

DOT LAKE VILLAGE, Appellant, v. DENA' NENA' HENASH d/b/a Tanana Chiefs Conference, ..., 2024 WL 5372670 (2024)

2024 WL 5372670 (Alaska) (Appellate Brief)

Supreme Court of Alaska.

DOT LAKE VILLAGE, Appellant,

v.

DENA' NENA' HENASH d/b/a Tanana Chiefs Conference, Appellee.

No. S-18599.

October 9, 2024.

Superior Court No. 4FA-22-01388CI

Appeal from the Superior Court Fourth Judicial District at Fairbanks the Honorable Patricia L. Haines

Appellee's Opening Brief

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***vii AUTHORITIES PRINCIPALLY RELIED UPON**

25 U.S.C. § 5381. Definitions

(a) In general

In this subchapter:

(5) Inter-tribal consortium

The term “inter-tribal consortium” means a coalition of two more separate Indian tribes that join together for the purpose of participating in self-governance, including tribal organizations.

....

(b) Indian tribe

In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on its behalf under this subchapter, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution or in this subchapter). In such event, the term “Indian tribe” as used in this subchapter shall include such other authorized Indian tribe, inter-tribal consortium, or tribal organization.

Alaska Civil Rule 82. Attorney's Fees

(a) Allowance to Prevailing Party. Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.

(b) Amount of Award.

....

(2) In cases in which the prevailing party recovers no money judgment, the court shall award the prevailing party in a case which goes to trial 30 percent of the prevailing party's reasonable actual attorney's fees which were necessarily incurred, and shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred. The actual fees shall include fees for legal work customarily performed by an attorney but which was delegated to and performed by an investigator, paralegal or law clerk.

***1 I. ISSUES PRESENTED ON APPEAL**

The central question presented is whether Appellee Dena' Nena' Henash (known as Tanana Chiefs Conference or “TCC”) has tribal sovereign immunity from unconsented suit in this inter-tribal dispute. The issues are:

(1) Does TCC have tribal sovereign immunity under *Ito v. Ahnta' T'Aene Nene' (Copper River Native Association)*, 547 P.3d 1003 (Alaska 2024);

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(2) Does this case involve a nonjusticiable inter-tribal dispute under *Healy Lake Village v. Mt. McKinley Bank*, 322 P.3d 866 (Alaska 2014) and *Douglas Indian Association v. Central Council of Tlingit and Haida Indian Tribes of Alaska*, 403 P.3d 1172 (Alaska 2017); and

(3) Did Appellant Village of Dot Lake waive its sovereign immunity as to an award of Alaska Civil Rule 82 attorneys' fees and costs?

II. STATEMENT OF THE CASE

A. Parties

Appellee Dena' Nena' Henash (the Tanana Chiefs Conference or “TCC”) is an Alaska Native P.L. 93-638 inter-tribal consortium registered as an Alaska non-profit corporation.¹ TCC is the “historic successor of the Tanana Chiefs Conference, the traditional consultative and governing assembly of the Athabaskan people of Interior *2 Alaska, from time immemorial, and shall have all the rights, duties, powers, and privileges of this historic assembly.”²

Appellant Village of Dot Lake (“Dot Lake”) is a federally recognized Indian Tribe and member of TCC.

B. Procedural History

This is Dot Lake's second lawsuit seeking Alaska court intervention regarding actions taken by TCC's Board of Directors in November and December 2021.³ The 2021 suit was against individual TCC officers and board members and was voluntarily dismissed upon Dot Lake's motion.⁴ Then, in 2022, Dot Lake filed this lawsuit for declaratory and injunctive relief seeking to declare the same actions of TCC's Board of Directors invalid and to enjoin TCC's officers and directors from taking certain future actions.⁵ Because TCC has tribal sovereign immunity from unconsented suits in Alaska state courts, and because TCC did not (and does not) consent to this suit, TCC moved for *3 dismissal pursuant to Alaska Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.⁶ TCC presented affidavit and documentary evidence supporting dismissal.⁷ Dot Lake opposed and presented its own evidence.⁸

On November 21, 2022, the Superior Court granted TCC's motion to dismiss, concluding “TCC is an arm of the tribe for purpose of sovereign immunity under both federal and state law.”⁹ The Superior Court further found that this matter presented a nonjusticiable “dispute involv[ing] the internal governance of an inter[-]tribal consortium,” and that the court “lacks jurisdiction to insert itself into a dispute that ultimately boils down to a self-governance disagreement within an inter[-]tribal consortium.”¹⁰ And last, the Superior Court found that “TCC has established that it is an *4 inter [-]tribal consortium organized under P.L. 93-638” but, since it had already held that TCC has arm of the tribe sovereign immunity, that the court “need not decide whether TCC is also immune under the ISDEAA.”¹¹

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As the prevailing party in a matter resolved without trial, TCC then moved to recover twenty percent of its actual attorney fees under [Alaska Civil Rule 82](#).¹² The Superior Court granted TCC's motion for attorney's fees, concluding Dot Lake waived its sovereign immunity on the issue of attorney's fees by seeking attorney's fees in the complaints it filed in this case.¹³ This appeal followed.

III. STANDARD OF REVIEW

A. Dismissal on Grounds of Tribal Sovereign Immunity.

“[T]ribal sovereign immunity is a jurisdictional bar properly raised in a [Civil Rule 12\(b\)\(1\)](#) motion to dismiss for lack of subject matter jurisdiction.¹⁴ This Court reviews de novo a superior court's decision to dismiss an action under [Rule 12\(b\)\(1\)](#) on the basis *5 of tribal sovereign immunity.¹⁵ In *Ito*, this Court adopted the federal courts' “arm of the tribe” approach to determining whether a court has subject matter jurisdiction over an action against a tribal organization.¹⁶ Appellate courts review the lower court's underlying factual findings on jurisdictional issues for clear error.¹⁷

B. Award of Attorney's Fees.

“The decision to award attorney fees rests in the discretion of the trial judge, and is reviewable on appeal only for an abuse of discretion.”¹⁸ An abuse of discretion “exists if an award is arbitrary, capricious, manifestly unreasonable, or improperly motivated.”¹⁹ *6 Whether the Superior Court correctly applied the law in awarding attorney's fees is a question of law this Court reviews de novo.²⁰

IV. ARGUMENT

A. Dismissal of Dot Lake's Claims Against TCC was Correct, on Two Independent Grounds.

Dot Lake addresses only one of the Superior Court's two independent grounds for dismissing this matter for lack of subject matter jurisdiction: TCC's sovereign immunity under the arm of the tribe doctrine, as adopted by this Court in *Ito v. CRNA*.²¹ The Superior Court's second ground for dismissal was that this matter is a nonjusticiable inter-tribal dispute.²² Dot Lake did not appeal nor brief the second basis for dismissal at all, thus waiving argument on that point.²³

B. Dot Lake Must Prove Jurisdiction Under [Civil Rule 12\(b\)\(1\)](#).

The burden is on Dot Lake to show that the Alaska courts have jurisdiction over this dispute: “[i]n the context of a [Rule 12\(b\)\(1\)](#) motion to dismiss on the basis of tribal *7 sovereign immunity, ‘the party asserting subject matter jurisdiction has the burden of proving its existence,’ *i.e.*, that immunity does not bar the suit.”²⁴

On a “factual” [Rule 12\(b\)\(1\)](#) motion, courts may consider evidence outside of the pleadings.²⁵ Both parties here submitted affidavits and other evidence,²⁶ from which the Superior Court found that TCC:

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Is an Alaska Native inter[-]tribal consortium registered as an Alaska non-profit corporation. TCC is comprised of 42 member Alaska Native Villages, 37 of which are federally-recognized Indian tribes. Each village elects a member representative to TCC's Board of Directors, and each representative must be an Alaska Native member of the village they represent.... TCC serves as a [P.L. 93-638](#) inter[-]tribal consortium for contracting and compacting under the Indian Self-Determination and Education Assistance Act (ISDEAA). Through funding from the Indian *8 Health Service ('IHS') and the Bureau of Indian Affairs ('BIA'), TCC provides health, education, economic, and social services to its member villages. TCC's budget is substantially based on the federal funds received from IHS and BIA as an ISDEAA organization.²⁷

C. TCC has Tribal Sovereign Immunity Under the *Ito* Criteria.

Dot Lake asserts that TCC does not have tribal sovereign immunity under the *Ito* factors. First, Dot Lake argues that the Superior Court incorrectly applied the five-factor *White* criteria instead of “the six (6) factor *Breakthrough* test adopted by this Court in *Ito*.”²⁸ Dot Lake misreads *Ito* which, to the contrary, found that the “sixth factor” in *Breakthrough* “need not be considered separately”:

Taking guidance from federal law, we conclude, like the Fourth, Ninth and Tenth Circuits, along with many state courts, that the *Breakthrough* factors guide our arm of the tribe inquiry. These five factors-(1) purpose, (2) method of creation, (3) control, (4) tribal intent, and (5) financial relationship - properly account for the inherent sovereignty of tribes and the federal policies underlying tribal sovereign immunity, including tribal self-governance, self-sufficiency, and cultural autonomy. *Breakthrough* also articulated a sixth factor, ‘whether the purposes of tribal sovereign immunity are served by granting immunity,’ but we agree with the California Supreme Court that this serves to focus the analysis of the individual factors on the purposes of tribal sovereign immunity and need not be considered separately.²⁹

*9 The arm of the tribe analysis is determined by the five *Ito* factors. “No single factor is dispositive,”³⁰ rather, “the balance of factors” will decide whether a tribal organization has immunity.³¹ Here, all five factors weigh in TCC's favor.

