

THREE AFFILIATED TRIBES
FORT BERTHOLD RESERVATION

IN DISTRICT COURT
NEW TOWN, NORTH DAKOTA

Carol Good Bear
and Terrence Fredericks,

Plaintiffs,

vs.

Mark N. Fox, as MHA Nation Tribal
Chairman, Fred Fox, as MHA Nation
Executive Secretary, and Mervin Packineau,
as MHA Nation Treasurer,

Defendants.

Case No. _____

**BRIEF IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

[¶1] Plaintiffs submit this memorandum in support of their Motion for Preliminary Injunction.

FACTUAL BACKGROUND

[¶2] Each of the Plaintiffs are enrolled members of the Three Affiliated Tribes.

[¶3] Defendant Mark N. Fox is an enrolled member of the Three Affiliated Tribes and is the Chairman of Three Affiliated Tribes Tribal Business Council (“the Council”).

[¶4] Defendant Cory Spotted Bear is an enrolled member of the Three Affiliated Tribes, Councilman for the South Segment, and is the Vice-Chairman of the Council.

[¶5] Defendant Mervin Packineau is an enrolled member of the Three Affiliated Tribes, Councilman for the Northeast Segment, and is the Treasurer of the Council.

[¶6] Defendant Fred Fox is an enrolled member of the Three Affiliated Tribes, Councilman for the East Segment, and is the Executive Secretary of the Council.

[¶7] Defendant Robert White is an enrolled member of the Three Affiliated Tribes and is the Councilman for the Four Bears Segment.

[¶8] Defendant Sherry Turner-Lone Fight is an enrolled member of the Three Affiliated Tribes and is the Councilwoman for the West Segment.

[¶9] Defendant Monica Mayer is an enrolled member of the Three Affiliated Tribes and is the Councilwoman for the North Segment.

A. Legal Framework of the Three Affiliated Tribes

[¶10] The Three Affiliated Tribes of Fort Berthold (“the Tribe”) are a federally recognized Indian Tribe organized under the Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation (“Tribal Constitution” or “Constitution,” and “Tribal Bylaws” or “Bylaws,” respectively), which were ratified by a vote of Tribal members on May 15, 1936.

[¶11] Pursuant to Section 17 of the Indian Reorganization Act, the Tribe petitioned the Secretary of Interior (“the Secretary”) for a Charter of Incorporation. The Corporate Charter of the Three Affiliated Tribes of the Fort Berthold Reservation (“Tribal Charter” or “Charter”) was issued by the Secretary April 1, 1937, and duly ratified by the Tribe in a referendum April 24, 1937.

[¶12] The Constitution enumerates powers and duties of the Council. Article VI, Section 3 grants the Council “all necessary sovereign authority – legislative and judicial – for the purpose of exercising the jurisdiction granted by the people in Article I of this Constitution.”

[¶13] The Constitution also provides the consent of the Tribe to suits against the Council for injunctive relief. Article VI, Section 3(b) provides:

“The people of the Three Affiliated Tribes, in order to achieve a responsible and wise administration of this sovereignty delegated by this Constitution to the [Council], hereby specifically grant to the Tribal Court the authority to enforce the provisions of the Indian Civil Rights Act, 25 U.S.C. 1301, et seq., including the award of injunctive relief only against the [Council] if it determines through an adjudication that the [Council] has in a specific instance violated the Act.”

[¶14] ICRA, 25 U.S.C. § 1302 provides that in exercising powers of self-government, no Indian Tribe shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

[¶15] Article VI, Section 5 states that the Council shall have the powers enumerated therein, but that the exercise of those powers shall be subject to popular referendum. (Emphasis added). Article VI, Section 5(b) of the Constitution states that the Council may establish a Tribal Business Council fund by “accepting grants or donations from any person, state, or the United States, or by income from the Tribal enterprises, or by levying assessments . . .”

