

Oglala Sioux Tribe Election Commission (“Election Commission”), and all or most of the members of these governmental bodies.¹

Plaintiff alleges that, “the Defendants, the Oglala Sioux Tribal Executive Board, Oglala Sioux Tribe Council, Oglala Sioux Tribe Election Commission and the Oglala Sioux Tribal Supreme Court appears [sic] to be in an entanglement of non-enforcement of the Oglala Sioux Tribal Constitution and the Oglala Sioux Tribe Election Code Ordinance no. 20-13.” *Id.* 2 (¶ 3).²

Defendants move the Court to dismiss this action for lack of subject matter jurisdiction because it raises claims arising under tribal law, not federal law as required by 28 U.S.C. § 1331, because those claims have already been heard and decided by the Supreme Court of the Oglala Sioux Nation (“Supreme Court”), and because assertion of such claims in this Court is barred by the doctrine of tribal sovereign immunity. Defendants also move the Court to dismiss this action for failure to state a claim upon which relief can be granted, insufficient process, and insufficient service of process.

BACKGROUND

A. Legal Background

The Oglala Sioux Tribe Constitution provides, in relevant part, that, “[t]he time, place and manner of nomination and election of councilmen and any other elective officers of the council

¹ All of these defendants are named either in the caption or the body of the complaint. In respect to the Executive Committee, the caption lists as defendants the “Oglala Sioux Tribe Executive Officers” and each of the five (5) members of the Executive Committee, Compl. 1, and the body of the complaint identifies the “Oglala Sioux Tribe Executive Board” as a defendant, *id.* at 2 (¶ 3). In respect to the Tribal Council, the caption of the complaint lists as defendants the “Oglala Sioux Tribal Council Members” and twenty (20) of the twenty-one (21) members of the Tribal Council, and the body of the complaint identifies the “Oglala Sioux Tribe Council” as a defendant, *id.* at 2 (¶ 3); *see also id.* at 3 (¶¶ 5, 7, 8, 10). In respect to the Election Commission, the caption of the complaint lists as defendants the “Oglala Sioux Tribal Election Commission” and two (2) members of the Election Commission. *Id.* at 1.

² The caption of the complaint does not identify the Supreme Court as a defendant.

shall be determined by the tribal council by appropriate ordinances.” O.S.T. Const. (attached hereto as **Exhibit A**), Art. VII, § 6. The tribal constitution further provides that elections for the Tribal Council “shall be called by the Tribal Council at least sixty days prior to the expiration of office of its members.” O.S.T. Const., Art. III, § 10.

The Tribal Council has, by ordinance, adopted an Oglala Sioux Tribe Election Code (“Election Code”) to govern tribal elections on the Reservation. *See* O.S.T. Ord. No. 20-23 (Feb. 25, 2020) (attached hereto as **Exhibit B**), *amended by* O.S.T. Ord. No. 20-52 (Aug. 11, 2020) (attached hereto as **Exhibit C**). The Election Code provides that the tribal primary election shall take place on the second Tuesday of October, beginning in 2020 and every two years thereafter, O.S.T. Ord. No. 20-23, § 5(B), and the tribal general election shall take place on “the same day in November as the national election, beginning in 2020 and every two years thereafter,” *id.* at § 5(C). The Election Code establishes an Election Commission, which is an “independent regulatory agency of the Oglala Sioux Tribe that is responsible for overseeing the election process as provided in [the] Election Code.” *Id.* at § 4.

Through the Election Code, the Tribal Council has delegated to the Election Commission the authority to carry out all or nearly all aspects of the Tribe’s elections. O.S.T. Ord. No. 20-23, § 8(M). This includes the authority to: select polling site judges and tellers, *id.* at § 10; appoint independent monitors, *id.* at § 11; manage voter lists, *id.* at § 13; issue, receive, and process nominating petitions and certify the eligibility of candidates for elective office, *id.* at § 14; designate polling sites, *id.* at § 17; prepare and count ballots and certify election results, *id.* at §§ 15, 16, 19, 20; and recount ballots and certify the results of a recount, *id.*, at § 24.

