

IN THE NOOKSACK TRIBAL COURT

ELEANOR J. BELMONT; et al.,

NO. 2014-CI-CL-007

Plaintiffs,

MOTION FOR JUDICIAL NOTICE

v.

ROBERT KELLY; et al,

Defendants.

NOOKSACK INDIAN TRIBE, a federally recognized Indian tribal government, Third-Party Plaintiff,

v.

ELEANOR J. BELMONT; et al.,

Third-Party Defendants.

Plaintiffs move this Court to take judicial notice of any Nooksack Resolutions, Tribal Code Titles or other laws that have been recently passed by Tribal Council Defendants, and to have Court staff make those laws available to Plaintiffs. Specifically, this Motion pertains to:

1. Any Resolutions or other laws passed on February 23, 24, or March 2, 2016, to ban, exclude or, expel Plaintiffs' counsel of record, Galanda Broadman, PLLC. There are believed to be at least two Resolutions;

1 2. Any Resolution authorizing amendment to Title 10, and any amended Title 10. It
2 is believed that Defendants have amended Title 10 once again, meaning since December 19,
3 2015;

4 3. Any Resolution authorizing amendment to Title 60, and any amended Title 60.
5 Defense counsel promised to inquire of Tribal Council Defendants about furnishing the amended
6 Title 60 to Plaintiffs but has apparently not made that inquiry (or at least has failed to advise
7 Plaintiffs' counsel of it); and

8 4. Any such other Resolutions or amended Titles that impact Plaintiffs' due process
9 rights at bar. Plaintiffs would not be surprised if Tribal Council Defendants once again amended
10 Title 80 with a view towards their inevitable request for interlocutory appellate review. Fourth
11 Declaration of Michelle Roberts ("Roberts Decl."), at 1-2.

12 Plaintiffs have good reason to believe that since the last Court hearing on February 22,
13 2016—when they realized that this Court was not indulging their frivolity—Tribal Council
14 Defendants have attempted to pass several of the aforementioned amendments and additions to
15 Nooksack Tribal law. These attempts to create disorder and confusion are unenforceable,
16 however, insofar as they are designed to further deprive Plaintiffs of their equal protection rights
17 and due process rights—most blatantly, the right to private counsel. *Id.*¹

19 ¹ See *Roberts v. Kelly*, No. 2013-CI-CL-003, at 5-8 (Nooksack Ct. App. Mar. 18, 2014) (generally discussing
20 Plaintiffs' guaranteed due process rights, including "the right to representation" by private counsel); *Belmont v.*
21 *Kelly*, No. 2014-CI-CL-007, at 12-13 (Nooksack Tribal Ct. Jan. 26, 2016) ("[Plaintiffs'] right to vote is fundamental
22 . . . As enrolled members, Plaintiffs have the right to vote in the 2016 elections."); *Belmont v. Kelly*, No. 2014-CI-
23 CL-007, at 16 (Nooksack Tribal Ct. Feb. 29, 2016) ("Unequivocally, Plaintiffs are enrolled members of the
24 Nooksack Indian Tribe and, pursuant to the Nooksack Constitution . . . shall have the right to vote.") (emphasis in
25 original); N.T.C. § 10.02.010 ("Any person appearing as a party in any civil or criminal action shall have the right to
be represented by an advocate of his/her own choice at his/her own expense . . .). Section 10.02.010 of the
Nooksack Tribal Code requires counsel to "have first obtained admission to practice" from the Court but says
nothing of any business license requirement. To the extent Tribal Council Defendants are enforcing some archaic
Nooksack business licensure requirement upon Galanda Broadman, PLLC—and only Galanda Broadman, PLLC—
they are estopped from doing so under the principles of equitable estoppel and substantive due process. *Forest*
Plywood Sales, Inc. v. Exp.-Imp. Bank of U.S., 147 F. App'x 685, 688 (9th Cir. 2005) ("Equitable estoppel may be
imposed when a party 'has . . . conceal[ed] material facts to a party ignorant of the facts, with the intention that the
other party should rely on it, where the other party actually and detrimentally relies on it.") (quoting *Mukherjee v.*

