

MANDAN, HIDATSA, & ARIKARA NATION
FORT BERTHOLD RESERVATION

SUPREME COURT
NEW TOWN, NORTH DAKOTA

Terrance Fredericks and Carol Good Bear

CERTIFICATE OF MAILING

APPELLEE,

Vs.

CV-2024-0357

AP-2025-001

Mark N. Fox, as Three Affiliated Tribes'
Tribal Chairman, Cory Spotted Bear as
TAT Vice-Chairman, Fred Fox, as TAT
Executive Secretary, Mervin Packineau,
As TAT Treasurer, Robert White, as
TAT Councilman, Sherry Turner-Lone Fight, as
TAT Councilwoman, Monica Mayer as
TAT Councilwoman and the TAT
Tribal Business Council,

APPELLANT,

STATE OF NORTH DAKOTA)
)ss
COUNTY OF MOUNTRAIL)

COMES NOW, Stacey Drumheller, MHA Supreme Court Clerk and states the following:

*Order

*Certificate of Mail

Was served by me on October 20th, 2025 to the following individuals by sending true and correct copies of such documents in the U.S. Mail postage prepaid, in New Town, North Dakota.

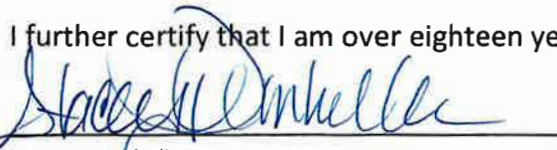
APPELLEE

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APPELLANT

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I further certify that I am over eighteen years of age and not a party to this action.


Stacey Drumheller
MHA Supreme Court Clerk



1 MANDAN, HIDATSA & ARIKARA NATION

SUPREME COURT

2
3 FORT BERTHOLD RESERVATION

NEW TOWN, ND 58763

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6 Terrance Fredericks and Carol Good Bear

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8 Appellants,

ORDER

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12
13 vs

AP-2025-001
CV-2024-0357

14
15 Mark N. Fox, as Three Affiliated Tribes'
16 Tribal Chairman, Cory Spotted Bear, as
17 Three Affiliated Tribes' Vice Chairman, Fred
18 Fox, as three Affiliated Tribes' Executive
19 Secretary, Mervin Packineau, as Three
20 Affiliated Tribes' Treasurer, Robert White, as
21 Three Affiliated Tribes' Councilman, Sherry
22 Turner-Lone Fight, AS Three Affiliated Tribes'
23 Councilwoman, Monica Mayer, as Three
24 Affiliated Tribes' Councilwoman, and The
25 Three Affiliated Tribes' Tribal Business
26 Council,

27 Appellees

28
29 This case comes before this Court from a District Court Order Granting a
30 Motion for Leave To File Amended Complaint And Order Dismissing Amended
31 Complaint dated January 24, 2025, wherein the District Court dismissed the
32 complaint for failure to state claims arising under the Indian Civil Rights Act and on
33 sovereign immunity and political question grounds. The hearing on the Motion to
34 dismiss was held on Nov. 7, 2024.

35
36 A Notice of Appeal was filed by Appellants' attorney on February 20, 2025.
37 On March 12, 2025, parties in this appeal requested an extension to file appellate
38 briefs. This Court granted the requested extension allowing the parties additional
39 time to submit briefs to the Court. Oral arguments were scheduled and held before
40 the MHA Nation Supreme Court on August 5, 2025.



41 When reviewing a District Court's decision on a motion to dismiss, the
42 standard of review is de novo¹ and focuses on the legal sufficiency of the complaint.
43 This Court independently evaluates the legal conclusions of the District Court
44 without deference. When reviewing this case, this Court reviews any pleadings in
45 the light most favorable to the Appellants.

47 BACKGROUND

48 The Appellants in this case are both enrolled members of the Three Affiliated
49 Tribes. The Appellees in this case are the elected officials of the Three Affiliated
50 Tribes and members of the Tribal Business Council (TBC).

52 In 2013 the TBC passed Resolution No. 13-004-VJB establishing "The
53 People's Fund" (the Fund). In 2013 an initial investment of \$100,000,000.00 was
54 made by TBC into the Fund. In July of 2014 the TBC passed Resolution No. 14-112-
55 VJB approving of a distribution plan for the Fund. By 2024 the Fund had grown to an
56 estimated \$891,000,000.00 and TBC passed Resolution No. 24-248-FWF
57 transferring \$250,000,000.00 from the Fund to a private equity account while more
58 than \$640,000,000.00 remained in the Fund. Initially Resolution No. 24-248-FWF
59 was passed in closed session, however on November 7, 2024, the TBC repassed
60 Resolution No. 24-248-FWF in an open meeting. Resolution No. 24-248-FWF was
61 clear that "All revenue earned from the purchase of units in TWG Global LLC shall be
62 used for the same purposes for which funds from PL1007014 are used, and for such
63 other purposes as are authorized by the Tribal Business Council."

65 Following the authorization of a transfer of money from the Fund to the
66 private equity account, Appellants filed a complaint in the Fort Berthold District
67 Court (District Court) claiming that the action of TBC to transfer funds was unlawful
68 because the action deprived them of property without due process as required by
69 the Indian Civil Rights Act (ICRA). The Appellants initially sought an injunction to
70 stop the transfer, however after learning that the transfer had already occurred the
71 Appellants amended their pleadings in the District Court seeking alternative
72 remedies and arguing that efforts to have the matter placed to a referendum vote
73 had been stymied because the transfer of funds had already occurred. Defendants

¹ See example *Cochran v. Gemini, Inc.*, 680 F.3d 1046, 1056 (2012) (stating that the dismissal of the Appellants claim is to be reviewed de novo accepting allegations within a complaint as true and drawing reasonable inferences in favor of the nonmoving party); *Kilhoran v. Kaler*, 18 N.W.3d 867 (2025) (stating that the Supreme Court of North Dakota consistently applies a de novo standard of review when reviewing a District Court decision to grant a motion to dismiss).