[¶16] Article VI, Section 5(c) of the Constitution provides that the Council has the power:

“To administer any funds or property within the exclusive control of the Tribes to make expenditures from available Tribal funds for public purposes of the Tribes, including salaries or other remuneration of Tribal officials or employees. Such salaries or remuneration shall be paid only for services actually rendered. All expenditures from the Tribal Business Council fund shall be by resolution duly passed by the council to such effect, and the amounts so paid shall be matters of public record at all times.”

(Emphasis added).

[¶17] Article VIII of the Constitution reserves the right of Tribal members to demand a referendum “on any proposed or enacted ordinance or resolution of the [Council].”

[¶18] Article I of the Bylaws provides additional duties applicable to particular officers of the Council.

[¶19] Article I, Section 2 of the Bylaws imposes upon the Secretary the duty to “keep all records, minutes of meetings, and an accurate roll of members by communities.” The Secretary shall also “receive all petitions, applications, and other papers, and prepare them for the action of the council.”

[¶20] Article I, Section 3 of the Bylaws enumerates the duties of the Treasurer of the Council as follows:

“The Treasurer of the Tribal Business Council shall accept, receipt for, keep 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 such funds in a bank or elsewhere as directed by the council and shall make and keep 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 or custody to the council at regular meetings and at such other times as requested by the council, his reports to be in writing and matters of record. He shall not expend or otherwise disburse any funds in his possession or in the possession or custody of the Tribal Business Council except when he is authorized to do so by resolution duly passed by the council.”

(Emphasis added). This section additionally provides that “[t]he books and records of the Treasurer shall be audited at least once each year by a competent auditor employed by the council. The treasurer shall be required to be under a surety bond satisfactory to the council and to the Commissioner of Indian Affairs.” (Emphasis added).

[¶21] Under Article I, Section 4 of the Bylaws, prior to installation to the Council, elected members are required to subscribe to the oath of office as follows: “I do solemnly swear that I will support and defend . . . the Constitution and Bylaws of the Three Affiliated Tribes . . . and will faithfully and impartially discharge the duties of councilman to the best of my ability.” (Emphasis added).

[¶22] In addition to the Constitution and By-laws, the Council is also governed by the Charter, Section 9 of which explicitly provides “The officers of the Tribe shall maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges, and assignments . . .” (Emphasis added).

[¶23] Plaintiffs have a vested communal interest in the Fund and any property owned by the Tribe because the Tribe has long embraced the communal concept of ownership of tribal property. *See*

Bordeaux v. Wilkinson, et al., 21 ILR 6131, 6132 (Ft. Bert. Tr. Ct. 1993) (“The Plaintiff and the [Defendant Officers] have the right to sit at the same table, because they are all enrolled tribal members. The Defendants have the right to decide whether and how to distribute what is on the table, because that is one of their duties as Council members. But, when they make rules on how to distribute things, they have to follow those rules. When the rules are broken, they can be enforced by anyone sitting at the table.” (Emphasis added)).

B. Expenditures Absent Resolutions

[¶24] The Secretary administers a Records Office for the Tribe that maintains a website (“the Records Website”) containing records of minutes from regular and special meetings of the Council in addition to resolutions considered and passed by the Council. LINK.

[¶25] A review of the Council’s regular meeting minutes on the Records Website provides a record of the Council utilizing ratifications at its regular meetings on numerous occasions to approve of executive actions taken during prior Executive Committee meetings. CITE (blanket rat folder). Although the subject matter of the executive actions being ratified varies, many of them involve expenditures of Tribal funds. CITE.

[¶26] Upon information and belief, when the Council engages in ratifications of executive committee actions relating to expenditures, there is no meaningful, public discussion of the expenditures and no ample opportunity for members of the Tribe to discover the amount and nature of any expenditures or provide meaningful input on such expenditures. Said ratifications are not resolutions and do not comport with the requirements under the Constitution.