1. “Purpose.” The first factor is the tribal entity's purpose. In analyzing this factor, courts consider “both the stated purpose for which the [e]ntit[y] [was] created as well as evidence related to that purpose.”³² While evidence about the entity's activities is important, courts should not perform an “overly intrusive inquiry into the activities of the tribe” and “should not require tribes to provide exhaustive evidence about their own activities when evaluating an entity's purpose.”³³

There are three main areas where courts have found a “purpose” consistent with an assertion of tribal sovereign immunity. First, courts are most likely to find that the purpose factor weighs in favor of sovereign immunity where the organization's stated purpose is performing a “core governmental function,” such as providing health care,³⁴ operating education and training programs,³⁵ recovering ancestral remains,³⁶ encouraging *10 economic development,³⁷ providing employment opportunities,³⁸ law enforcement,³⁹ or, as the Superior Court found here, securing the legal rights of tribal members.⁴⁰ Second, courts have found that where the organization's purpose is strengthening tribal self-sufficiency, the purpose factor weighs in favor of immunity.⁴¹

Third, critically in *Ito* and this matter, courts have uniformly found that the “purpose” factor supports sovereign immunity when an Alaska tribal organization's main activity is carrying out [P.L. 93-638](#) self-determination and self-governance healthcare programs, functions, services, and activities.⁴² Indeed, the purpose of a self-governance *11 agreement is “core to the notion

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of sovereignty”⁴³ and “[t]he more the purpose relates to the goal of tribal self-governance, the stronger this factor will weigh in favor of immunity.”⁴⁴

In harmony with those decisions, this Court held in *Ito* that although no single factor is dispositive, here the purpose factor strongly favors immunity because CRNA's member tribes use it to deliver tribal healthcare services, a core tribal governmental function necessarily connected to tribal self-governance and autonomy.”⁴⁵ This Court noted that “CRNA's stated purposes include preserving the culture and promoting the welfare of Alaska Native people in the region” and delivering health care to tribal members pursuant to P.L. 93-638, “a federal law designed to promote tribal self-governance and self-determination.”⁴⁶ And that CRNA's tribes “chose to exercise their sovereign authority to create their own governance and service delivery solutions that *12 reflect their own cultures, circumstances, priorities, and needs.”⁴⁷ The Court concluded that this factor “weighs heavily in favor of immunity because of the close relationship between CRNA's purpose and the goal of self-governance.”⁴⁸

The situation presented here is virtually identical. TCC's purposes expressly and straightforwardly include “secur[ing] to the Alaska Native people of the region of the Tanana Chiefs Conference the rights and benefits to which they are entitled” under the laws of the United States and the State of Alaska, to “preserve the customs, folklore, art, and cultural values of the Native People” of the region, to “promote the common welfare of the Natives of Alaska and their physical, economic, and social well-being,”⁴⁹ and to “provide[] a unified voice in advancing sovereign tribal governments through the promotion of physical and mental wellness, education, socioeconomic development, and culture of the Interior Alaska Native people.”⁵⁰

High on the list of TCC's long-standing purposes are health care for tribal members and maintaining tribal autonomy. The Tanana Chiefs have pursued these goals since the Traditional Tanana Chiefs' historic 1915 meeting in Fairbanks with United States District Judge James Wickersham, then Alaska's delegate to the United States *13 Congress.⁵¹ This meeting signified the beginning of the formal relationship between the Interior Athabascan Tribes and the United States Government. At that meeting, the Tanana Chiefs negotiated with Judge Wickersham and firmly expressed their priorities: sustaining their villages by employment, protecting their lands, accessing hunting and fishing, and, most importantly, obtaining education and health care for their people.⁵² The Tanana Chiefs have ever since ceaselessly fought to achieve those goals.⁵³

*14 To those ends, TCC is an original signatory to the Alaska Tribal Health Compact with the United States⁵⁴ and today carries out federal programs, functions, services, and activities for Alaska Natives, American Indians, and other eligible individuals through agreements with the Indian Health Service (“IHS”) and the Department of Interior Bureau of Indian Affairs (“BIA”), authorized by, *inter alia*, the Indian Health Care Improvement Act⁵⁵ and P.L. 93-638,⁵⁶ “a federal law designed to promote tribal self-governance and self-determination.”⁵⁷ TCC is a constituent tribal organization of the Alaska Native Tribal Health Consortium, the P.L. 93-638 inter-tribal consortium which, together with Southcentral Foundation, operates the Alaska Native Medical Center in Anchorage and provides statewide health services to Alaska Natives and other eligible individuals.⁵⁸

Pursuant to TCC's P.L. 93-638 agreements with the United States, TCC operates the Chief Andrew Isaac Health Center, a state-of-the-art regional health clinic in *15 Fairbanks, and operates village health clinics and programs that provide health care, social services, employment, and cultural services throughout the Interior Region.⁵⁹ The Superior Court found that one of TCC's core purposes is “to promote the common welfare of the Natives of Alaska and their physical, economic, and social well-being”: “Thus, TCC ‘is not simply a business entity that happens to be run by a tribe or its members, but, rather, occupies a role quintessentially related to self-governance.’”⁶⁰

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Dot Lake argues that TCC did not have a “tribal purpose” until recently. Rather, Dot Lake asserts, TCC's purpose in the 1960's and 1970's was to advocate for land selections, not “to represent tribes ... or promote self-determination of the tribes.”⁶¹ Certainly, at different times different issues have been important to the Tanana Chiefs. But TCC's purposes-and its advocacy sustaining the tribes' villages and their culture by employment, protection of lands, access to hunting and fishing, obtaining education, and improving health care-have been long-standing and consistent. While some of TCC's activities and its organizational form have evolved with the times, TCC's bedrock *16 purposes and goals have remained the same.⁶² As in *Ito*, the “purpose” factor weighs strongly in TCC's favor.

2. “Method of Creation.” The second factor goes to how the organization was created. In *Ito* this Court examined “the circumstances and purpose underlying CRNA's formation,”⁶³ and evidence examined in the purpose factor: the “circumstances leading to, and the purpose driving, the entity's formation are also relevant; the creation of an entity by a tribe weighs in favor of immunity.”⁶⁴ An entity's incorporation under State law “is not alone dispositive but tends to weigh against sovereign immunity;” incorporation under tribal law is seen as more favorable.⁶⁵ Overall, however, “[t]he law a tribe uses to create an entity is certainly relevant, but [this Court] decline [s] to treat an entity's incorporation under the Alaska Nonprofit Corporation Act as dispositive.”⁶⁶

*17 Both CRNA and TCC were formally incorporated shortly after enactment of the Alaska Native Claims Settlement Act (ANCSA), as the successors of their respective traditional assemblies.⁶⁷ But even before their incorporation, CRNA and TCC were expressly recognized by Congress in ANCSA as “existing Native associations” that were “composed ... of Natives having a common heritage and sharing common interests.”⁶⁸ As to CRNA, this Court noted that:

CRNA's articles of incorporation explain that it ‘is the historic successor of the Chiefs Conference whose name is lost in antiquity, the traditional consultative and governing assembly of the Athabascan people of the Copper River Region from time immemorial.’ The articles express an intent that CRNA ‘have all the rights, duties, powers, and privileges of this historic assembly.’⁶⁹

Similarly, TCC's articles confirm that it is the “successor to the Tanana Chiefs Conference, the traditional consultative and governing assembly of the Athapascan *18 people of Interior Alaska, from time immemorial, and shall have all of the rights, duties, powers, and privileges of this historic assembly.”⁷⁰

The Tanana Chief s 1915 meeting with Judge Wickersham began a new era in the Chiefs' traditional role as tribal leaders. With the arrival of gold miners and settlers to the Interior, the Tanana Chiefs' tasks now “included dealing with the government and negotiating for new opportunities. The [1915] Tanana Chiefs meeting is an early example of the chiefs' efforts to protect traditional life on the land while also setting new educational, medical, economic, and legal opportunities for their members.”⁷¹ The “shar[ed] common interests” fought for by the Tanana Chiefs in 1915 have been continuously pursued by TCC ever since, and are still its priorities today: “recognition of legal rights, land claims, health care, social services, and education.”⁷²

*19 Ignoring this history, Dot Lake argues that TCC was “incorporated... by three Native individuals” in 1971 and was “not intended to create a ‘tribal organization.’”⁷³ This is misleading. The Alaska Nonprofit Corporation Act simply requires “[t]hree or more natural persons” as incorporators; TCC's articles thus have three incorporators.⁷⁴ More relevant, and confirming that TCC was intended from the outset as a tribal entity, are the TCC's initial Board of Directors: twenty-five Alaska Native leaders, each from one of the Alaska Native Villages in the Interior Region.⁷⁵

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Dot Lake's selective paraphrasing from CASE & VOLUCK does nothing to support its argument. Certainly, as the treatise notes, TCC was deeply involved in the land claims fight after the 1958 Statehood Act. The State's land selections "placed much pressure on the Athabascan villages because the state was selecting lands traditionally used for hunting, trapping, and fishing."⁷⁶ TCC's land claims advocacy was entirely consistent with its tribal leadership role and its historic concerns.⁷⁷ Further, Case & Voluck confirms that TCC is the "successor to the traditional consultative and governing assembly of the Athabascan people of interior Alaska," identifies TCC's purposes, and *20 describes in detail TCC's self-governance activities under P.L. 93-638,⁷⁸ and concludes that "TCC is a 'tribal organization' [under P.L. 93-638]."⁷⁹ The second *Ito* factor, "creation," weighs in favor of immunity.

3. "Control." The third *Ito* factor "examines the structure, ownership, and management of the entity, 'including the amount of control the Tribe has over the entity.' Relevant considerations include 'the entity's formal governance structure, the extent to which the entity is owned by the tribe, and the day-to-day management of the entity.'"⁸⁰ Where an entity's board of directors is made up of tribal members, the control factor weighs in favor of sovereign immunity.⁸¹ Tribal authority to appoint and remove the entity's leadership also weighs in favor of immunity.⁸²

*21 TCC is entirely controlled by its constituent Tribes.⁸³ Membership is limited to "[e]ach Alaska Native Village located in the geographic area as described in the Alaska Native Claims Settlement Act of 1971 represented by or claimed by the people of Dena' Nena' Henash [and the] Fairbanks Native Association and Tok Native Association and Native villages recognized as member villages of Tanana Chief Conference."⁸⁴ "[T]he affairs of [TCC] shall be managed by its Board of Directors,"⁸⁵ which consists of 42 members, including 37 elected representatives "of federally-recognized Native Villages entitled to tribal sovereign immunity under federal law. Each Village is self-governing and chooses to authorize TCC to act on its behalf."⁸⁶ TCC's officers are elected by the Board of Directors and "must be Alaska Native members of a member village...."⁸⁷ The Board is organized into Subregions, which elect the Executive Board and advise the Executive Board on matters "which affect the delivery of services to their respective subregions."⁸⁸ And, as happened in this matter, "[t]he full Board may remove any Board *22 officer 'whenever, in its judgment the best interests of [TCC] would be served thereby,' and the Board may sanction a Director that violates its Code of Ethics."⁸⁹

Dot Lake argues that TCC does not meet the "control" factor because its members include the Fairbanks Native Association, the Tok Native Association, and three Interior Native villages which have not yet been federally-recognized.⁹⁰ That the BIA has not included a village on its current list does not mean that it does not exist as an Alaska Native community, nor that it will never be recognized as a tribe in the future.⁹¹ TCC's bylaws allow for as yet unrecognized Alaska Native communities to be admitted as *23 members.⁹² Regardless, holding 37 of 42 seats on the Board gives TCC's federally-recognized tribes overwhelming control over the organization. The *Ito* "control" factor weighs in favor of sovereign immunity.