The Election Code allows candidates for elective office, eligible voters, or in some cases, members of the public to file various types of election challenges. First, the Election Code allows

candidates for elective office to file a contest of election to challenge any decision of the Election Commission, including but not limited to the certification of eligible candidates and the certification of election results. O.S.T. Ord. No. 20-23, § 25(A). Election contests are filed with and ruled on by the Election Commission. *Id.* at § 25(E),(F),(G). Decisions of the Election Commission are subject to appeal to the Supreme Court. *Id.* at § 26.

Second, the Election Code allows eligible voters to challenge an individual's right to vote or a candidate's right to run for office. O.S.T. Ord. No. 20-23, § 25(J),(K). Such challenges are filed with and ruled on by the Election Commission. *Id.* Decisions of the Election Commission may be appealed to the Supreme Court. *Id.* at § 26.

Third, the Election Code also allows candidates for elective office and, in some cases, members of the public to file affidavits of prejudice against Election Commissioners. O.S.T. Ord. No. 20-23, § 9. Such affidavits are filed with and ruled on by the Supreme Court. *Id.* at § 9(C). If the Supreme Court finds that an Election Commissioner has violated the Election Code, it shall refer the matter to the Executive Committee, which has "the discretion to immediately remove the Commissioner by majority vote." *Id.* at § 9(E).

The Tribal Council has a limited role in the election process. Its authority is generally limited to: calling for tribal elections, O.S.T. Ord. No. 20-23, §§ 5(A); appointing Election Commissioners, *id.* at § 8(C),(E),(F); approving actions of the Election Commission that are not specifically addressed by the Election Code, *id.* at § 7(4); reapportioning the number of Tribal Council representatives per tribal district, *id.* at § 12(B); and appropriating funds to cover the cost of conducting tribal elections, *id.* at § 30.

The Executive Committee also has a limited role in the election process. Its authority is generally limited to: removing Election Commissioners found by the Supreme Court to have

violated the Election Code, O.S.T. Ord. No. 20-23, § 9(E); dismissing Election Commissioners whose offices are deemed forfeited under the standards set forth in the Election Code, *id.* at 8(J); filling vacancies on the Election Commission, *id.* at § 8(G), and approving the budget of the Election Commission, *id.* at § 29(A).

B. Factual and Procedural Background

Plaintiff alleges that she filed a contest of election with the Election Commission on or about September 10, 2020. Compl. 4 (¶ 14). Her complaint was denied by the Election Commission on or about September 21, 2020. *See In re the Contest of Henny Cleone Whalen*, Case No. 2020-01 (O.S.T. Election Comm'n Sep. 21, 2020) (attached hereto as **Exhibit D**). Plaintiff alleges that she filed an appeal with the Supreme Court and that, on or about September 24, 2020, the Supreme Court issued an order affirming the decision of the Election Commission. Compl. 4-5 (¶¶ 16, 17). *See In the Matter of the Election Contest of Henny Cleone Whalen*, Case No. ELEC-2000-0001 (O.S.T. S. Ct. Sep. 24, 2020) (attached hereto as **Exhibit E**). Plaintiff alleges that she filed a motion for reconsideration with the Supreme Court and that, on October 5, 2020, the Supreme Court issued an order denying the motion for reconsideration. Compl. 5 (¶¶ 18, 19). *See In the Matter of the Election Contest of Henny Cleone Whalen*, Case No. ELEC-2000-0001 (O.S.T. S. Ct. Oct. 5, 2020) (attached hereto as **Exhibit F**).

