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DEC 09 2025

Clerk, U.S. Courts
District of Montana
Missoula Division

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MONTANA
MISSOULA DIVISION**

**SARAH MCCLURE, and
COLTON WHEELER,**
Plaintiffs,

CIVIL ACTION NO.:

v.

**MICHAEL FUTRELL,
LOST BOYS CONSTRUCTION**
Defendants.

**NOTICE OF REMOVAL
(CIVIL RIGHTS)
28 U.S.C. §1443(1)
From CSKT Tribal Court
Cause No. 25-0208-CV**

**A RULE 11(b)(2) ARGUMENT to EXTEND, MODIFY, or
REVERSE EXISTING LAW, and/or to MAKE NEW LAW
APPLYING, CONSTRUING, or DEFINING CIVIL RIGHTS
REMOVAL under 28 U.S.C. §1443(1)**

1. I, the undersigned Defendant Michael W. Futrell (aka Michael Wayne Futrell), a White (non-Indian) Independent Contractor, individually and dba Lost Boys Construction, here file this Notice of Removal according, under and pursuant to 28 U.S.C. §1443(1) "Civil Rights Removal."

2. I was sued in Tribal Court of the Salish & Kootenai Tribe on a (seemingly routine, unextraordinary) contract dispute by a customer/Plaintiff whose first cousin is the Tribal Clerk of Court.

Notice of Removal with Rule 11(b)(2) Argument to Extend, Modify, or Reverse Existing Law, and/or to Make New Law Applying, Construing, or Defining Civil Rights Removal under 28 U.S.C. §1443(1)

3. Other potential defendants (independent contractors with Native American racial or cultural identity and/or heritage) involved in the same business series of transactions or occurrences, have not been sued.

4. I have consulted 200 lawyers who have refused to take my case or defend me---and I have actually paid and retained several who withdrew immediately on becoming more fully informed concerning the case. One of these lawyers is willing to testify that the Clerk of Court told him "they" do not want him to have any representation in this Court.

5. I am aware that Civil rights removal of proceedings from tribal courts to US District Courts has never been allowed to succeed in Montana or any other jurisdiction.

6. Accordingly, I recognize that this must and will be a "case of first impression."

7. I have read and reviewed the Federal removal statutes, including the civil rights removal statute 28 U.S.C. § 1443, and I understand that these apply exclusively to proceedings commenced in "state court" and do not extend to tribal courts under the express language of both 28 USCA § 1443 28 USCA §1441.

8. The Supreme Court in *Nevada v. Hicks*, 533 U.S. 353 (2001) held that tribal courts lack jurisdiction over federal civil rights claims under 42

U.S.C. §1983, and noted that allowing such claims in tribal court would create "serious anomalies" under federal removal statutes because defendants would lack removal rights available in state court proceedings.

9. I, ask this court to sustain my removal, as a matter of first impression, because I the undersigned Defendant, submit and will be competent evidence demonstrate that I will be automatically and absolutely denied both due process and equal protection of the laws merely by bringing the case against me to trial in Tribal Court.

10. I ask this Court to compare my situation to the Supreme Court's holding in *City of Greenwood v. Peacock*, 384 U.S. 808, 827-28 (1966):

this case constitutes one of those:

. . . . rare situations where it can be clearly predicted by reason of operation of pervasive and explicit state or federal law that these rights will inevitably be denied by very act of bringing defendant to trial in state court. 28 U.S.C.A. § 1443(1).

Greenwood v. Peacock, 384 U.S. 808, 828, 83 S.Ct. 1800, 1812, 16 L.Ed.2d 944 (1966).

11. Accordingly, I here submit best argument be under Rule 11(b)(2) to extend, modify, or reverse existing law, or to make new law to permit this removal to go forward and be sustained.