[¶27] Additionally, upon information and belief, Chairman Fox began issuing unilateral “Executive Actions” between regular Council meetings that he then has the Chief Executive Officer present for ratification at regular Council meetings. A review of the Council’s regular

meeting agendas and the agendas of committee meetings reveals that the “Executive Actions” are generally not listed in specificity and are instead listed categorically as “Executive Actions.” (Same as blanket rat folder).

[¶28] Upon information and belief, because of the lack of information about the “Executive Actions” prior to the Council’s regular meetings, the subject matter of those “Executive Actions” is usually sprung upon the public at the regular meetings of the Council, again with little opportunity for meaningful, public discussion on the subject matter of the actions prior to their approval/denial. Furthermore, unilateral “Executive Action” is not supported by the Constitution or Bylaws and blanket ratification of these behind-closed-doors actions frustrates the resolution process required with regard to expenditures.

[¶29] On or about December 30, 2022, the Council closed on a property purchase in Las Vegas, Nevada for \$92,820,000.00. The Council also paid a Real Property Transfer Tax on the purchase in the amount of \$473,382.00. The total amount paid for this property was \$93,293,382.00. (need documents with total amounts for exhibits). A resolution was never publicly discussed or passed for the purchase of this property nor for the payment of the Real Property Transfer Tax. Further, Treasurer Packineau and the Council failed to make public the amount expended for this property or the source of the monies expended on the property – rather, the expenditure was made public only after several local and regional news agencies reported on it and the public still does not know the source of the funds used to purchase the property. Ex.

[¶30] On or about April 5, 2023, the Council closed on an additional 1.1-acre parcel of property in Las Vegas for \$10,250,000.00. The Council also paid a Real Property Transfer Tax on the purchase in the amount of \$52,250.00. (same as above). A resolution was never publicly discussed or passed for the purchase of this property. The total amount paid for this property was

\$10,302,250.00. Again, the purchase was made public only after several local and regional news agencies reported on it and the public does not know the source of funds used to purchase the property. Ex.

[¶31] Upon information and belief, Treasurer Packineau has disbursed monies from the Fund for home purchases and other items and services absent any resolution duly passed by the Council, and without making the amounts expended for such homes part of any written report or a matter of public record.

[¶32] Given Treasurer Packineau and the Council's willingness to expend large sums of money from Tribal funds for properties located in Las Vegas in contravention of the Constitution and Bylaws, it is believed that since 2010, there have been numerous other expenditures made from the Tribal funds absent any resolution duly passed by the Council or a public record and accounting of such expenditures. Ex.

C. Failure to Conduct Audits

[¶33] Upon information and belief, Treasurer Packineau has failed to ensure annual audits of the books and records of the Treasurer are completed. Requests to the Council to make public any audits that have been completed have been met with silence.

[¶34] Since 2010, the only audit known by Plaintiffs to have been conducted of the books and records of the Treasurer was completed in 2021 and was for the fiscal year that ended September 30, 2018 ("the 2018 Audit").

[¶35] Despite numerous requests by members of the Tribe, the Council refused to reveal the results and conclusions of the 2018 Audit. Cite.

[¶36] The 2018 Audit was eventually leaked to an unknown Facebook page.

[¶37] The leak of the 2018 Audit found on Facebook by Plaintiffs revealed the auditing firm issued two adverse opinions and four disclaimed opinions with respect to the books and records of the Treasurer. Ex. (The exhibit is not the full 2018 Audit, which Plaintiffs do not possess, but a “Report of Independent Auditors” that appears to be a summary of the audit. Also, in the upper righthand corner of the exhibit’s first page is a typewritten statement that does not appear to be part of the report, but something added by an unknown person).

[¶38] Upon information and belief, the adverse opinions of the auditing firm with respect to the 2018 Audit are indicative of improper activity in the bookkeeping of the Council.