Plaintiff alleges that she and two other individuals filed affidavits of prejudice with the Supreme Court on or about November 3, 2020. Compl. 6 (¶¶ 21, 22). The Supreme Court consolidated the cases and, on or about November 9, 2020, issued an order of dismissal. *Id.* at 6 (¶ 23). *See In the Matter of Election Appeals of Cleone Whalen, Mary Redhawk, and Darren Janis*, Case Nos. ELEC-2000-09, ELEC-2000-10 & ELEC-2000-11 (O.S.T. S. Ct. Nov. 9, 2020) (attached hereto as **Exhibit G**). The Supreme Court noted:

The Appeals, all signed under oath, comprise several pages of incohesive allegations containing zero evidence or serious allegations that would effect the Tribe's elections or the tribal democratic process. For example, Appellant Whalen complains that the Committee allegedly placed ballots on a chair and not in a secure location. Appellant Redhawk observed candidates observing the vote count process. Finally Appellant Janis complains that the Election violated the Tribe's quarantine ordinance

The OST Supreme Court had neither the time nor the interest in adjudicating *trivial* matters such as those asserted by appellants who for whatever reason seem to gripe about matters that do not even remotely impact a full and fair democratic election.... The Court will not give life to these trivial matters by entertaining them further.

Id. at 1-2 (emphasis in original).

Plaintiff alleges that she filed a complaint with the Executive Committee and the Executive Committee did not answer the complaint in writing. Compl. 5 (¶ 20). But, plaintiff acknowledges that the Executive Committee may remove an Election Commissioner only “[i]f the Supreme Court finds that a violation occurred,” *id.*, and the Supreme Court made no such finding in this case. To the contrary, the Supreme Court ruled against plaintiff three times. *See Exhibits E, F, and G.*

Plaintiff filed this action in the United States District Court on or about November 20, 2020. She asks this Court to declare the results of the Tribe's primary and general elections null and void. Compl. 7. She asks this Court to hold a hearing on the Tribe's elections, order new tribal elections, amend the tribal Election Code, remove the Supreme Court from the resolution of election disputes, and install a new election commission. *Id.* She asks the Court to allow the Superintendent of the Pine Ridge Agency of the Bureau of Indian Affairs to “oversee everyday business of the Oglala Sioux Tribe until a new election is held.” *Id.* She further asks the Court to appoint a “special master to oversee the finances of the Oglala Sioux Tribe until there is a newly seated governing body through a fair and honest election.” *Id.*

This action should be dismissed for the reasons set forth herein.

ARGUMENT

I. PLAINTIFF’S CASE SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION BECAUSE IT DOES NOT RAISE A FEDERAL QUESTION.

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Amer.*, 511 U.S. 375, 377 (1994). “The burden of establishing that a cause lies within the limited jurisdiction of the federal courts is on the party asserting jurisdiction.” *United States v. Afremov*, 611 F.3d 970, 975 (8th Cir. 2010). Federal court jurisdiction is based on either on the presence of a federal question or diversity of citizenship of the parties. *See* 28 U.S.C. §§ 1331 (federal question), 1332 (diversity).

Plaintiff asserts that the Court “does have subject jurisdiction matter over the Federally Recognized Oglala Sioux Tribe.” Compl. 2. However, the complaint does not specify what source of federal law confers subject matter jurisdiction. Diversity jurisdiction is not alleged and does not exist in this case. For this Court to have federal question jurisdiction, “a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff’s cause of action.” *Gardner v. Schaffer*, 120 F.2d 840, 842 (8th Cir. 1941). However, plaintiff does not allege the violation of a federal right or immunity. Instead, she alleges that the Tribe is subject to federal law, Compl. 2, and that the Tribe or tribal officials violated the Tribe’s laws. Plaintiff’s claims arise under tribal law, not federal law, and as a result, her assertion of federal jurisdiction is without a legal basis.

Plaintiff asks this Court to intervene in internal tribal matters: tribal elections and the interpretation of the tribal constitution and the tribal Election Code. In affirming the dismissal of another internal tribal controversy, the Eighth Circuit stated that, “resolution of such disputes involving questions of interpretation of the tribal constitution and tribal law is not within the

jurisdiction of the district court.” *Runs After v. United States*, 766 F.2d 347, 352 (8th Cir. 1985). See also *In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litig.*, 340 F.3d 749, 763 (8th Cir. 2003) (“Jurisdiction to resolve internal tribal disputes, interpret tribal constitutions and laws, and issue tribal membership determinations lies with Indian tribes and not in the district courts”).