FACTUAL BACKGROUND TO LITIGATION

12. Earlier this year, my company, Lost Boys Construction, LLC, took a small remodel job on the Tribal Lands of the Confederated Salish & Kootenai Tribes (CSKT) in Pablo, Montana, from a tribal member Sarah McClure, whose cousin happens to be Anna McClure, a current and active Salish & Kootenai Clerk of Court (though not the only clerk of court). The total value of this contract was (originally) under \$12,000.00 (See Exhibits A & B).

13. In doing this job there where many reversals and challenges (albeit of an ordinary, mundane sort), for example: installing a door to come back the next day to find it was smashed/broken, then being told we needed to repurchase a door and install for free. Furthermore, Ms. McClure ordered all the wrong materials then blamed us for her errors.

14. On May 30th, 2025, we were let go from the job on the grounds of asking for the last payment and the fact we would no longer pay for the damages that Ms. McClure or Mr. Wheeler caused to their own home, wanting instead, for us to pay for their damages out of our account.

15. At this time this time the job was 95% complete.

16. Ms. McClure filed a claim against my ("Lost Boys") business insurance which was denied her claim on June 23, 2025. My business partners and I thought this was done.

17. On August 6, 2025 I personally received a summons to tribal court over this matter (Exhibit A), which I answered (Exhibit B).

18. I went to the first hearing on the October 2, 2025 to be informed I was being sued for the same amount as was owed to my business.

19. I asked the judge for a list of attorneys that could help me. I was given a list and called every number (over 200)(see Exhibit C).

20. They all informed me they could not help me as it would be a conflict of interest for them. This included even their public defenders (who are apparently available to handle civil as well as criminal cases).

21. So I started looking for nontribal attorneys, outside of the tribe. I found one, a certain Mr. Alden Big Man on September 16, 2025. After many discussions, he was interested in taking this on as my advocate and counsellor.

22. When the Plaintiff Sarah McClure was informed of this, she filed a motion to have him barred from the case on September 17, 2025 (Exhibit D).

23. **Mr. Big-Man and I were in shock at this. When Mr. Big Man inquired about this, the tribe said "we don't want him represented".**

24. After this, I did find one more attorney willing to help from another tribe. He was told they would take his license if he did help (he wishes to not be named, unless the Court orders disclosure).

25. I filed a motion to dismiss as I believe there is a conflict of interest here. I am being sued by Sarah McClure and the only clerk of the court who takes action on my case is her cousin Anna McClure.

26. I went to the 2nd hearing on December 2, 2025. The judge said out loud, unprompted, that she is not keeping me from getting counsel on this matter and that I should not think that. It was at that moment, and that moment only, that I would be denied equal protection of the laws merely by appearing for trial in this case, and that I could not do worse by default.

**SUMMARY of CONSTITUTIONAL PARITY and FORUM ACCESS
ARGUMENT under RULE 11(B)(2) to ALLOW REMOVAL HERE**

27. I submit and argue, in good faith, under Federal Rule of Civil Procedure 11(b)(2), that this Court may and should extend, modify, or reverse existing law to permit removal from tribal court to federal court as a matter of **Constitutional Parity and Right to Forum Access**.

28. The current statutory framework demarcating the jurisdictional boundaries between State, Tribal, and Federal Courts violates equal protection principles by creating an arbitrary disparity where tribal court defendants are denied the federal forum access automatically available to

state court defendants facing identical federal claims, and that this disparity lacks constitutional justification under current Supreme Court precedent.

29. While no federal court has (yet) accepted this argument to date, the unanimous judicial recognition of anomalies in the current system, combined with the changed circumstances since the removal statutes were drafted when tribal courts were "either nonexistent or not significant," creates a nonfrivolous basis for seeking legal extension under Rule 11(b)(2).

30. Furthermore, the express racial undertones of my case and my position as a lone White Defendant in an Title 25 Indian Tribal Court suggest systemic "insider-managed" discrimination which is both utterly inconsistent with the Fourteenth Amendment and completely consistent with some arguments advanced in favor of civil rights removal as articulated throughout history.

EXISTING FEDERAL REMOVAL FRAMEWORK and
TRIBAL COURT EXCLUSION

31. Federal courts have uniformly held that the removal statutes apply exclusively to state courts and do not encompass tribal courts.