[¶39] The leak of the 2018 Audit also revealed that the auditing firm created a disclaimed opinion with regard to the Tribe’s “major governmental funds.” The basis for that disclaimer stated as follows: “Due to the inadequacy of accounting records to support financial balances for the year ended September 30, 2018, we were unable to adequately test receivables, equity interest in discrete component units, capital assets, and all liabilities, net position, fund balances, transfers, revenues, and expenses.” Ex., at p. 2 (emphasis added). Explaining further, the disclaimer itself stated: “Because of the significance of the matter described in the [basis], we have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the financial statements of the governmental activities and each major governmental fund of the Tribes.” Id. (Emphasis added).

[¶40] The adverse opinions of the 2018 Audit were issued with regard to the Tribe’s Major Enterprise Fund and Aggregate Discretely Presented Component Units. The basis for the adverse opinion stated as follows:

“The financial statements do not include financial data for the Tribes’ legally separate blended and discrete component units . . . Because of this departure from accounting principles generally accepted in the United States of America, the assets, liabilities, net position, revenues, and expenses of 4 Bears Casino & Lodge,

blended component unit, which would have been reported as business-type activities and major proprietary fund, would have increased by approximately \$103,474,000, \$42,606,000, \$60,869,000, \$54,981,000, and \$60,521,000, respectively.”

Id. (Emphasis added).

[¶41] Upon information and belief, the Council has not conducted or submitted a federal program audit for 2019, 2020, 2021, or 2022, and Plaintiffs are unaware of any such audit for these years.

[¶42] Upon information and belief, the Council’s failure to conduct and submit federal program audits has led to the Bureau of Indian Affairs’ Contract Office issuing two warning letters to the Council for not submitting the 2019 audit, one warning letter for not submitting the 2020 audit, and one warning letter for not submitting the 2021 audit. (Do we have any physical documents for this?) Upon information and belief, failure to submit audits to the BIA results in sanctions against the Tribe involving loss of contract support costs from the BIA.

[¶43] In 2020, two former tribal councilman and two tribal employees were criminally charged in a bribery kickback scheme involving payments from an economic development corporation of one of the Tribe’s Segments. CITE (saved in exhibits). Upon information and belief, there are ongoing improprieties which have been allowed to continue by Treasurer Packineau’s failure to conduct annual audits as required by Article I, Section 3 of the Bylaws. (Insert information from FBI Affidavits and send affidavits to me when you get a chance please)

[¶44] The obvious problem with Treasurer Packineau and the Council’s failure to accurately account for the receipts, expenditures, and assets of the Tribe on a regular basis, outside of the fact that it is a violation of the Constitution, Bylaws, and Charter, is the fact that it creates and perpetuates the opportunity for misuse of Tribal assets, both by Council members and other individuals or entities, distrust of Tribal governance, and unnecessary and unhealthy tension between Tribal officials and Tribal members.

[¶45] Upon information and belief, the failure to conduct annual audits of the books and records of the Treasurer as required by Section 3, Article I of the Bylaws has resulted in severe detriment to the Tribe, members of the Tribe, and the overall assets of the Tribe.

ARGUMENT

[¶46] This Court may issue a preliminary injunction upon a movant's showing of irreparable harm to preserve the status quo before a hearing can be held. Ft. Berthold R.Civ.P. 17. "Generally, to be entitled to injunctive relief, a party must show no adequate remedy at law exists and irreparable injury will result if the relief is not granted." *Nodak Mut. Ins. Co. v. Ward Cty. Farm Bureau*, 2004 ND 60, ¶ 24, 676 N.W.2d 752. Whether to grant injunctive relief generally rests on four factors: (1) whether there is a substantial probability of success on the merits; (2) an impending or existent irreparable injury; (3) likelihood of harm to other interested parties; and (4) effect on the public interest. "The preservation of the status quo recognizes that the most important prerequisite for the issuance of a preliminary injunction is a demonstration that, if the preliminary injunction is not granted, the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered." *Vorachek v. Citizens State Bank of Lankin*, 461 N.W.2d 580, 585 (N.D. 1990).