Indian tribes “have power to make their own substantive law in internal matters, and to enforce that law in their own forums.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978). “[T]ribal courts are best qualified to interpret and apply tribal law.” *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987). Where, as here, a tribe has a “functioning tribal court, which the parties recognize as a court of competent jurisdiction to resolve tribal election disputes . . . [i]t is essential that the parties seek a tribal remedy . . . [because] substantial doubt exists that federal courts can intervene under any circumstances to determine the rights of the contestants in a tribal election dispute.” *Goodface v. Grassrope*, 708 F.2d 335, 339 (8th Cir. 1983).

“Tribal election disputes, like tribal elections, are key facts of internal tribal governance and are governed by tribal constitutions, statutes, or regulations.” *Attorney’s Process & Investigation Services, Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d 927, 943 (8th Cir. 2010). Such questions of tribal law are “beyond the purview of the federal agencies and the federal courts.” *Id.* “Because tribal governance disputes are controlled by tribal law, they fall within the exclusive jurisdiction of tribal institutions[.]” *Id.*

Federal district courts have routinely dismissed cases involving tribal election disputes. For example, in *Goodface v. Lower Brule Sioux Tribe 2020 Election Board*, 2020 WL 5017352 (D.S.D. Aug. 25, 2020), the court dismissed a lawsuit filed by a tribal member who alleged that the Lower Brule Sioux Election Board wrongfully denied her petition to be a candidate

for the Tribal Council. The court dismissed the complaint for lack of subject matter jurisdiction, noting that none of plaintiff's claims provided federal question jurisdiction. *Id.* at *1. In addition, the court also stated:

Assuming Goodface's allegations are true, she has some legitimate complaints against the Election Board. These complaints, however, are not the kind that may be resolved by a federal court. Federal courts have limited jurisdiction and may only decide those cases which the Constitution and statutes authorize them to decide.

Id. See also *Enrolled Members of Blackfeet Tribe v. Crowe*, 2018 WL 6012442 at *2 (D. Mon. 2018) (“Tribal election disputes represent intra-tribal matters. Federal courts lack jurisdiction over tribal election disputes that require interpretation of tribal law or a tribal constitution to resolve”) (citing *Goodface*, 708 F.2d at 339); *Anderson v. Duran*, 70 F. Supp. 3d 1143, 1150-51 (N.D. Ca. 2014) (“[J]urisdiction does not . . . extend to the looming question of the rightful leadership of the Tribe”) (citing *Attorney's Process & Investigation Services, Inc.*, 609 F.3d at 943); *Timbisha Shoshone Tribe v. Kennedy*, 687 F. Supp. 2d 1171, 1185-86 (E.D. Ca. 2009) (declining to issue injunction, in part, because it would require the court “to consider tribal law as it relates to elections,” and noting that, “[i]nternal matters of a tribe are generally reserved for resolution by the tribe itself, through a policy of Indian self-determination and self-government”); *U.S. Bancorp v. Ike*, 171 F. Supp. 2d 1122, 1125 (D. Nev. 2001) (“Deciding a question involving a tribal election dispute is solely a matter of tribal law, and we do not have jurisdiction to address this question”).