4. "Tribal Intent." The fourth *Ito* factor "assesses the tribe's intent to extend its immunity to the entity," which may be shown by direct statements, but "even without express statements, intent may still be inferred from the tribe's actions or other sources".⁹³

When CRNA's member tribes authorized CRNA to carry out services on their behalf under ISDEAA, they manifested their intent to share their sovereign rights and responsibilities with CRNA, including sovereign immunity. Taking action under ISDEAA directly supports the federal policies underlying sovereign immunity, namely tribal self-governance, self-sufficiency, and cultural autonomy.⁹⁴

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As with CRNA, TCC's members-including Dot Lake-authorized TCC by resolution to carry out P.L. 93-638 programs, functions, services, and activities on their behalf, and to use their IHS tribal shares and BIA funding in so doing.⁹⁵ These Alaska Native Villages thus agreed that TCC may exercise their “sovereign rights and *24 responsibilities,” including the right to assert sovereign immunity.⁹⁶ And, TCC's Articles give it the “rights, duties, powers and privileges” of the traditional Tanana Chiefs Conference, a delegation almost identical to that which this Court stated in *Ito* “at a minimum, supports an implicit intent to extend immunity to CRNA.”⁹⁷

Dot Lake asserts this Court was simply wrong in *Ito*. Dot Lake reads a P.L. 93-638 provision which *preserves* sovereign immunity as a *prohibition* on “sharing” that immunity.⁹⁸ This turns the statute on its head. When a tribe joins a tribal organization, the tribe's own immunity is not in the slightest “affect [ed], modif[ie]d, diminish[ed], or otherwise impair[ed].”⁹⁹ The Superior Court found this factor neutral, given conflicting evidence on whether Dot Lake intended to “share sovereign immunity with TCC.”¹⁰⁰ TCC differs with the Superior Court, and believes that - despite Dot Lake's *post hoc* attempt to create evidence during litigation - the “intent” criteria weighs in TCC's favor.

***25 5. “Financial Relationship.”** The final factor looks at “the financial relationship between the entity and the tribe” and considers, *inter alia*, if a “judgment against an entity would reach the tribe's assets,” “the practical effect on the tribe of a judgment against the entity, and the source of the entity's funding.”¹⁰¹ In *Ito*, this Court held this factor in favor of immunity because CRNA receives federal health care funding “that would otherwise flow to tribes to provide tribal services,” and a judgment against CRNA would financially impact its ability to provide tribal members with those services.¹⁰² This was sufficient to outweigh CRNA's theoretical financial “insulation” as a State law nonprofit corporation.

That is precisely the case here. TCC also “is funded primarily through federal funds directed to it through contracts with the federal government and member Villages or Tribal entities pursuant to [P.L. 93-638] as well as revenues generated by the provision of... health care services.”¹⁰³ The effect of a judgment against TCC in any litigation *26 would be exactly as with CRNA in *Ito*: “it would be effectively paid from the member tribes' federal healthcare funding.”¹⁰⁴

But, Dot Lake asserts, in this particular matter “there would be no money judgement that could reach tribal assets.”¹⁰⁵ To the contrary, tribal sovereign immunity protects against suit, not just against judgment,¹⁰⁶ for the very good reason that litigation costs alone can be crippling to a tribal treasury:

But we are mindful of the concerns raised by amicus Tanana Chiefs Conference, representing rural tribes in interior Alaska, that “even ‘limited’ discovery could be financially ruinous for many tribes in [the Conference's] region” as funds are shifted from critical programs and rural village economies to urban lawyers in Anchorage, Fairbanks, or Juneau. We find the latter consideration more compelling given that “protecting tribal assets has long been held crucial to the advancement of the federal policies advanced by immunity.”¹⁰⁷

This matter is a perfect example. Dot Lake filed two separate Superior Court actions and three complaints based on its disagreement over Chief Simon's removal.¹⁰⁸ It engaged in acrimonious litigation tactics; named individual TCC officers as defendants; *27 filed false returns of service with the clerk¹⁰⁹; purported to represent TCC “*ex rel.*” even as it individually sued TCC's officers; publicly maligned TCC's board members and legal counsel; and filed inflammatory pleadings aimed at obtaining press coverage and sowing dissension among TCC's members.¹¹⁰ While Dot Lake claims it does not seek a “monetary judgement,” TCC has incurred substantial litigation costs in this matter, shifting its tribes' financial resources from health care programs into legal fees.¹¹¹ And as in *Ito*, this factor weighs in favor of tribal sovereign immunity.¹¹²

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6. Conclusion - Ito Factors. The Superior Court, applying the *White v. University of California* factors, found that four of the five factors were in favor of immunity, and that the fourth factor (tribal intent to share immunity) was neutral, due to the parties' conflicting positions on that issue.¹¹³ TCC respectfully disagrees with the Superior Court on the fourth factor, based on this Court's approach to that factor in *Ito*, and believes all five *Ito* factors weigh in its favor. Regardless, as the Superior Court held, the balance of factors is strongly in favor of immunity and this Court should affirm the dismissal.

***28 D. This is a Non-Justiciable Tribal Leadership Dispute.**

As noted above, in addition to finding that TCC qualified for immunity under the arm of the tribe doctrine, the Superior Court concluded it lacked “jurisdiction to insert itself into a dispute that ultimately boils down to a self-governance disagreement within an inter[-]tribal consortium.”¹¹⁴ Dot Lake did not address this equally dispositive basis for dismissal, and therefore waived this argument.¹¹⁵

That this is an internal tribal matter can hardly be disputed. First, TCC is an inter-tribal consortium “directed by and accountable to its 42 member Alaska Native Villages, 37 of which are federally-recognized Indian tribes and five of which are not yet recognized by the federal government but [are] recognized by TCC as tribal communities.”¹¹⁶ TCC's Board is limited to the elected Alaska Native representatives of its members.¹¹⁷ Second, as Dot Lake's opening brief candidly describes, this matter involves a TCC leadership dispute among its members, which culminated in a TCC *29 Board of Directors' meeting “on December 15, 2021, [when] TCC's Chairman and President P.J. Simon was purportedly [sic] recalled from his office.”¹¹⁸

TCC's Board “may remove any Board officer ‘whenever, in its judgment the best interests of the corporation would be served thereby,’ and the Board may sanction a Director that violates its Code of Ethics.”¹¹⁹ Chief Simon's conduct during his tenure was highly controversial and divisive. The record establishes that the December 15 meeting was called by a wide range of TCC members' Tribal Councils, through their elected leaders, “to review the report drafted by the executive board[s] outside counsel regarding the grievance against [Chief] PJ Simon, and to investigate actions and retaliation [by Chief Simon] against [TCC's] general counsel and other employees.”¹²⁰ *30 Of particular note is a letter signed by the First Chief, Second Chief, and the other Native Village of Stevens Tribal Council members addressed to the “Tanana Conference Chiefs and Councils,” calling for a meeting of the TCC Board of Directors with the exhortation that “[b]oth sides to the dispute should be a part in the meeting and get their opportunity to present their case.”¹²¹ Another is from the Native Village of Kaltag's Tribal Council, describing the internal political infighting relating to Chief Simon's recall, and “repudiat [ing]” an earlier letter sent by Second Chief Madros.¹²²

After Chief Simon was recalled, Dot Lake, “a federally recognized Indian Tribe and a member of TCC”¹²³ on the losing side of the leadership dispute, filed suit, alleging violations of TCC's bylaws.¹²⁴ Dot Lake now requests “a permanent injunction *31 prohibiting TCC from including a *bonafide* officer or director from attending or voting in a meeting of a board of which they are a member in the future,”¹²⁵ an extraordinary (and nonsensical) judicial intrusion into TCC's internal affairs. With this request, Dot Lake asks the Court to override TCC's member tribes' rights as “distinct, independent political communities, retaining their original natural rights”¹²⁶ to self-governance and self-determination.

Given the facts established in the record, the Superior Court correctly looked to *Healy Lake* and *Douglas Indian Association* and concluded that the leadership dispute was an internal self-governance matter over which it lacked subject matter jurisdiction.

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Healy Lake reaffirmed *John v. Baker's* holding that “[i]f state-court jurisdiction over Indians ... would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of federal law.”¹²⁷

Healy Lake involved a tribal leadership dispute between two tribal factions, each contending “that they are the properly elected and legitimate traditional [tribal] *32 council.”¹²⁸ The factions each “argue[d] that the election that seated the competing group failed to comply with tribal law and regulations,” and asserted competing claims to the Tribe's accounts at Mt. McKinley Bank.¹²⁹ The plaintiff faction asserted the Superior Court “has jurisdiction to determine the rights and legal relations of the Tribe with respect to the depository accounts ...pursuant to AS 22.10.020.”¹³⁰ This Court affirmed dismissal under Rule 12(b)(1), concluding that the Alaska courts lacked subject matter jurisdiction over the dispute because “internal functions involving tribal membership and domestic affairs lie within a tribe's retained inherent sovereign powers.”¹³¹

Healy Lake is on all fours with this matter. *Douglas Indian Association*, as the Superior Court noted, is not as close but is still instructive. That case involved two federally-recognized tribes, the Douglas Indian Association (“DIA”) and Central Council of Tlingit and Haida Indian Tribes of Alaska, in a dispute over the use of jointly administered federal transportation funds.¹³² DIA “sought a declaration that Central Council owed it a fiduciary duty, and also sought injunctive relief against individual *33 Central Council tribal officials.”¹³³ The Superior Court dismissed the action, citing *inter alia* to *Healy Lake*, noting that “as with absolute, qualified, and Eleventh Amendment immunity, tribal sovereign immunity is an immunity from suit rather than a mere defense to liability[.]”¹³⁴ This Court affirmed, noting that “the ‘federal policies of tribal self-determination, economic development, and cultural autonomy’ are better served by leaving these decisions up to the tribes.”¹³⁵

Here, the Superior Court found that the TCC Board's recall of Chief Simon was an internal decision about tribal leadership, and that “the federal policies of self-determination autonomy are better served by allowing tribes, and not the courts, to resolve intratribal disputes absent an express waiver of immunity”:

Tribal sovereign immunity in Alaska state court is ‘motivated in significant part by the need to ensure that tribal assets are used as the tribe wishes, without fear from litigation.’ Applying that principle here, TCC must be able to assert the tribal sovereign immunity of its member tribes to protect the tribal funds that flow to it on the tribes' behalf. And given the Alaska Supreme Court's analysis of tribal autonomy in the context of both inter [-]tribal and intratribal disputes in *Healy Lake Village* and *Douglas*, the court lacks jurisdiction to insert itself into a dispute that ultimately boils down to a self-governance disagreement within an inter[-]tribal consortium.¹³⁶

*34 Dot Lake Village does not challenge dismissal based on this dispositive issue and thus has waived that issue entirely.¹³⁷ The Superior Court's decision may be affirmed on this basis alone.

