.

Even if LaBatte could survive those jurisdictional defects, he never gave the SWO courts an opportunity to rule on the jurisdictional question. As a prudential rule, "a federal court should stay its hand 'until after the Tribal Court has had a full opportunity to determine its own jurisdiction.'" *Strate v. A-1 Contractors*, 520 U.S. 438, 449 (1997); *Stanko v. Oglala Sioux Tribe,* 916 F.3d 694, 699 (8th Cir. 2019). "Regardless of the basis for jurisdiction, the federal policy supporting tribal self-government directs a federal court to stay its hand in order to give the tribal court a 'full opportunity to determine its own jurisdiction.'" *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987). "Until appellate review is complete, [an Indian tribe's] Tribal Courts have not had a full opportunity to evaluate the claim and federal courts should not intervene." *Gaming World Int'l v. White Earth Band of Chippewa Indians*, 317 F.3d 840, 850-51 (8th Cir. 2003).

Here, LaBatte never presented his jurisdictional argument to the Tribal Court—indeed, the charge at issue was dismissed by the Tribal Court.

Because LaBatte did not exhaust his Tribal Court remedies, federal courts should not step in to rule on the extent of the SWO's jurisdiction in the first instance.

IV. LaBatte's extraterritoriality argument does not establish federal jurisdiction and is wrong on the merits.

LaBatte asks this Court to judicially restrict the criminal jurisdiction exercised by the SWO based on the Supreme Court's determination that Congress terminated the Lake Traverse Indian Reservation. *See DeCoteau v. Dist. Cnty. Ct. for Tenth Jud. Dist.*, 420 U.S. 425, 428 (1975) (finding that an 1891 federal allotment law "terminated the Lake Traverse Reservation, and that consequently the state courts have jurisdiction over conduct on non-Indian lands within the 1867 reservation borders"). There are multiple reasons this Court should reject that argument.

First, LaBatte ignores the reality that he has not—and cannot—establish federal jurisdiction in this matter. "The requirement that jurisdiction be established as a threshold matter is inflexible and without exception for jurisdiction is power to declare the law, and without jurisdiction the court cannot proceed at all in any cause." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 5778 (1999). Without jurisdiction, "the only

function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998). Because there is no federal cause of action—and because there are multiple other jurisdictional defects in LaBatte's case—the district court correctly dismissed LaBatte's amended complaint.

Furthermore, LaBatte's argument that the SWO's criminal jurisdiction is limited to only its territory is wrong. The Sixth Circuit recently explained that a tribe's inherent sovereignty extends to both its members and its territory. *Kelsey v. Pope*, 809 F.3d 849, 856 (6th Cir. 2016). LaBatte's reliance on cases involving tribal jurisdiction over non-members fails for the same reason explained in *Kelsey*: tribal membership is "a crucial distinction given the importance of tribal membership in determining various aspects of tribal sovereignty." *Id.* at 857. And LaBatte's attempt to distinguish *Kelsey* is not effective. Tribal jurisdiction did not turn on the severity of the crime or the status of the defendant as a tribal leader—it was a function of the tribe's inherent sovereignty. *See id.* at 859 ("In sum, Indian tribes possess the inherent sovereign authority to try and punish members on the basis of tribal membership.").

LaBatte has not identified any manner in which Congress or a treaty expressly limited the SWO's inherent authority to exercise criminal jurisdiction over its members. LaBatte has not identified any manner in which the SWO was implicitly divested of its inherent authority by virtue of its domestic dependent status. To the contrary, the SWO is one of nine federally recognized Indian tribes located in the State of South Dakota. All three branches of the federal government recognize the SWO as a sovereign Indian tribe: Congress, Pub. L. No. 93-491, 88 Stat. 1468 (1974), Pub. L. No. 95-398, 92 Stat. 850 (1978), and Pub. L. No. 98-513, 98 Stat. 2411 (1984); the judicial branch, *South Dakota v. U.S. Dept. of Interior*, 665 F.3d 986, 987 (8th Cir. 2012); *see Sioux Tribe v. United States*, 500 F.2d 458, 463 (Ct. Cl. 1974); and the executive branch, *Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 89 Fed. Reg. 944, Jan. 8, 2024.

The SWO's 1966 Constitution provided that: "The jurisdiction of the Sisseton-Wahpeton Sioux Tribe shall extend to lands lying in the territory within the original confines of the Lake Traverse Reservation as described in Article III of the Treaty of February 19, 1867." *See DeCoteau*, 420 U.S. at 443. This provision is still in the SWO Constitution. Thus, the members of

the SWO, not the Tribal Council, determined and consented to the reach of the SWO's jurisdiction under the Constitution, which makes this dispute an internal tribal dispute.

Even if federal courts had jurisdiction over LaBatte's amended complaint, LaBatte's effort to judicially restrict the SWO's criminal jurisdiction over tribal members must be rejected.

Conclusion

LaBatte's amended complaint failed to establish any viable federal cause of action and any basis for federal jurisdiction.

The Tribal Officials request that this Court affirm the decision and judgment of the district court.

DATED: December 5, 2024

By: /s/Timothy W. Billion
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Certificate of Brief Length

The undersigned counsel for Appellees certifies that this brief complies with the requirements of Fed. R. App. P. 32(a)(7)(B) in that it is printed in 14 point, proportionately spaced typeface utilizing Microsoft Word 2016 and contains 3,677 words, including headings, footnotes, and quotations.

DATED: December 5, 2024 By: /s/ Timothy W. Billion

Certificate of Virus Check

The undersigned counsel for Appellees hereby certifies under 8th Cir. R. 28A(h)(2) that the brief has been scanned for computer viruses and that the brief is virus free.

DATED: December 5, 2024 By: /s/ Timothy W. Billion

Certificate of Service

The undersigned counsel for Appellees hereby certifies that on December 5, 2024, he electronically filed the Brief of Appellees with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. He certifies that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

DATED: December 5, 2024 By: /s/ Timothy W. Billion