Plaintiff acknowledges that she exercised and “did exhaust all remedies” in the Supreme Court of the Tribe. Compl. 2. A tribal court's resolution of a case based solely on tribal law is not reviewable by a federal court. *In re Sac & Fox of Mississippi in Iowa/Meskwaki Casino Litigation*, 340 F.3d 749, 764 (8th Cir. 2003) (“We have characterized an election dispute . . . as [a] type of non-justiciable intra-tribal matter.”); *Runs After v. United States*, 766 F.2d 347, 352 (8th Cir. 1985) (holding that “resolution of . . . disputes involving questions of interpretation of the tribal

constitution and tribal law is not within the jurisdiction of the district court.”); *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996) (holding that federal courts do not have jurisdiction over intra-tribal disputes); *see also Lee v. Her Many Horses*, 2014 WL 1331007 at *12 (D.S.D. Mar. 30, 2014) (“Because resolution of plaintiffs’ claims against the individually named defendants involves interpretation and application of the OST Constitution and tribal law, those claims ‘are not within the jurisdiction of the district court. . . . Plaintiffs may not use the federal court to resolve these complaints but must ‘seek review in tribal court or pursue alternative, political remedies.’”) (quoting *Runs After*, 766 F.2d at 353).

There being no source of federal subject matter jurisdiction, this action should be dismissed under Rule 12(b)(1).

II. THIS ACTION SHOULD BE DISMISSED FOR LACK OF JURISDICTION BECAUSE IT IS BARRED BY THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY.

The Tribe possesses sovereign immunity from unconsented suit. In *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831), the Supreme Court held that Indian tribes are “domestic dependent nations,” with inherent sovereign authority over their members and their territory, and in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), the Supreme Court held that suits against Indian tribes are barred by tribal sovereign immunity.

The Supreme Court has “time and again treated the ‘doctrine of tribal immunity as settled law’ and dismissed any suit against a tribe absent congressional authorization (or a waiver).” *Michigan v. Bay Mills Indian Cmty.*, 134 S.Ct. 2024, 2030-2031 (2014) (quoting *Kiowa Tribe v. Mfg. Technologies, Inc.*, 523 U.S. 751, 756 (1998)). *Accord, Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 511 (1991) (Indian tribes exercise

inherent sovereign authority over their members and territories, and suits against tribes are barred by sovereign immunity absent congressional abrogation or waiver).³

Tribal sovereign immunity “is a necessary corollary to Indian sovereignty and self-governance.” *Three Affiliated Tribes of Ft. Berthold Reservation v. Wold Eng’g*, 476 U.S. 877, 890 (1986). The courts have noted that:

Not only is sovereign immunity an inherent part of the concept of sovereignty and what it means to be a sovereign, but “immunity [also] is thought [to be] necessary to promote the federal policies of tribal self[-]determination, economic development, and cultural autonomy.”

Breakthrough Management Group, Inc. v. Chukchansi Gold Casino and Resort, 629 F.3d 1173, 1182-1183 (10th Cir. 2010) (internal citations omitted). *Accord, Alden v. Maine*, 527 U.S. 706, 715 (1999) (noting the “close and necessary” relationship between sovereignty and sovereign immunity, which is “central to sovereign dignity”).

Congress has not abrogated the Tribe’s sovereign immunity and there is no tribal waiver of sovereign immunity to suit in this Court. To the contrary, the Tribe has acted to preserve and protect its immunity, including the immunity of tribal officers from suit in any civil action arising from the performance of their official duties. Oglala Sioux Tribal Ordinance No. 15-16 provides that:

The Oglala Sioux Tribe and its governing body, the Oglala Sioux Tribal Council, and its departments, programs, and agencies shall be immune from suit in any civil

³ The doctrine of tribal sovereign immunity has been affirmed repeatedly by the Supreme Court and the lower federal courts. *See, Bay Mills Indian Cmty.*, 134 S. Ct. at 2030-2031; *C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe*, 532 U.S. 411, 416-417 (2001); *Kiowa Tribe*, 523 U.S. at 754; *Okla. Tax Comm’n*, 498 U.S. at 509-510; *Three Affiliated Tribes*, 476 U.S. at 890-891; *Santa Clara Pueblo*, 436 U.S. at 58; *Puyallup Tribe v. Dep’t of Game*, 433 U.S. 165, 172-173 (1977); *Amerind Risk Mgmt. Corp. v. Malaterre*, 633 F.3d 680, 685 (8th Cir. 2011); *Hagen v. Sisseton-Wahpeton Community College*, 205 F.3d 1040 (8th Cir. 2000); *Dillon v. Yankton Sioux Tribe Housing Auth.*, 144 F.3d 581, 583 (8th Cir. 1998).

action and its officers, employees, and agents shall be immune from suit in any civil action for any liability arising from the performance of their official duties.

