IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

CASE NO.: 8:08-CV-2455-T17-TBM

WILLIAM BERNARD PERRY,

Plaintiff

v.

SEMINOLE TRIBE OF FLORIDA, a federally recognized Indian tribe; SEMINOLE HARD ROCK CASINO, INC., SEMINOLE POLICE DEPARTMENT, WILLIAM LATCHFORD, CHIEF OF POLICE OF SEMINOLE POLICE DEPARTMENT AND JOHNNY NUCKLES

Defendants.
_____/

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OF DEFENDANTS, SEMINOLE TRIBE OF FLORIDA, SEMINOLE POLICE DEPARTMENT, WILLIAM LATCHFORD AND JOHNNY NUCKLES (DISPOSITIVE MOTION)

DONALD A. ORLOVSKY
Florida Bar Number: 223816
dao4law@aol.com
KAMEN & ORLOVSKY, P.A.
1601 Belvedere Road, Ste. 402-S
West Palm Beach, FL 33406
Phone: (561) 687-8500
Fax: (561) 687-7892
Counsel for Defendants, Seminole Tribe of Florida, Seminole Police Department, William Latchford, Johnny Nuckles

Defendants, Seminole Tribe of Florida, a federally recognized Indian tribe (Seminole Tribe)[1]; Seminole Police Department, a subordinate governmental unit of the Seminole Tribe of Florida (SPD); William Latchford, Chief of Police of the Seminole Police Department (Chief Latchford) and Johnny Nuckles, a duly authorized officer and employee of the Seminole Police Department (Officer Nuckles), by and through their undersigned attorneys, hereby move pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure for an order dismissing the claims set forth in plaintiff's Amended Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted, based upon the entitlement of each of these Defendants to immunity from suit under the doctrine of tribal sovereign immunity as well as Plaintiff's failure to plead facts sufficient to state a claim arising under 42 U.S.C. § 1983, against these Defendants. As grounds for this motion, the substantial matters to be argued are on follows:

I. FACTUAL BACKGROUND

On or about December 11, 2008, William Perry filed a complaint in this Court seeking damages against all parties named herein other than the Seminole Tribe of Florida based upon an arrest that occurred on or about September 15, 2007 on the Tampa Reservation of the Seminole Tribe of Florida while Plaintiff was allegedly picking up his girlfriend at the Seminole Hard Rock Hotel & Casino – Tampa which is located on the Tampa Reservation of the Seminole Tribe of Florida.

[1] Plaintiff has also named Seminole Hard Rock Casino, Inc., a Florida corporation as a party defendant. It appears from the context of the allegations contained in the Amended Complaint that Plaintiff's allegations pertain to the facility located on the Tampa Reservation of the Seminole Tribe of Florida more commonly known as the Seminole Hard Rock Hotel & Casino – Tampa. This is not owned or operated by Seminole Hard Rock Casino, Inc. but rather is owned and operated by the Seminole Tribe of Florida as a subordinate governmental unit of the Tribe itself. In view of the fact that Plaintiff has sued the Seminole Tribe of Florida and the Seminole Tribe of Florida also does business under the name Seminole Hard Rock Hotel & Casino – Tampa, the party that Plaintiff apparently intended to name appears to be before the Court since the "party" is actually the Seminole Tribe of Florida doing business as Seminole Hard Rock Hotel & Casino – Tampa which is owned and operated by the Seminole Tribe pursuant to the Indian Gaming Regulatory Act as set forth in 25 U.S.C.

Thereafter, on or about March 24, 2009, prior to any of the moving defendants filing a response to the complaint, Plaintiff filed an Amended Complaint, apparently as a matter of right under the Federal Rules of Civil Procedure.

In the Amended Complaint, Plaintiff's claim is based upon his arrest by Officer Nuckles on the property of the Seminole Hard Rock Hotel & Casino in Tampa while Plaintiff was allegedly waiting for his girlfriend. He contends that jurisdiction of the court is predicated upon a violation of his rights under 42 U.S.C. §§ 1983 and 1988 as well as rights secured to Plaintiff by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution. Jurisdiction of Plaintiff's claims are predicated upon federal question jurisdiction arising under 28 U.S.C. § 1331 and 1343. Under 28 U.S.C. § 1343(a)(3), the District Courts of the United States are granted original jurisdiction of an civil action authorized by law to be commenced by any person to redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for the equal rights of citizens within the jurisdiction of the United States. Plaintiff sets forth in this complaint that he is a citizen of the United States entitled to invoke this statute as against the moving defendants. (Amended Complaint at ¶¶ 1-4).

The facts upon which Plaintiff's claims are based are set forth in the Amended Complaint. Plaintiff contends that at all times material hereto, Officer Nuckles was a police officer employed by the SPD to perform law enforcement duties at the Seminole Hard Rock Casino in Hillsborough County, Florida, and was assigned to the Seminole Hard Rock Casino parking area.[2] Plaintiff

---

§ 2701, et seq.

[2] This allegation is what Plaintiff mistakenly utilizes to tie his allegations to the party named Seminole Hard Rock Casino, Inc. The casino to which Plaintiff is actually making reference is known as Seminole Hard Rock Hotel & Casino – Tampa which is owned and operated by the Seminole Tribe of Florida as a subordinate governmental unit of the Tribe itself. The casino is regulated by the Indian

correctly states that at all times material to the complaint, Officer Nuckles was acting as the agent, servant and employee of the SPD and the Seminole Tribe. (Amended Complaint at ¶¶ 5-6).

According to the Amended Complaint, Chief Latchford is the duly appointed Chief of Police of the SPD, a subordinate governmental unit of the Seminole Tribe. At all times material to the complaint, Plaintiff alleges that Chief Latchford was the commanding officer of Officer Nuckles, through a chain of command recognized in law enforcement, through which Chief Latchford assumed ultimate command responsibility for training, supervision and conduct of SPD officers, including Officer Nuckles. (Amended Complaint at ¶ 8).

In paragraph 9 of the Amended Complaint, Plaintiff contends that Seminole Hard Rock Casino, Inc. is a Florida corporation which employed Officer Nuckles and Chief Latchford. As noted, the property described in the complaint is actually the Seminole Hard Rock Hotel & Casino which is owned and operated by the Seminole Tribe of Florida in accordance with the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, et seq. (the IGRA) as well as rules and regulations promulgated by the National Indian Gaming Commission (NIGC) through which the Seminole Tribe conducts gaming on tribal trust lands under the jurisdiction of the Seminole Tribe, including the Tampa Reservation of the Seminole Tribe.

Plaintiff contends that on or about September 15, 2007 at approximately 0300 hours, Plaintiff went to the Seminole Hard Rock Hotel & Casino to pick up his girlfriend while driving in his 2008 Nissan Titan truck. (Amended Complaint at ¶ 10 and 11). Once again, the property described by Plaintiff where he went to pick up his girlfriend was the Seminole Hard Rock Hotel & Casino on the Tampa Reservation of the Seminole Tribe. Plaintiff contends that at the time that he went to pick up his girlfriend on that morning, he was not sleepy, under the influence of alcohol or experiencing any

---

Gaming Regulatory Act, 25 U.S.C. § 2701, et seq.

psychotic episode. He further contends that he was not speeding, driving recklessly or presenting any harm to anyone. (Amended Complaint at ¶¶ 10-13). Plaintiff states that while he was looking for a parking space at the Seminole Hard Rock Hotel & Casino, Officer Nuckles approached him and demanded to see his drivers' license. Plaintiff apparently did not display his drivers' license but instead told Officer Nuckles that he was waiting for a friend. He also inquired of Officer Nuckles whether he had done anything wrong. At that point, Plaintiff alleges that Officer Nuckles accused him of drinking while operating a motor vehicle and demanded that he exit his vehicle to take a field sobriety test. (Amended Complaint at ¶¶ 14-16). Plaintiff next contends that when he received a telephone call from his girlfriend on his cellular phone, Officer Nuckles began to unsuccessfully search Plaintiff for contraband but that no contraband was found.

According to Plaintiff, Officer Nuckles handcuffed and arrested Plaintiff, and transported him to the Hillsborough County Jail on charges of driving under the influence and resisting arrest without violence; however, Plaintiff contends that there were no grounds for his arrest. He also contends that the arrest effected by Officer Nuckles was performed in front of other police officers in full view of people in the Tribe's casino. (Amended Complaint at ¶¶ 17-21). Plaintiff further contends that at the time he was handcuffed, he told Officer Nuckles that the cuffs should be placed in front of him because he previously had brain surgery some nine (9) years before which left him unable to bend his right arm. Notwithstanding the alleged disclosure and request, Plaintiff claims that Officer Nuckles bent his arm back, thereby causing Plaintiff to experience "..excruciating pain and suffering." (Amended Complaint at ¶ 18).

In his Amended Complaint, Plaintiff claims that each of the moving defendants knew of the alleged vicious propensities of Officer Nuckles and allowed him to continue to have contact with the public without taking any effective action to prevent Officer Nuckles and other Seminole Police

personnel from engaging in misconduct of the type alleged by Plaintiff in the Amended Complaint. Moreover, Plaintiff contends that he was subjected to an "institutionalized practice of the Seminole Police Department…" which was ratified by the Defendants herein who, with prior notice of the "vicious propensities" of Officer Nuckles, took no steps to train him, correct his abuse of authority or discourage the alleged unlawful use of authority. (Amended Complaint at ¶¶ 22-26). Plaintiff then contends that notwithstanding the moving defendants allowed criminal charges to be filed against him at the Hillsborough County Criminal Court, thereby causing restrictions on Plaintiff's liberty including the necessity of posting bail. (Amended Complaint at ¶ 22). Plaintiff further asserts that all changes brought by Officer Nuckles were terminated in favor of Plaintiff by an order of dismissal rendered on September 8, 2008. Plaintiff claims that as a result of the misconduct described in the Amended Complaint, he has experienced humiliation, emotion distress, pain and suffering and attorneys' fees, among other damages. (Amended Complaint at ¶¶ 22-24).