E. Dot Lake's “Superior Sovereign” and “Ultra Vires” Arguments are Without Merit.

Last, Dot Lake briefly argues that the Superior Court erred in not sufficiently considering its “superior sovereign” and “ultra vires” arguments. The Superior Court gave those arguments the consideration they deserve, and correctly rejected both.¹³⁸

1. The “Superior Sovereign” Argument. Dot Lake misconstrues and confusingly articulates what it asserts is the “‘superior sovereign’ exception to TCC's assertion of sovereign immunity.”¹³⁹ Dot Lake bases this argument on *Native Village of Eklutna v. Alaska Railroad Corp.*, a statutory interpretation case in which this Court found that the Alaska Railroad, a state instrumentality, was not exempted from municipal zoning regulations by a state statute.¹⁴⁰ In so holding, this Court actually *rejected* the “superior

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sovereign” test, which “presumes that the legislature intended the state *35 instrumentality to be immune” from regulation by local authorities,¹⁴¹ instead adopting a different test “to discern legislative intent.”¹⁴²

Native Village of Eklutna is entirely inapposite. This matter does not involve a State statute, the intent of the Alaska Legislature, or any State instrumentalities. Tribal sovereign immunity “is a matter of federal law and is not subject to diminution by the States.”¹⁴³ The federal law test for whether a tribal organization has sovereign immunity is the *Breakthrough* arm of the tribe approach - not Dot Lake's proffered “superior sovereign exception.”¹⁴⁴

Dot Lake then purports to be equal to the United States, citing to cases that hold that tribal sovereignty “does not extend to preventing the *federal government* from exercising its superior sovereign powers.”¹⁴⁵ This argument is both presumptuous and inapt. The Constitution gives Congress “plenary and exclusive” authority to “legislate in respect to Indian tribes.”¹⁴⁶ But absent abrogation by Congressional legislation or tribal waiver, tribes “possess .. the ‘common-law immunity from suit traditionally enjoyed by *36 sovereign powers.’”¹⁴⁷ Even then, “[a]lthough Congress has plenary authority over tribes, courts will not lightly assume that Congress in fact intends to undermine Indian self-government.”¹⁴⁸

Dot Lake is not Congress and cites to no authority to support its position that it has authority equal to the federal government. And TCC is an inter-tribal consortium of dozens of federally-recognized tribes, all of whose sovereign immunity extend to TCC and form the basis of their relations with one another.¹⁴⁹ Dot Lake is not a “superior sovereign” to TCC or other TCC tribes, nor does it have “plenary authority” over TCC, nor does it have the power to abrogate the sovereign immunity of TCC or TCC's other federally-recognized member tribes. Dot Lake's relationship with TCC is simply not comparable to the unique, Constitutionally-established relationship between the United States and tribes.¹⁵⁰ Dot Lake's “superior sovereign” argument is without merit.

***37 2. The “Ultra Vires” Argument.** Finally, Dot Lake proposes that its claims for declarations and injunctions against purported *ultra vires* actions by TCC fall outside of sovereign immunity's protection. Dot Lake cites *Oertwich v. Traditional Village of Togiak*, in which the Ninth Circuit held that “[s]uits seeking prospective injunctive relief ordinarily may proceed against tribal officers sued in their official capacities under the doctrine of *Ex parte Young* to enjoin them from violating federal law, without the presence of the immune State or tribe.”¹⁵¹ The Ninth Circuit then remanded solely to allow the plaintiff to replead to clarify his injunctive and declaratory relief claims against individual village officials for the District Court's consideration of sovereign immunity.¹⁵²

Dot Lake flatly asserts-without support in law or logic-that TCC is a “legal person” and can be sued for prospective relief regarding *ultra vires* actions like a tribal government official.¹⁵³ Dot Lake *already* sued individual TCC directors for purported *ultra vires* acts, but dismissed those claims to pursue TCC itself.¹⁵⁴ Regardless, TCC is not an tribal official and cannot be subject to suit under the rationale outlined in *38 *Oertwich*.¹⁵⁵ Rather, it is an inter-tribal consortium entitled to the same immunity as its constituent tribes themselves.¹⁵⁶

Further, the relief Dot Lake seeks goes well beyond *Ex parte Young*. Dot Lake does not allege a violation of any federal law. Instead, based on its interpretation of TCC's bylaws, Dot Lake asks the Court to declare a TCC officer's recall “invalid” and “prohibit” TCC and its board of directors (again, made up of representatives of 37 federally-recognized tribes and representatives of other Native Alaskan communities) from holding and regulating their own meetings.¹⁵⁷ This requested relief “goes to the heart of the [tribes'] sovereign and proprietary interests” in governing TCC.¹⁵⁸ A dispute by Dot Lake over an intramural

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tribal governance matter is simply not an *Ex Parte Young* matter, and is not within the subject matter jurisdiction of the Alaska courts.¹⁵⁹

***39 F. The Superior Court Correctly Awarded Attorney's Fees to TCC.**

In filing suit against TCC, Dot Lake sought relief in its complaint that included attorney's fees and costs. In so doing, Dot Lake expressly invoked the jurisdiction of Alaska courts, waiving sovereign immunity and agreeing to be subject to an award of fees under [Civil Rule 82](#).

1. Alaska Civil Rule 82 is Procedural, not Substantive. [Alaska Civil Rule 82](#) states:

Except as otherwise provided by law or agreed to by the parties, the prevailing party in a civil case shall be awarded attorney's fees calculated under this rule.... In cases in which the prevailing party recovers no money judgment, the court .. shall award the prevailing party in a case resolved without trial 20 percent of its actual attorney's fees which were necessarily incurred.¹⁶⁰

[Rule 82](#) is, by its name and nature, a procedural rule and not a substantive claim against a litigant.¹⁶¹ [Rule 82](#) has been described as “policy-neutral in the sense that prevailing parties are awarded partial fees regardless of the subject matter of their action or defense.”¹⁶² “The two-way and policy-neutral features of [Rule 82](#) contribute in an important way to the rule's procedural character.”¹⁶³

This Court's precedent and the language and function of [Rule 82](#) make clear it cannot be characterized as a substantive claim against a party such as Dot Lake.

2. Dot Lake Waived Sovereign Immunity on Attorney Fees. There is no dispute that “a tribal sovereign[] enjoys common law immunity from suit.”¹⁶⁴ Tribal sovereign immunity means that a tribe is immune from suit *unless* Congress authorized the suit *or* the tribe waives its immunity.¹⁶⁵ When a tribe files suit, and invokes the aid of the court, it waives immunity as to the issues it raises and “must abide the consequences” of having done so.¹⁶⁶ Initiation of a lawsuit is an action that “necessarily establishes consent to the court's adjudication of the merits of that particular controversy including ... the risk of being bound by an adverse determination.”¹⁶⁷

***41** In Dot Lake's initial action, both the Complaint and the First Amended Complaint sought an “[a]ward of full attorney's fees and costs.”¹⁶⁸ Likewise, Dot Lake's Complaint in the present action sought an “[a]ward of full attorney's fees and costs” as part of its requested relief.¹⁶⁹ By invoking the jurisdiction of this Court and affirmatively requesting the Court to adjudicate the issue of attorneys' fees-and not just once, but twice-Dot Lake unequivocally waived its sovereign immunity as to that issue. It cannot pick and choose which of the Civil Rules apply to it merely because it fears (or is subject to) adverse consequences.

The Superior Court correctly concluded that because Dot Lake specifically requested relief that included “an award of full attorney's fees and costs” in its complaint, Dot Lake “expressly asked [the Superior Court] to resolve the issue of attorney's fees put[ting] this issue under the jurisdiction of [the Superior] court, [and] thereby waiving [Dot Lake's] sovereign immunity.”¹⁷⁰ Accordingly, TCC was entitled to an award of twenty percent of actual attorney's fees, in the amount of \$11,888.

***42** If this action had not been dismissed, Dot Lake could not object on sovereign immunity grounds, for example, to orders compelling Civil Rules discovery or enforcing the Superior Court's pretrial deadlines. Having filed this action, invoked the

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jurisdiction of the Court, and put attorney's fees directly at issue, Dot Lake exposed itself to the risk that it would not prevail and would, as a result, be liable for the other side's [Civil Rule 82](#) attorney's fees and costs as well.¹⁷¹ As the party filing the lawsuit, Dot Lake should have been aware of the burdens, risks and attendant expenses of litigation.¹⁷² This Court should uphold the award of fees against Dot Lake.

V. CONCLUSION

TCC respectfully requests that Dot Lake's appeal be denied and that it be awarded fees and costs.

Appendix not available.

