

**FILED**

**SEP 21 2007**

  
CLERK

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

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5	William Birdnecklace,	) Case No.: 07-5008
6	Plaintiff (petitioner);	)
7		)
8	-against-	) MEMORANDUM IN SUPPORT OF
9		) PLAINTIFF'S MOTION FOR
10	JOHN YELLOW BIRD STEELE, et. al.,	) DEFAULT JUDGMENT
11	Defendant.	)
12		)

Memorandum in Support

I. Introduction

Plaintiff filed an original complaint January 29, 2007, which was subsequently amended by Plaintiff and accepted July 3, 2007. Defendant has filed Motion to Dismiss Plaintiff's Complaint on February 21 2007, and an additional Motion to Dismiss for Plaintiff's Amended Complaint on August 1, 2007. Plaintiff has submitted on May 16, 2007 and August 17, 2007 - respective responses to Defendants' Motions To Dismiss.

II. Standard of Review

Federal Rule of Civil Procedure 55(a) "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.", and 55(b)(2) "In all other cases the

1 party entitled to a judgment by default shall apply to the court  
2 therefore;..."; both F.R.C.P. 55(a) and 55(b) allows for a default  
3 judgment to be awarded when the Respondents (the named  
4 Defendants herein) have failed to plead.

5  
6 Federal Rule of Civil Procedure 12(a) requires Defendants to  
7 enter an answer to Plaintiff's Complaint within 20 days of  
8 service.

9  
10 Defense has moved for dismissal arguing the Doctrine of  
11 Sovereign Immunity shields the Defense from the jurisdiction of  
12 this District Court, and further the Defense argues immunity  
13 from suit. In the immediate Plaintiff's Motion For Default  
14 Judgment, Plaintiff's argument depends on this Memorandum In  
15 Support, and Plaintiff's August 17, 2007 Response And Answer  
16 previously submitted to this court.

17  
18 Jurisdiction

19 This Federal District Court has full jurisdiction of this matter  
20 as provided by Article 1 of the Fort Laramie Treaty of 1868.

21  
22 The membership and authority of a valid and properly sanctioned  
23 Oglala Sioux Tribe (OST) Council is essential to the Tribes  
24 ability to govern the jurisdiction of the OST. The governing  
25 body of the Oglala Sioux Tribe is body of the OST Council, whose  
26 membership is governed by OST Ordinance 04-06 (an election  
27 ordinance). OST Ordinance 04-06 was enacted by a OST Council  
28 in 2004. The Council has vested authority to enact Ordinances  
29 by Constitutional Statue, OST Const. Art. III et. seq.; The OST  
30 has a Constitution in place (see; *Pl. August 17, 2007 Response*

1 Br., Attachment 2); and such OST Constitution is born out of the  
2 Indian Reorganization Act (25 U.S.C. 478 ), which in-turn was  
3 enacted by the US Congress observing the governing law  
4 prescribed by the 1868 Fort Laramie Treaty.

5  
6 The Defendants are currently in resistance to order issued by  
7 the OST Election Court of Appeals (OSTECA) October 22, 2006,  
8 which finds the Individual Defendants' identity as candidates to  
9 election as OST government officials "null and void" as of  
10 October 22, 2006, and therefore ordered a "re-nomination" and  
11 "new primary election" to be executed. This fully adjudicated  
12 issue nullifies the identity or claim of "government official"  
13 status to all individually named Defendants. As a group, the  
14 Defendants are nothing more than a group of "wishers and  
15 dreamers" who hold no "government official" value or status.

16  
17 The sovereignty and jurisdiction (therefore sovereign immunity)  
18 of the Defendants exists if and only if a legal and properly  
19 sanctioned Tribal Council must be seated according to applicable  
20 laws - therefore, the Oglala Sioux Tribe, without a authorized  
21 Tribal Council, lacks jurisdiction over this case, leaving only  
22 the Federal Court to have and exert affirmative jurisdiction in  
23 this matter.