Among other police misconduct, Plaintiff asserts that Chief Latchford and the other moving defendants authorized, tolerated and ratified misconduct consisting of a failure to properly discipline, restrict and control tribal police employees, including Officer Nuckles, known to be irresponsible with their dealings with citizens in the community, and by failing to take adequate precautions in hiring, promoting and retaining police personnel including, specifically, Officer Nuckles. (Amended Complaint at ¶¶ 26-27).

The gist of Plaintiff's Amended Complaint is set forth in paragraph 30. Plaintiff asserts that the conduct alleged in the Amended Complaint was engaged in by Officer Nuckles "…under color of state law authority…". He further alleges that the other moving defendants are responsible because of its authorization, condemnation, and ratification which he contends resulted in Plaintiff being deprived of rights secured to him under the United States Constitution and the laws of the United States which

include, but are not limited to, Plaintiff's First Amendment right to freedom of expression, his Fourth Amendment right to be free from the unlawful seizure of his person, his Fifth and Fourteenth Amendment rights to be safe from the unjustified use of excessive force utilized by police and his Eighth Amendment right to be free from cruel and unusual punishment. He also contends the conduct upon which the Amended Complaint is based further constitutes a false arrest, false imprisonment as well as assault and battery for which Plaintiff seeks compensatory and punitive damages as well as attorneys' fees pursuant to 28 U.S.C. § 1988.

In support of this motion, the moving defendants have attached hereto as **Exhibits "A"** and **"B"**, respectively, copies of the following genuine documents:

A. Amended Constitution and Bylaws of the Seminole Tribe of Florida

B. Tribal Ordinance C-01-95, commonly known as the Tribal Sovereign Immunity Ordinance of the Seminole Tribe of Florida.

Based upon the matters set forth herein, any action arising against Officer Nuckles, Chief Latchford, SPD and the Seminole Tribe must be dismissed for lack of subject matter jurisdiction based upon the doctrine of tribal sovereign immunity.

II. THE DISTRCT COURT LACKS SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S CLAIMS AGAINST THE MOVING DEFENDANTS BASED UPON THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY.

It is well settled that absent a clear, express and unmistakable waiver of immunity by the Seminole Tribe of Florida or the clear, express and unmistakable abrogation of immunity by act of Congress, federal and state courts do not have jurisdiction to resolve civil disputes brought against the Seminole Tribe or any of its subordinate governmental units and its Tribal Police Officers and other employees and agents. Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 523 U.S. 751 (1998); Oklahoma Tax Commission v. Citizen Band Potawatomi Tribe of Oklahoma, 498 U.S. 505 (1991); Santa Clara Pueblo v.

Martinez, 436 US 49, 58 (1978); Houghtaling v. Seminole Tribe of Florida, 611 So. 2d 1235 (Fla. 1993); Seminole Police Department v. Casadella, 478 So. 2d 470 (Fla. 4th DCA 1985). This immunity from suit applies not only to the Seminole Tribe and its subordinate governmental units, but also to tribal officials, employees and to all other authorized agents of the Tribe. Tamiami Partners Ltd. v. Miccosukee Tribe of Indians of Florida, 177 F.3d 1212 (11th Cir. 1999); Florida Paraplegic Association v. Miccosukee Tribe of Indians of Florida, 166 F.3d 1126 (11th Cir. 1999); State of Florida v. Seminole Tribe of Florida, 181 F.3d 1237 (11th Cir. 1999). See also, Tribal Council Ordinance C-01-95. (**Exhibit "B"**)

Where a tribal official, employee or other agent, such as Officer Nuckles and Chief Latchford, act on behalf of the Tribe in the course of their agency and employment when the alleged conduct occurred, those agents or employees are protected from suit by the tribe's sovereign immunity which, of course, also extends to all subordinate governmental units of the Tribe, such as SPD. Tamiami Partners Ltd. v. Miccosukee Tribe of Indians of Florida, 177 F.3d 1212 (11th Cir. 1999). *See also*, United States v. State of Oregon, 657 F.2d 1009, 1012, n.8 (9th Cir. 1981); White Mountain Apache Tribe v. Industrial Commission of Arizona, 796 P.2d 223 (Ariz. App. 1985). In this case, the alleged acts of Officer Nuckles and separate acts or omissions alleged against Chief Latchford occurred, if at all, while each were acting within the course and scope of their respective agencies and employment as a tribal police officer and the Chief of Police, respectively. In addition to the foregoing, a tribal employee or agent will also be entitled to tribal sovereign immunity where, as here, the suit is, in substance, an action against the tribal sovereign. Oklahoma Tax Commission v. Graham, 882 F.2d 951, 957 (10th Cir. 1987); United Nuclear Corporation v. Clark, 584 F.Supp. 107, 109 (D.D.C. 1984); *see also* Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 687-689 (1949). In determining whether a suit against a tribal official or agent is, in effect, a suit against the tribal sovereign, the court must inquire as to whether or not the judgment seeks, in effect, to expend itself upon the resources of the tribe. If so, the action against the tribal agent must fail. Dugan v.

Rank, 372 U.S. 609, 620 (1963). Here, the individual claims against Officer Nuckles and Chief Latchford, if successful, would expend itself against the Treasury of the Seminole Tribe and the police budget of SPD.

A. Tribal Sovereign Immunity - Background

As a sovereign Indian tribe, the Seminole Tribe and its agents are entitled to sovereign immunity. Chief Justice Marshall stated in Worchester v. Georgia, 31 U.S. (6 Pet.) 515, 557 (1832), that Indian tribes are:

> ...distinct political communities, having territorial boundaries within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States.

Further, in Atkinson v. Haldane, 569 P. 2d 151 (Alaska 1977), the Alaska Supreme Court reiterated the immunity of Indian tribes from suits in state courts in recognition of the supremacy of the decisions of the United States Supreme Court:

> Because of the supremacy of federal law, we are bound to recognize the doctrine of tribal sovereign immunity, even if we were to find valid public policy reasons to hold it inapplicable in this case.
>
> Id. at 163. (Emphasis added).

Section 16 of the *Indian Reorganization Act of 1934*, as amended, 25 U.S.C. § 476 establishes the right of an Indian tribe to organize for the common welfare of its members by adopting a constitution and bylaws in accordance with the provisions of the Act. By adoption of its constitution, the Seminole Tribe of Florida became a fully recognized constitutionally based Indian tribe under the laws of the United States. As such, this recognition vested in the tribal government certain powers in addition to its pre-existing sovereign powers. One of the long standing sovereign powers that the Seminole Tribe has always had and retained is its right as a sovereign tribal government to sovereign immunity for itself, its subordinate governmental units, such as SPD, and its employees and agents.

The federally recognized tribal sovereignty of Indian tribes lies at the heart of the special and unique relationship that exists between the United States and Indian tribes: that of a dominant sovereign to a dependent sovereign. This relationship has been defined as being most akin to that of a guardian and its ward, as stated by Chief Justice John Marshall in Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831). Fifty years later, the United States Supreme Court redefined the relationship in the same vein as follows:

> These Indian tribes are the wards of the nation. They are communities *dependent* on the United States, -- dependent largely for their daily food; dependent for their political rights. They owe no allegiance to the states, and receive from them no protection. Because of the local ill feeling, the people of the states where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the executive, and by congress, and by this court, whenever the question has arisen.

United States v. Kagama, 118 U.S. 375, 384-385 (1886); see also, United States v. Sandoval, 231 U.S. 28 (1913).

It is firmly established that Indian tribes are regarded by the United States as dependent political sovereign governments which possess all aspects and attributes of sovereignty except where they have been abrogated by Congress. As an aspect of their sovereignty, Indian tribes and their agents -- such as Officer Nuckles and Chief Latchford -- are immune from suit, either in federal or state court, without an express and unmistakable tribal waiver or a clear and unmistakable Congressional abrogation. Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 523 U.S. 751 (1998); Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978); Maryland Casualty Company v. Citizens National Bank of West Hollywood, 361 F. 2d 517, 520 (5th Cir. 1966); Houghtaling v. Seminole Tribe of Florida, 611 So. 2d 1235 (Fla. 1993).

Indian tribes and their agents are regarded as having an immunity from suit similar to that enjoyed by the federal government. Namekagon Development Company v. Bois Forte Reservation Housing Authority, 517 F. 2d 508 (8th Cir. 1975). Moreover, since an Indian tribe's sovereign immunity is co-extensive with that of the United States, a party may not maintain a claim against an Indian tribe or any of its authorized agents or subordinate governmental units absent a firm showing of an effective waiver which is unequivocally and unmistakably expressed. Ramey Construction Company, Inc., v. Apache Tribe of Mescalero Reservation, 673 F. 2d 315 (10th Cir. 1982). A waiver of tribal sovereign immunity may never arise by implication. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58-59 (1978).