O.S.T. Ord. No. 15-16 § 1(a) (Sept. 28, 2015) (attached hereto as **Exhibit H**).

In this case, sovereign immunity bars suit against the Tribal Council, which is the governing body of the Tribe, *see* O.S.T. Const., Art. III, § 1, and the Executive Committee, which is comprised of officers of the Tribal Council, *see id.* at Art. III, § 6, and which acts on behalf of the Tribal Council when the Tribal Council is not in session, *see id.* at Art. XIII, § 6.

Sovereign immunity also bars suit against individual members of the Tribal Council and Executive Committee. Sovereign immunity extends to tribal officials acting in their official capacities. “[A] suit against a governmental officer in his official capacity is the same as a suit against the entity of which the officer is an agent.” *McMillian v. Monroe County*, 520 U.S. 781, 785 n.2 (1997) (internal citations, quotation marks, and brackets omitted). A government official sued in his or her official capacity may assert the defense of sovereign immunity. *Kentucky v. Graham*, 473 U.S. 159, 167 (1985).

In this case, at all relevant times, the individual members of the Tribal Council and Executive Committee acted as officers and public officials of the Tribe and, as such, they are entitled to sovereign immunity. There is no allegation that any defendant acted outside the scope of his or her official duties or that any defendant is sued in an individual or personal capacity. It is well settled that, “in order to sue a public official in his or her individual capacity, a plaintiff must expressly and unambiguously state so in the pleadings, otherwise, it will be assumed that the defendant is sued only in his or her official capacity.” *Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999) (citations omitted). “[T]his strict pleading requirement is consistent with the Supreme Court’s ... jurisprudence” on sovereign immunity. *Artis v. Francis Howell N. Band Booster Ass’n, Inc.*, 161 F.3d 1178, 1182 (8th Cir. 1998) (internal citation omitted). “[O]nly

an express statement that [public officials] are being sued in their individual capacity will suffice to give proper notice to the defendants.” *Johnson*, 172 F.3d at 535 (citing *Nix v. Norman*, 879 F.2d 429 (8th Cir. 1989)). Absent such an express, the Court must “interpret the complaint as bringing only official-capacity claims.” *Egerdahl v. Hibbing Cmty. Coll.*, 72 F.3d 615, 619 (8th Cir. 1995).

In the absence of congressional abrogation or waiver of the Tribe’s sovereign immunity, the Court has no jurisdiction over Plaintiff’s claims against the Tribe and its officers acting in their official capacities. “Sovereign immunity is jurisdictional in nature.” *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994). *Accord*, *United States v. Mitchell*, 463 U.S. 206, 212 (1983); *Puyallup Tribe*, 433 U.S. at 172; *United States v. Sherwood*, 312 U.S. 584, 586 (1941); *Amerind*, 633 F.3d at 684-685, 686; *Hagen*, 205 F.3d at 1044; *Rupp v. Omaha Indian Tribe*, 45 F.3d 1241, 1244 (8th Cir. 1995). It is a “threshold jurisdictional question” and an abrogation or waiver of tribal sovereign immunity is a “jurisdictional prerequisite” for any suit against the Tribe. *Amerind*, 633 F.3d at 684-685, 686 (citing *Hagen*, 205 F.3d at 1044).⁴

Plaintiff “bear[s] the burden of proving that either Congress or [the Tribe] has expressly and unequivocally waived tribal sovereign immunity,” *Amerind*, 633 F.3d at 685-686 (citations omitted), and she has not met that burden in this case. Accordingly, this action should be dismissed under Rule 12(b)(1).