[¶47] With regard to irreparable injury, the North Dakota Supreme Court has held:

"An injury is irreparable when it cannot be adequately compensated in damages, and it is not necessary that the pecuniary damage be shown to be great . . . Acts which result in a serious change of, or are destructive to, the property affected either physically or in the character in which it has been held or enjoyed, . . . do an irreparable injury . . ."

Wrigley v. Romanick, 2023 ND 50, ¶ 34, 988 N.W.2d 231. However, "[i]t is a well-established rule that where Congress expressly provides for injunctive relief to prevent violations of a statute, a plaintiff does not need to demonstrate irreparable harm to secure an injunction." *Burlington N. R.R. Co. v. Bair*, 957 F.2d 599, 601 (8th Cir. 1992) (Emphasis added). Moreover, even in the

absence of statutorily authorized injunctive relief, “if no remedy is authorized by law and irreparable harm will result, judicial relief is available against public officials to prevent them from acting in excess of, or without, jurisdiction.” *Medical Arts Clinic, P.C. v. Franciscan Initiatives*, 531 N.W.2d 289, 294-96 (N.D. 1995).

I. Plaintiffs Have a Substantial Probability of Succeeding on Their ICRA Claims.

[¶48] Here, the Council has violated ICRA on numerous occasions by depriving Plaintiffs of property without due process of law. Plaintiffs have a vested communal interest in the money contained in the Fund, as well as any other property of the Tribe, under the Tribe’s long-recognized communal concept of ownership of tribal property. *See Bordeaux*, 21 ILR 6131, 6132 (Ft. Bert. Trib. Ct. 1993). The Constitution and Bylaws explicitly outline the procedural due process required prior to making expenditures from the Fund, with both expressing that no expenditure may be made absent a resolution duly passed by the Council to such effect.

[¶49] On or about December 30, 2022, the Council expended more than \$92,000,000 for a property in Las Vegas. A review of the Council’s resolutions, available on the Records Website, provides no record of the Council ever passing a resolution authorizing the expenditure for that property. A review of the Council’s regular meeting minutes available on the Records Website also provides no record of the Council ever proposing or discussing the December 30 purchase prior to its occurrence.

[¶50] On or about April 3, 2023, the Council expended more than \$10,250,000 for a separate property in Las Vegas. A review of the Council’s resolutions, available on the Records Website, provides no record of the Council ever passing a resolution authorizing the expenditure for that property. A review of the Council’s regular meeting minutes available on the Records Website

also provides no record of the Council ever proposing or discussing the April 3 purchase prior to its occurrence.

[¶51] On numerous occasions, the Council has ratified its own prior “executive committee actions” at regular meetings. While the topics of those executive committee actions generally vary, a large portion of them involve expenditures for various items or services. When the Council engages in ratifications of its own prior executive committee actions, there is no meaningful, public discussion of the expenditures and no ample opportunity for members of the Tribe to discover the amount and nature of any expenditures or provide meaningful input on such expenditures. Said ratifications are not resolutions and do not satisfy the procedural due process requirements under the Constitution and Bylaws.

[¶52] Additionally, at some point, Chairman Fox began issuing unilateral “Executive Actions” that the Council then ratify in a single fell swoop at the following regular meeting of the Council. Again, while the subject matter of the “Executive Actions” varies, a large number of them attempt to confer authority for expenditures. The Council’s ratifications of Chairman Fox’s unilateral “Executive Actions” are even less detailed than their ratifications of their own “executive committee actions,” listed categorically as “Executive Actions” rather than in detail. A lack of information prior to or even at the Council’s regular meetings about the “Executive Actions” provides enrolled members of the Tribe with little opportunity for meaningful, public discussion on the subject matter of the actions prior to their approval. Moreover, unilateral “Executive Action” or the blanket ratification thereof by the Council’s mere verbal confirmation does not satisfy the due process required by the Constitution and Bylaws as it relates to expenditures.