In American Indian Agricultural Credit Consortium, Inc. v. Standing Rock Sioux Tribe, 780 F. 2d 1374, 1378 (8th Cir. 1985), the Court was clear and emphatic in expressing an Indian tribe's unquestionable right to sovereign immunity absent an express waiver thereof:

> Indian tribes long have structured their many commercial dealings upon the justified expectation that absent an express waiver, their sovereign immunity stood fast. Relaxation of the settled standard invites challenge to virtually every activity undertaken by a tribe on the basis that tribal immunity had been implicitly waived. Moreover, a waiver of immunity by tribal action represents a substantial surrender of sovereign power and, therefore, merits no less scrutiny than a waiver based on congressional action. As the Fifth Circuit stated, [T]o construe the immunity to suit as not applying to suits on liability as arising out of private transactions would defeat the very purpose of Congress in not relaxing the immunity, namely, the protection of the interests and the property of tribes...(citing Maryland Casualty Co. v. Citizens National Bank, 361 F. 2d 517, 521-22 (5th Cir.), cert. denied, 385 U.S. 918 (1966).

B. Applicability of Tribal Sovereign Immunity to Tribal Employees and Agents

In a line of cases decided over a period of 175 years, the United States Supreme Court has recognized that Indian tribes “retain their original natural rights” which were vested in them, as sovereign governmental entities existing long before the genesis of the United States. Florida Paraplegic Assoc. v. Miccosukee Tribe of Indians of Florida, 166 F.3d 1126, 1130 (11th Cir. 1999),

citing Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 559 (1832). The principle of tribal sovereign immunity from suit is a well-established doctrine. United States v. U.S. Fidelity Guaranty Company, 309 U.S. 506, 512 (1940); Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56 (1978); Oklahoma Tax Commission v. Citizen Band Potowatomi Indian Tribe of Oklahoma, 498 U.S. 505, 509 (1991); Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 523 U.S. 751 (1998); Houghtaling v. Seminole Tribe of Florida, 611 So.2d 1235 (Fla. 1993). As sovereign governmental entities that predate the establishment of the United States, Indian tribes and their subordinate governmental units, as well as their officials, employees and agents are immune from suit by third parties without unmistakable tribal consent at its highest level, or the unmistakable consent of Congress. Cherokee Nation of Oklahoma v. Babbitt, 117 F.3d 1489, 1498-1499 (D.C. Cir. 1997). Tribal sovereign immunity does not derive from an act of Congress, but rather is one of the inherent powers of limited sovereignty which has never been extinguished. Id. at 1498, *citing*, United States v. Wheeler, 435 U.S. 313, 322 (1978). In United States v. U.S. Fidelity Guaranty Company, 309 U.S. 506, 512 (1940) the United States Supreme Court held that "Indian nations are exempt from suit without Congressional authorization." This includes complaints, counterclaims (compulsory and permissive) and crossclaims. *See also*, Oklahoma Tax Commission v. Citizen Band Potowatomi Indian Tribe, 498 U.S. 505, 509 (1991).

As noted in Kiowa, *supra*, and its numerous predecessors, including, Bank of Oklahoma v. Muscogee Creek Nation, 972 F.2d 1166, 1169 (10th Cir. 1992), "the basic law of sovereign immunity for Indian Tribes is clear: suits against Indian Tribes by third parties are barred by sovereign immunity absent a clear waiver by the Tribe or congressional abrogation." *See also*, State of Florida v. Seminole Tribe of Florida, 181 F.3d 1237, 1241 (11th Cir. 1999). As previously noted, a waiver of tribal sovereign immunity "cannot be implied but must be unequivocally expressed." Santa Clara Pueblo v.

Martinez, 436 U.S. 49, 58 (1978). It is equally well settled that tribal sovereign immunity extends to tribal agencies and tribal organizations. Weeks Construction, Inc. v. Oglala Sioux Housing Authority, 797 F.2d 668, 670-671 (8th Cir. 1986); Wilson v. Turtle Mountain Band of Chippewa Indians, 459 F. Supp. 366, 369 (D.N.D. 1978), (dismissing claims under the *Indian Civil Rights Act* and under 42 U.S.C. § 1983 against tribal entity on grounds of sovereign immunity); Seminole Police Department v. Casadella, 478 So.2d 470 (Fla. 4th DCA 1985) (dismissing false arrest claim against tribal police department and tribal police officer on sovereign immunity grounds).

A tribe's immunity from the claims of third parties extends to tribal officials, employees and agents when acting within the scope of their authority. *See*, Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 148 (1982); Tamiami Partners, Ltd. et al. v. Miccosukee Tribe of Indians of Florida, 177 F.3d 1212, 1225 (11th Cir. 1999); United States v. Oregon, 657 F.2d 1009, 1012, n.8 (9th Cir. 1981); Snow v. Quinault Indian Nation, 709 F.2d 1319, 1321 (9th Cir. 1983), *cert. den.* 467 U.S. 1214 (1984); Cypress v. Tamiami Partners, Ltd., 662 So.2d 1292 (Fla. 3d. DCA 1995); Seminole Police Department v. Casadella, 478 So.2d (Fla. 4th DCA 1985).

It is axiomatic that a sovereign tribal government and its police department may only act through their officers, employees and agents and the defense of sovereign immunity may not be evaded by the "simple device of suing officers [or employees] in their individual capacity." John v. Hoag, 500 NYS 2d. 950, 954 (N.Y. Supp. 1986); *see also*, Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 688 (1949). (The sovereign can only act through agents); Oklahoma Tax Commission v. Graham, 822 F.2d 951, 957 (10th Cir. 1987), *vacated on other grounds*, 484 U.S. 973; Bottomly v. Passamaquoddy Tribe, 599 F.2d 1061, 1067 (1st Cir. 1979); United Nuclear Corporation v. Clark, 584 F. Supp. 107-109 (D.D.C. 1984); Kenai Oil & Gas, Inc. v. Department of Interior, 522 F. Supp. 521, 531 (D. Utah 1981); ("tribal immunity may not be evaded by suing tribal officers. . . .") *aff'd* 671 F.2d

383 (10th Cir. 1982). Thus, when a Tribe acts, it may only do so through its officials, employees and agents. When a tribal police officer, including the Chief of Police, acts on behalf of the tribe, the tribal police officer has the same immunity from claims as that possessed by the tribe itself. *See*, John v. Hoag, 500 NYS 2d. 955-956 (N.Y. Supp. 1986). (Claim against tribal police department and tribal police officer must be dismissed on tribal sovereign immunity and jurisdictional grounds.)

C. Plaintiff's Complaint Fails to Show that Defendants acted under Color of State Law.

In order for Plaintiff to assert a viable claim arising under 42 U.S.C. § 1983, Plaintiff must show that the Seminole Tribe, SPD, Chief Latchford and Officer Nuckles, acted under color of state law when arresting Plaintiff. Plaintiff's constitutional claim fails to state a claim against the Tribe, SPD, Chief Latchford, Officer Nuckles, either individually or officially, arising under 42 U.S.C. § 1983, since these Defendants could not have acted under color of state law. The common law immunity from suit enjoyed by the Tribe extends to SPD, Chief Latchford and Officer Nuckles and shields them from any liability arising under 42 U.S.C. § 1983. Although the First, Fourth, Fifth, Eighth and Fourteenth Amendments are framed as limitations on federal and state authority, these Constitutional provisions do not constrain Indian tribes which are regarded as separate sovereign tribal governments predating the Constitution. Bruette v. Knope, 554 F.Supp. 301, 304 (E.D. Wisc. 1983); *see also*, Santa Clara Pueblo v. Martinez, 436 U.S. 49, 59-72 (1978); Means v. Wilson, 522 F.2d 833, 838 (8th Cir. 1975); Wilson v. Turtle Band of Chippewa Indians, 459 F.Supp 366, 367-369 (D.N.D. 1978).

In Bruette v. Knope, 554 F.Supp 301 (E.D. Wisc. 1983), a claim was asserted against two tribal police officers for alleged violations of the Plaintiff's rights arising under Fourth, Fifth, Ninth and Fourteenth Amendments as well as violations of 42 U.S.C. §§ 1983 and 1985 arising from the alleged violation of Plaintiff's constitutional rights. These claims were dismissed on tribal sovereign

immunity grounds. The claims were also found to be defective since the tribal police defendants could not have acted under color of state law. In order to maintain an action arising under 42 U.S.C. § 1983, a Plaintiff must show that the conduct complained of was committed by a person acting under color of state law; and that the subject conduct deprived Plaintiff of rights, privileges and immunities secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981). State action may not be fairly implicated where an alleged constitutional deprivation (which is also plainly lacking in this case) is not attributable to the "state actor." Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982). The allegations contained in the Amended Complaint makes clear that the Tribe, SPD, Chief Latchford and Officer Nuckles are not "state actors."

"A tribal officer is entitled to sovereign immunity if his actions are within the scope of his authority." Sulcer v. Davis, 986 F.2d 1429, 1993 WL 53613 (10 Cir. 1993) (citations omitted), *cert. denied*, 510 U.S. 870 (1993); *see also*, Fletcher v. United States, 116 F.3d 1315, 1324 (10 Cir. 1997).

"Tribal sovereign immunity is a matter of subject matter jurisdiction, …, which may be challenged by a motion to dismiss under Fed.R.Civ.P. 12(b)(1)…" *See*, E.F.W. v. St. Stephen's Indian High School, 264 F.3d 1297, 1302-03 (10 Cir. 2001) (citations omitted). Upon a defendant's Rule 12(b)(1) motion to dismiss, the plaintiff bears the burden of proving jurisdiction. Richmond, Fredericksburg & Potomac R. Co. v. United States, 945 F.2d 765, 768 (4 Cir. 1991), *cert. denied*, 503 U.S. 984 (1992).

