

No. 18-2332

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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DAWN MARIE DELEBREAU,

Plaintiff-Appellant,

v.

CRISTINA DANFORTH, et al.,

Defendants-Appellees.

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On Appeal from the United States District Court

For the Eastern District of Wisconsin

Honorable Judge William C. Griesbach, Chief Judge

Case No. 1:17-cv-01221-WCG

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**Reply Brief of Plaintiff-Appellant**

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De Pere, WI 54115

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## INTRODUCTION

**This Reply Brief is tenet to federal jurisdiction.** This Reply Brief follows Fed. R. App. P. 28(c).

In the Defendants-Appellees' Reply Brief Conclusion (18-2332, Doc.# 12, p. 59) they infer dismissal on dismissal motion, Fed. R. App. P. 28, additional documents such as Ft. Belknap Constitution, Article III Standing, and failure to state a claim, and lastly tribal sovereignty. However, the Appellate Court ought to consider each of these Defendants-Appellees defenses have "gaping holes of controversy" *Sabrina Roppo v. Travelers Commercial Ins. Co.*, 869 F.3d (7th Cir. 2017) thereby pleading out Defendants-Appellees defenses in opposing federal jurisdiction for the Plaintiff-Appellant. The holes will be elucidated throughout this Reply Brief. With that, the following introduction starts to illuminate the holes of controversy, *id.*

The Defendants-Appellees do not deny and thus concede their counsel is paid for by the Oneida Nation having annual budget of over \$500 million thus the Appellate Court must realize the Oneida Nation is attempting to silence the Oneida Nation citizen Plaintiff-Appellant and therefore "crosses the unconstitutional line between rich and poor" see *Douglas v. California*, 372 U.S. 353 (1963). The *pro se* Plaintiff-Appellant must be given 14th Amendment protection. And, if, for no other

reason the Appellate Court ought to reverse the District Courts' decision to Dismiss this Case and give the Plaintiff-Appellant [her] day in court.

In the Decision and Order Granting Motion to Dismiss (E.D. Wis. Doc.# 56) it was the decision of the District Court to deny the Plaintiff-Appellant 42 U.S.C. § 1983 Reconstruction Era Civil Rights thus the District Court *sua sponte* gives the Plaintiff-Appellate the legal right to defend this volatile constitutional deprivation in the Appellate Court and Defendants-Appellees cannot assert any defenses, *id.* Indeed, the Appellate Court knows that tribal governments are constitutionally different from each other i.e. Pub. L. 280, non-Pub. L. 280, adjudication of tribal and non-tribal matters, and both on and off-reservations etc.

Unfortunately, the District Court cites *Burrell v. Armijo*, 456 F.3d 1159, 1174 (10th Cir. 2006) in denying the Oneida Nation citizen Plaintiff-Appellant constitutional rights by arbitrarily disregarding the Oneida Nation Constitution i.e. the Plaintiff-Appellant is not a white<sup>1</sup> husband & wife, nor is the Plaintiff-Appellant a white company, *Burrell and R.J. Williams Co. v. Ft. Belknap Hous. Auth.*, 719 F.2d 979, 982 (9th Cir.1983) respectively. The latter decision was derived from the Ft. Belknap Constitution and the former decision was derived from both the Ft. Belknap Constitution and Pueblo of Santa Ana Constitution and is the basis for the District

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<sup>1</sup> White is defined here as non-degrogatory and is only used to demonstrate the distinctness between the non-Native parties in *Burrell* and *Ft. Belknap Hous. Auth.*, and the Native American Plaintiff-Appellant party in this Case thus is analogous to the adage of comparing apples and oranges.

Courts' erroneous Dismissal decision (Doc.# 56). In other words, the District Court erred in using *Burrell* to deprive Plaintiff-Appellant of [her] constitutional rights by, 1) not applying the appropriate Oneida Nation Constitution and, 2) not considering the Plaintiff-Appellants' Oneida Nation citizenship i.e. not a white person, nor a white company.

The Defendants-Appellees infer in their Brief that Defendants were not the immediate supervisor of the Plaintiff-Appellant but concomitantly on purpose neglect to tell the Appellate Court that the Defendants were in very-high positions-of-power over the supervisors who did in fact harm the Plaintiff-Appellant. It is more than plausible that a tribal vice-chairperson, tribal treasurer, Chief Financial Officer, and tribal HRD director would yield "some" amount of power over a tribal "whistleblower" that continues to threaten many tribal family's disclosure to federal housing crimes i.e. tribal HUD corruption. Contrary to the Defendants-Appellees' skewed assertion of a peripheral-distal relationship to the Plaintiff-Appellant the Appellate Court must take note that the Defendants-Appellees are not the "average Joe" off-the-street. Notwithstanding Defendant Jay L. Fuss (*U.S.A. v. Jay L. Fuss*, No. 17-CR-92 (E.D. Wis.)), the Defendants-Appellees have and/or still hold very-high positions-of-power over the Plaintiff-Appellant i.e. employment blackballing and "crossing the unconstitutional line" by hiring Defendants-Appellees' attorneys are just two examples, in the latter see *Douglas*.