[¶53] Each of the above expenditures are per se violations of the procedural due process required by both the Constitution and the Bylaws with regard to expenditures made by the Council. Both

documents are clear that prior to making an expenditure, the Council must pass a resolution authorizing the expenditure. None of the aforementioned expenditures were authorized by a resolution. Because Plaintiffs have a vested interest in the funds expended, and because the Council's procedure in making those expenditures lacked procedural due process, the Plaintiffs have established a prima facie showing of ICRA violations by the Council. *See Fargo Women's Health Org. v. Lambs of Christ*, 488 N.W.2d 401, 406 (N.D. 1992) (where plaintiffs established prima facie showing of claims underlying request for preliminary injunction, they had established probable success on the merits as required). Even if this Court finds the Plaintiffs have not made a prima facie showing with the claims and evidence provided, Plaintiffs have established a strong probability of success on the merits based on the per se violations presented.

II. Plaintiffs Do Not Need to Demonstrate Irreparable Harm Because the Constitution Expressly Provides for Injunctive Relief for the Council's ICRA Violations.

[¶54] “It is a well-established rule that where Congress expressly provides for injunctive relief to prevent violations of a statute, a plaintiff does not need to demonstrate irreparable harm to secure an injunction.” *Burlington*, 957 F.2d at 601 (8th Cir. 1992) (quoting *U.S. v. City of San Francisco*, 310 U.S. 16, 31 (1940)). In *Burlington*, the Eighth Circuit Court of Appeals reviewed a district court's award of a preliminary injunction to Burlington Northern against the Director of the Department of Revenue of Iowa. There, the statute at issue provided that “a district court of the United States has jurisdiction . . . to prevent a violation of [this section.]” 49 U.S.C. § 11503. The Eighth Circuit, in affirming the district court's award of a preliminary injunction explained that in situations where a statute explicitly provides for injunctive relief:

“[I]t is not the role of the courts to balance the equities between the parties. The controlling issue is whether Congress has already balanced the equities and

determined that, as a matter of public policy, an injunction should issue where the defendant is engaged in, or is about to engage in, any activity which the statute prohibits. The proper role of the courts is simply to determine whether a violation of the statute has or is about to occur.”

Burlington, 957 F.2d at 601-02 (8th Cir. 1992) (Citations omitted).

[¶55] At its core, *Burlington* stands for the proposition that Plaintiffs need not show irreparable harm if: (1) There is statutory authority which prohibits some act(s); (2) That same statutory authority also authorizes injunctive relief against those engaging in prohibited act(s); and, (3) There has been or will be a violation of the statute. Here, the Plaintiffs do not need to show irreparable harm because their ICRA claims meet all three *Burlington* criteria. First, the “statute” here, the Constitution, prohibits violations of ICRA, which in turn prohibits the Tribe from depriving individuals of property without due process of law. Although the Constitution is not a “statute” passed by Congress, it is a document that was duly ratified by the very people who are governed by it, and the rhetoric utilized by the Eighth Circuit, the U.S. Supreme Court, and numerous other authorities applies. Second, the Constitution explicitly states that the people of the Tribe grant this Court with authority to issue an injunction if the Court finds the Council has violated ICRA. Last, the Plaintiffs have established a number of violations of ICRA by the Council through showing the Council’s expenditures absent any resolutions authorizing those expenditures. This Court should find that Plaintiffs need not establish irreparable harm to receive injunctive relief.