Federal courts hold that no action under 42 U.S.C. § 1983 may be maintained by persons alleging deprivation of constitutional rights under color of tribal law, that actions taken under color of tribal law are beyond the reach of Section 1983. Sulcer, *supra*; R.J. Williams Co. v. Fort Belknap Housing Authority, 719 F.2d 979, 982 (9 Cir. 1983), *cert. denied*, 472 U.S. 1016 (1985). To be sure, "[i]t is well settled that a defendant's actions pursuant to Tribal authority are not 'under color of state

law' for the purposes of maintaining an individual capacity suit against that defendant under 42 U.S.C. § 1983." E.F.W. v. St. Stephen's Mission Indian High School, 51 F.Supp.2d 1217, 1230 (D.Wyo. 1999), *aff'd*, 264 F.3d 1297 (10 Cir. 2001). "Indian tribes are not states of the union within the meaning of the Constitution, and the constitutional limitations on the states do not apply to tribes." Chapoose v. Hodel, 831 F.2d 931, 934 (10 Cir. 1987). Accordingly, the Plaintiff's Amended Complaint has not alleged any claims against any of the moving defendants over which this Court would have subject matter jurisdiction.

The doctrine of tribal sovereign immunity is essential to guard against the unwarranted exercise of state and federal jurisdiction over tribal affairs which would impinge on tribal self-government. Plaintiff asks this Court to do just that. Unlike other types of governmental entities, Indian tribes would find the loss of assets more difficult to replace because Indian tribes have a limited revenue base over which to spread losses.[3] See, Atkinson v. Haldane, 569 P. 2d. 151, 169 (Alaska 1977). Tribal sovereign immunity is essential to protect tribal assets which are held for the benefit of all tribal members and must be available at all times to be applied to meet tribal needs. If tribal assets are permitted to be dissipated through litigation, long standing Congressional efforts to provide Indian tribes with economic and political autonomy would be frustrated. Cogo v. Central Council of the Tlingit & Haida Indians, 465 F. Supp. 1286, 1288 (D. Alaska 1979). Without an express and unequivocal congressional waiver of tribal immunity, it is respectfully submitted that no Court or other tribunal is free to imply one. Atkinson v. Haldane, 569 P. 2d. 151, 167, (Alaska 1977). As previously noted, a waiver or abrogation of tribal sovereign immunity may not arise by inference or implication but rather must be clear, express and unmistakable as well as limited in nature. Santa Clara Pueblo v.

[3] The status of an Indian tribe as a sovereign government is unique and different from the other forms of sovereign governments recognized in the U.S. Constitution; that is, federal, state, tribal and foreign governments. It has been held, for example, that Indian tribes"...have a status higher than that of a

Martinez, 436 U.S. 49, 58-59 (1978).

The vitality of the doctrine of tribal sovereign immunity is so securely rooted in American law that it has been held that federal and state courts lack subject matter jurisdiction to consider actions brought by third parties against Indian tribes as well as tribal officials, employees and agents for claims of negligence, intentional tort as well as for alleged intentional violations of rights secured by the Constitution and laws of the United States. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56-57 (1978) (claim arising under Indian Civil Rights Act barred on sovereign immunity grounds); Talton v. Mayes, 163 U.S. 376 (1896) (claims alleging violation of Fifth Amendment rights by tribal employee barred by tribal sovereign immunity); Evans v. McKay, 869 F.2d 1341 (9th Cir. 1989); *aff'g in part*, Evans v. Little Bird, 656 F. Supp. 872 (D. Mont. 1987); United Nuclear Corp. v. Clark, 584 F. Supp. 107 (D.D.C. 1984) (claims alleging violation of Fifth Amendment rights barred by tribal sovereign immunity); Bruette v. Knope, 554 F. Supp. 301 (E.D. Wisc. 1983) (claims alleging violations of rights secured by the Fourth, Fifth, Ninth and Fourteenth Amendments of the U.S. Constitution together with claims arising under 42 U.S.C. §§ 1983 and 1985, based upon a police chase and the alleged use of excessive force, were all held to be jurisdictionally barred by tribal sovereign immunity). In each of these cases, actions against Tribes, their police departments and their employees for alleged intentional deprivations of rights secured by the Constitution and laws of the United States have been held to be barred on tribal sovereign immunity grounds.

As Plaintiff is well aware, the Seminole Tribe operates its police department and its law enforcement functions pursuant to a Self-Determination Contract authorized by Public Law 93-638 as a part of the government-to-government with the United States of America. Under the Self-Determination Contract for law enforcement services, the federal government funds the Seminole

---

state." Native American Church v. Navajo Tribal Council, 272 F. 2d 131, 134 (10th Cir. 1959).

Tribe's law enforcement services, as this function was one which the federal government was previously obligated to provide to the Seminole Tribe. As such, Plaintiff's only claims arising from the conduct alleged in his amended complaint would be an action brought solely and exclusively against the United States of America under the Federal Tort Claims Act, 28 U.S.C. §2871, et. seq. (FTCA) which requires, as a condition precedent, that Plaintiff give notice to the United States of America as required by law under the FTCA on Form 95. Under the FTCA the Seminole Tribe and its employees, including Officer Nuckles and Chief Latchford are deemed to be federal employees and a part of the Bureau of Indian Affairs pursuant to 28 U.S.C. § 2804(a) and (f) which requires that all claims against Indian tribes, such as the Seminole Tribe, arising from the Indian Self-Determination and Education Act, including police functions, be deemed and brought against the United States. 28 U.S.C. § 2679. Under the FTCA, a party claiming to be injured by tribal law enforcement operating pursuant to a Self Determination Contract is required to make a presuit submission on Form 95 in accordance with the presuit notice requirements set forth in 28 U.S.C. § 2675. Plaintiff must then allow six (6) months to pass to give the United States of America the opportunity to investigate the claim. Thus, any claim that Plaintiff has against Officer Nuckles, Chief Latchford, the SPD and the Seminole Tribe would arise, if at all, under the FTCA as a claim against the United States of America since Officer Nuckles and Chief Latchford were acting within the course and scope of their employment when the alleged misconduct occurred. Without a viable claim arising under the FTCA, Plaintiff's claims against the Seminole Tribe, the SPD, Chief Latchford and Officer Nuckles are all barred by the doctrine of tribal sovereign immunity. Either way, Plaintiff's claim against the moving defendants must be dismissed.

The Indian Self-Determination and Education Assistance Act of 1975 ("ISDEAA"), Public Law 93-638, authorizes federal agencies to contract with Indian tribes to provide certain services to the

Tribe. *See* 25 U.S.C. §§ 450-450n. Such a contract is commonly referred to as a "self-determination contract" or "638 contract." A "self-determination contract" is a contract "between a tribal organization and the [federal government] for the planning, conduct and administration of programs or services which are otherwise provided to Indian tribes and their members pursuant to Federal law." 25 U.S.C. § 450(b)(j). "Congress enacted the ISDEAA to encourage Indian self-determination and tribal control over administration of federal programs for the benefit of Indians, by authorizing self-determination contracts between the United States, through the Secretaries of the Interior and of Health and Human Services, and Indian tribes." Demontiney v. U.S. *ex rel* Dept. of Interior, Bureau of Indian Affairs, 255 F.3d 801, 806 (9th Cir. 2001). There are several categories of contractible services or programs culled out by the statute, one of which concerns the provision of a police force and related law enforcement functions on Indian lands. 25 U.S.C. § 450(a)(1)(B). Congress thus recognized that one of the ways to further Indian self-determination was to allow a tribe to contract for law enforcement services so the tribe could maintain a tribal police force on the reservation capable of effectively enforcing criminal laws.

For many years, the Seminole Tribe has been in a contract with the Bureau of Indian Affairs ("BIA") to provide law enforcement services under a self-determination contract or 638 contract for which it receives federal funding. In 1988, Congress amended the ISDEAA to allow recovery under the FTCA for certain claims arising out of the performance of self-determination contracts. "Congress acknowledged that tribal governments, when carrying out self-determination contracts, were performing a federal function that the federal government would otherwise be required to provide, and that a unique legal trust relationship exists between the tribal government and the federal government in these agreements. Because of this relationship, Congress concluded that the federal government must provide liability insurance to the tribal government for self-determination contracts." FGS

Constructors, Inc. v. Carlow, 64 F.3d 1230, 1234 (8th Cir. 1995).

In this case, if Perry has a viable claim under the FTCA, the claim against the United States covers all claims against all moving defendants. If, on the other hand, an FTCA claim is not viable, plaintiff's claim must fail on jurisdictional grounds since these defendants are each immune from suit under the doctrine of tribal sovereign immunity. Either way, the moving defendants do not belong in this lawsuit and plaintiff is well aware of this.

III. CONCLUSION

Without an express and unmistakable Tribal waiver or Congressional abrogation of tribal sovereign immunity, it is respectfully submitted that no court or other tribunal is free to imply one. As noted, a waiver of tribal sovereign immunity may not arise by inference or implication. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58-59 (1978). Based upon all of the foregoing, the Seminole Tribe, as a sovereign Indian Tribe, and all of its subordinate governmental units, including the Seminole Police Department, as well as its employees, agents and officials, including Officer Nuckles and Chief Latchford are immune from suit filed by Plaintiff under the doctrine of tribal sovereign immunity. Accordingly, Plaintiff's claim against these defendants must be dismissed.