32. The general removal statute, 28 U.S.C. § 1441(a), permits removal of "***any civil action brought in a State court*** of which the district courts of the United States have original jurisdiction." 28 USCA § 1441.

33. Similarly, the civil rights removal statute, 28 U.S.C. § 1443, authorizes removal of civil actions "***commenced in a State court***" that meet specific civil rights criteria. 28 USCA §1443_(bold and italic emphasis added).

34. Circuit courts have consistently rejected attempts to extend these statutes to tribal courts. In ***Becenti v. Vigil***, 902 F.2d 777 (10th Cir., 1990), the Tenth Circuit held that 28 U.S.C. § 1442(a)(1), which provides for removal from "State court" of actions against federal officers, does not authorize removal from tribal courts. The court reasoned that "where Congress has intended to permit removal from courts other than state courts it has expressly said so," and concluded that "Congress has not yet seen fit to incorporate tribal court actions such as the one involved here in its grant of removal jurisdiction to the federal district courts."

35. Multiple district courts have reached identical conclusions. In ***White Tail v. Prudential Ins. Co. of America***, 915 F.Supp. 153 (U.S.D.C. N.D., 1995), the District Court for North Dakota held that "there is no ambiguity in the text of 28 U.S.C. § 1441; it refers specifically to state courts and to state courts only."

36. The ***White Tail*** court emphasized that "when Congress has decided to bring other non-federal trial courts within the ambit of § 1441, it has enacted legislation expressly doing so," pointing to specific statutory

provisions extending removal rights to the District of Columbia Superior Court and Puerto Rico courts as examples of explicit congressional intent.

CONSTITUTIONAL PARITY AND FORUM ACCESS ARGUMENTS

37. I, your undersigned removing defendant, hereby submit that the strongest Rule 11(b)(2) argument for extending removal jurisdiction rests on constitutional equal protection principles and the fundamental right to federal forum access for federal claims.

38. This argument operates on several levels that, while not yet accepted by any court, present nonfrivolous constitutional theories for legal extension.

39. Equal Protection Analysis: The current removal framework creates a classification system where defendants facing identical federal claims receive different procedural rights based solely on whether the case was filed in state court versus tribal court.

40. This disparity lacks rational justification under current equal protection doctrine.

41. While courts have so far rejected racial discrimination arguments in the tribal context, citing the "quasi-sovereign status" of tribes under federal law, *Fisher v. District Court of Sixteenth Judicial Dist. of Montana, in and for Rosebud County*, 424 U.S. 382 (1976) the removal disparity affects all defendants regardless of race or tribal

membership and pertains to access to federal forums for federal claims rather than tribal sovereignty principles.

42. Article III Federal Question Jurisdiction: The Constitution grants federal courts jurisdiction over all cases "arising under this Constitution, the Laws of the United States, and Treaties." USCA CONST Art. III § 2, cl. 1

43. The Supreme Court has consistently emphasized that federal courts are the preferred forum for federal questions, and the removal statutes were designed to ensure defendants could access federal forums when federal law governs their disputes.

44. The arbitrary denial of this access based on court system rather than claim substance contravenes Article III principles.

45. Due Process Forum Access: Where specific conflicts of interest or bias concerns exist—such as the plaintiff's first cousin serving as Tribal Clerk of Court—due process may require access to an alternative forum.

46. Federal courts have recognized that tribal court proceedings must afford "basic tenets of due process" or judgments will not be recognized. *FMC Corporation v. Shoshone-Bannock Tribes*, 942 F.3d 916 (9th Circuit, 2019).

47. The combination of structural conflicts and the complete absence of any alternative forum access creates due process concerns that could support removal jurisdiction.

HISTORICAL OVERSIGHT AND CHANGED CIRCUMSTANCES

48. A compelling argument for legal extension rests on the historical context in which removal statutes were drafted and the fundamental changes in tribal court systems since that time.