Footnotes

- 1 Indian Self-Determination and Education Assistance Act of 1975, [P.L. 93-638](#), as amended, [25 U.S.C. §§ 5301-5423](#) (“ISDEAA” or “[P.L. 93-638](#)”); [25 U.S.C. § 5381\(b\)](#) (defining “Indian tribe” to include “inter-tribal consortium”).
- 2 Exc. 118-32 (TCC Motion to Dismiss); Exc. 133-36 (Affidavit of TCC General Counsel Robin Brown (“Brown Aff.”)).
- 3 Exc. 137-64 (*Dot Lake Vill. v. Stern*, Case No. 4FA-21-02438 CI (Alaska Super. Ct.) (“*Dot Lake I*”) (Complaint filed on Nov. 22, 2021) (First Amended Complaint filed on Dec. 22, 2021)).
- 4 Exc. 137-64 (*Dot Lake I*, Case No. 4FA-21-02438 CI (Alaska Super. Ct.) (Complaint & First Amended Complaint); *see also* *Dot Lake I*, Case No. 4FA-21-02438 CI (Alaska Super. Ct.) (Dot Lake's Motion to Dismiss & Supporting Memorandum filed on Apr. 11, 2022) (available at App'x Ex. A).
- 5 Exc. 165-81 (*Dot Lake Vill. v. Dena' Nena' Henash*, Case No. 4FA-22-01388 CI (Complaint filed Mar. 21, 2022) (“Complaint”)); *see also* Exc. 182-95 (Order Granting TCC's Motion to Dismiss (“Decision”)).
- 6 Exc. 118-32 (TCC Motion to Dismiss); Exc. 133-36 (Brown Aff.); Exc. 196-98 (Affidavit of Vice President Charlene Stern (“Stern Aff.”)).
- 7 *E.g., id.* Though not directly relevant for Dot Lake's appeal, TCC provides additional procedural history for context. After TCC moved to dismiss, Dot Lake moved for partial summary judgment on the merits of its claims. Exc. 199-217 (Village of Dot Lake's Motion for Partial Summary Judgment). The Superior Court granted TCC's request to stay consideration of that motion pending resolution of the question of the court's subject matter jurisdiction. Exc. 218-19 (Order Granting TCC's Motion to Stay Proceedings); Exc. 220-24 (TCC'S Motion to Stay Proceedings). Allakaket Village, another member village of TCC, sought to intervene in the action. Exc. 237-40 (Motion for Allakaket Village to Intervene). The Superior Court denied this request but ordered Allakaket be permitted to participate as *amici curiae*. Exc. 225-228 (Order Denying Allakaket Village's Motion to Intervene); Exc. 229-36 (TCC's Opposition to Allakaket Village's Motion to Intervene).
- 8 Exc. 241-82 (Village of Dot Lake's Opposition to TCC's Motion to Dismiss).
- 9 Exc. 182-95 (Decision).
- 10 Exc. 193 (Decision at 12).
- 11 Exc. 194-95 (Decision at 13-14) (quoting [25 U.S.C. § 5381\(b\)](#) (“In any case in which an Indian tribe has authorized ... an inter-tribal consortium ... to plan for or carry out programs, services, functions, or activities ... on its behalf under [[P.L. 93-638](#)],... the authorized... inter-tribal consortium... shall have the rights and responsibilities of the authorizing Indian tribe.”) (ellipses and brackets in original)).

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- 12 Exc. 283-87 (TCC's Reply in Support of Motion for Attorneys' Fees & Supporting Exhibits); Exc. 288-305 (TCC's Motion for Attorneys' Fees & Supporting Exhibits); *see also* Exc. 306 (TCC's Motion for Entry of Judgment).
- 13 Exc. 307-08 (Final Judgment); Exc. 309-13 (Order Granting TCC's Motion for Attorneys' Fees).
- 14 *Douglas Indian Ass'n v. Cent. Council of Tlingit & Haida Indian Tribes*, 403 P.3d 1172, 1178-79 (Alaska 2017).
- 15 *Id.* at 1178-79; *Ito v. Ahtna' T'Aene Nene' (Copper River Native Ass'n)*, 547 P.3d 1003, 1009 (Alaska 2024).
- 16 547 P.3d at 1022-27 (citing, *inter alia*, *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1187 (10th Cir. 2010); *White v. Univ. of Cal.*, 765 F.3d 1010, 1025 (9th Cir. 2014)).
- 17 *Secs. & Exch. Comm'n v. World Capital Mkt., Inc.*, 864 F.3d 996, 1003 (9th Cir. 2017); *United States ex rel. Hartpence v. Kinetic Concepts, Inc.*, 792 F.3d 1121, 1126-27 (9th Cir. 2015) (en banc) (“Where the district court relied on findings of fact to draw its conclusions about subject-matter jurisdiction, we review those factual findings for clear error.”), *overruled on other grounds by Stein v. Kaiser Found. Health Plan, Inc.*, ___ F. 4th ___, 2024 WL 4271950, at *3 (9th Cir. Sept. 24, 2024); *see also Williams v. Big Picture Loans, LLC*, 929 F.3d 170, 176 (4th Cir. 2019) (“On appeal from a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1), we review ‘the district court’s factual findings with respect to jurisdiction for clear error and the legal conclusion that flows therefrom de novo.’”) (citation omitted) (evaluating denial of motion to dismiss for lack of subject matter jurisdiction on basis defendants were entitled to sovereign immunity as arm of the tribe).
- 18 *Aiken v. Alaska Additional Prof. Ass’n*, 552 P.3d 454, 463 (Alaska 2024) (citation and internal quotation marks omitted).
- 19 *Riddle v. Lanser*, 421 P.3d 35, 44 (Alaska 2018) (citation and internal quotation marks omitted).
- 20 *Id.*; *City of Kodiak v. Kodiak Pub. Broad. Corp.*, 426 P.3d 1089, 1093 (Alaska 2018); *Ahtna Tene Nene v. Alaska Dep’t of Fish & Game*, 288 P.3d 452, 457 (Alaska 2012).
- 21 547 P.3d at 1022-27 (citing, *inter alia*, *Breakthrough*, 629 F.3d at 1187; *White*, 765 F.3d at 1025). The Superior Court did not decide TCC's third basis for immunity: “whether TCC is also immune under the ISDEAA.” Exc. 194-95 (Decision at 13-14) (citing 25 U.S.C. § 5381(b)).
- 22 Exc. 191-93 (Decision at 10-12) (discussing *Healy Lake Vill.*, 322 P.3d at 867-69; *Douglas Indian Ass’n*, 403 P.3d at 1175).
- 23 *Daggett v. Feeney*, 397 P.3d 297, 304 n.19 (Alaska 2017) (“In general, issues not briefed or only cursorily briefed are considered waived.”) (internal quotations and citations omitted).
- 24 *See Pistor v. Garcia*, 791 F.3d 1104, 1110 (9th Cir. 2015) (quoting *Miller v. Wright*, 705 F.3d 919, 923 (9th Cir. 2013)); *Douglas Indian Ass’n*, 403 P.3d at 1178-79 (“We...take guidance from federal law and the Ninth Circuit’s analysis in *Pistor*” in concluding “Rule 12(b)(1) is still a proper vehicle for invoking sovereign immunity from suit.”); *see also* 5B WRIGHT & MILLER, *Fed. Prac. & Proc. Civ.* § 1350 (4th ed.) (“When a factual challenge is made, there is no presumption of truthfulness attached to the plaintiffs’ allegations, and the plaintiff bears the burden of proving the facts supporting subject matter jurisdiction by a preponderance of the evidence.”) (internal citations omitted).
- 25 *Healy Lake Vill.*, 322 P.3d at 871 (citing, *inter alia*, *Muscogee (Creek) Nation v. Okla. Tax Comm’n*, 611 F.3d 1222, 1227 n.1 (10th Cir. 2010); *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1038-39 (9th Cir. 2004)).
- 26 *E.g.*, Exc. 118-32 (TCC Motion to Dismiss); Exc. 314-16 (Affidavit of Chief Brian Ridley Aff.); Exc. 133-36 (Brown Aff.); Exc. 196-98 (Stern Aff.); *see also* Exc. 317-82 (collectively appearing as Dot Lake Exs. 1-11) (individually, Exc. 317-326 (Affidavits of Chief Carl Burgett); Exc. 327-29 (Kaltag Tribal Council Resolution); Exc. 330-31 (Affidavit of President Tracey Charles-Smith); Exc. 332 -36 (Affidavit of Chief P.J. Simon); Exc. 342-71 (Kornelia Grabinska, Excerpts of History Leading to Passage of Alaska Native Claims Settlement Act (January 1983)); Exc. 372-78 (TCC Articles of Incorporation); Exc. 379-80 (Dot Lake Village Council Resolutions); Exc. 381-82 (Letter from Loudon Tribal Council)).

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- 27 Exc. 183 & *id.* at n.5 (Decision at 2, & 2 n.5) (quoting 25 U.S.C. § 5381(a)(5), (b)); Exc. 133-34 (Brown Aff. ¶¶ 2-3).
- 28 Appellant's Br. at 13.
- 29 547 P.3d at 1022 (quoting *Breakthrough*, 629 F.3d at 1181, 1186-87, 1191; *People ex rel. Owen v. Miami Nation Enters.*, 386 P.3d 357, 371-72 (Cal. 2016)).
- 30 *Id.* at 1022, 1026.
- 31 *Id.* at 1026.
- 32 *Id.* at 1022 (alteration in original) (citations omitted).
- 33 *Id.* at 1023.
- 34 *Id.*; *Wilson v. Alaska Native Tribal Health Consortium*, 399 F. Supp. 3d 926, 933-35 (D. Alaska 2019).
- 35 *McCoy v. Salish Kootenai Coll., Inc.*, 334 F. Supp. 3d 1116, 1121 (D. Mont. 2018), *aff'd*, 785 F. App'x 414 (9th Cir. 2019).
- 36 *White*, 765 F.3d at 1025.
- 37 *California v. Azuma Corp.*, No. 2:23-cv-00743-KJM-DB, 2024 WL 266121, at *3 (E.D. Cal. Jan. 24, 2024) (unpub. op.), *appeal docketed sub nom. California v. Del Rosa*, N. 24-698 (9th Cir. Feb. 8, 2024); *Min Zhang v. Grand Canyon Resort Corp.*, No. 5:19-cv-00124-SVW-SP, 2020 WL 1000608, at *2 (C.D. Cal. Jan. 15, 2020) (unpub. op.) (purpose of “creating economic development opportunities” weighed in favor of extending sovereign immunity to a tribal entity); *Ngyuen v. Cache Creek Casino Resort*, No. 2:20-cv-1748-TLN-KNJ PS, 2021 WL 22434, at *3 (E.D. Cal. Jan. 4, 2021) (unpub. op.); *Cadet v. Snoqualmie Casino*, 469 F. Supp. 3d 1011, 1015-16 (W.D. Wash. 2020).
- 38 *Cf. Confederated Tribes of Warm Springs Res. of Or. v. Vanport Int'l, Inc.*, 428 F. Supp. 3d 384, 400 (D. Or. 2019).
- 39 *Dutchover v. Moapa Band of Paiute Indians*, No. 2:19-cv-01905-KJD-BNW, 2021 WL 1738869, at *4 (D. Nev. May 3, 2021) (unpub. op.).
- 40 *E.g.*, Exc. 187 (Decision at 6) (noting that TCC's “principal purpose for incorporation was to ‘secure to the Alaska Native people’ of TCC's region the ‘rights and benefits to which they are entitled under the laws of the United States and the State of Alaska.’”).
- 41 *E.g.*, *McCoy*, 334 F. Supp. at 1121 (“[I]t is apparent the purpose of the College was for the Tribes to become completely self-sufficient and educate their own people.”).
- 42 *See, e.g., Ito*, 547 P.3d at 1023; *Wilson*, 399 F. Supp. 3d at 933-34; *Cole v. Alaska Island Cmty. Servs., Inc.*, No. 1:18-cv-00011-TMB, 2019 WL 13211822, at *6-*7 (D. Alaska Oct. 11, 2019) (unpub. op.), *aff'd*, 834 F. App'x 366, 367 (9th Cir. 2021); *Bekkum v. Samuel Simmonds Mem'l Hosp.*, No. 2BA-15-00097 CI (Alaska Super. Ct., June 19, 2015) (unpub. op. with motion available at App'x Ex. B); *Beversdorf v. Tanana Chiefs Conf.*, No. 4FA-17-01911 CI, 2017 WL 7313414, at *2 (Alaska Super. Ct. Sep. 27, 2017); *Barron v. Alaska Native Tribal Health Consortium*, 373 F. Supp. 3d 1232, 1240 (D. Alaska 2019); *Matyascik v. Arctic Slope Native Ass'n*, No. 2:19-cv-002-HRH, 2019 WL 3554687, at *2 (D. Alaska Aug. 5, 2019); *Johnson v. Maniilaq Ass'n*, No. 3:21-cv-00206-JWS (D. Alaska May 5, 2022) (unpub. op. available at App'x Ex. C & [R. 15-31]); *Meglitsch v. Southcentral Found.*, No. 3:20-cv-0190-HRH, 2022 WL 16949256, at *4 (D. Alaska Nov. 15, 2022) (unpub. op.).
- 43 *Barron*, 373 F. Supp. 3d at 1239--40 (quoting *White*, 765 F.3d at 1025).
- 44 *Ito*, 547 P.3d at 1022.
- 45 *Id.* at 1026.