Similarly, the Appellate Court ought to ask the question, “Why are only two of the four tribal officers being sued?” “Why are only two of the nine Oneida Business Committee Members being sued?” After all, the Defendants-Appellees infer the tribal government is the “real target of interest” and is clearly seen by the Defendants-Appellees as a very-desperate, kneel-praying, court-begging, last-ditch, attempt to silence the Plaintiff-Appellant see *Lewis v. Clarke*, 137 S.Ct. 1285 (2017). All the drama aside, the Plaintiff-Appellant is *not* suing the Oneida Nation but only those individuals responsible for deprivations such that the three employees and two elected officials acted outside-the-scope-of-their-authority and are the “real target of interest”, *id.* Therefore, Defendants-Appellees plead themselves out of a judgement for sovereign immunity see *Benders v. Bellows & Bellows*, 515 F.3d 757 (7th Cir. 2008), also *Smart v. Local 702 Int’l Broth. Of Elec. Workers*, 562 F.3d 798 (7th Cir. 2009).

The Defendants-Appellees do not deny that Plaintiff-Appellant is a federal witness who supports the federal investigation that was cause for the Oneida Housing Authority (OHA) HUD fraud indictment and subsequent sentencing of Jay L. Fuss (*Fuss*) and therefore concedes temporal proximity cause and effect arising from the federal HUD fraud disclosure. In other words, without Plaintiff-Appellants’ testimony, documents, photographs, and physical HUD material evidence such as the Plaintiff-Appellants’ home flooring there would have been no HUD fraud

indictment and the OHA HUD housing material Ponzi scheme would still be defrauding the federal government of millions of dollars.

#### STATEMENT OF JURISDICTION

The District Court Order Dismissing this Case for lack of federal jurisdiction is appealable as of Right taken under Fed. Rules of Appellate Procedure, Rule 3(a) and Rule 4(a)(1)(A). The Defendants-Appellees do not deny and therefore concede that an appeal is permitted by law under Rule 3(a).

The Complaint, the District Courts' decision, and the Plaintiff-Appellant's Brief states allegations of civil rights violations i.e. notwithstanding 42 U.S.C. § 1983 and 42 U.S.C. § 1985. For example, the Plaintiff-Appellants' Complaint cites, 5<sup>th</sup> Amendment deprivation of liberty (being under threat of harm and intimidation), 5<sup>th</sup> Amendment deprivation of life and liberty (familial harm i.e. son was severely beaten), 5<sup>th</sup> Amendment loss of property (benefits and income), without due process of law *inter alia*. In addition, 14<sup>th</sup> Amendment deprivation of the same described *supra* and violations of protections offered to an FBI federal witness i.e. 18 U.S.C. § 1512(a)(2) and 18 U.S.C. § 1513(b). The basis for the District Courts' subject matter jurisdiction *supra* is 28 U.S.C. § 1331 such that the "District Court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or



treaties of the United States”. Thus, the Plaintiff-Appellants’ harm and deprivations arise out of the Constitution and laws of the United States, Fed. R. App. P. 28(b)(1).

## STATEMENT OF THE ISSUES

1. Did the District Court err when applying 42 U.S.C. § 1983 “under color of tribal law” to the Oneida Nation citizen Plaintiff-Appellant when the decision in *Burrell* was derived from the non-Pub. L. 280 Ft. Belknap Constitution held in *Ft. Belknap Hous. Auth.*?
2. Did the District Court err when applying “under color of tribal law” to the Oneida Nation citizen Plaintiff-Appellant when the decision in *Burrell* and *Ft. Belknap Hous. Auth.* involved white (non-Indian) parties?
3. Did the District Court err by applying non-Oneida Nation tribal laws to the Oneida Nation Plaintiff-Appellant?
4. In the Oneida Nation Constitution what does, “All members of the tribe may enjoy, without hinderance, freedom of worship, conscience, speech, press, assembly, association and due process of law, as guaranteed by the Constitution of the United States mean?” See, Oneida Nation Constitution, Article VII – Bill of Rights.
5. Based on the Oneida Nation Constitution is it correct to infer, that there are no U.S. Constitutional differences between an Oneida Nation citizen and any other U.S. citizen off-the-street?

6. Did the District Court err in failing to apply tribal individuals acting under color of tribal law differently than white people acting under color of tribal law? In *Burrell and Ft. Belknap Hous. Auth.* the parties were white not Indian.
7. It is one thing for the District Court to determine that “§ 1983 does not apply to [white] individuals [and white companies] acting under color of tribal law” and, completely another thing to determine that “§ 1983 does not apply to [Indian] individuals acting under color of tribal law.” Are white people treated equally to Indian people in tribal law? Doc.# 56, p. 5.
8. The Appellate Court must seek to answer the question, “When does 42 U.S.C. § 1983 apply to Indians?” Does it matter if a tribal constitution guarantees a tribal citizen the right to due process of law under the U.S. Constitution such as the Oneida Nation Constitution Article VII.
9. Does a tribal or U.S. Constitutional abridgement exist when an Oneida Nation Citizen is denied 42 U.S.C. § 1983 rights? Does a tribal constitution abridgement exist under Article VII i.e. “guaranteed by the Constitution of the United States?”
10. Because the Plaintiff-Appellant was denied 42 U.S.C. § 1983 rights was Plaintiff-Appellants’ Oneida Nation Constitutional rights abridged? Was

Plaintiff-Appellants’ U.S. Constitutional rights abridged? Were the Plaintiff-Appellants’ U.S. Constitutional rights abridged because the Oneida Nation Constitution guarantees due process of law rights i.e. “guaranteed by the Constitution of the United States?”