49. As cited by the District Court for Southern Mississippi in *Williams-Willis v. Carmel Financial Corp.*, 139 F.Supp.2d 773 (U.S.D.C. S.D. Miss. 2001), legal scholars have noted that "tribal courts were either nonexistent or not significant and therefore were not even on the screen in the original removal context."

50. The Hattiesburg court in *Williams-Willis* observed that "with the growth and development of tribal courts, the removal statutes simply need to be amended to include tribal courts within their purview."

51. This historical oversight argument gains strength from Congress's demonstrated willingness to extend removal jurisdiction when circumstances warrant.

52. The removal statutes have been specifically amended to include the District of Columbia Superior Court 28 USCA §

1451 when those court systems achieved sufficient development and importance. The exclusion of tribal courts appears to reflect historical accident rather than deliberate policy choice.

**ORIGINAL INTENT and HISTORIC TREATMENT of
INDIAN TRIBAL SOVEREIGNTY**

53. The final clause of Article III, Section 2 of the Constitution of the United States provides Federal Court Jurisdiction over “all cases, in law and equity, arising” “between a state, or the citizens thereof, and foreign states, citizens or subjects.”

54. In the origins of our US national identity, Indians were “foreigners.”

55. Indian Tribal Sovereignty, since at least 1831, have been defined as “domestic dependent nations” whose “relation to the United States resembles that of a ward to his guardian.” *Cherokee Nation v.*

State of Georgia, 30 U.S. 1, 5 Pet. 1 (1831)(C.J. John Marshall):

...Though the Indians are acknowledged to have an unquestionable, and heretofore unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; it it may well be doubted whether those tribes which reside within the acknowledged [international] boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations...”

56. The next year, in *Worcester v. State of Georgia*, Chief Justice Marshall continuing his crusade and dissertation upholding Federal judicial
Notice of Removal with Rule 11(b)(2) Argument to Extend, Modify, or Reverse Existing Law, and/or to Make New Law Applying, Construing, or Defining Civil Rights Removal under 28 U.S.C. §1443(1) 12

authority to decide relationships with the Tribes, wrote further that "**the whole intercourse between the United States and this [Cherokee Indian] nation, is, by our constitution and laws, vested in the government of the United States.**" 31 U.S. 515, 6 Pet. 515.

57. Should not removal to Federal Court thus be permitted as it would be in a case transcending international boundaries?

58. The Supreme Court's recent decisions concerning Oklahoma tribal lands do not move Indian reservations toward a legal status more analogous to either states or foreign countries.

59. Instead, these decisions maintain and reinforce the aforementioned unique "domestic dependent nations" framework established in *Cherokee Nation v. State of Ga.*, 30 U.S. 1 (1831).

60. While *McGirt v. Oklahoma*, 591 U.S. 894 (2020) strengthened tribal territorial integrity by confirming reservation boundaries, and *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022) clarified concurrent state jurisdiction over certain crimes, both decisions preserve the distinctive quasi-sovereign status of tribal nations that exists within, but separate from, the federal-state constitutional framework.

61. Functional Equivalence Theory: Modern tribal courts increasingly perform functions equivalent to state courts in adjudicating disputes involving federal law and nonmembers.

62. The empirical evidence cited in recent federal decisions demonstrates that "tribal courts are even-handed in dispensing justice to nonmembers," *FMC Corporation v. Shoshone-Bannock Tribes*, 942 F.3d 916 (*supra*, 2019) undermining any policy rationale for continued exclusion from removal jurisdiction based on bias concerns.

STATUTORY CONSTRUCTION ARGUMENTS FOR EXTENSION

63. The removal statutes contain internal evidence supporting extension to tribal courts through proper constitutional interpretation. Section 1442(d) specifically defines "State court" to include "a tribal court" in the context of federal officer removal, 28 USCA §1442 demonstrating that Congress knows how to include tribal courts when it intends to do so.

64. This creates an argument that the exclusion from general removal statutes reflects drafting oversight rather than intentional limitation.