1 As this Court mentioned on February 22, 2016, Tribal Council Defendants have a
2 propensity for amending Tribal laws, and rather quickly. In addition to amending the Nooksack
3 Constitution (and proposing to do so again), they have now amended the Nooksack Tribal Code
4 no less than 15 times, as they incessantly target Plaintiffs for disenrollment.²

5 Fundamentally, due process requires that any new or amended laws that affect—and in
6 fact target—Plaintiffs’ rights, *i.e.*, voting, due process, equal protection, and representation
7 rights, be afforded to them. Nothing in Nooksack law, at least to Plaintiffs’ present knowledge,
8 prevents this Court from taking judicial notice of the latest slew of laws promulgated by the
9 Tribal Council Defendants to ensure Plaintiffs’ disenrollment,³ and causing Court staff to make
10 those laws available to Plaintiffs. *See* N.T.C. 10.04.020.⁴

11 Plaintiffs are at an extreme disadvantage. Defendants have on every level, from day one,
12 been able to obstruct, cloud, and otherwise encumber Plaintiffs’ rights—unhindered in many
13 instances, under the guise of sovereignty. At the very least, regardless of how the chips are
14 staked, Plaintiffs deserve to know the rules of the game. Plaintiffs’ motion must be granted.


21 *INS*, 793 F.2d 1006, 1008 (9th Cir. 1986)); *Begay v. Navajo Nation Election Admin.*, 4 Am. Tribal Law 604, 611
(Navajo 2002) (substantive due process involves the “right to liberty and equal protection of . . . law” and prevents
laws from being “applied . . . in an unfair and unequal way”).

22 ² *See* Reply Re: Motion for Leave to Amend Complaint, *Belmont v. Kelly*, No. 2014-CI-CL-007, at 3 n.9 (Nooksack
Tribal Ct Jan. 22, 2016) (“Since the inception of this litigation, in a transparent attempt to thwart the Plaintiffs’
efforts in this tribunal, and thus to accelerate Plaintiffs’ disenrollment, Defendants have changed the procedural rules
on Plaintiffs no less than eleven times.”).

23 ³ *Lomeli v. Kelly*, No. 2013-CI-APL-2013-002 (Nooksack Ct. App. Aug. 27, 2013) (observing that Tribal Council
Defendants have been passing laws and “fast-tracking the disenrollment process at nearly every turn,” since 2013).

24 ⁴ *See also Belmont*, No. 2014-CI-CL-007, at 17 (Feb. 29, 2016) (discussing the Court’s “inherent authority to
manage the cases on its docket”).

1 DATED this 4th day of March, 2016.

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4 _____
5 Michelle Joan Roberts
6 *Spokesperson for Plaintiffs or, Alternatively,*
7 *Pro Se Plaintiff⁵*
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23 ⁵ If Galanda Broadman, PLLC, is in fact unable to represent Plaintiffs at this time, Defendants will at a minimum
24 need to serve any and all court papers, including any papers for permission for interlocutory review, if any, on all
25 “272 adult Plaintiffs named in the unabridged caption of this lawsuit,” *i.e.*, “every party in the case . . . either by
giving it to the party in person or by putting it in the mail” per Title 10.05.040(d). *Belmont v*, No. 2014-CI-CL-007,
at 10 (Feb. 29, 2016).

1 DECLARATION OF SERVICE

2 I, Michelle Roberts, say:

3 1. I am over eighteen years of age and am competent to testify, and have personal
4 knowledge of the facts set forth herein. I am employed at Galanda Broadman, PLLC, counsel of
5 record for Plaintiffs.

6 2. Today, I caused the foregoing document to be filed with the referenced court and
7 delivered to:

8 Ray Dodge
9 Rickie Armstrong
10 Office of Tribal Attorney
11 Nooksack Indian Tribe
12 5047 Mt. Baker Hwy
13 P.O. Box 63
14 Deming, WA 98244

15 and emailed to:

16 Thomas Schlosser
17 Rebecca Jackson
18 Morisset, Schlosser, Jozwiak & Somerville
19 1115 Norton Building
20 801 Second Avenue
21 Seattle, WA 98104-1509

22 The foregoing statement is made under penalty of perjury under the laws of the Nooksack
23 Tribe and the State of Washington and is true and correct.

24 DATED this 4th day of March, 2016.

25 
MICHELLE ROBERTS