⁴ “Sovereign immunity limits a federal court’s subject matter jurisdiction over actions brought against a sovereign. Similarly, tribal immunity precludes subject matter jurisdiction in an action against an Indian tribe.” *Alvarado v. Table Mt. Rancheria*, 509 F.3d 1008, 1015-16 (9th Cir.2007). “As immunity is a limitation on federal court jurisdiction, a motion to dismiss based on tribal immunity is appropriately examined under Fed. R. Civ. P. 12(b)(1).” *Bassett v. Mashantucket Pequot Museum & Research Ctr. Inc.*, 221 F. Supp. 2d 271, 276 (D. Conn. 2002). *Accord*, *Robbins v. U.S. Bureau of Land Mgmt.*, 438 F.3d 1074, 1080 (10th Cir. 2006) (holding that the defense of sovereign immunity is jurisdictional in nature, depriving courts of subject-matter jurisdiction where applicable); *Amore v. Frankel*, 228 Conn. 358, 364, 636 A.2d 786 (1994) (holding that, “the doctrine of sovereign immunity implicates subject matter jurisdiction and is therefore a basis for granting a motion to dismiss”).

III. THIS ACTION SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Plaintiff asks this Court to grant extraordinary and unprecedented relief in respect to the internal elections of the Oglala Sioux Tribe. Among other things, plaintiff asks this Court: to declare the results of the Tribe’s primary and general elections null and void; to order new tribal elections; to order the Superintendent of the Pine Ridge Agency to “oversee everyday business of the Oglala Sioux Tribe until a new election is held;” and to appoint a “special master to oversee the finances of the Oglala Sioux Tribe until there is a newly seated governing body through a fair and honest election.” Compl. 7. She also asks this Court to: amend the Tribe’s Election Code; remove the Supreme Court from the resolution of election disputes; and install a new Election Commission. *Id.*

Plaintiff fails to cite any source of law—federal or tribal—that would authorize such relief. Plaintiff fails to state or recite the elements of any legally-cognizable claim that would provide “grounds” for her “entitlement to relief.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation omitted). No such authority or grounds exist. Accordingly, this case should be dismissed under Rule 12(b)(6).⁵

⁵ Defendants further note that no claim or cause of action is, or can be, stated against the individual members of the Tribal Council or the Executive Committee, since the Tribal Council and Executive Committee are governing bodies of the Tribe that act as collective unit and since individual members do not have the authority to act for or on behalf of these collective units or to adopt or implement the election laws of the Tribe. Further, any claim related to the performance of legislative activities by members of the Tribal Council is barred by legislative immunity, which provides that, “[m]embers of the Oglala Sioux Tribal Council shall have absolute legislative immunity from suit in any civil action arising from the performance or nonperformance of their legislative activities.” O.S.T. Ord. No. 15-16, § 2(a). “It is well established that federal, state, and regional legislators are entitled to absolute immunity from civil liability for their legislative activities.” *Bogan v. Scott*, 523 U.S. 44, 46 (1998) (citation omitted).

IV. THIS ACTION SHOULD BE DISMISSED FOR INSUFFICIENT PROCESS AND INSUFFICIENT SERVICE OF PROCESS.

As of this date, on information and belief, no summonses have been issued in this action and no defendant has been served with a summons or a copy of the complaint. Accordingly, this case should be dismissed under Rule 12(b)(4) & (5).

CONCLUSION

For the foregoing reasons, defendants Oglala Sioux Tribe Executive Officers and Oglala Sioux Tribal Council Members move the Court dismiss this action.

Respectfully submitted this 4th day of December 2020.

/s/ Steven J. Gunn
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*Attorney for Defendants Oglala Sioux Tribe
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CERTIFICATE OF SERVICE

The undersigned certifies that, on December 4, 2020, a true and accurate copy of the foregoing was served on the parties listed below by depositing the same in United States mail, postage prepaid, addressed as follows, and electronic mail, where indicated:

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