[¶56] Even if this Court finds that the Plaintiffs need to establish irreparable harm, the nature of the Council’s ICRA violations is so repetitive that any otherwise available remedy is inadequate and the injury may only be prevented by this Court’s injunction. See *Viestenz v. Arthur Twp.*, 54 N.W.2d 572, 578 (N.D. 1952) (“As a general rule, where an injury committed by one against another is being constantly repeated so that the complainant’s remedy at law requires the bringing

of successive actions, that remedy is inadequate and the injury will be prevented by injunction.”). A review of the available minutes from the Council’s regular meetings over the last 12 months provides a record of the Council using the ratification process outlined above for both unilateral actions taken by Chairman Fox and executive committee actions, a number of which at each meeting relate to expenditures. Plaintiffs have made attempts to secure information related to the Council’s expenditures from the Defendants to no avail. The proof is in the pudding – the frequency and severity of the Council’s ICRA violations are evidence that without this Court’s immediate intervention, the Council will continue to expend tens, hundreds of millions of its constituents’ money with zero regard to its obligations under the very Constitution and Bylaws those constituents ratified.

III. Requiring the Council to Utilize Appropriate Procedure for Expenditures is a Return to the Status Quo Intended by the Constitution and Bylaws and Harms No One.

[¶57] The balance of harms in this case obviously favors Plaintiffs. As noted above, the Constitution and Bylaws have clear but stringent requirements for the Council’s expenditures, with both documents directing that expenditures may not be made in the absence of resolutions authorizing the release of funds. The obvious reason for this procedural safeguard to expenditures by the Council is that it prevents misuse, misappropriation, or misinformation about the Council’s spending. By ignoring the procedural due process required by the Constitution and Bylaws prior to spending communal funds, the Council has put the proverbial cart before the horse. At this point, given the Council’s apparent uncontrolled spending in the absence of due process, the cart has outrun the horse by a longshot. What Plaintiffs request of this Court is the restoration of order and due process to the Council’s use of funds which the Plaintiffs have a vested interest in.

IV. Public Policy Obviously Favors Enjoining the Council from Continuing to Violate ICRA.

[¶58] Public policy obviously weighs in favor of plaintiffs where the people of the Tribe ratified three different documents to establish the organizational framework for the Tribe itself, and each of those documents prohibit the conduct engaged in by the Council as it relates to expenditures. Moreover, one of those documents, the Constitution, explicitly provides for injunctive relief against the Council for violations of ICRA such as here. Any one of the Defendants may attempt to proclaim that the injunctive relief requested will considerably slow the pace at which the Council is able to make expenditures. But that is precisely the process desired by the people from the outset of the Tribe's operations. Simply put, the public policy in this matter favors the public and the very policy the public enacted to protect its own interests from anyone who would seek to take advantage of them.

CONCLUSION

[¶59] Plaintiffs have established they are entitled to a preliminary injunction because there has been a showing of irreparable harm, that each of the injunctive factors balance in Plaintiffs' favor, and that an injunction is necessary to preserve the status quo prior to a hearing being held. As noted above, Plaintiffs have a substantial likelihood of success on the merits of their claims because there are clear violations of the procedural due process required by the Bylaws and Constitution, and in turn, violations of ICRA. Plaintiffs do not need to establish irreparable harm because of the Tribe's consent to injunctive relief for ICRA violations, but can establish irreparable harm nonetheless. Last, Plaintiffs' request for a preliminary injunction restores the status quo intended by the Constitution, Bylaws, Charter, and ICRA. Plaintiffs request this Court enter a preliminary injunction directing as follows:

- a. The Council must refrain from making any expenditures without first discussing and passing resolutions authorizing those expenditures, including remunerations for employees;
- b. The Council must refrain from ratifying unilateral executive actions as a means of making expenditures;
- c. The Council must refrain from ratifying executive committee actions as a means of making expenditures;
- d. The Council must refrain from making changes to the White Sands Motel property in Las Vegas; and,
- e. Receiver to ensure procedure is followed for expenditures? Need to discuss this further.

Commented [MRK1]: Steve, this needs some additional factual support and will need to be referenced throughout. I think I found the appropriate news article referencing Fox's quote on this, but let's talk about that a bit more when you have a chance.

[¶60] Plaintiffs request the Court set a hearing for a preliminary injunction at the Court's earliest convenience.