65. Constitutional Avoidance Doctrine: Courts must interpret statutes to avoid constitutional problems where possible.

66. Given the equal protection and due process concerns created by the current removal gap, extending the statutes to include tribal courts would

eliminate potential constitutional violations while serving the underlying congressional purpose of ensuring federal forum access for federal claims.

PRECEDENTIAL FOUNDATION FOR LEGAL EXTENSION

67. While no court has accepted removal from tribal courts, the recognition of interpretive difficulties in this area provides a foundation for Rule 11(b)(2) arguments. In *Kerr-McGee Corp. v. Farley*, 115 F.3d 1498 (10th Circuit, 1997), the Tenth Circuit noted that "**statutory silence**" on tribal court removal "cannot be converted into an '**express jurisdictional prohibition**' on the exercise of tribal adjudicatory authority," suggesting courts recognize the removal gap creates interpretive difficulties rather than clear congressional intent to exclude tribal courts.

PRACTICAL IMPLICATIONS

68. The current federal removal framework creates substantial disparity between tribal court and state court defendants: both those facing federal claims or those seeking the protection and security from local power-elite prejudice and political manipulation (such as apparent in my present situation).

69. Defendants in tribal courts are denied the removal rights available to all state court defendants, potentially leaving them without access to federal forum for federal questions.

70. For defendants in a position similar to mine, this could mean being forced to litigate federal civil rights issues in a forum with actual or apparent conflicts of interest (tribal clerk relationship to plaintiff) while similarly situated state court defendants would have automatic removal rights, or waiving these rights all together.

RECENT DEVELOPMENTS

71. Recent developments include recognition by courts citing scholarly authority that removal statutes were drafted when tribal courts were "nonexistent or not significant." *Williams-Willis v. Carmel Financial Corp.*, 139 F.Supp.2d 773 (S.D. Miss., 2001).

72. There has been growing scholarly recognition that the removal gap creates anomalies, empirical studies showing tribal courts provide fair treatment to nonmembers, *FMC Corporation v. Shoshone-Bannock Tribes*, 942 F.3d 916 (*supra*, 2019) and recent cases continue to acknowledge the anomaly but apply strict construction pending congressional action---or judicial modification, as I am seeking here.

CONCLUSIONS AND SUMMARY

73. Tribal courts possess inherent sovereign authority to adjudicate disputes involving their members and issues arising on tribal lands, but their

jurisdiction over nonmembers—particularly non-Indians—is limited and subject to significant legal constraints.

74. While tribes retain broad powers to regulate members and tribal territory, civil jurisdiction over nonmember defendants is restricted under the principal Montana exceptions: consensual relationships or conduct that affects tribal integrity.

75. Tribal adjudicatory jurisdiction does not exceed legislative jurisdiction, and without express or implied consent, tribal courts generally lack authority over non-Indians in civil disputes, absent a sufficient nexus to tribal membership or land-related activities.

76. Non-members challenged in tribal courts may seek federal court intervention, but the cost of doing this may be prohibitive in low dollar-value cases such as those in this case, since federal courts often require exhaustion of tribal remedies before review, except under narrowly defined exceptions including tribal bad faith, harassment, or lack of jurisdiction.

77. The tribal exhaustion doctrine reflects federal courts' respect for tribal sovereignty and comity, requiring tribal courts the first opportunity to determine jurisdictional questions, though some cases allow bypass when exhaustion is futile or the tribal court clearly lacks jurisdiction.

78. Federal courts afford comity to tribal judgments but with scrutiny for due process violations or jurisdictional defects.

79. Existing federal removal statutes do not explicitly authorize removal from tribal courts to federal courts based on civil rights claims, reflecting tribal courts' unique jurisdictional status and sovereignty limitations.

See *152 AMJUR TRIALS 71, 116 AMJUR TRIALS 395*.

