

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF OKLAHOMA**

(1) THE CADDO NATION OF OKLAHOMA, and )

(2) BRENDA EDWARDS, in her capacity as )

Chairman of the Caddo Nation of Oklahoma, )

Plaintiffs, )

vs. )

Case No. 14-CV-00281-D

(1) THE COURT OF INDIAN OFFENSES )

FOR THE ANADARKO AGENCY, )

Defendant. )

**PLAINTIFFS' SUPPLEMENTAL BRIEF PURSUANT TO THE  
MARCH 21, 2014 ORDER OF THE COURT**

The Plaintiffs, the Caddo Nation of Oklahoma and Brenda Edwards, in her capacity as Chairman of the Caddo Nation of Oklahoma, submit the following supplemental brief in response to the issues of comity and exhaustion of remedies outlined in this Court's March 21, 2014 Order.

**STATEMENT OF RELEVANT FACTS**

On or about August 2013, a power struggle resulted in a dispute over the Tribal leadership of the Caddo Nation. Prior to that time, the Tribal Council of the Caddo Nation had withdrawn authority of the Court of Indian Offenses (hereinafter "CFR Court") to "adjudicate an election dispute, take jurisdiction over a suit against a tribe, or adjudicate any internal tribal government dispute" 25 C.F.R. 11.118(d). During the course of the intra-tribal leadership dispute, the party claiming power issued a resolution granting authority to the CFR Court. The duly authorized Tribal Council declared that the CFR Court had no jurisdiction. Thereafter, based on their own resolution, the party purporting to be the Caddo Nation sought a preliminary and permanent injunction in CFR Court.

## ARGUMENT AND AUTHORITY

The issue here is whether the CFR Court is in a position to determine its jurisdiction over the Caddo Nation's intra-Tribal disputes. This Court has raised concerns over its jurisdiction based on the doctrines of comity and exhaustion of tribal remedies, or more particularly, whether comity requires the exhaustion of Tribal court remedies. *Tillett v. Lujan*, 931 F.2d 636, 640 (10th Cir. 1991). "Exhaustion is required as a matter of comity, not as a jurisdictional prerequisite." *Nev. v. Hicks*, 533 U.S. 353, 399, 121 S.Ct. 2304, 2331 (2001)(citing *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, n.8, 107 S.Ct. 971, n.8 (1987)). An important aspect of comity is whether this Court should defer to hear the case. *LePlante*, 480 U.S. n.8. In looking at comity and exhaustion or remedies with respect to 25 C.F.R. 11.118, the issue boils down to who is this Court to give comity too (Tribal Council or the Federal CFR Court), if at all, and what remedies, if any, are to be exhausted.

"The basic dilemma the doctrine of comity is meant to solve is that '[n]o law has any effect, of its own force, beyond the limits of the sovereignty from which its authority derived.'" *MacArthur v. San Juan County*, 497 F.3d 1057, 1066 (10th Cir. Utah 2007)(citing *Hilton v. Guyot*, 159 U.S. 113, 163, 16 S. Ct. 139, 40 L. Ed. 95 (1895)). "Thus, comity 'is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.'" *Id.* In this case, the jurisdiction derives from the Caddo Nation, not CFR Court.

The Caddo Nation is entitled to a declaratory judgment and an injunction that the CFR Court lacks jurisdiction to even entertain this intra-Tribal dispute because the duly elected officials of the Caddo Nation did not authorize jurisdiction. The Caddo Nation, or its officials, should not have to exhaust the CFR Court's federally created remedies where the duly elected officials of the

Caddo Nation have resolved not to have the CFR Court's remedies followed in this unlawful power struggle. Comity should be given to the Caddo Nation's Tribal Council which enacted a resolution that the CFR Court's lack jurisdiction to resolve this very issue.

The underlying principle as to whether comity should apply relates directly to the Supreme Court's continued holding that "Congress is committed to a policy of supporting tribal self-government and self-determination." *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856, 105 S.Ct. 2447, 2454 (1985). Whether the CFR Court has jurisdiction over an intra-tribal dispute strikes at the very heart of self-governance and self-determination where the Caddo Nation has declared otherwise. "Internal matters of a tribe are generally reserved for resolution by the Tribe itself, through a policy of Indian self-determination and self-government as mandated by the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1341." *Timbisha Shoshone Tribe v. Joseph Kennedy*, 2009 WL 3615971, at \*11 (E.D. Ca. 2010).

