

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

BURREL JONES

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CIVIL ACTION 9:20-cv-00063

VS.

ALABAMA-COUSHATTA TRIBE OF  
TEXAS AND NASKILA GAMING

**PLAINTIFF BURREL JONES’ SUR-REPLY TO THE TRIBE’S REPLY TO  
PLAINTIFF’S RESPONSE IN OPPOSITION TO THE TRIBE’S  
MOTION TO DISMISS PLAINTIFF’S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

1. Comes now Plaintiff, Burrel Jones, (hereinafter “Plaintiff”) and files this sur-reply in opposition to the Alabama-Coushatta Tribe of Texas’s (hereinafter “the Tribe”) Motion to Dismiss Plaintiff’s First Amended Complaint.

**ARGUMENTS AND AUTHORITIES**

2. Pursuant to well-established, binding, Fifth-Circuit case law, the doctrine of sovereign immunity does *not* protect the Tribe from declaratory-judgment actions. *See Comstock Oil & Gas Inc. v. Alabama & Coushatta Indian Tribes of Texas*, 261 F.3d 567, 572 (5th Cir. 2001); *TTEA v. Ysleta del Sur Pueblo*, 181 F. 3d 676, 680 (5th Cir. 1999). Consequently, the Tribe cannot escape the fact that under *this* circuit’s case law, the Tribe is not immune from Plaintiff’s declaratory-judgment action against it.

3. In its reply, the Tribe made a rather peculiar claim, saying “that this Court has jurisdiction to consider Plaintiff’s First Amendment claim in no way immunizes that claim...from a motion to dismiss.” Dkt. No. 21, p. 2. However, since the Court has jurisdiction

to consider Plaintiff's First-Amendment declaratory-judgment action, as the Tribe acknowledges on the one hand, it cannot also be true, as the Tribe alleges on the other hand, that the Court does *not* have jurisdiction over the declaratory judgment action because of sovereign immunity. These two conflicting statements create a crucial contradiction in the Tribe's jurisdictional allegations. If sovereign immunity existed over Plaintiff's declaratory-judgment action, the Court would not also have jurisdiction over the claim, which the Tribe now admits it *does* have. *See De Sanchez v. Banco Cent. de Nicaragua*, 770 F.2d 1385, 1389 (5<sup>th</sup> Cir. 1985). The fundamental problem with the Tribe's arguments is that the Court *does* have jurisdiction over Plaintiff's First-Amendment claim because sovereign immunity does not apply, and because his cause of action is based on a federal question over which this Court has subject-matter jurisdiction.

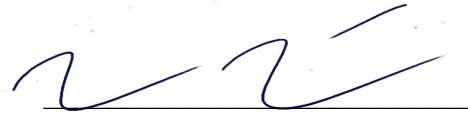
4. Finally, despite the fact that the Tribe attempts to guide this Court's opinion by pointing to the non-binding, often unpublished opinions of courts outside of this jurisdiction, the Tribe somehow objects to the Court being guided by an opinion outside of this circuit that dealt with facts similar to those in the case at bar. Contrary to the Tribe's contentions, *Wilkes v. PCI Gaming Authority*, 287 So. 3d 330 (Ala. 2017) is a recent case that examined a plaintiff's tort claim against a tribal defendant and used Supreme Court precedent on the matter to decline to apply sovereign immunity to the Plaintiff's tort claim because "a contrary holding would be contrary to the interests of justice." *Wilkes*, 287 So. 3d at 335. As Plaintiff detailed in his response, the *Wilkes* Court used an in-depth analysis of the history and the development of the use of sovereign-immunity against tort claims to reach its conclusion. With facts so similar to the case at bar, the *Wilkes* Court should serve as an example for this Court in serving the interests and barring the Tribe's sovereign immunity claim against Plaintiff's underlying premises liability claim.

**CONCLUSION**

5. For the foregoing reasons, Plaintiff respectfully requests that this Court deny in its entirety the Tribe's Motion to Dismiss Plaintiff's First Amended Complaint.

Respectfully submitted,

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**ATTORNEY FOR PLAINTIFF  
BURREL JONES**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served upon all counsel of record herein in accordance with the Federal Rules of Civil Procedure on August 28, 2020.

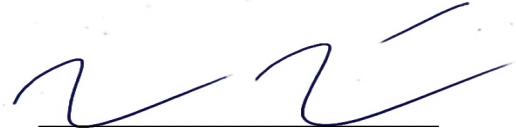
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