Respectfully submitted,

s/ Donald A. Orlovsky
Donald A. Orlovsky, Esq.
(Fla. Bar No. 223816)
dao4law@aol.com
KAMEN & ORLOVSKY, P.A.
1601 Belvedere Road, Ste. 402-S
West Palm Beach, FL 33406
Telephone: (561) 687-8500
Facsimile: (561) 687-7892
Counsel for Defendants, Seminole Tribe of Florida, Seminole Police Department, William Latchford, Johnny Nuckles

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic filing.

/s/ Donald A. Orlovsky

DONALD A. ORLOVSKY

d-2293/dao33877.mtd

SERVICE LIST

Carl Roland Hayes
Law Office of Carl R. Hayes
Suite E
308 E Dr MLK Jr Blvd
Tampa, FL 33602
Phone: 813-237-2392
Fax: 813-236-5717
Email: hayescr@gte.net

Exhibit "A"

Includes changes
Approved in Amendments
I thru XX

AMENDED
CONSTITUTION AND BYLAWS
of the
SEMINOLE TRIBE OF FLORIDA

PREAMBLE

We, the members of the Seminole Tribe of Florida, seeking divine guidance under God, in order to promote justice, insure tranquility, encourage the general welfare, safeguard our interests and secure the blessings of freedom and liberty for ourselves and for our posterity, do hereby form and organize a Seminole Tribal Council and we do ordain and establish this Constitution and set of Bylaws as the rules for its deliveration. (Amendment I)

ARTICLE I - TERRITORY

The jurisdiction of the Seminole Tribe of Florida shall include all lands within the Hollywood, Big Cypress, and Brighton Reservations, the title to which is held by the United States in trust for the Seminole Tribe of Florida, or by the United States in trust for the Seminole Indians of Florida, Lands held under Executive Order No. 1379, dated June 28, 1911, and such other lands as may hereafter be acquired for the use and benefit of the Seminole Tribe of Florida. (Amendment XII)

ARTICLE II - MEMBERSHIP

Section 1: All persons who are enrolled as members of the Seminole Tribe of Florida as of the date this amendment is adopted by vote of the adult members of the Tribe.

Section 2. Any person of Seminole Indian blood whose name appears on the Census Roll of the Seminole Agency of January 1, 1957, may be enrolled upon written application if admitted to membership by a majority vote of the Tribal Council, provided that the Census Roll of January 1, 1957, may be corrected by the Seminole Tribal Council up to and including August 22, 1970. (Amendment XIII)

Section 3. Any person of one-fourth (1/4) or more degree of Seminole Indian blood born after the adoption of this amendment both of whose parents are members of the Tribe, shall be enrolled as a tribal member upon written application to the Tribal Council.

Section 4. Any person of one-fourth (1/4) or more degree of Seminole Indian blood born after the adoption of this amendment of a marriage between a member of the Tribe and any other person may be enrolled if admitted to membership by a majority vote of the Tribal Council.

Section 5. A child of one-fourth (1/4) or more degree of Seminole Indian blood, born out of wedlock after the adoption of this amendment, to a Seminole mother who is a member of the Tribe, may be enrolled by a majority vote of the Tribal Council if the child otherwise meets the requirements for enrollment.

Section 6. A child of one-fourth (1/4) or more degree of Seminole Indian blood born out of wedlock, to a mother who is not a member of the Tribe and is not eligible to become a member, may be enrolled by a majority vote of the Tribal Council if the mother files with the Tribal Council proof established in accordance with the laws of the State of Florida as to the paternity of the child, and the person adjudged to be the father is an enrolled member of the Tribe, and if the child otherwise meets the requirements for enrollment.

Section 7. In the event the applicant is a minor, the application may be prepared and presented by the parent or parents of the minor, or by any adult relative.

Section 8. The Tribal Council shall have the power to pass ordinances, which are not in conflict with this Constitution, governing future membership, loss of membership and the adoption of members into the Seminole Tribe of Florida, which ordinances shall be subject to the approval of the Secretary of the Interior, or his authorized representative. (Amendment XIII)

Section 9. No person who is admitted to tribal membership by adoption shall be eligible to hold an elective office in the Seminole Tribe of Florida. (Amendment II and V)

ARTICLE III - ORGANIZATION OF GOVERNING BODY

Section 1. The governing body of the Seminole Tribe of Florida shall be known as the Tribal Council and shall consist of five (5) members, each of whom shall have voting rights.

Section 2. The Tribal Council shall consist of a Chairman elected at-large and councilmen elected from and exclusively by the residents of each of the following Seminole Reservations: Hollywood, Big Cypress, and Brighton. The President of the Board of Directors, elected in accordance with the provisions set forth in the Charter of the Seminole Tribe of Florida, Inc. shall meet with and serve as Vice-Chairman of the Tribal Council during his term of office. (Amendment XII)

Section 3. Any member of the Tribe having reached the age of 21, and who has been in residence on Hollywood, Brighton, or Big Cypress Reservation for a continuous period of four years immediately prior to an election, shall be qualified to be a candidate for election to the Council. (Amendment XII)

Section 4. The Tribal Council shall select from within or without the membership of the tribe a Secretary-Treasurer and such committees as may be deemed necessary.

Committeemen so selected shall serve at the pleasure of the Tribal Council. All officers and employees appointed or employed by the Tribal Council now serving or hereafter are appointed or employed in permanent positions and shall serve unless removed or their services terminated for inefficiency, gross misconduct, neglect of duty, or for good and sufficient reasons as may hereafter be prescribed by the Tribal Council. (Amendment VI and XIV)

ARTICLE IV - NOMINATIONS AND ELECTIONS

Section 1 (a). The first election of representatives to the Tribal Council under this amended Constitution shall be held within thirty (30) days following the adoption and approval of the amendments and shall be under the supervision of the incumbent Tribal Council and the Superintendent of the Seminole Agency.

(b) Any person who has reached his eighteenth (18) year thirty (30) days prior to an election who is a member of the Seminole Tribe of Florida shall be eligible to vote in any election of the Seminole Tribe except in those elections where voting requirements may be otherwise prescribed by Federal law. (Amendment XVII)

Section 2. In any election of the Seminole Tribe, resident voters shall register with the reservation of their domicile. Where this Constitution provides for election of councilmen from a particular reservation, only voters residing on that reservation shall be eligible to participate in the election of such representatives. Non-resident voters shall vote only for at-large candidates.

Section 3. The successful candidates in elections to the Tribal Council shall hold office as follows:

(a) The candidate from each reservation receiving the largest number of votes shall hold office for two (2) years.

(b) The candidate for Chairman elected at-large who receives the largest number of votes shall hold office for four (4) years.

(c) Successful candidates shall take office on the first Monday in the month immediately following their election. (Amendment XV)

(d) If a member of the Tribal Council fails or refuses to attend two regular meetings in succession, unless excused due to illness or other causes for which he cannot be held responsible, his office shall be declared forfeited by a resolution of the Tribal Council, and a special election called by the Tribal Council shall be held to replace him according to Section 5 of this Article.

Section 4. The Tribal Council may by an affirmative vote of four-fifths (4/5) of its total membership remove any tribal official or member of the Tribal Council from office who fails to carry out his duties or his Tribal Council responsibilities, or is found guilty of a misdemeanor involving moral turpitude or a felony in any county, State or Federal Court, or for gross neglect of duty or misconduct reflecting on the dignity and integrity of the Tribal Council.

Each reservation, by petition signed by twenty percent (20%) of the eligible voters thereon, may request the recall of such reservation's representative by the Tribal Council. Request for the recall of the Council Chairman shall be by petition signed by twenty percent (20%) of the number of voters who participated in this election.

Before any vote of recall or removal is taken, the member or official shall be given a written statement of all charges filed against him at least ten (10) days before the meeting of the Tribal Council before which he is to appear and he shall be given an opportunity to answer any and all written charges at such meeting. The decision of the Tribal Council shall be final.

Section 5. If a councilman should die, resign, or permanently leave the reservation he represents, or be removed from office for cause, the Council shall declare the office vacant and within thirty (30) days an election shall be held on the relevant reservation to fill the vacancy for the unexpired term: Provided, a regularly scheduled election is not to be held within sixty (60) days. In the event that the Chairmanship should become vacant, the office will not be filled by the Vice-Chairman, but the Council shall call an election-at-large within a period of thirty (30) days to select a new Chairman to serve until his predecessor's term has expired: Provided, a regularly scheduled election is not to be held within sixty (60) days.

Section 6. Any qualified member of the Seminole Tribe of Florida may announce his or her candidacy for the Tribal Council, such announcement to be in writing and supported by a petition signed by ten (10) eligible voters from the reservation on which he or she resides. In the case of an at-large candidate, his announcement must also be in writing and supported by a petition signed by ten (10) eligible voters of each reservation. Any petition submitted in support of a candidate shall be considered invalid when and if a signer has signed a petition supporting any other candidate for the same office. All announcements shall be presented to the Secretary of the Tribal Council at least twenty (20) days prior to the date of election. It shall be the duty of the Secretary of the Tribal Council to post in at least one public place on each reservation and publish at least once in a newspaper of general circulation at least fifteen (15) days before the election the names of the candidates for Tribal Council. No candidate shall be permitted to seek and/or hold more than one elected office at any given period.

Section 7. All elections shall be by secret ballot and shall be held in accordance with the rules and regulations prescribed by the Tribal Council, subject to the review of the Secretary of the Interior, or his authorized representative. In the event that the Tribal Council does not call an election as herein provided, the Secretary of the Interior, within sixty (60) days after the regular election date, may call such an election. (Amendment III and VII)

ARTICLE V - POWERS OF TRIBAL COUNCIL

In addition to all powers vested in the Seminole Tribal Council by existing law, the Tribal Council of the Seminole Tribe of Florida shall exercise the following powers, subject to any limitation imposed by the Constitution or the Statutes of the United States, and subject further to all expressed restriction upon such powers contained in this Constitution and Bylaws.