80. Although tribal courts adjudicate disputes involving tribal members extensively (including contractual matters), non-Indians often face barriers in asserting federal constitutional claims in tribal fora, and federal courts have generally upheld tribal sovereign authority absent explicit jurisdictional prohibitions.

81. Above all, when tribal courts deny due process or equal protection, and particularly where tribal court officials exhibit bias or political control, federal courts may scrutinize tribal judgments more rigorously, including denying enforcement or refusing comity.

82. Tribal forum exhaustion rules balance tribal sovereignty with federal constitutional protections, permitting federal court review only in exceptional circumstances such as tribal court jurisdiction pursued in bad faith or manifest futility.

83. However, given that controlling precedent, including *Nevada v. Hicks*, establishes limitations on tribal jurisdiction over federal civil rights claims and underscores federal courts' deferential but circumscribed approach to tribal adjudications *FPP § 4469, 186 A.L.R. Fed. 71, 116 AMJUR TRIALS 395*, the CSKT Tribal Court, even if it were willing, would lack legal competence to decide my constitutional challenges to the procedures and biases in this case.

PRAYER FOR RELIEF

84. For all the above-and-foregoing reasons, Civil Rights Removal is a safety valve that can and should be, I would say **MUST** be allowed, and

85. WHEREFORE, I, the undersigned Defendant in this case, earnestly and in good faith and conscience move this Court to sustain this Notice of Civil Rights Removal and so to allow my removal to stand, and to sustain Federal Jurisdiction over this case on the above-described, *Greenwood v. Peacock* grounds, namely, that I cannot win in the CSKT Tribal Court controlled by friends and relatives of an unfair plaintiff.

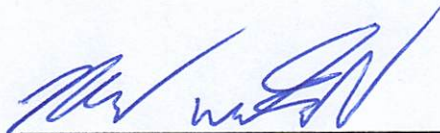
86. To force me to trial under these circumstances is utterly inconsistent with the due process and equal protection guarantees of the Fifth, Ninth, and Fourteenth Amendments, and would constitute a nugatory mockery of due process, equal access to the courts, fair play, and substantial justice.

VERIFICATION & ACKNOWLEDGMENT

87. I, Michael Wayne Futrell, acknowledge, affirm, certify, and swear under my oath and penalty of perjury that I have read the above-and-foregoing document and that all averments of fact set forth therein are true and correct according to my personal knowledge.

Respectfully submitted,

Tuesday
December 9, 2025

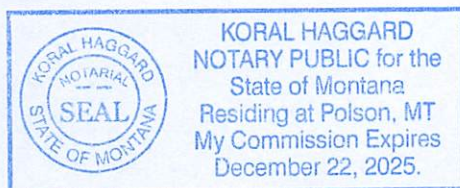



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NOTARY'S JURAT

I am a notary public in and for the County of Lake in the State of Montana.

On this Tuesday, the 9th Day of December 2025, Michael Wayne Futrell, aka "Michael W. Futrell" appeared in person before me to give his oath and to acknowledge, affirm, certify, and swear under penalty of perjury that he had read the above-and-foregoing document and that all averments of fact set forth therein are true and correct according to his personal knowledge.




Notary Public, State of Montana

CERTIFICATE OF SERVICE

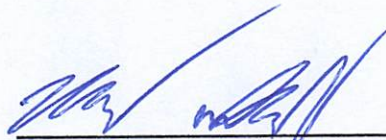
I hereby affirm and certify that, as required by 28 U.S.C. §1446(d), I sent a true and correct copy of the above-and-foregoing Notice of Removal to the Plaintiffs, by U.S. Mail and email as follows:

Sarah McClure & Colton Wheeler
41220 Whispering Pines Drive
Ronan, Montana 59864

Email: cslwheeler3212@gmail.com

And I further affirm and certify that I filed a true-and-correct copy of the same Notice of Removal with the clerk of the Tribal Court of the Confederated Salish & Kootenai Tribes as if it were the State Court, in order to effect the removal and impose a stay upon all Tribal Proceedings unless and until the case is remanded.

Tuesday
December 9, 2025



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