Further, as recognized by 25 C.F.R. 11.118, the Tribe has the sovereign authority to remove jurisdiction from the CFR Court. The Tribe, in an exercise of its sovereign authority, should not have to subject itself to the CFR Court for a determination of whether that jurisdiction exists when the Caddo Nation already removed the internal dispute from the CFR Court's jurisdiction. The CFR Court's jurisdiction is derived from the Caddo Nation – not vice versa.

In *Tillet v. Lujan*, 931 F.2d 636 (10<sup>th</sup> Cir. 1991), an issue arose over the leadership of the Kiowa Tribe. The 10<sup>th</sup> Circuit Court of Appeals held that "as a matter of comity, a federal court should not exercise jurisdiction over cases arising under its federal question or diversity jurisdiction, if those cases are also subject to tribal jurisdiction, until the parties have exhausted their tribal remedies." *Id.* at 640. Here however, there is no exhaustion issue because the Caddo Nation has already determined there is no remedy to exhaust. *Tillet* is distinguishable because

there was no dispute that the CFR Court was authorized to determine the underlying intra-tribal dispute. *Id.* at 639. There was no issue of comity between the CFR Court and the Tribe itself because there was no issue over the Tribe's grant of jurisdiction to the CFR Court.

In addition, the Caddo Nation has determined that the CFR Court cannot hear intra-tribal disputes. As an underlying rationale of the United States Supreme Court decisions regarding comity and exhaustion of tribal remedies, it has held that "[a]djudication of such matters by any nontribal court ... infringes upon tribal lawmaking authority, because tribal courts are best qualified to interpret and apply tribal law." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16, 107 S.Ct. 971, 977 (1987). However, in this instance, the CFR Court has been excluded by the Tribe's lawmaking authority. Under *LePlante's* rationale, the Caddo Nation should not be subjected to the CFR Court after the lawmaking authority of the Caddo Nation removed jurisdiction.

Moreover, out of an abundance of caution, even if comity and exhaustion of remedies apply in this situation, the issues are futile. An intra-tribal dispute is at its essence a struggle amongst the leadership of a Tribal Nation as to who has authority to act. Each side would continually grant and remove jurisdiction in the CFR Court. Thus, this Court must determine that the status of jurisdiction is determined at the time when the dispute arose. To allow later enactments granting jurisdiction and removing jurisdiction would lead to a never ending struggle in the CFR Courts. It would also lead to the unintended result of the CFR Court adjudicating the proper leadership of the Nation to determine which later enacted resolution is effective. Here, such an approach would override the initial decision of the Tribal Council as there is no dispute that at the outset of the intra-tribal dispute the Nation did not grant jurisdiction to the CFR Court to adjudicate this issue.

Many months after the start of the intra-tribal dispute, each side's purported Tribal Council enacted competing resolutions – one granting authority to the CFR Court and the other declaring

that there is no jurisdiction. This Court should not give the CFR Court authority to do what it could not previously do – decide the intra-tribal dispute. In essence the CFR Court would have to decide which Tribal Council is the proper Tribal Council to determine which of the later enacted resolutions are effective. The CFR Court cannot be permitted to make that decision. Moreover, the Caddo Nation and its officials should not have to subject themselves to the CFR Court to make this determination.

**Comity and exhaustion should not be required where an adjudication on the ultimate issue is needed to determine if the CFR Court could decide the ultimate issue.**

### **CONCLUSION**

The underlying issue of comity and exhaustion of remedies should not require the Caddo Nation to subject itself to the CFR Court's regulatory remedies. This Court should give comity to the Caddo Nation's Tribal Council and not the federally created CFR Court. This Court must issue the emergency temporary restraining order against the Court of Indian Offenses to prevent it from further exercising jurisdiction over the current and any future intra-tribal disputes, including the hearing at 2:00 P.M. on March 25, 2014, where the CFR Court will essentially have to determine who the proper leadership of the Caddo Nation is in order to determine which resolution controls.

Dated this 24<sup>th</sup> Day of March 2014.

Respectfully submitted,

/s/Eugene Bertman

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