11. Did the District Court err when failing to address 42 U.S.C. § 1983 in its entirety? In other words, why did the District Court only address state law and not also the territorial law provision of 42 U.S.C. § 1983?
12. Are “domestic dependent [tribal] nations” subject to territorial law under 42 U.S.C. § 1983?
13. The Oneida Nation is a “domestic dependent [Pub. L. 280] nation”, is the Oneida Nation, Oneida Nation citizens, Oneida Nation elected officials, Oneida Nation employees subject to territorial law under 42 U.S.C. § 1983?
14. Regarding *Cherokee Nation v. Georgia* What does “remained subject to the paternalistic powers of the United States” mean in relationship to 42 U.S.C. § 1983 i.e. under color of state, territorial, or tribal law ?

#### REPLY BRIEF ARGUMENTS AND STATEMENTS

The Appellate Court assesses Article III Standing *de novo* see *Amburgey v. United States*, 733 F.3d 633, 636 (6th Cir. 2013). In this Case the Plaintiff-Appellant disclosed, is a witness, and a victim of federal Oneida OHA HUD fraud see *Fuss*.

This is a fact, it is indisputable, it is not denied and thus conceded by the Defendants-Appellees. It is also straight forward that Plaintiff-Appellant suffered redressable temporal-proximity injuries-in-fact i.e. demotions, reassignments, firings, and familial harm *inter alia* by collusion at the direction of Defendants-Appellees as individuals having very-high powers of authority i.e. vice-chairperson, tribal treasurer, Chief Financial Officer, and HRD Director while acting outside-the-scope-of-their-authority. When the Appellate Court appropriately applies the high positions-of-power held by the Defendants-Appellees the Appellate Court ought to discern, find plausible, that the Plaintiff-Appellant has Article III Standing.

1. The Defendants-Appellees high positions-of-power (above supervisory) are enough to cause the Plaintiff-Appellant concrete injuries, constitutional deprivations, witness tampering, witness retaliation i.e. demotions, reassignments, firings, familial harm (son was severely beaten). Also, the Plaintiff-Appellant is a federal crime victim FBI Case no. 194B-MW-4775798.
2. The Defendants-Appellees' temporal proximity cause-effect actions of constitutional deprivations, tampering, and retaliation are sufficiently traceable to the federal HUD fraud disclosure and witness support for the federal OHA HUD fraud investigations held in *Fuss*.

3. The federal investigation that resulted in the federal *Fuss* HUD fraud indictment documents undisputable evidence that rises far above any speculative level and more than, highly-likely, provides the Plaintiff-Appellant a redress of injuries by a favorable decision based on federal documents and evidence of temporal propinquity, changes in job status, demotions, firings, reassignments, police reports, medical bills, lost wages and compensation, and deprivations of due process of law, and, equal protections, *inter alia*.

Article III Standing is established as a three-element “irreducible constitutional minimum” arising from either a “case” or “controversy” see *Lujan v. Defenders of Wildlife*, (90-1424), 504 U.S. 555 (1992). The Plaintiff-Appellant has met the constitutional minimum for Article III Standing, *supra* 1-3, *id* at 560-61. The Plaintiff-Appellant has sufficiently alleged enough interest in this dispute and therefore it is within the power, the subject-matter jurisdiction, of the federal court of the Eastern District of Wisconsin. The Appellate Court ought to reverse the District Courts’ Dismissal because Plaintiff-Appellant has met the constitutional minimum Article III Standing to establish jurisdiction.

The Defendants-Appellees argue that anyone who works for the Oneida Nation and yet acts outside-the-scope-of-their-authority can deprive anyone of their U.S. Constitutional rights without fear of relief i.e. failure to state a claim for which

relief can be granted under color of tribal law. This is dangerous thinking and must be scuttled. However, the Plaintiff-Appellant states, the Defendants-Appellees argument is contrary to the Oneida Nation Constitution, Article VII. Indeed, both the U.S. Constitution and the Oneida Nation Constitution contain a due process clause i.e. 5<sup>th</sup> Amendment and 14<sup>th</sup> Amendment and Article VII respectively. Due process deals with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, etc. Thus, the Plaintiff-Appellant argues the Oneida Nation Constitution safeguards against outside-the-scope-of-their-authority constitutional deprivations of Oneida Nation citizens i.e. relief can be granted under Reconstruction Era Civil Rights Claims such as 42 U.S.C. § 1981, 42 U.S.C. § 1983, and 42 U.S.C. § 1985 see also, *Burrell* and *Lewis*.

Why did the District Court fail to adjudicate territorial law in the 42 U.S.C. § 1983 statute? In other words, the Dismissal suggests liability only under color of state law see Doc.# 56, p. 5. However, territorial law applies United States laws equally regardless of nationality or citizenship. Is an Indian Nation and/or their citizens subject to territorial law? Although the Oneida Nation is a Pub. L. 280 tribal government even non-Pub. L. 280 tribes are subject to federal laws. The District Court erred in the Dismissal decision because a tribal individual may be liable for actions taken under color of territorial law.

Both the *pro se* Plaintiff-Appellant and the Defendants-Appellees recognize this dispute must be liberally construed and may not be technically correct see *Anderson v. Hardman*, 241 F.3d 544, 545 (7th Cir. 2001) and *Burrell*. Nonetheless, the Appellate Court must recognize that the Plaintiff-Appellant has made convincing, cogent arguments. For example, it is easy for the Defendants-Appellees to argue that the Defendants were not the supervisors who fired the Plaintiff-Appellant but upon inspection of the Plaintiff-Appellants' cogent argument, the Appellate Court can imagine how it is plausible that the Vice-Chairperson and the Tribal Treasurer have the necessary power to cause the Plaintiff-Appellate concrete harm see *Anderson*.