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- 46 *Id.* at 1023.
- 47 *Id.*
- 48 *Id.*
- 49 Exc. 383-84 (TCC Articles of Incorporation) (corporate purposes).
- 50 Tanana Chiefs Conference, *About Us*, <https://www.tananachiefs.org/about/> (last visited Sept. 23, 2024).
- 51 See William Schneider, Kevin Illingworth, Will Mayo, Natasha Singh, & Thomas Alton, *The Tanana Chiefs: Native Rights and Western Law* (Univ. of Alaska Press, 2018) [Schneider, *The Tanana Chiefs*] at 29-33 (relating discourse between Judge Wickersham and Chief Alexander Williams: “Chief Alexander Williams, of Fort Gibbon, through Paul Williams, Interpreter, said: ‘If there is an industrial school started for the Indians, will you have a doctor there?’ Delegate Wickersham: ‘Do they need a doctor there?’ Paul: ‘Chief Alexander Williams says little as they get it they need the doctor just as bad as they need the schools.’ Delegate Wickersham: ‘When their people get sick where do they go?’ Paul interpreting for Chief Alexander Williams: ‘Down at Gibbon there is a Government doctor, the army doctor, and they depend on him, but other places they go to the mission for medicine but there are places where there is no mission or Government doctor and anyway it is only those who have money who can go to the doctor.’ Delegate Wickersham: ‘What do they do when they have no money and are sick?’ Paul: ‘Then they are helpless and can’t do anything.’ Delegate Wickersham: ‘Are there many who need doctors and can’t get them?’ Paul: ‘Yes, lots of them.’” *Id.* at 108-09; see also Tanana Chiefs Conference, *Our History*, <https://www.tananachiefs.org/about/our-history/> (last visited September 23, 2024).
- 52 *Supra*, n.51.
- 53 See, e.g., *Fairbanks N. Star Borough v. Dena' Nena' Henash*, 88 P.3d 124, 134-35 (Alaska 2004) (describing TCC's P.L. 93-638 programs). “The unique relationship between the federal government and Indian tribes has long led the government to provide support to tribes for health, education, employment, irrigation, administration, and real estate services.” *Id.* at 134.
- 54 Exc. 389-411 (Alaska Tribal Health Compact).
- 55 25 U.S.C. §§ 1601-1673.
- 56 25 U.S.C. §§ 5301-5423; Exc. 196 (Stern Aff. ¶ 2); Exc. 389-411 (Compact); Exc. 412-34 (TCC Funding Agreement); Exc. 135 (Brown Aff. ¶ 6).
- 57 *Ito*, 547 P.3d at 1023 (citing 25 U.S.C. § 5302).
- 58 Dep't of the Interior & Related Agencies Appropriations Act, 1998, Pub. L. No. 105-83, § 325, 111 Stat. 1543, 1597-99 (1997); *Barron*, 373 F. Supp. 3d at 1238 (“ANTHC is a statewide Alaska Native tribal health consortium. It was established pursuant to Section 325 of Public Law 105-83 with the purpose of ‘entering into self-determination and self-governance agreements with the Indian Health Service to operate and manage health services’ for the benefit of Alaska Native tribes”) (citation omitted).
- 59 Exc. 134-36 (Brown Aff. ¶¶ 5-8); Exc. 196-98 (Stern Aff. ¶ 2); Exc. 389-411 (Compact). TCC operates health clinics in Alatna, Allakaket, Bettles (Evansville), Chalkyitsik, Circle, Dot Lake, Eagle, Hughes, Huslia, Kaltag, Koyukuk, Galena, Manley Hot Springs, Minto, Nenana, Northway, Nulato, Rampart, Ruby, Stevens Village, Tanacross, Tetlin, and Tok, and carries out a wide range of additional Indian Health Service programs, functions, services, and activities. Exc. 412-34 (TCC Funding Agreement).
- 60 Exc. 187 (Decision at 6, n.28) (quoting *E.E.O.C. v. Karuk Hous. Auth.*, 260 F.3d 1071, 1080 (9th Cir. 2001)).
- 61 Appellant's Br. at 25-27. Dot Lake admits that the 37 tribal resolutions authorizing TCC to carry out P.L. 93-638 programs for its constituent tribes “does suggest a limited tribal purpose.” *Id.* at 26.
- 62 See, e.g., *supra* n.50.

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- 63 [547 P.3d at 1023-24.](#)
- 64 *Id.* at 1023.
- 65 *Id.* (citing, *inter alia*, [Breakthrough](#), 629 F.3d at 1191-92).
- 66 *Id.* at 1022; *see also id.* at n.138 (citing and quoting, *inter alia*, [Lustre Oil Co., LLC v. Anadarko Mins., Inc.](#), 527 P.3d 586, 604 (Mont. 2023) (McKinnon, J., concurring) (“[T]he factor examining how an entity was created demands a more meaningful and substantive examination than just an observation that the incorporation occurred under state law.”) (alteration in original)). In point of fact, *all* Alaska [P.L. 93-638](#) organizations found by the courts to have tribal sovereign immunity are organized as Alaska nonprofit corporations, including TCC, the Alaska Native Tribal Health Consortium, Southcentral Foundation, Southeast Alaska Regional Health Consortium, Maniilaq Association, and the Arctic Slope Native Association. *See supra* n.42 (collecting cases).
- 67 Exc. 377 (TCC Articles of Incorporation) (TCC was incorporated in 1972 “[t]o secure to the Alaska Native people of the region of the Tanana Chiefs Conference the rights and benefits to which they are entitled under the laws of the United States and the State of Alaska” and, *inter alia*, “To seek an equitable adjustment and settlement of Native affairs and the land claims of the Native People of said region.”). CRNA's Articles of Incorporation, also filed in 1972, have similar provisions. *See* Alaska Dep't of Commerce, Cmty., & Econ. Dev., *Ahtna' T'Aene Nene' / Creation Filing* <https://www.commerce.alaska.gov/cbp/main/search/entities>, (last visited Sept. 23, 2024).
- 68 [43 U.S.C. § 1606\(a\)](#) (CRNA's and TCC's traditional territories were used by Congress to define the boundaries of the Ahtna and Doyon ANCSA Regional Corporations).
- 69 *Id.* at 1007.
- 70 Exc. 375 (TCC Articles of Incorporation); Exc. 133 (Brown Aff. ¶ 2); Exc. 384-86 (TCC Articles & Bylaws, Art. Fifth(f)).
- 71 Schneider, *The Tanana Chiefs*, at 25, 27 (at the 1915 meeting, the Tanana Chiefs “articulated not only a respect for their own customs and traditions, but also an understanding of current threats brought by the growing white population and a plan for directing their own future. The chiefs ‘proved to be unusually intelligent’ and ‘diplomatic,’ one [Fairbanks] newspaper reported in a somewhat surprised tone following the meeting. ‘The Indians knew what they wanted and how to get it.’” (quoting “*The Indian Conference*,” Alaska Citizen, July 12, 1915)).
- 72 Schneider, *The Tanana Chiefs*, at xiii; Exc. 133 (Brown Aff. ¶ 2) (“TCC predates Alaska statehood. The Traditional Chiefs of the Athabascan Tribes of the Alaska Interior have met to address issues of concern since time immemorial, including meeting with United States Judge James Wickersham in 1915 to secure health, education, and other benefits.”).
- 73 Appellant's Br. at 19-20.
- 74 [AS 10.20.146](#); Exc. 372 (TCC Articles of Incorporation) (incorporators signatures).
- 75 Exc. 372-73 (listing initial directors from each of TCC's core Alaska Native Villages).
- 76 David S. Case & David Voluck, *Alaska Natives and American Law* 347 (Univ. of Alaska Press, 3d Ed., 2012) (“Case & Voluck”). Dot Lake cites to the Second Edition.
- 77 *See, e.g.*, Schneider, *The Tanana Chiefs*, at 38-41 (protecting tribal rights to land was a major topic in the 1915 meeting with Judge Wickersham).
- 78 *Id.* at 348-52.
- 79 *Id.* at 352.

