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**In the United States Court of Appeals**  
**for the Eighth Circuit**

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BRENDAN LABATTE,

*Plaintiff - Appellant,*

v.

KAREN GANGLE, PROSECUTOR FOR THE SWO, IN THEIR OFFICIAL  
CAPACITY, GARY GAIKOWSKI, CHIEF OF POLICE FOR SWO, IN THEIR  
OFFICIAL CAPACITY, HON. RUTH BURNS, JUDGE FOR THE SWO TRIBAL  
COURT, IN THEIR OFFICIAL CAPACITY, HON. MICHAEL SWALLOW, JUDGE  
FOR THE SWO TRIBAL COURT, IN THEIR OFFICIAL CAPACITY,

*Defendants - Appellees.*

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On Appeal from the United States District Court  
for the District of South Dakota

No. 1:24-cv-01014  
Hon. Eric C. Schulte

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**REPLY BRIEF**

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## **Reply Brief**

### **INTRODUCTION**

Appellants Reply brief reasserts all arguments previously made in the circuit court record and Appellants Appendix. The circuit court addressed jurisdiction under Federal Rules of Civil Procedure 12(b)(1) if the court had jurisdiction based upon two questions. First does the Indian Civil Rights Act provide a cause of action or second does the United States Constitution. (App. 106-114; R. Doc. 32 at 1-9 & App. 115; R. Doc. 33 at 1.)

It is the Appellants position the circuit court erred for the reason outlined and argued in both the record and in Appellants brief submitted to this court for your consideration.

### **ARGUMENT**

#### **A. The Criminal Jurisdiction is a Federal Question giving United State District Court the Authority to Adjudicate the Extent of its Jurisdiction.**

As plead in the complaint the ultimate question that was posed was the extent of the Tribes Jurisdiction. (App. 3; R. Doc. 1 at 3). The question of jurisdiction of a tribe is a judiciable act that can occur in the District Court of the United States. As 28 U.S.C. section 1331 which states, “ The district courts shall have original jurisdiction of all civil

actions arising under the Constitution, laws, or treaties of the United States.” A tribe’s jurisdiction under a treaty and under federal specifically the interpretation of the 1867 Treaty of Lake Traverse which has been disestablished is a classic question of Indian Law that a Federal Court can entertain.

### **B. The Tribe Cannot Assert Extraterritorial Jurisdiction.**

As argued in the Plaintiff’s brief territory and jurisdiction go hand-in-hand and cannot be separated. (Pl. Brief p. 10–11). This, as was argued in the brief goes well back to the foundations of Indian law such as in *Talton v. Mayes*, 163 U.S. 376 (1896). and *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).

No federal case but for one *Kelsey v. Pope*, 809 F.3d 849 (6th Cir. 2016). This case is an outlier and the only case to touch upon extraterritorial jurisdiction. It stands out as a sore thumb against previous Court decisions. The defendants, through their brief, attempt to make it a widely known and supported decision, which it is not. The appellees seek for this circuit to adopt *Kelsey* in order to justify the extraterritorial jurisdiction the Defendant’s assert.

### **C. The Action Is Not Moot.**

The Circui Court made no determination as to whether or no LaBatte’s claim was moot. (App. 106-114; R. Doc. 33 at 1-9.) The issue

was briefed by the Appellant in his “Reply Brief to Defendant’s Motions. (App. 87-89; R. Doc. 30 at 2-5.) Two exceptions cover LaBatte’s action to the mootness doctrine. Namely, the voluntary cessation yet evading review *See Friends of the Earth, Inc. v. Laidlaw Env’t Servs. TOC) Inc.*, 528 U.S. 167, 189 (2000) (voluntary cessation). And capable of repetition yet evading review see *Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 795 (8th Cir. 2016).)

The dismissal of the charge of DUI which occurred wholly on State’ grounds is not moot. First, the voluntary cessation of the prosecution falls clearly under the first exception to mootness. Likewise, it is a charge and policy that is easily reinstated. The Defendants have made no change to their judicial and legislative policy of asserting criminal jurisdiction over tribal member on State owned fee land. Furthermore, it is a policy that can be repeated, holding tribal members for criminal offenses that occur on fee, State land without the possibility of review.