Section 1. To negotiate with the Federal, State and local governments and others on behalf of the Tribe and to advise and consult with the representatives of the Department of the Interior on all activities of the Department which may affect the Seminole Tribe of Florida, excepting those tribal affairs which may hereafter be specifically delegated under the provisions of the Charter of the Seminole Tribe.

Section 2. To employ legal counsel for the protection of the rights of the Tribe and its members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior, or his authorized representative.

Section 3. To manage and lease or otherwise deal with tribal lands and communal resources in accordance with law and to prevent the sale, disposition, lease or encumbrance of tribal lands, interest in lands, or other tribal assets without the consent of the Tribe.

Section 4. To advise with the Secretary of the Interior, or his authorized representative, with regard to all appropriation estimates or Federal projects for the benefit of the Seminole Indians of Florida prior to the submission of such estimates to the Bureau of the Budget and the Congress.

Section 5. (a) To administer any funds within the control of the Tribe; to make expenditures from available funds for Tribal purposes, including salaries and expenses of tribal officials or employees; subject, however, to the condition that this authority shall not extend over the responsibilities and authorities specifically delegated to the Board of Directors by the Charter of the Tribe. All expenditures of tribal funds under control of the Tribal Council shall be by resolution duly approved by a majority of the Tribal Council in legal session and the amounts so expended shall be a matter of public record at all times.

(b) The Tribal Council, subject to the approval of the Secretary of the Interior, or his authorized representative, shall prepare annual budget requests for the advancement to the control of the Tribe such money as is now or may hereafter be deposited to the credit of the Tribe in the United States Treasury or which may hereafter be appropriated for the use of the Tribe.

Section 6. To make and enforce ordinances, subject to the review of the Secretary of the Interior, or his authorized representative, covering the tribe's right to levy taxes and license fees on persons or organizations doing business on the reservation.

Section 7. To promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Seminole Tribe of Florida.

Section 8. To adopt resolutions regulating the procedures of the Seminole Tribal Council, its officials and committees in the conduct of tribal affairs.

Section 9. (a) No authorities contained in this Constitution may be delegated by the Seminole Tribal Council to tribal officials, district councils, or associations to carry out any function for which the Tribal Council assumes primary responsibility, except by ordinance or resolution duly enacted by the Tribal Council in legal session, and excepting also those specific requirements contained in the Bylaws of the Seminole Tribe of Florida.

(b) The Seminole Tribal Council is hereby authorized to recognize any district committees, associations or other organization open to the members of the Seminole Tribe of Florida and to approve such organizations, subject, however, to the provision that no such committee, association or organization may assume authorities specifically granted to the Seminole Tribal Council unless by a proper delegation of authority by the Seminole Tribal Council.

Section 10. To deposit to the credit of the Seminole Tribe of Florida tribal funds, without limitation on the amount in any account, in any National or State bank whose deposits are insured by an agency of the Federal Government: provided, that funds advanced to the Tribe from funds held in trust in the United States Treasury shall be deposited with a bonded disbursing officer of the United States whenever the conditions prescribed by the Secretary of the Interior, or his authorized representative in connection with such advance require that the advance be so deposited.

Section 11. To enact ordinances, subject to approval by the Secretary of the Interior, establishing and governing tribal courts and tribal law enforcement agencies on the Seminole Reservations; and providing for the removal or exclusion from the reservation of any non-members of the Seminole Tribe whose presence may be injurious to tribal members or to the interests of the Seminole Tribe as determined by the tribal council. (Amendment XVIII)

Section 12. To promote and protect the peace, safety, health and general welfare of the tribe and its members. (Amendment XX)

ARTICLE VI- MANNER OF REVIEW

Section 1. Any resolution or ordinance which by the terms of this Constitution and Bylaws is subject to review by the Secretary of the Interior, or his authorized representative, shall be presented to the Superintendent of the reservation within ten (10) days of its enactment. The Superintendent shall within ten (10) days after its receipt approve or disapprove the same. If the Superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may within ninety (90) days from the date of enactment rescind the said ordinance or resolution for any cause, by notifying the Tribal Council of such decision.

If the Superintendent shall refuse to approve any ordinance or resolution submitted to him, within ten (10) days after its receipt he shall advise the Tribal Council of his reasons therefor. If the reasons appear to the Tribal Council to be insufficient it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior who may within ninety (90) days from the date of enactment of the resolution of referral, approve or disapprove same in writing, provided however no such ordinance shall become effective until approved by the Secretary of the Interior or his duly authorized representative.

Section 2. Any resolution or ordinance by the terms of this Constitution and Bylaws that is subject to the approval of the Secretary of the Interior, or his authorized representative, shall be presented to the Superintendent who shall transmit the same to the Secretary with his recommendations as to the merits of the proposals.

The said ordinance or resolution shall not become effective until it shall have been approved by the Secretary of the Interior, or his duly authorized representative.

ARTICLE VII - AMENDMENTS

Whenever the Tribal Council by a majority vote of the members, or the tribal membership by a petition signed by twenty (20) percent of the eligible voters, calls for the submission of an amendment, the Secretary of the Interior shall call an election upon the proposed amendment to the Constitution and Bylaws. If at such election the amendment is adopted by a majority vote of the qualified voters of the Tribe voting therein, and if at least thirty (30) percent of those entitled to vote shall vote, such amendment shall be submitted to the Secretary of the Interior and, if approved by him, shall thereupon take effect. (Amendment IV)

ARTICLE VIII - REFERENDUM

Section 1. Upon recept of a petition signed by twenty (20) percent of the eligible voters, or by an affirmative vote of a majority of the Tribal Council members, any enacted or proposed ordinance or resolution of the Tribal Council shall be submitted to a referendum of the eligible voters of the Tribe. The majority of the votes cast in such referendum shall be conclusive and binding on the Tribal Council. The Tribal Council shall call such referendum within thirty (30) days and prescribe the manner of conducting the vote. (Amendment VIII)

ARTICLE IX - BILL OF RIGHTS

Section 1. All members of the Seminole Tribe shall be accorded equal political rights and equal opportunities to participate in the economic resources and activities of the Tribe, and no person shall be denied freedom of conscience, speech, association or assembly, or due process of law, or the right to petition for the redress of grievances. The members of the Tribe shall continue undisturbed in their religious beliefs and nothing in this Constitution and Bylaws will authorize the Tribal Council to interfere with these traditional religious practices according to their custom. (Amendment IX)

ARTICLE X - TRIBAL COURTS

Section 1. The judicial powers of the Seminole Tribe shall be vested in the tribal courts, including a trial and appellate court. The jurisdiction of the tribal courts shall extend to all matters, criminal and civil, except where prohibited by the constitution, laws or treaties of the United States.

Section 2. The civil and criminal offenses over which the courts of the Seminole Tribe shall have jurisdiction shall be embodied in a Code of Laws, adopted by ordinance of the tribal council, and subject to approval of the Secretary of the Interior.

Section 3. The duties and procedures of the courts shall be determined by ordinances of the tribal council.

Section 4. The tribal council shall consist of a chief judge and two associate judges, appointed by the chairman of the tribal council, with the concurrence of not less than a three-fourths (3/4) majority vote of the whole membership of the tribal council.

Section 5. The tenure and salary of tribal judges shall be fixed by ordinance of the tribal council and no person appointed to the office of tribal judge shall hold at the same time any other tribal office or position.

Section 6. No person shall be appointed to the office of tribal judge unless he is an enrolled member of the Seminole Tribe, not less than thirty-five (35) years nor more than seventy (70) years of age; nor shall any person be appointed as a tribal judge who has ever been convicted of a felony or, within one (1) year, the last past, of a misdemeanor.

Section 7. Persons appointed to the office of tribal judge may be removed from office for cause including conviction of a felony in any court of competent jurisdiction, gross neglect of duty, misconduct reflecting on the dignity and integrity of the Seminole Tribe. Such removal shall be accomplished by not less than three-fourths (3/4) majority of the whole membership of the tribal council; provided that first the accused judge shall be given a written statement of the charges against him at least ten (10) days before the meeting of the tribal council at which action is to be taken and providing that he shall be given an opportunity to answer any and all charges against him. (Amendment XIX)

BYLAWS OF THE SEMINOLE TRIBE OF FLORIDA
ARTICLE I - DUTIES OF OFFICERS

Section 1. The Chairman of the Tribal Council shall preside over all meetings of the Council and exercise any authority specifically delegated to him as provided in Article V, Section 9 of the Constitution. The Chairman shall participate in the meetings of the Board of Directors as Vice-President of that body. He shall have full power to vote in both Tribal Council meetings and those of the Board of Directors. (Amendment X)

An Acting Chairman shall be appointed by the members of the Tribal Council from among those elected members present when circumstances compel the Chairman to absent himself from any meeting.

Section 2. The Vice-Chairman shall assist the Chairman when called on to do so. Voting power shall be vested in him. In the absence of the Secretary, the Vice-Chairman shall assume all the duties and responsibilities of the Secretary. (Amendment X)

Section 3. The Secretary shall cause to be prepared all minutes, resolutions and ordinances enacted at all meetings and forward copies, in every instance, to the Superintendent. In addition to the duties prescribed pursuant to Article V, Section 8, the Secretary shall maintain all files, records, and correspondence of the Tribal Council in an orderly manner for the convenience of the Tribal Council and exercise such other duties as may be specifically delegated to him.