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- 80 [Ito](#), 547 P.3d at 1024 (quoting *Williams v. Big Picture Loans, LLC*, 929 F.3d 170, 182 (4th Cir. 2019) (internal alterations in brackets removed)). The court in *Williams*, in turn, looked to the *Breakthrough* standard. 929 F.3d at 182 (quoting *Breakthrough*, 629 F.3d at 1191).
- 81 *Ito*, 547 P.3d at 1024; see also *Breakthrough*, 629 F.3d at 1193 (management by tribal members weighs in favor immunity); *Manzano v. S. Indian Health Council, Inc.*, No. 20-ccv-02130-BAS-BGS, 2021 WL 2826072, at *8 (S.D. Cal. July 7, 2021) (unpub. op.); *Cole*, 2019 WL 13211822, at *6; *Matyascik*, 2019 WL 3554687, at *2; *Wilson*, 399 F. Supp. 3d at 934-35; *Bekkum v. Samuel Simmonds Mem'l Hosp.*, No. 2BA-15-00097 CI (Alaska Sup. Ct. June 19, 2015) (granting motion to dismiss) (App'x A at 1-2).
- 82 See, e.g., *Wilson*, 399 F. Supp. 3d at 935; *Williams*, 929 F.3d at 182-83; cf. *Confederated Tribes of Warm Springs Res. of Or.*, 428 F. Supp. 3d at 400.
- 83 Exc. 133-34 (Brown Aff. ¶¶ 2-4).
- 84 Exc. 435-36 (TCC Bylaw Art. Two, § 1); see also Exc. 376 (describing TCC's traditional territory as “in general, the Middle Yukon and Upper Yukon drainages, the Koyukuk and Tanana drainages, and the Upper Kuskokwim drainage, but including Mentasta and Cantwell[.]”).
- 85 Exc. 439 (TCC Bylaw Art. Four, § 2).
- 86 Exc. 315 (Ridley Aff. ¶ 37).
- 87 Exc. 442 (TCC Bylaw Art. Five, § 1).
- 88 Exc. 447-48 (TCC Bylaw Art. Seven, § 3); Exc. 134 (Brown Aff. ¶ 4). The Executive Committee includes an Elder Advisor and a Youth Advisor, who must be Alaska Native and over 55 years in age (Elder Advisor) or between 18-21 years of age (Youth Advisor). Exc. 448-49 (TCC Bylaw Art. Seven, § 4).
- 89 Exc. 134 (Brown Aff. ¶ 4); Exc. 443 (TCC Bylaws, Art. Five, § 3); Case & Voluck, 348-52.
- 90 Appellant's Br. at 28.
- 91 See Exc. 134 (Brown Aff. ¶ 4); Schneider, *The Tanana Chiefs*, at 52 (Will Mayo describing Interior Native communities “left out” by ANCSA that are not included on the BIA list, including Minchumina, Bear Paw, Cosjacket, Tolovana, Salchaket, and Chena). Before 1993, no formal federal “recognition of Alaska villages had occurred,” but for the preceding half century, “Congress and the Interior Department ... dealt with the Alaska Natives as though there were tribes in Alaska.” *John v. Baker*, 982 P.2d 738, 749, 750 (Alaska 1999) (internal quotation marks and citation omitted). Currently there are 229 federally-recognized Alaska Tribes and Alaska Native Villages, including one added by Congress after the BIA's list was published. See *McCrory v. Ivanof Bay Vill.*, 265 P.3d 337, 341 n.29 (Alaska 2011) (citation omitted). The BIA list is not cast in stone: there are at least three ways a Native community not on the list can achieve tribal recognition. See *Frank's Landing Indian Cmty. v. Nat'l Indian Gaming Comm'n*, 918 F.3d 610, 613-14 (9th Cir. 2019) (Christen, J.); see also U.S. Department of the Interior: Bureau of Indian Affairs, *Interior Publishes Revised List of Alaska Native Tribes Eligible for Services from Bureau of Indian Affairs*, <https://www.bia.gov/as-ia/opa/online-press-release/interior-publishes-revised-list-alaska-native-tribes-eligible> (announcing revision of initial list to add three additional Alaska tribes) (dated Oct. 15, 1993) (last visited Sept. 30, 2024).
- 92 Exc. 436 (TCC Bylaw Art. 2, §§ 1(b), 2).
- 93 547 P.3d at 1024 (alteration and internal quotation marks and citation omitted).
- 94 *Id.* at 1025 (citing *Wilson*, 399 F. Supp. 3d at 935).

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- 95 Exc. 314-16 (Ridley Aff.); Exc. 135-36 (Brown Aff. ¶ 8). During this litigation, Dot Lake's Village Council for the very first time asserted that "TCC is not a tribal agency for the purposes of exercising the Tribe's sovereign immunity." *Compare*, R. 145 (Dot Lake Tribal Resolution 94-IHS-1, July 25, 1994) with Exc. 380 (Dot Lake Village Council Resolution (unnumbered), April 26, 2022).
- 96 *Ito*, 547 P.3d at 1025 (citations omitted).
- 97 *Id.* TCC has long consistently asserted and successfully defended its status as a tribal organization. *See, e.g., Beversdorf v. Tanana Chiefs Conf.*, 2017 WL 7313414, at *2; *Dená Nená Henash v. Fairbanks N. Star Borough*, 265 P.3d 302, 303 (Alaska 2011); *Fairbanks N. Star Borough*, 88 P.3d at 127.
- 98 Appellant's Br. at 31 (citing 25 U.S.C. § 5332 ("Nothing in [P.L. 93-638] shall be construed as... affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe")).
- 99 25 U.S.C. § 5332.
- 100 Exc. 187-88 (Decision at 6-7) ("Dot Lake did not expressly reserve its sovereign immunity until it objected to allegedly illegal actions taken by TCC's Board of Directors. Moreover, other tribes within TCC explicitly recognize their delegation of sovereign immunity to TCC.").
- 101 *Ito*, 547 P.3d at 1025 (citations omitted).
- 102 *Id.* at 1026 ("This would directly affect CRNA's resources and ability to provide services to tribal members, and undermine the policies of self-determination and self-governance.").
- 103 Exc. 314-15 (Ridley Aff. ¶ 2); Exc. 197 (Stern Aff. ¶ 3) ("The vast majority of TCC's operations are funded through the IHS Annual Funding Agreement."); Exc. 133-34 (Brown Aff. ¶ 5) (providing P.L. 93-638 "services is a core governmental function of TCC's villages, and TCC takes its responsibilities to provide these services very seriously.").
- 104 *See* 547 P.3d at 1026.
- 105 Appellant's Br. at 33.
- 106 *Price v. Unisea, Inc.*, 289 P.3d 914, 922-23 (Alaska 2012).
- 107 *Douglas Indian Ass'n*, 403 P.3d at 1179 (quoting, *Runyon ex rel. B.R. v. Ass'n of Vill. Council Presidents*, 84 P.3d 437, 440 (Alaska 2004), overruled by *Ito*, 547 P.3d 1003).
- 108 Exc. 137-64 (*Dot Lake I*, Case No. 4FA-21-02438 CI (Alaska Super. Ct.) (Complaint & First Amended Complaint) (case dismissed, April 19, 2022); Exc. 165-81 (Complaint).
- 109 *See Dot Lake I*, Case No. 4FA-21-02438 CI (Alaska Super. Ct.) (TCC Motion for Limited Intervention) (available at App'x Ex. D).
- 110 *See, e.g., supra*, n.108.
- 111 *See Douglas Indian Ass'n*, 403 P.3d at 1179.
- 112 547 P.3d at 1026.
- 113 Exc. 188 (Decision at 7).
- 114 Exc. 191-93 (Decision at 10-12).
- 115 *DeNardo v. Maassen*, 200 P.3d 305, 317 (Alaska 2009) ("[A]n issue is waived when a party fails to raise it in the points on appeal and then inadequately briefs the argument.").

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- 116 Exc. 134 (Brown Aff. ¶ 3); Exc. 435-36 (TCC Bylaws, Art. 2, Sec. 1); Exc. 166 (Complaint ¶ 9).
- 117 See Exc. 372-73 (TCC Original Articles, Art. Sixth) (naming 25 tribal representatives as initial board of directors); Exc. 436 (TCC Bylaws, Art. 2, Sec. 3(b)) (“[t]he number of Directors shall be equal to the number of member villages plus three officers ... Each member village shall be entitled to elect one Director. Directors must be residents of the State of Alaska and Alaska Native members of member villages”); Exc. 439 (Art. VII, Sec. 1).
- 118 Appellant's Br. at 2; Exc. 456-58 (Notice of Special TCC Full Board of Directors Meeting, Dec. 15, 2021).
- 119 Exc. 134 (Brown Aff. ¶ 4).
- 120 Exc. 459 (letter from Minto Village Council, Oct. 29, 2021). Those requesting the Board meeting all indicated they did so in their official capacity as Tribal leaders and show that this matter is indeed an internal tribal matter. See Exc. 331 (Tracy Charles-Smith Aff. (“I am the President of the Dot Lake Village, a federally recognized tribal entity”), describing a meeting where “Chief Carl Burgett, a member of the TCC Executive Board, challenged the legality” of a special meeting called to recall Chief Simon); Exc. 317-22 (Chief Burgett Aff. ¶ 1, declaring he is “the Chief of the Native Village of Huslia, a federally recognized tribal entity” and a TCC member); Exc. 332 (Chief Simon Aff. ¶ 3 identifying himself as the former “Chief of [the Native Village] of Allakaket.”); Exc. 381-82 (letter from Loudon [Galena] Tribal Council addressed to “Dear Fellow Tribal Leaders,” urging support of Chief Simon and describing the efforts of “First Chief Charlie Green” and “Second Chief Tyler Huntington” on Chief Simon's behalf); Exc. 379-80 (Dot Lake Traditional Council resolutions); Exc. 460 (letter from Birch Creek Tribe First Chief Jacqueline Basaam requesting a full TCC Board meeting with “at least 12 tribes” present to address “unanswered questions and concerns” about Chief Simon's conduct); see also Exc. 461 (letter from First Chief Karma Ulvi of the Native Village of Eagle); Exc. 462 (letter from President Jessica Black of the Fairbanks Native Association); Exc. 463 (letter from Second Chief Georgianna Madros of the Village of Kaltag Tribal Council); and see Exc. 327-29 (Kaltag Tribal Council Resolution “repudiat[ing]” Second Chief Madros' letter); Exc. 459 (letter from Secretary Lori Baker of the Native Village of Minto Tribal Council); Exc. 464 (letter from Vice President Christopher Denny of the Native Village of Tanacross Council); Exc. 465 (letter from Second Chief Julie Roberts Hsylop of the Native Village of Tanana Tribal Council); Exc. 466 (letter from Chief Michael Sam of the Native Village of Tetlin Tribal Council); Exc. 467 (letter from First Chief Robert Walker of the Anvik Village Tribal Council); Exc. 468 (letter from Second Chief Leonard John of the Arctic Village Tribal Council); Exc. 469 (letter from First Chief Michael Wiehl of the Rampart Village Tribal Council).
- 121 Exc. 470.
- 122 Exc. 327-29.
- 123 Exc. 164 (Complaint ¶ 4).
- 124 Exc. 165-81 *passim* (Complaint). TCC emphatically denies that there were any errors or improprieties by TCC whatsoever in the December 15 meeting, in the process leading to that meeting, and in events subsequent to the meeting. See Exc. 133-36 (Brown Aff.); Exc. 196-98 (Stern Aff.); Exc. 314-16 (Ridley Aff.). The merits of the dispute, however, are not before the Court in this appeal.
- 125 Appellant Br. at 3. Dot Lake filed two actions and three complaints arising from Chief Simon's recall. Exc. 137-64 (*Dot Lake I* Case No. 4FA-21-02438 CI (Alaska Super. Ct.) (Complaint & First Amended Complaint)); Exc. 165-81 (Complaint). Healy Lake Village later withdrew from these actions. Healy Lake Village Council Resolution No. 2020-031422, “Withdrawal From Tanana Chiefs Conference Lawsuit Cases,” Case No. 4FA-22-02438 CI (Mar. 14, 2022) (available at App'x Ex. E).
- 126 *Ito*, 547 P.3d at 1010 (quoting *Runyon*, 84 P.3d at 439).
- 127 *Healy Lake*, 322 P.3d at 875 (ellipses in original) (quoting *John*, 982 P.2d at 756).
- 128 *Id.* at 867.
- 129 *Id.* at 867-69.