In another example, the Plaintiff-Appellant in a cogent argument states the District Court erred in dismissing this Case under 42 U.S.C. § 1983 “under color of tribal law” when the *Burrell* and *Ft. Belknap Hous. Auth.* cases arise from white and not Indian parties i.e. the Plaintiff-Appellant is Indian; a federally recognized Oneida Nation citizen and this is how the District Court erred in its judgment see *Anderson*. This seemingly discriminatory District Court decision is, by itself, an “articulable basis for disturbing the District Courts’ [Dismissal] judgement”, *Anderson* at 545-46.

There are enough cogent arguments presented by the *pro se* Plaintiff-Appellant to meet the minimum non-generalized error assertion standard, see *Anderson*.

Similarly, there is a minimum threshold within the Fed. R. App. Procedure to be liberally construed as compliant, see *Anderson*. Further, nothing additional is argued that is not embedded within the Plaintiff-Appellants' narrative Complaint such as being a federal witness in the federal HUD fraud investigation. Again, this is a fact, it is not denied and therefore conceded by the Defendants-Appellees.

The Defendants-Appellees complain that the tribal constitutions were not argued in District Court, yet it is the District Court *sua sponte* that cited *Burrell* in the Dismissal (Doc.# 56) such that *Burrell* was derived from the Pueblo of Santa Ana and Ft. Belknap Constitution's concomitant tribal laws. It is irresponsible to use the constitution and laws of other tribal governments when this matter arises from the Oneida Housing Authority HUD fraud (*Fuss*) and subsequent Oneida Nation-elected tribal officials and employees' whose outside-the-scope-of-their-authority actions is the cause of both Oneida Nation Constitution i.e. Article VII, and U.S. Constitution deprivations i.e. 5<sup>th</sup> Amendment and 14<sup>th</sup> Amendment violations.

The Defendants-Appellees inaccurately suggest tribal constitutions "have no place in the consideration of this appeal" (18-2332, Doc.# 12, pg. 22 (B)); the



Defendants-Appellees inaccurately suggest tribal constitutional law must not even be considered by the Appellate Court. However, the Appellate Court ought to agree that the District Courts' decision to Dismiss this Case (Doc.# 56) citing *Burrell* involuntarily provides the Plaintiff-Appellant the due-process-of-law-right to challenge the Dismissal based on flawed law i.e. citing *Burrell* to Dismiss this Case because the parties were white and not Indian; the Plaintiff-Appellant is a federally recognized and enrolled Oneida Nation citizen. What does this mean? The District Court made an error by inappropriately Dismissing this Case, thus, upon recognition of this error, the Appellate Court ought to reverse this error by asserting federal jurisdiction exists thus allowing the Plaintiff-Appellant to have [her] day in court.

It is easy to see why the Defendants-Appellees would not offer the Appellate Court a real cogent argument on how or why *Burrell* was cited by the District Court to create the argument *sua sponte* to Dismiss this Case when the Oneida Nation Constitution does not abridge or diminish a Oneida Nation citizens' right to U.S. Constitutional due process of law i.e. right to redress for constitutional deprivations when a tribal official or employee acts outside-the-scope-of-their-authority.

#### I. 42 U.S.C. § 1983 ERRORS

Notwithstanding the Plaintiff-Appellants' Opening Brief this section addresses defenses to Defendants-Appellees' impotent responses to Plaintiff-Appellants' Opening Brief, *supra*, and is directed mostly to 42 U.S.C. § 1983 errors.

First, the Appellate Court out to agree that the Plaintiff-Appellate has met the minimum standards both procedurally and constitutionally to reverse the District Courts' flawed decision to Dismiss this Case notwithstanding the liberal construction and quasi technically-correct defenses of the Plaintiff-Appellant, see *Anderson* and *Burrell* respectively.

By the plain terms of 42 U.S.C. § 1983 only two allegations are required to state a cause of action under that statute. They are 1) the Plaintiff-Appellant must allege that the Defendants-Appellees deprived the Plaintiff-Appellant of a federal right, and 2) that the Plaintiff-Appellant was deprived that right when the Defendants-Appellees acted under the color of state or territorial law. Territorial law is, applying alike to all persons regardless of their nationality or citizenship within a given territory and is distinguished from *personal law*. The District Court states in the Dismissal (Doc.# 56, p. 5) "Under 42 U.S.C. § 1983, an individual may be liable for actions taken under color of state law." Indian Nations are domestic dependent nations meaning that although tribes were "distinct independent communities", they remained subject to the paternalistic powers of the United States see *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). The District Court erred by failing to apply territorial law because the Oneida Nation is clearly within the territorial laws of the United States; the Oneida Nation is within the United States and is not a foreign state in the sense of the U.S. Constitution, *id.* The

Plaintiff-Appellant has met the two allegations required to state a cause of action under 42 U.S.C. § 1983.