24  
25 Additionally, the Defendants lack jurisdiction to issue orders,  
26 judgments, or statements; Any such order, judgment, or statement  
27 issued by the Defendants - while in resistance of a proper and  
28 legal court order which nullified and voids their candidacies  
29 and authority to hold any current office whatsoever - are null  
30 and void-ab-initio.

1 III. Argument

2  
3 Defendants Submit Void Documents and Present False Identities

4 The Defendants' attempts to defraud the court, and attempts to  
5 obtain an order from this court by fraud through the submission  
6 of void documents claiming false identification as government  
7 officials (see; Def. Mot. Dismiss Feb. 21, 2007) (see also; Def.  
8 Mot. Dismiss Aug. 1, 2007) is a corruption of these proceedings.  
9 Defendants are fully knowledgeable of the existence and content  
10 of the OST Election Court of Appeals (OSTECA) October 22, 2006  
11 Order (the nullification of their candidacies). The Defendants  
12 have submitted no evidence or authority proper to oppose the  
13 indisputable truth, that they are not legal or properly  
14 sanctioned to claim or acknowledge themselves as government  
15 officials, or to claim the status of "sovereign immunity" as a  
16 defense or otherwise.

17  
18 The Defenses' motions to dismiss filed February 21, 2007 and  
19 August 1, 2007: can only result in an order void-ab-initio.  
20 Fraud upon the court is described by the 7th Circuit Court of  
21 Appeals as to (Kenner v. C.I.R., 387 F.3d 689 (1968))"embrace  
22 that species of fraud which does, or attempts to, defile the  
23 court itself, or is a fraud perpetrated by officers of the court  
24 so that the judicial machinery can not perform in the usual  
25 manner its impartial task of adjudging cases that are presented  
26 for adjudication."

27  
28 Further, any decision garnered by the Defendants by and through  
29 their submissions to this court will not bare any valuable fruit  
30 whatsoever, (7 Moore's Federal Practice, 2d ed., p. 512, ¶

1 60.23) "a decision produced by fraud upon the court is not in  
2 essence a decision at all, and never becomes final."

3  
4 Individual Defendants

5 Defenses' attempt to dismiss or answer the complaint with a  
6 contemptuous and fraudulent claim to identity (as government  
7 officials), whether for or against the Defense can only result  
8 in a void judgment. Therefore the Defendants' documents  
9 submitted as "answers" are void on their face. It's the  
10 Plaintiff's argument that the result of such action by the  
11 Defense is a nullity; further, the submission of a fraudulent  
12 identity, in the attempt to procure a defense of sovereign  
13 immunity is simply fraud and void.

14  
15 The Defendants lack jurisdiction to overrule the October 22,  
16 2006 order of the OSTECA (see; Attachment 1 pg. 4 ¶2) "ORDERED,  
17 that the OST Election Ordinance 04-06 Section 16, Sub-section  
18 (G) which reads; The decisions of the Court of Election Appeals  
19 on all issues under its jurisdiction shall be final ands binding  
20 upon the parties. No further appeals to the Tribal Council or  
21 the Supreme Court are available. Shall be upheld." , and thus,  
22 Defendants also lack jurisdiction to submit claims of a defense  
23 of sovereign immunity. "ORDERED, ADJUDGED and DECREED, the OST  
24 Primary Election that was held on October 22, 2006 on the Pine  
25 Ridge Indian Reservation be null and void" (OSTECA 10/22/06  
26 Order, pg. 3, ¶5)(see; Attachment 1)

27  
28 The named individual defendants' are simply individuals; and any  
29 claim to "sovereign immunity", or claim of the identity of  
30 "government officials" is a contemptuous claim, trespassing upon  
a proper and valid order.

OST Officials

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2  
3 The Defendants named OST officials lack authority to act  
4 officially because they lack a legally sanctioned and vested  
5 Tribal Council which is the governing body that vests authority  
6 in any official or office of the OST. (Oglala Sioux Tribe  
7 Constitution Art. III Sec. 1) "The governing body of the tribe  
8 under this constitution shall be a council which shall be  
9 composed of councilmen chosen by secret ballot by qualified  
10 voters of the tribe, which council shall hereafter be known as  
11 "The Oglala Tribal Council"."