**D. LaBatte As An American Citizen Should Receive The Protections Of the Constitution When a Foreign Government Asserts Jurisdiction Over Him For Actions Occurring Outside of The Foreign Jurisdictions Territory.**

There seems to be no debate that LaBatte is an American Citizen and a member of the Sisseton-Wahpeton Oyate by either party to this action. As argued in Appellant’s brief LaBatte is an American Citizen

and through the Indian Citizenship Act he is guaranteed the protections and privileges of being a citizen. (Appellants' Brief pp. 8–9.) The crux of the problem is LaBatte also therefore protected by the incursion of a foreign government, here the Sisseton-Wahpeton Oyate. Appellees rest heavily upon the case *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). For the general proposition that the United States Constitution is not applicable to Tribal Governments. However, *Santa Clara* deals entirely with intra tribal matters where the Tribe's jurisdiction is sacra mount. Namely the determination of who is a tribal member. *Santa Clara* is not applicable for the purposes of determining if a Tribe can assert extraterritorial jurisdiction and the application of the American Indian Civil Rights to such actions.

**E. The Circuit Court has Jurisdiction Over This Action as Criminal Jurisdiction is a Federal Question.**

Appellant reasserts his argument that the determination of criminal jurisdiction of Indian Country is a federal question. Appellants Brief p 10. Furthermore that such reviwability by the District Court arises under 28 U.S.C. section 1331.

**F. LaBatte Did Not Fail To Exercise Tribal Remedies As Such Would Be Futile.**

Throughout the record and argument from the parties the Sisseton-Wahpeton Oyate has both statutorily and judicially confirmed it's exercise of criminal jurisdiction "within the Exterior boundaries of the reservation". This assertion of assertion of jurisdiction has been upheld not once, but twice. Specifically in the *Vernon Cloud* decision the first of it's decisions upholding tribal jurisdiction over members on fee, State lands. (App. 92-93; R. Doc. 30 at 7-8.) As argued before the Circuit Court, "Since *Strate* the Eighth Circuit has not required litigant to adjudicate the full merits of their case before a federal court can assert jurisdiction. (App. 92; R. Doc. 30 at 7.) As argued to the Circuit Court, "Here LaBattes case seeking tribal court exhaustion would be futile and just for delay." (App. 92; R. Doc. 30 at 7.)

**G. Tribal Sovereign Immunity Is Not Applicable In This Case.**

LaBatte brought his action against the Appellees for declaratory and injunctive relief. It has been held by the Supreme Court that, "tribal immunity does not bar such a claim for injunctive relief against individuals, including tribal officers, responsible for unlawful conduct." *Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2035, 188 L.2Ed..2d. 1071 (2014). The circuit court did not address this issue as to



sovereign immunity but rather rested upon other issues under Federal Rules of Civil Procedure 12(b)(1). LaBatte asserts that since his suit was for injunctive and declaratory relief it is not barred by the Doctrine of sovereign immunity. (App. 90-91; R. Doc 30. at 6-7.)

## **CONCLUSION**

Wherefore, the Appellant requests that it grants request for relief and to remand the case back to circuit court and to find that the circuit court does have jurisdiction to entertain a challenge to the extraterritorial assertion of criminal jurisdiction.

Doody Law Office

Respectfully submitted,

Dated: January 6, 2025

By: /s/ Robert Doody

Attorney for  
Plaintiff - Appellant  
Brendan LaBatte

## **CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains **1,147 words**, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface, **14-pt Century Schoolbook**, using TypeLaw.com's legal text editor.

3. This brief complies with the electronic filing requirements of Eighth Circuit Rule 28A(h) because this brief and addendum have been scanned for viruses and are virus-free.

Doody Law Office

Respectfully Submitted

Dated: January 6, 2025

By: /s/ Robert Doody

Robert Doody

For Brendan LaBatte

## **Certificate of Service**

I hereby certify that I electronically filed the foregoing **REPLY BRIEF** with the Clerk of the Court by using the Appellate CM/ECF system on **January 6, 2025**. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Doody Law Office  
Respectfully submitted,

Dated: December 31, 2024

By: /s/ Robert Doody  
Attorney for  
Plaintiff - Appellant  
Brendan LaBatte