References to action under color of state law are meant to include action under color of territorial law. Such that the net effect of the Supreme Court decisions interpreting 42 U.S.C. § 1983 is to treat the territories and their officials and employees the same as states and their officials and employees. In further support of territorial equality, the Appellate Court turns to the Oneida Nation Constitution where the Oneida people, themselves, under their own volition, demand guaranteed U.S. Constitutional rights see Oneida Nation Constitution, Article VII – Bill of Rights *infra*:

All members of the Nation shall be accorded equal opportunities to participate in the economic resources and activities of the Nation. All members of the tribe may enjoy, without hindrance, freedom of worship, conscience, speech, press, assembly, association and due process of law, as guaranteed by the Constitution of the United States.

Further, officials and other employees who act outside-the-scope-of-their authority are persons under 42 U.S.C. § 1983 and that “person may extend and be applied to bodies politic and corporate” see *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989) at 71 & 78. Thus, the body politic, a group of people in collusion or who demonstrate patterns of unlawful activity are defined as a person under 42 U.S.C. § 1983, *id* at 78.

§ 1983 *infra*:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Simply, U.S. Constitutional and federal laws apply to the Oneida Nation, Oneida Nation elected officials, Oneida Nation employees, and of course the Oneida Nation Plaintiff-Appellant. The District Court erred when inferring Indian people can constitutionally deprive another Indian without the right to redress and relief and therefore the Appellate Court must appropriately interpret 42 U.S.C. § 1983 as an Indian law mechanism for which Oneida citizens can be held accountable for depriving another Oneida citizen of Oneida Nation and U.S. Constitutional rights.

Although 42 U.S.C. § 1983 does not contain a state-of-mind requirement, the Appellate Court should consider that a tribal government is made up of tight-knit, blood and clan-bonded families closely related to the Defendants-Appellees thus, it does not take much imagination to understand why the Plaintiff-Appellant was intentionally harmed for disclosing millions of dollars in federal HUD fraud; the Plaintiff-Appellant disrupted this unlawful federal activity while implicating Defendants-Appellees' blood-bonded families in federal criminal activity.

So, how did this HUD fraud occur and how many Oneida people were involved? Consider, lawfully authorized HUD structures were set up for repair and renovation concomitant unauthorized structures were built new, repaired, and renovated both on and off-reservation for both Native and non-native people.

The unauthorized structures used material from the authorized HUD structures where the housing employees were paid cash for the side-jobs. When the employees went to the authorized homes to repair and renovate, the material of course was not there, so the employees worked on the authorized structure with the material that was there i.e. install windows because the roofing was used for a side-job.

The missing authorized HUD material that was used on side-jobs were replaced from other authorized structures creating a Ponzi scheme that was covered up, for example, 1) the missing and unauthorized HUD materials were purchased in a different budget cycle (making the material harder to track), 2) the missing and unauthorized HUD materials were purchased from multiple funding mechanisms (making material harder to track), 3) HUD materials were purchased for structures that did not need the materials, (excess materials for side-jobs), and 4) the housing employees shell-gamed funds from one account to another to make the missing HUD material look like there was never any missing material.

How many employees, how many tribal families would take to cover up this kind of tribal HUD housing material Ponzi scheme? What might be the state-of-mind of the Defendants-Appellees when their families are threatened because of federal HUD fraud disclosure? The Appellate Court might be wondering who was benefiting from the side-jobs; who was getting “free” HUD materials for their homes?” After all, Jay L. Fuss (*Fuss*) did not pay for the HUD Ponzi materials. As it turns out, most of the side-jobs benefited OHA and Oneida Land Office employees because the two departments played the same shell-game together.

To add further insult, the Oneida Land Office recently purchased a \$400,000 home that received “free” HUD materials, thus, the Oneida Nation paid a premium price for the unauthorized HUD renovated home owned by an Oneida Land Office employee? Another insult, Rehabilitation Grant funds were used to repair and renovate an OHA employees’ personal apartment complex. The Appellate Court might imagine an out-of-control housing corruption-ring.

What might be the state-of-mind of the Defendants-Appellees when an additional corrupt tribal Department increases the implied depth and breadth of federal HUD fraud? In other words, the HUD material Ponzi scheme has enough depth and breadth necessary to minimally constitutionally deprive Plaintiff-Appellant of [her] constitutional rights i.e. to fire, reassign, demote, and cause severe

bodily injury to [her] son. The Defendants-Appellees laugh and think it is funny that the Plaintiff-Appellants' son was beaten. It is not funny, it is unlawful.

A third 42 U.S.C. § 1983 element is that the Defendants-Appellees caused Plaintiff-Appellant damages. What might they be? For example, when the Plaintiff-Appellant was fired the Plaintiff-Appellant lost both income and benefits which are defined as personal property i.e. a 14<sup>th</sup> Amendment deprivation.

Yet, another 42 U.S.C. § 1983 element is that the Defendants-Appellees conspired to cause harm; demonstrated patterns of deprivation behavior towards the Plaintiff-Appellant and when considering the Defendants-Appellees state-of-mind *supra*, it ought not to be a stretch of the Appellate Courts' imagination to visualize the Vice-Chairperson, Tribal Treasurer, CFO, and the HRD Director (positions-of-power) conspiring to silence the Plaintiff-Appellant i.e. to fire and blackball, intimidate, harass, retaliate, tampering, etc.

