

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Lorrie Miner,)	Case # 1:08-cv-105
plaintiff)	
vs.)	BRIEF IN SUPPORT OF
)	DEFENDANTS' MOTION TO
Standing Rock Sioux Tribe and)	DISMISS FOR LACK OF
Standing Rock Sioux Tribal)	SUBJECT MATTER
Court,)	JURISDICTION
defendants)	

This case must be dismissed for lack of subject matter jurisdiction.

The plaintiff's jurisdictional allegation, ¶ 5 of her Complaint, alleges federal question jurisdiction under 28 USC §1331, alleging a statutory grant of jurisdiction under 28 USC §§1301-03, the Indian Civil Rights Act (ICRA).

ICRA, §1303, extends jurisdiction to the courts of the United States only for *habeas corpus*.

Judge Miner seeks only declaratory relief, in her First Claim at ¶¶ 34, et seq., and in her Second Claim, at ¶¶ 40, et seq.

Judge Miner alleges, however, that jurisdiction has been extended to declaratory judgment actions by the case of Santa Clara Pueblo v. Martinez, 436 US 49 (1978).

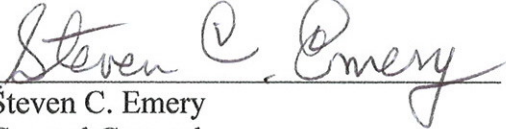
On the contrary, Santa Clara Pueblo specifically and clearly holds that ICRA does not create subject matter jurisdiction for either declaratory relief or injunctive relief. Plaintiff Martinez brought her case claiming jurisdiction under ICRA for declaratory or injunctive remedies. The Supreme Court *held* that the United States District Court did not have jurisdiction to hear any claim seeking declaratory judgment:

As we have repeatedly emphasized, Congress' authority over Indian matters is extraordinarily broad, and the role of courts in adjusting relations between and among tribes and their members correspondingly restrained. See *Lone Wolf v. Hitchcock*, 187 U.S. 553, 565, 23 S. Ct. 216, 221, 47 L. Ed. 299 (1903). Congress retains authority expressly to authorize civil actions for injunctive or other relief to redress violations of §1302, in the event that the tribes themselves prove deficient in applying and enforcing its substantive provisions. But unless and until Congress makes clear its intention to permit the additional intrusion on tribal sovereignty that adjudication of such actions in a federal forum would represent, we are constrained to find that §1302 does not impliedly authorize actions for **declaratory** or injunctive relief against either the tribe or its officers.

Santa Clara Pueblo, 436 US 49, at page 72 (emphasis added).

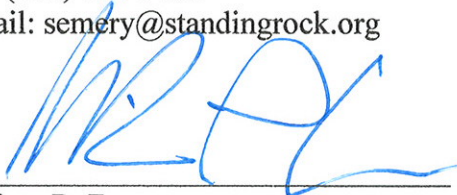
Therefore, this Court cannot entertain Judge Miner's action and must dismiss with prejudice.

Respectfully submitted,



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