Section 4. (a) The tribal Treasurer shall accept, receive, receipt for, preserve and safeguard all funds in the custody of the Tribe from whatever source. He shall deposit all funds in such bank, or elsewhere as directed by the Tribal Council in accordance with Article V, Section 10 and shall cause to be made and preserved a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his possession or custody, such report to be made in writing and filed with the Secretary at each regular meeting of the Tribal Council and at such other times as requested by the Tribal Council.

(b) He shall not pay out or otherwise disburse any funds in his possession or custody, or in the possession or custody of the Tribal Council, except when properly authorized to do so by a duly enacted resolution.

(c) The books and records of the tribal Treasurer shall be audited at least once every year by a competent auditor employed by the Council and at such other time as the Council or the Commissioner of Indian Affairs or his authorized representative may direct. In addition to the copies prepared for the governing body, one copy of the audit shall be prepared for the Superintendent, one copy for the Area Director and one copy for the Commissioner of Indian Affairs.

(d) The tribal Treasurer shall be required to give a bond satisfactory to the Tribal Council and the Commissioner of Indian Affairs, or his authorized representative, and make such provisions for carrying out the Tribal Council directives in the manner and method for custody and disbursement of funds as shall guarantee their safety, proper disbursement and use.

Section 5. The Council representatives shall serve as Chairman of the Committees on their respective reservations and committee meetings shall be held on the reservation each represents. No more than two people shall serve with him on each of his committees and they shall be members of the Tribe residing on that particular reservation. (Amendment X)

ARTICLE II - OATH OF OFFICE

Section 1. All duly elected members of the Tribal Council who have been certified shall be installed as provided in Article III, Section 3, upon subscribing to the following oath to be administered by the Superintendent.

> "I, _____, do solemnly swear that I will support and defend the Constitution of the United States against all enemies; that I will faithfully and impartially carry out the duties of my office to the best of my ability; that I will cooperate, promote, and protect the best interest of the Tribe, in accordance with the Constitution and Bylaws of the Seminole Tribe of Florida."

ARTICLE III - SALARIES AND REMUNERATIONS

Section 1. The Tribal Council may prescribe such salaries and remunerations pursuant to the provision of Article V, Section 5, as may be available and necessary to carry on its responsibilities and the responsibilities of its officials and employees.

ARTICLE IV - ORDINANCES AND RESOLUTIONS

Section 1. All final decisions of the Tribal Council on matters of general and permanent interest to members of the Tribe and to tribal administration shall be embodied in ordinances. Each ordinance shall be numbered consecutively beginning with Number 1. Such enactments shall be available for public inspections.

Section 2. All final decisions of the Tribal Council on matters of temporary interest or relating to particular individuals, officials or committees shall be embodied in resolutions. Such resolutions shall be numbered consecutively beginning with Number 1 and shall also be subject to public inspection.

ARTICLE V - MEETINGS

Section 1. The regular meetings of the Tribal Council shall be held bimonthly, the first to be held within thirty (30) days of the election of the Council. The Council may decide on the day and time for Regular Meetings. Special Meetings may be called by the Chairman or by three (3) members of the Council. The Secretary shall give advance written notice, as prescribed by the Council, of all meetings, such notices shall include date, time, place and purpose of the meeting.

Section 2. A quorum shall consist of three (3) members and no official action shall be transacted in the absence of a quroum at any time. (Amendment XI)

ARTICLE VI - ORDER OF BUSINESS

Section 1. The Tribal Council shall determine the order of business. The Chairman and the Secretary-Treasurer shall prepare an agenda for both Regular and Special Meetings for the consideration of the Tribal Council which shall include, subject to change by the Council:

(a) Call to order and roll call
(b) Reading of minutes of last meeting
(c) Unfinished business
(d) Reports
(e) New business
(f) Adjournment

ARTICLE VII - RATIFICATION

This Constitution and Bylaws, when approved by the Secretary of the Interior, shall be effective from and after the date of its ratification by a majority vote of adult Indians of the Seminole Tribe of Florida voting at an election called for that purpose by the Secretary of the Interior: Provided, that at least 30 percent of those entitled to vote shall vote in such an election.

For the purpose of this election any adult 21 years of age and over, whose name appears on the Census Roll of the Seminole Agency of January 1, 1957, shall be eligible to vote. A voting list of such eligible persons shall be prepared by the Constitutional Committee and the Superintendent.

APPROVAL

I, Roger Ernst, Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378), do hereby approve the attached Constitution and Bylaws of the Seminole Tribe of Florida, subject to ratification by the Tribe in the manner therein provided.

Upon ratification of this Constitution and Bylaws, all rules and regulations heretofore promulgated by the Interior Department or by the Bureau of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution and Bylaws, are declared inapplicable to the Seminole Tribe of Florida.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and Bylaws.

Approval recommended:

(sgd) Glenn L. Emmons
Commissioner of Indian Affairs

Roger Ernst
ASSISTANT SECRETARY OF THE INTERIOR
(SEAL)

Washington, D.C. July 11, 1957

CERTIFICATE OF RATIFICATION

Pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378), the attached Constitution and Bylaws approved on July 11, 1957, by Roger Ernst, Assistant Secretary of the Interior was submitted for ratification to the adult Indians of the Seminole Tribe of Florida and was on August 21, 1957, ratified by a vote of 241 for, and 5 against, in an election in which at least 30 percent of those entitled to vote cast their ballots.

(sgd) Bill Osceola
Chairman, Constitutional Committee

(sgd) Mike Osceola
Secretary, Constitutional Committee

(sgd) K.A. Marmon
Superintendent, Seminole Agency

Revised 11/28/89
DOC0337A

SEMINOLE TRIBE OF FLORIDA
TRIBAL COUNCIL

Ratified Constitution/ByLaws - August 21, 1957

Adopted Amendment Nos. I thru IV to Constitution/ByLaws - June 25, 1960

Adopted Amendments to Constitution/ByLaws - March 14, 1963
Amendment Nos. V - XI

Adopted Amendments to Constitution/ByLaws - February 14, 1967
Amendment Nos. XII - XVI

Adopted Amendments to Constitution/ByLaws - April 22, 1983
Amendment Nos. XVII - XX

++

Exhibit "B"

RE: ORDINANCE OF THE SEMINOLE TRIBE OF FLORIDA RELATING TO ITS IMMUNITY FROM SUIT UNDER THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY; THE APPLICABILITY OF SUCH IMMUNITY TO TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED TRIBAL AGENTS; EXCLUSIVE METHOD FOR TRIBAL WAIVER OF SOVEREIGN IMMUNITY AND RENUNCIATION OF ALL PRIOR NON-CONFORMING ACTS PURPORTING TO WAIVE TRIBAL SOVEREIGN IMMUNITY AS TO THE SEMINOLE TRIBE OF FLORIDA AND ITS TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED AGENTS

SEMINOLE TRIBE OF FLORIDA
HOLLYWOOD, FLORIDA

ORDINANCE No. C-01-95

WHEREAS, the SEMINOLE TRIBE OF FLORIDA -- whose ancestorial heritage and tribal history substantially predates Colonial America -- formally organized for the common welfare of its tribal members in accordance with the provisions of Section 16 of the *Indian Reorganization Act of 1934*, as embodied in 25 U.S.C. Section 476. As such, the SEMINOLE TRIBE OF FLORIDA is a sovereign Indian tribe recognized and designated as an Indian tribe pursuant to the Act; and

WHEREAS, the present members of the Seminole Tribe of Florida are descendants of a small number of Seminole Indians who -- approximately 150 years ago -- stood fast to their ancestorial land rather than be forcibly removed along what has come to be known as the "Trail of Tears" over which the tribal members of the five civilized tribes (Cherokee, Choctaw, Creek, Chickasaw and Seminole) were marched on foot from their ancestorial lands to an area call Indian territory which is now a part of the State of Oklahoma; and

WHEREAS, At the time of its formal organization, the Seminole Tribe of Florida adopted a Constitution and a set of By-laws which were ratified by the tribal community and approved by the United States Secretary of the Interior, in full compliance with the *Indian Reorganization Act of 1934*. It is the Amended Constitution and By-laws of the Seminole Tribe of Florida which defines the right of the Seminole Tribe of Florida to determine its destiny through self-government as a federally recognized Indian tribe. One of the longstanding powers that the Seminole Tribe of Florida has always had and retained is its rights as a sovereign government to tribal sovereign immunity for itself, its subordinate economic and governmental units, its tribal officials, employees and authorized agents; and

RE: ORDINANCE OF THE SEMINOLE TRIBE OF FLORIDA RELATING TO ITS IMMUNITY FROM SUIT UNDER THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY; THE APPLICABILITY OF SUCH IMMUNITY TO TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED TRIBAL AGENTS; EXCLUSIVE METHOD FOR TRIBAL WAIVER OF SOVEREIGN IMMUNITY AND RENUNCIATION OF ALL PRIOR NON-CONFORMING ACTS PURPORTING TO WAIVE TRIBAL SOVEREIGN IMMUNITY AS TO THE SEMINOLE TRIBE OF FLORIDA AND ITS TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED AGENTS

WHEREAS, as a sovereign Indian tribe, the Seminole Tribe of Florida is culturally, politically and economically distinct from non-tribal society which has, for many years, enjoyed distinct educational, economic and other opportunities which, until recently, were not practically available to Seminoles and other Indians; and