## SUMMARY OF THE ARGUMENTS AND STATEMENTS

To support the Summary of Arguments and Statements that are in reply to the Defendants-Appellees Reply Brief (18-2332, Doc.# 12), the Plaintiff-Appellant first returns to the Original Complaint. The Complaint contains the minimum required elements such as, who, what, where, when, how, and why. For example, the Defendants-Appellees conspired to unlawfully force Plaintiff-Appellant out of any

Oneida job position (14<sup>th</sup> Amendment deprivation) even though the Plaintiff-Appellant was helping federal investigators as a federal witness see 18 U.S.C. § 1512(a)(2), 18 U.S.C. § 1513(b). The Defendants-Appellees are in positions-of-power above supervisory positions i.e. the power to tamper and retaliate. Why the tampering and retaliation continues to this day is because the disclosure of federal HUD fraud implicates their blood relatives, clan, and religious families to federal crimes notwithstanding tribal scrutiny for varies types of federal housing corruption schemes *supra* and in Opening Brief.

It is clear the District Court prematurely Dismissed this Case because the Dismissal analysis grounds are an effect of flawed-law. The District Court at a minimum had erroneously ruled out 42 U.S.C. § 1983 for at least three reasons 1) territorial law was not applied, 2) citing *Burrell*, citing *Ft. Belknap Hous. Auth.* such that both cases had white parties i.e. the Plaintiff-Appellant is Oneida, and 3) the Oneida Nation Constitution was not applied. The District Courts' decision missed the mark when going to other tribal court cases because the implications of using other tribal constitutional and law provisions notwithstanding white parties in both *Burrell* and *Ft. Belknap Hous. Auth.* was not clearly understood. i.e. the Ft. Belknap (a federal non-Pub. L. 280) tribe is not the same as the Oneida Nation such that their constitutions and laws are different. When you put the puzzle pieces together, *Burrell* and *Ft. Belknap Hous. Auth.* are from a completely different puzzle and



cannot fit this Case. Therefore, the District Court erred in ruling out 42 U.S.C. § 1983 as a statute for which this federal jurisdictional action can be based see Doc.# 56 p. 4.

It ought to be clear, the Plaintiff-Appellants' testimony, documents, material evidence, while continuing to support federal investigators is the cause of the *Fuss* federal HUD indictment. From *Fuss*, there is a plausible temporal-proximity for cause-and-effect i.e. the firings happened, Plaintiff-Appellants' son was severely beaten i.e. police report, medical bills; are not insubstantial and not frivolous see *Turner/Ozanne v. Hyman/Power*, 111 F.3d 1312 (7th Cir. 1997). These effects are real and ought *not* to be taken as frivolous. The District Court erred in Dismissing this Case as the federal-witness-soundness raises the subject of controversy because Plaintiff-Appellant and *Fuss* are legally-federally-tied and thus a controversy now arises at the Appellate Court upon the error of the District Courts' attempt to dissect the two see *Roppo*.

The Plaintiff-Appellant has met the minimum statutory standard giving the Appellate Court cause to accept the factual allegations being liberally construed in Plaintiff-Appellants' favor concomitant finding the minimum elements of 42 U.S.C. § 1983 are also met *supra* see *Turley v. Rednour*, 729 F.3d 645 (7th Cir. 2013). This is "enough to raise a right to relief above the speculative level" because *Fuss* provides "more than just plausibility on its face" see *Bell Atl. Corp. v. Twombly*, 550

U.S. 544 (2007) at 555 and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) respectively. Contrary to the District Courts' erroneous decision, "Delebreaux could [] recover from any of them under § 1983" see Doc.# 56, p. 6. Deprivations are any deprivation of any rights, privileges, or immunities secured and protected by the Constitution or the laws of the United States. The Plaintiff-Appellant was deprived on many rights and privileges such as demotion, reassignment, firings, witness retaliation, familial harm, *inter alia*.

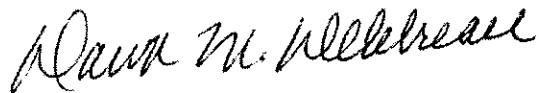
The District Court fails to connect the dots i.e. the Defendants-Appellees' positions-of-power over supervisory positions suggesting it was impossible for the Defendants-Appellees to harm the Plaintiff-Appellant. This of course, is a fallacy because generally people who are in positions-of-power have authority over those under them. However, only the individuals involved in the deprivations are being sued such that no other tribal positions or the positions of the people who have replaced them in their former positions are being sued. It is the individuals and not the tribe or their positions-of-authority that are the "real target of interest" in this lawsuit see *Lewis*. Therefore, the District Court erred in Dismissing this Case inferring tribal elected officials and employees who act outside-the-scope-of-their-authority can claim tribal sovereign immunity, which of course, is patently false see *Lewis*.

## CONCLUSION

The District Courts' Analysis to dismiss this Case for lack of federal jurisdiction is flawed. The Plaintiff-Appellant has Article III Standing by having sufficient interest in this dispute while meeting the minimum rules and other constitutional standards to allow the Appellate Court to reverse the District Courts' erroneous and premature Dismissal.

For the forgoing reasons, Plaintiff-Appellant respectfully requests the Appellate Court **reverse the District Courts' Order Dismissing this Case for lack of federal jurisdiction** because the *pro se* Plaintiff-Appellant has demonstrated enough errors as presented and are sufficiently serious to warrant the District Courts' decision to Dismiss void and return this Case to the District Court to be heard on the merits.

Dated; September 4, 2018



Dawn Marie Delebreaux, Pro Se.