12  
13 As such, these individuals and the OST and its officers as a  
14 whole lack the authority to assert "sovereign immunity" as the  
15 government acts outside its scope of authority. Citing the  
16 District Court of the District of Columbia, December 19, 2006  
17 Order and Memorandum - Marilyn Vann, et al. v. Birk Kempthorne  
18 et. al. Memorandum Opinion and Order: (see; D.S.D 07-5008,  
19 Docket #34, Pl. Br. Mot. to Amend. Ex. D pg. 26)

20  
21 "...even if the tribe were immune, tribal officials are not  
22 protected by sovereign immunity when they are acting beyond the  
23 scope of their authority, nor are they immune from suits for  
24 prospective, injunctive relief. See *Santa Clara Pueblo*, 436 U.S.  
25 at 59 (citing *Ex parte Young*, 209 U.S. 123 (1908)). When a  
26 complaint alleges that the tribal officer has "acted outside the  
27 amount of authority that the sovereign is capable of bestowing,  
28 an exception to the doctrine of sovereign immunity is invoked."  
29 *Tenneco Oil Co. v. Sac and Fox Tribe of Indians of Okla.*, 725  
30 F.2d 572, 574 (10<sup>th</sup> Cir. 1984) (permitting plaintiff to seek  
injunctive and declaratory relief against tribe under exception

1 to sovereign immunity). "Any other rule would mean that a claim  
2 of sovereign immunity would protect a sovereign in the exercise  
3 of power it does not possess." *Id.* (citing *Larson v. Domestic &*  
4 *Foreign Commerce Corp.*, 337 U.S. 682 (1949) ("[T]he conduct  
5 against which specific relief is sought is beyond the officer's  
6 powers and is, therefore, not the conduct of the sovereign.")).  
7 Utilizing such exceptions of sovereign immunity is "especially  
8 appropriate" with regard to Indian tribes, who are otherwise  
9 protected by an extremely broad immunity that would prevent  
10 federal courts from reviewing many aspects of federal law.  
11 *Tenneco Oil*, 725 F.2d at 574 (citing *Santa Clara*)".  
12

13 The Defendants act in direct contempt and violation of a proper  
14 court order (see; Attch. 1); however, the much more incredible  
15 event is the Defendants' audacious attempt to defraud this court  
16 with their scandalous, fraudulent, and contemptuous statements  
17 of identity and immunity.  
18

#### 19 Scandalous Matter

20 By claiming an illegal status of "sovereign immunity", the  
21 Defendants attempt to waste court resources and time; The  
22 foundation for both Defense Motions to Dismiss filed February  
23 21, 2007 and August 1, 2007 is based on the fraudulent argument  
24 that the Defendants are "government officials"; by asserting a  
25 fraudulent defense and submitting "scandalous" material to the  
26 court, the Defense renders their submissions null-and-void, and  
27 any court order issued in regard to the Defenses' Motions to  
28 Dismiss would in-fact render a null-and-void order, regardless  
29 if the order were for or against the Defense regarding their  
30 various motions to dismiss, (*Freytag v. Commissioner*, 501 U.S.

1 868 (1991);) "Since such jurisdictional defect deprives not only  
2 the initial court but also the appellate court of its power over  
3 the case or controversy, to permit the appellate court to ignore  
4 it. ...[Would be an] unlawful action by the appellate court  
5 itself."

6  
7 Time Has Expired For Defendants To Answer

8 Time has expired for Defendants to file an answer or assert an  
9 affirmative defense to Plaintiff's Complaint as required by  
10 F.R.C.P. 12(a), and applicable laws and jurist-prudence.

11  
12 IV. Conclusion

13 For the stated reasons herein, Plaintiff prays for this Court to  
14 grant Plaintiff's Motion for Default Judgment, in the above-  
15 mentioned case.

16  
17 Dated this 18th day of September, 2007.

18  
19  
20  
21  
22 By: 

William Birdnecklace  
Pro Se  
P.O. Box 525  
Manderson, SD 57756-0525  
605-441-7675