WHEREAS, the economic security and general welfare of the Seminole Tribe of Florida and its members are largely dependent upon the careful protection of scarce tribal assets and resources; and

WHEREAS, the Seminole Tribe of Florida, as an aspect of its sovereignty, is entitled to immunity from suit in all state and federal courts absent the clear, express and unequivocal consent of the Seminole Tribe of Florida or the clear, express and unequivocal consent of the United States Congress; and

WHEREAS, the purpose of tribal sovereign immunity is to guard against the unwarranted exercise of state and federal jurisdiction over the Seminole Tribe of Florida, its subordinate economic and governmental units, tribal officials, employees and authorized agents and over tribal affairs which would impinge upon tribal self-government and economic development, including the protection of scarce tribal assets and resources which are held for the benefit of all tribal members and must be available at all times to be applied to meet tribal needs; and

WHEREAS, the government of the Seminole Tribe of Florida constitutionally operates through the Tribal Council and can only function through the actions of tribal officials, employees and authorized agents of the Seminole Tribe of Florida who are likewise entitled to immunity from suit in all state and federal courts where such tribal officials, employees or authorized agents act on behalf of the Seminole Tribe of Florida in the course of their agency or are acting within that degree of

RE: ORDINANCE OF THE SEMINOLE TRIBE OF FLORIDA RELATING TO ITS IMMUNITY FROM SUIT UNDER THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY; THE APPLICABILITY OF SUCH IMMUNITY TO TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED TRIBAL AGENTS; EXCLUSIVE METHOD FOR TRIBAL WAIVER OF SOVEREIGN IMMUNITY AND RENUNCIATION OF ALL PRIOR NON-CONFORMING ACTS PURPORTING TO WAIVE TRIBAL SOVEREIGN IMMUNITY AS TO THE SEMINOLE TRIBE OF FLORIDA AND ITS TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED AGENTS

(Ordinance No. C-01-95)

authority which the Seminole Tribe of Florida is capable of bestowing upon such tribal official, employee, or agent as a matter of federal, constitutional, or tribal law; and

WHEREAS, as an apparent result of increased prosperity, the Seminole Tribe of Florida, its subordinate economic and governmental units as well as tribal officials, employees and authorized agents have been named, from time to time, as parties defendant in federal and state litigation thereby exposing the Seminole Tribe of Florida to unnecessary costs and expenses and threatening the economic resources and general welfare of the Seminole Tribe of Florida and its members; and

WHEREAS, the Seminole Tribe of Florida desires to make clear to all persons having business or otherwise dealing with the Seminole Tribe of Florida, its subordinate economic and governmental units, its tribal officials, employees and authorized agents that the Seminole Tribe of Florida does not under any circumstances intend to voluntarily waive its entitlement to immunity from suit in state and federal courts under the doctrine of tribal sovereign immunity absent strict and complete compliance with the procedures set forth below which shall be the exclusive method for effecting a voluntary tribal waiver of sovereign immunity; and

WHEREAS, the Tribal Council has reviewed this Ordinance and it is otherwise fully advised.

NOW THEREFORE BE IT ORDAINED: that the Seminole Tribe of Florida, its subordinate economic and governmental units as well as its tribal officials, employees and authorized agents are immune from suit brought by any third-party in any state or federal court absent the clear, express and unequivocal consent of the Seminole Tribe of Florida or the clear, express and unequivocal consent of the United States Congress. This immunity shall apply whether the Tribe or any subordinate economic or governmental unit is engaged in a private enterprise or governmental function; and

RE: ORDINANCE OF THE SEMINOLE TRIBE OF FLORIDA RELATING TO ITS IMMUNITY FROM SUIT UNDER THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY; THE APPLICABILITY OF SUCH IMMUNITY TO TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED TRIBAL AGENTS; EXCLUSIVE METHOD FOR TRIBAL WAIVER OF SOVEREIGN IMMUNITY AND RENUNCIATION OF ALL PRIOR NON-CONFORMING ACTS PURPORTING TO WAIVE TRIBAL SOVEREIGN IMMUNITY AS TO THE SEMINOLE TRIBE OF FLORIDA AND ITS TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED AGENTS

(Ordinance No. C-01-95)

BE IT FURTHER ORDAINED: that all tribal officials, employees or other authorized agents shall likewise be immune from suit brought by any third-party in any state or federal court where such tribal official, employee or other authorized agent is either acting on behalf of the Seminole Tribe of Florida in the course of their agency or where the acts of such tribal official, employee or other agent, though mistaken, negligent or otherwise improper are within that degree of authority which the Seminole Tribe of Florida is capable of bestowing upon the agent as a matter of federal, constitutional or tribal law; and

BE IT FURTHER ORDAINED: that the consent of the Seminole Tribe of Florida to waive its immunity from suit in any state or federal court may only be accomplished through the clear, express and unequivocal consent of the Seminole Tribe of Florida pursuant to a resolution duly enacted by the Tribal Council of the Seminole Tribe of Florida sitting in legal session. Any such resolution purporting to waive sovereign immunity as to the Seminole Tribe of Florida, any of its subordinate economic or governmental units or any of its tribal officials, employees or authorized agents shall specifically acknowledge that the Seminole Tribe of Florida is waiving its sovereign immunity or a limited basis and describe the purpose and extent to which such waiver applies. The failure of the Tribal Council resolution to contain such language shall render it ineffective to constitute a waiver of tribal sovereign immunity; and

BE IT FURTHER ORDAINED: that this Tribal Ordinance shall be retroactive to January 1, 1990 and that all prior acts -- other than a clear, express and unequivocal waiver of tribal sovereign immunity pursuant to a resolution duly enacted by the Tribal Council of the Seminole Tribe of Florida sitting in legal session authorizing a waiver of tribal sovereign immunity shall and is hereby declared to be null and void and is hereby renounced; and

BE IT FURTHER ORDAINED: that any "sue and be sued" clause contained in any charter, agreement or other document pertaining, in any respect to any subordinate economic or governmental unit of the Seminole Tribe of Florida is hereby declared to be void and ineffectual as of the date of this Tribal Ordinance; and

RE: ORDINANCE OF THE SEMINOLE TRIBE OF FLORIDA RELATING TO ITS IMMUNITY FROM SUIT UNDER THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY; THE APPLICABILITY OF SUCH IMMUNITY TO TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED TRIBAL AGENTS; EXCLUSIVE METHOD FOR TRIBAL WAIVER OF SOVEREIGN IMMUNITY AND RENUNCIATION OF ALL PRIOR NON-CONFORMING ACTS PURPORTING TO WAIVE TRIBAL SOVEREIGN IMMUNITY AS TO THE SEMINOLE TRIBE OF FLORIDA AND ITS TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED AGENTS

BE IT FURTHER ORDAINED: that any third-party who initiates or maintains any regulatory, administrative or civil action in any state or federal court or before any tribunal of any kind whatsoever against the Seminole Tribe of Florida, any of its subordinate economic or governmental units, or any of its tribal officials, employees or authorized agents who were acting within the course or scope of their agency or who were acting within that degree of authority that the Tribal Council of the Seminole Tribe of Florida is capable of bestowing upon such tribal official, employee or authorized agent as a matter of federal, constitutional or tribal law, such third-party shall be liable for all taxable costs and other expenses as well as attorney's fees incurred in defending against such action; and

BE IT FURTHER ORDAINED: that without waiving tribal sovereign immunity or consenting to any suit in any respect, any action brought against the Seminole Tribe of Florida, any of its subordinate economic or governmental units or any tribal official, employee or other agent for any act arising out of any act committed within the course and scope of their agency or within that degree of authority which the Seminole Tribe of Florida is capable of bestowing upon such tribal official, employee or authorized agent as a matter of federal, constitutional or tribal law may only be venued in the United States District Court for the Southern District of Florida or the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida; and

RE: ORDINANCE OF THE SEMINOLE TRIBE OF FLORIDA RELATING TO ITS IMMUNITY FROM SUIT UNDER THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY; THE APPLICABILITY OF SUCH IMMUNITY TO TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED TRIBAL AGENTS; EXCLUSIVE METHOD FOR TRIBAL WAIVER OF SOVEREIGN IMMUNITY AND RENUNCIATION OF ALL PRIOR NON-CONFORMING ACTS PURPORTING TO WAIVE TRIBAL SOVEREIGN IMMUNITY AS TO THE SEMINOLE TRIBE OF FLORIDA AND ITS TRIBAL OFFICIALS, EMPLOYEES AND AUTHORIZED AGENTS

(Ordinance No. C-01-95)

Page 6

BE IT FURTHER ORDAINED: that this ordinance is hereby adopted after motion made by Max B. Osceola, Jr. seconded by Fred Smith and a roll call vote as follows:

Chairman James E. Billie	Aye
Vice-Chairman Fred Smith	Aye
Council Representative David R. Cypress.	Aye
Council Representative Jack Smith, Jr.	Aye
Council Representative Max B. Osceola, Jr.	Aye

DONE THIS 16th DAY OF March, 1995, at the regular meeting of the Tribal Council, duly convened at Hollywood, Florida, with a quorum being present by a vote of 5 for, 0 against, with 0 abstentions.

Chairman
TRIBAL COUNCIL

DATE: APR 19 1995

Secretary/Treasurer
TRIBAL COUNCIL

APPROVED BY:

Franklin Keel, Area Director
UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, EASTERN AREA OFFICE

c:\wpdocs\resoluti\sov.imm