## ADDENDUM

## **CONSTITUTION AND BY-LAWS OF THE ONEIDA NATION**

We, the people of the Oneida Nation, grateful to Almighty God for his fostering care, in order to reestablish our tribal organization, to conserve and develop our common resources and to promote the welfare of ourselves and our descendants, do hereby ordain and establish this Constitution.

This constitution serves as an affirmation of the Oneida Nation's sovereign status as an independent Indian nation and the solemn trust relationship between this Nation and the United States of America.

### **Article I-Territory**

The jurisdiction of the Oneida Nation shall extend to the territory within the present confines of the Oneida Reservation and to such other lands as may be hereafter added thereto within or without said boundary lines under any law of the United States, except as otherwise provided by law.

### **Article II-Membership**

Section 1. The membership of the Oneida Nation shall consist of:

(a) All persons of Indian blood whose names appear on the membership roll of the Oneida Nation in accordance with the Act of September 27, 1967 (81 Stat. 229), Public Law 90-93.

(b) Any child of a member of the Nation born between September 28, 1967, and the effective date of this amendment, who is of at least one-fourth degree Indian blood, provided, that, such member is a resident of the Reservation at the time of the birth of said child.

(c) All children who possess at least one-fourth degree Oneida blood are born after the effective date of this amendment to members of the Nation who are residents of the reservation at the time of said children's birth.

Section 2. The General Tribal Council shall have the power to promulgate ordinances covering future membership and the adoption of new members.

### **Article III-Governing Body**

Section 1. The governing body of the Oneida Nation shall be the General Tribal Council composed of all the qualified voters of the Oneida Nation.

Section 2. All enrolled members of the Oneida Nation who are eighteen (18) years of age or over shall be qualified voters provided they present themselves in person at the polls on the day of election.

Section 3. The qualified voters of the Oneida Nation shall elect from among the enrolled Oneida Nation members age twenty-one (21) and over who physically reside in either Brown or Outagamie Counties of Wisconsin by secret ballot (a) a chairman; (b) a vice-chairman; (c) a secretary; (d) a treasurer; (e) and five councilmen. These shall constitute the Business Committee and shall perform such duties as may be authorized by the General Tribal Council

A majority of the Business Committee including the chairman or vice-chairman shall constitute a quorum of this body. Regular meetings of the Business Committee may be established by resolution of the Business Committee. Special meetings of the Business Committee shall be held upon a three-day advance notice by the chairman to all members thereof or upon written request of a majority of the Business Committee stating the time, place, and purpose of the meeting.

The General Tribal Council may at any regular special meeting fill any vacancies that occur on the Business Committee for the unexpired term.

The General Tribal Council may at its discretion remove any official on the Business Committee by a two-thirds majority vote at any regular or special meeting of the Tribal Council, pursuant to a duly adopted ordinance. Such ordinance shall fix the specific causes for removal and ensure that the rights of the accused are protected, including his receiving in writing a statement of the charges against him and assurance on sufficient notice thereof where he shall be afforded every opportunity to speak in his own defense.

Section 4. The General Tribal Council shall meet in January and July.

Section 5. The officials provided for in Section 3 of this Article shall be elected every three years in the month of July on a date set by the General Tribal Council. The General Tribal Council shall enact necessary rules and regulations governing the elections of tribal officials.

Section 6. The chairman or fifty (50) qualified voters may, by written notice, call special meetings of the General Tribal Council. Seventy-five (75) qualified voters shall constitute a quorum at any regular or special meeting of the General Tribal Council.

#### **Article IV-Powers of the General Tribal Council**

Section 1. Enumerated Powers. - The General Tribal Council of the Oneida Nation shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States:

- (a) To negotiate with the Federal, State, and local governments.
- (b) To employ legal counsel, the choice of counsel and fixing of fees.

(c) To veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other tribal assets of the Nation.

(d) To advise with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Oneida Nation prior to the submission of such estimates to the Bureau of the Budget and to Congress.

(e) To manage all economic affairs and enterprises of the Oneida Nation.

(f) To promulgate and enforce ordinances, governing the conduct of members of the Oneida Nation, providing for the manner of making, holding, and revoking assignments of tribal land or interests therein, providing for the levying of taxes and the appropriation of available tribal funds for public purposes, providing for the licensing of non-members coming upon the reservation for purposes of hunting, fishing, trading, or other business, and for the exclusion from the territory of the Nation of persons not so licensed and establishing proper agencies for law enforcement upon the Oneida Reservation.

(g) To appoint committees, delegates, and officials deemed necessary for the proper conduct of tribal business or relations.

(h) To charter subordinate organizations for economic purposes and to delegate to such organizations, or to any subordinate boards or officials of the Nation, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

(i) To adopt resolutions not inconsistent with this Constitution and the attached By-laws, regulating the procedure of the Council itself and of other tribal agencies, tribal officials, or tribal organizations of the Oneida Reservation.

Section 2. Future Powers. - The General Tribal Council may exercise such further powers as may in the future be delegated to the Council by the Secretary of the Interior or any other duly authorized official or agency of the State or Federal Government.

Section 3. Reserved Powers. - Any rights and powers heretofore vested in the Oneida Nation but not expressly referred to in this Constitution shall not be abridged by this Article, but may be exercised by the people of the Oneida Nation through the adoption of appropriate By-laws and constitutional amendments.

#### **Article V-Judiciary**

Section 1. The General Tribal Council shall, by law, establish a judiciary to exercise the judicial authority of the Oneida Nation.