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- 130 “Petition To [sic] Declaratory Relief and Determination of Party Authorized to Act on Behalf of Tribal Accounts,” XXXXXXXXXX CI (June 6, 2012).
- 131 *Healy Lake*, 322 P.3d at 874 (quoting *John*, 982 P.2d at 751).
- 132 403 P.3d at 1175.
- 133 *Id.*
- 134 *Douglas Indian Ass'n v. Cent. Council of Tlingit & Haida Indian Tribes of Alaska*, Case No. 1JU-15-00625 CI, at *4 (Jan. 11, 2016) (unpub. op.) (quoting *Burlington N. & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1090 (9th Cir. 2007) (internal quotation marks omitted, emphasis in original, bracket in original)).
- 135 403 P.3d at 1179 (quoting *Runyon ex rel. B.R. v. Ass'n of Vill. Council Presidents*, 84 P.3d 437, 440 (Alaska 2004)).
- 136 Exc. 193 (Decision at 12) (citing *Douglas Indian Ass'n*, 403 P.3d at 1176).
- 137 *DeNardo*, 200 P.3d at 317.
- 138 Exc. 193-94 (Decision at 12-13).
- 139 Appellant's Br. at 35.
- 140 87 P.3d 41, 45 (Alaska 2004).
- 141 *Id.* at 53-54.
- 142 *Id.* at 55.
- 143 *Douglas Indian Ass'n*, 403 P.3d at 1177 (quoting *McCrary*, 265 P.3d 337 at 342).
- 144 *Ito*, 547 P.3d at 1014-16 (citing, *inter alia*, *Breakthrough*, 629 F.3d at 1187; *White*, 765 F.3d at 1025)).
- 145 Appellant's Br. at 37 (quoting *United States v. White Mt. Apache Tribe*, 784 F. 2d 917, 920 (9th Cir. 1986) (citing, *inter alia*, *Quileute Indian Tribe v Babbitt*, 18 F.3d 1456, 1559-60 (9th Cir. 1994)) (emphasis added).
- 146 *Michigan v. Bay Mills Cmty.*, 572 U.S. 782, 788 (2014) (citations omitted).
- 147 *Id.* (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978)). This immunity extends to suits by one tribe against another. *E.g.*, *Douglas Indian Ass'n*, 403 P.3d at 1174-75; *Quileute Indian Tribe*, 18 F.3d at 1559-60 (dismissing action by one tribe because defendant tribe was an indispensable party under *Fed. R. Civ. P. 19* and could not be joined due to sovereign immunity).
- 148 *Ito*, 547 P.3d at 1010 (quoting *Bay Mills Cmty.*, 572 U.S. at 790).
- 149 *Douglas Indian Ass'n*, 403 P.3d at 1179 (upholding sovereign immunity dismissal and commenting that “a tribe can ... protect its interests when entering into a contract with another tribe by negotiating a waiver of the other tribe's immunity or some other procedure for resolving disputes. But the ‘federal policies of tribal self-determination, economic development, and cultural autonomy’ are better served by leaving these decisions up to the tribes.”) (citation omitted); *Wilson*, 399 F. Supp. 3d at 935.
- 150 *Arizona v. San Carlos Apache Tribe of Ariz.*, 463 U.S. 545, 571 (1983).
- 151 29 F.4th 1108, 1121-22 (9th Cir. 2022).
- 152 *Id.* (citing *Jamul Action Comm. v. Simermeyer*, 974 F.3d 984, 994 (9th Cir. 2020)) (internal quotations omitted).

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- 153 Appellant's Br. at 39-40. Compare *Wilson*, 399 F. Supp. 3d at 933 (concluding a tribal consortium that has sovereign immunity under the *White/Breakthrough* test is not "a person" under federal law) (citing *United States ex rel. Cain v. Salish Kootenai College, Inc.*, 862 F.3d 939, 941 (9th Cir. 2017)).
- 154 See *Dot Lake I*, Case No. 4FA-21-02438 CI (Alaska Super Ct.) (voluntarily dismissed in favor of this action App'x Ex. A).
- 155 *Ex parte Young*, 209 U.S. 123, 159 (1908) (state official's attempt to enforce an unconstitutional legislative enactment is an "illegal act" where "[t]he state has no power to impart to him any immunity from responsibility to the supreme authority").
- 156 25 U.S.C. § 5381(b); *White*, 765 F.3d at 1025.
- 157 Appellant's Br. at 3 (requesting "a permanent injunction prohibiting TCC from including a bona fide officer or director from attending or voting in a meeting of a board of which they are a member in the future"). But see *Douglas Indian Ass'n*, 403 P.3d at 1180 (rejecting *Ex parte Young* argument, reasoning that "Douglas has not alleged an ongoing violation of federal law"), see also *Jamul*, 974 F.3d at 994 ("There are also limits to what sort of relief a plaintiff may seek under *Ex parte Young* without making the sovereign the real party in interest.").
- 158 *Jamul*, 974 F.3d at 996; *White*, 765 F.3d at 1025 (recognizing the "preservation of tribal self-determination" as a "central polic[y] underlying the doctrine of tribal sovereign immunity.") (citation omitted).
- 159 See *Healy Lake Vill.*, 322 P.3d at 874.
- 160 Alaska R. Civ. P. 82(a), (b)(2); *Sitka Tribe of Alaska v. Alaska Dep't of Fish & Game*, 540 P.3d 893, 902-03 (Alaska 2023).
- 161 See *State v. Native Vill. of Nunapitchuk*, 156 P.3d 389, 402-03 (Alaska 2007) ("Rule 82 is a rule of procedure because it more readily falls on the procedure side of the substance and procedure divide under the definitions established by the precedents of this court."); *Alaska Rent-A-Car, Inc. v. Avis Budget Grp., Inc.*, 738 F.3d 960, 974 (9th Cir. 2013) (concluding Rule 82 is "substantive for *Erie* purposes" but "procedural for Alaska constitutional purposes of allocating authority as between the courts and the legislature and procedural for choice of law purposes").
- 162 *Native Vill. of Nunapitchuk*, 156 P.3d at 403.
- 163 *Id.*
- 164 *In re White*, 139 F.3d 1268, 1271 (9th Cir. 1998).
- 165 *Douglas Indian Ass'n*, 403 P.3d at 1179.
- 166 See *In re White*, 139 F.3d at 1271.
- 167 *McClendon v. United States*, 885 F.2d 627, 630 (9th Cir. 1989); *United States v. Oregon*, 657 F.2d 1009, 1014 (9th Cir. 1981); see also *Paskenta Band v. Cornerstone Cmty. Bank*, 859 F. App'x 173, 174 (9th Cir. June 25, 2021) ("By filing a complaint seeking attorneys' fees, [tribal entities] expressly waived sovereign immunity with respect to that issue, and also consented to the court's authority to consider [defendants'] motions for attorneys' fees.") (unpub. op.); *Guidiville Rancheria of Cal. v. United States*, 704 F. App'x 655, 660 (9th Cir. Aug. 4, 2017) ("The Tribe asked, as part of its requested relief, that the district court grant "[a]n award of damages ..., including reasonable attorneys['] fees and costs as permitted by law." Thus, attorneys' fees was one of the issues that the Tribe expressly requested the district court to resolve and put under its jurisdiction Once the Tribe consented to federal court jurisdiction over the attorneys' fees issue, it was bound by the district court's determination ...") (unpub. op.).
- 168 Exc. 145 (*Dot Lake I*, 4FA-21-02438 CI (Alaska Super Ct.) (Complaint at 9 ¶ 4); Exc. 163 (*Dot Lake I*, 4FA-21-02438 CI (Alaska Super Ct.) (First Amended Complaint, at 18 ¶ 7)).
- 169 Exc. 181 (Complaint at 17 ¶ 6).

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170 Exc. 309-13 (Order Granting TCC's Motion for Attorneys' Fees).

171 See *McClendon*, 885 F.2d at 630; *Oregon*, 657 F.2d at 1014; Alaska Civ. R. 82.

172 Nor does TCC argue, as Dot lake suggested below, that attorney's fees are a counterclaim for recoupment or otherwise an offset for the Tribe's requested relief. Cf. *Quinault Indian Nation v. Pearson*, 868 F.3d 1093, 1100 (9th Cir. 2017). As the Superior Court correctly reasoned: “[a]n award of attorney's fees is a determination made under Civil Rule 82, rather than a counterclaim or affirmative defense.” Exc. 313 (Order Granting TCC's Motion for Attorneys' Fees at 5).

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