Section 2. Any judiciary in operation prior to the effective date of this amendment to the Constitution may be designated as the judiciary authorized under this article upon passage of a resolution by the General Tribal Council. Such designation shall remain in full force and effect until amended by General Tribal Council.

#### **Article VI – Amendment**

Section 1. Amendment by the Oneida Business Committee. Amendments to this Constitution and By-Laws may be proposed by the Oneida Business Committee. Proposed amendments agreed to by eight members of the Oneida Business Committee, excluding the Chair, shall be put before a meeting of the General Tribal Council. If a majority of the voting General Tribal Council members vote in favor of the proposed amendment, the proposed amendment shall be placed upon the ballot of the next General election or special election called for the purpose to consider an amendment.

Section 2. Amendment by Petition. Amendment to this Constitution and By-Laws may be proposed by petition of the members eligible to vote. Every petition shall include the full text of the proposed amendment, and be signed by members eligible to vote, equal in number to at least ten percent (10%) of the members eligible to vote. Petition with the requisite number of signatures may be put before the Oneida people for their approval or rejection at the next general election, except when the Oneida Business Committee or General Tribal Council orders a special election for the purpose. Such petitions shall be filed with the person authorized by law to receive the same at least ninety (90) days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by Oneida law. The person authorized by law to receive such petition shall upon its receipt determine, as provide by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least sixty (60) days prior to the election at which the proposed amendment is to be voted upon. Any amendment proposed by such petition shall be submitted, not less than ninety (90) days after it was filed, to the next general or special election called for the purpose to consider an amendment.

Section 3. Any proposed amendment, existing provision of the Constitution and By-Laws which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by Oneida Law. Copies of such publications shall be prominently posted in each polling place, at Tribal administration offices, and furnished to news media as provided Oneida law.

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than one hundred (100) words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person who is so authorized by Oneida law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as to create no prejudice for or against the proposed amendment.

If the proposed amendment is approved by sixty-five percent (65%) of the members eligible to vote who presented themselves at the polls and voted on the question, it shall become part of the Oneida Constitution and By-Laws, and shall abrogate or amend existing provisions of the Constitution and By-Laws at the end of thirty (30) days after submission of the final election report as directed law. If two or more amendments approved by the voters at the same election conflict, the amendment receiving the highest affirmation vote shall prevail.

#### **Article VII-Bill of Rights**

All members of the Nation shall be accorded equal opportunities to participate in the economic resources and activities of the Nation. All members of the tribe may enjoy, without

hindrance, freedom of worship, conscience, speech, press, assembly, association and due process of law, as guaranteed by the Constitution of the United States.



## BY-LAWS OF THE ONEIDA NATION

### Article I-Duties of Officers

Section 1. Chairman of Council. - The Chairman of the Council shall preside over all meetings of the Council, shall perform the usual duties of a Chairman, and exercise any authority delegated to him by the Council. He shall vote only in the case of a tie.

Section 2. Vice-Chairman of Council. - The Vice-Chairman shall assist the Chairman when called upon to do so and in the absence of the Chairman, he shall preside. When so presiding, he shall have all the rights, privileges and duties as well as the responsibilities of the Chairman.

Section 3. Secretary of the Council. - The Secretary of the Tribal Council shall conduct all tribal correspondence and shall keep an accurate record of all matters transacted at Council meetings. It shall be his duty to submit promptly to the Superintendent of the jurisdiction, and the Commissioner of Indian Affairs, copies of all minutes of regular and special meetings of the Tribal Council.

Section 4. Treasurer of Council. - The Treasurer of the Tribal Council shall accept, receive, receipt for, preserve and safeguard all funds in the custody of the Council, whether they be tribal funds or special funds for which the Council is acting as trustee or custodian. He shall deposit all funds in such depository as the Council shall direct and shall make and preserve 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 and custody, at each regular meeting of the General Tribal Council, and at such other times as requested by the Council or the business committee.

He shall not pay out or otherwise disburse any funds in his possession or custody, except in accordance with a resolution duly passed by the Council.

The Treasurer shall be required to give a bond satisfactory to the Council and to the Commissioner of Indian Affairs.

Section 5. Appointive Officers. - The duties of all appointive boards or officers of the Community shall be clearly defined by resolutions of the Council at the time of their creation or appointment. Such boards and officers shall report, from time to time as required, to the Council, and their activities and decisions shall be subject to review by the Council upon the petition of any person aggrieved.

### Article II-Ratification of Constitution and By-laws

This Constitution and these By-laws, when adopted by a majority vote of the voters of the Oneida Nation voting at a special election called by the Secretary of the Interior, in which at least 30 per cent of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be effective from the date of such approval. 7

**Adoption Dates**

- Original Constitution adopted November 14, 1936 by Oneida Tribe. Approved by the Secretary of the Interior December 21, 1936.
- Amended June 3, 1939, approved June 15, 1939.
- Amended October 18, 1969, approved November 28, 1969.
- Amended June 14, 1969, approved August 25, 1969.
- Amended June 14, 1969, approved August 25, 1969.
- Amended June 14, 1969, approved, August 25, 1969.
- Amendment X approved June 16, 2015, notice received June 24, 2015
- Amendment XI approved June 16, 2015, notice received June 24, 2015
- Amendment XII approved June 16, 2015, notice received June 24, 2015
- Amendment XIII approved June 16, 2015, notice received June 24, 2015
- Amendment XIV approved June 16, 2015, notice received June 24, 2015