² See example *Arile v. Lawyer*, 970 N.W.2d 150 (2022) (stating that the court should be deferential to the plaintiff when reviewing pleadings unless it is clear the plaintiff fails to set forth any provable facts that would warrant relief).

74 filed a motion to dismiss the complaint arguing that the case was barred by
75 sovereign immunity and political question.

76
77 The District Court initially entered an Order Granting In Part and Denying In
78 Part Defendants' Motion to Dismiss on May 9, 2024. An appeal was filed. However,
79 after thorough review this Court ultimately denied the appeal as interlocutory. As
80 this Court stated in both the Order Denying the Appeal and the Order Denying
81 Reconsideration of the Appeal, although the District Court held a hearing, the
82 evidentiary record was not developed sufficiently to determine whether the Motion
83 to Dismiss had merit. As such the case was not ripe for appeal and was returned to
84 the District Court for further adjudication on the Motion.⁷ After returning the case
85 to the District Court for further adjudication on the Motion to Dismiss and upon
86 subsequent order of the District Court this case meets the standard of the collateral
87 order doctrine and is no longer deemed interlocutory.

88
89 This appeal has been filed after further adjudication by the District Court on
90 November 7, 2024, and an Order Granting Motion for Leave to File Amended
91 Complaint and Order Dismissing Amended Complaint. The District Court entered
92 January 24, 2025. The District Court determined the Appellants had failed to
93 sufficiently plead a violation of the Indian Civil Rights Act, found in favor of the
94 Defendants, and dismissed the original complaint and the complaint as amended, on
95 both sovereign immunity defense and political question defense. The Appellants
96 appealed the January 24, 2025, Order Granting Motion for Leave to File Amended
97 Complaint and Order Dismissing Amended Complaint.

98 ISSUES AND LEGAL ANALYSIS

99
100 The primary question on appeal is whether the lower court erred in finding
101 the Appellants complaint was barred by the sovereign immunity defense or whether
102 the sovereign immunity of TBC has been waived pursuant to Article VI Section 3(b)
103 of the Constitution.

104

⁷ See Appellate case no. 2024-AP-002.

⁸ Id. To be clear this Court previously did not find an order on a motion to dismiss was not immediately appealable, rather it was determined that the adjudication on the Motion to Dismiss was not sufficient to render that May 9, 2024, Order final and ripe for appeal. It is important to note that the appellate court cannot hear new evidence or retry a case and as such relies upon the thoroughness of the lower court to ensure a record or decision is final. In cases of collateral orders this typically requires a district court to (1) "conclusively determine the disputed question," (2) "resolve an important issue completely separate from the merits of the action," and (3) "be effectively unreviewable on appeal from a final judgment." The collateral order doctrine would most commonly apply to orders of dismissal on immunity grounds. See *Casper & Lybrand v. Irving*, 437 U.S. 463, 468 (1978); See also *Ojaga Tribal Council v. United States Dept of Labor*, 187 F.3d 1174, 1179-80 (10th Cir. 1999).

The Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation (Constitution) establish and prescribe the duties and authorities of the Tribal Business Council (TBC). More specifically, Article VI Section 5 provides that the TBC has the authority...“(a) To manage all economic affairs and enterprises of the Three Affiliated Tribes of the Fort Berthold Reservation...(c) 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...(f) To adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies and Tribal officials of the Reservation.” To this end the establishment of accounts or funds with Tribal assets are not only permissible but fall directly within the duties of the TBC.

Pursuant to Article VIII of the Constitution, Tribal members retain rights to address decisions made by the TBC which they do not agree with through a referendum process. To initiate the referendum process, the Constitution requires submission of a petition bearing the signatures of “...at least 10 percent of the qualified voters of each community, demanding referendum on any proposed or enacted ordinance or resolution of the Tribal Business Council.” In the absence of a referendum, the Constitution provides one additional opportunity for members to challenge the actions of the TBC for violations of the Indian Civil Rights Act when “...it is determined through an adjudication that the Tribal Business Council has in a specific instance violated the Act.”

Sovereign immunity limits legal challenges to actions of TBC.⁶ The purpose of the Tribal sovereign immunity defense is to protect and preserve inherent rights of self-governance and the defense serves to allow governmental officials to fulfill duties and obligations without constant exposure to litigation or undue disruption of governmental functions.⁷ Tribal sovereign immunity prevents lawsuits against a Tribe unless there is a Congressional abrogation, the Tribe consents to suit or the Tribe otherwise explicitly waives its sovereign immunity.⁸

⁶ Article VIII, Constitution and Bylaws of the Three Affiliated Tribes of the Fort Berthold Reservation.

⁷ *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (stating that Tribal governments retain immunity from suit unless Congress explicitly waives that immunity); See also *Ex Parte Young*, 209 U.S. 123 (1908) (stating that sovereign immunity does not bar injunctive relief so long as the actions of the government officials are unlawful).

⁸ See *Fant v. City of Ferguson, Missouri*, 913 F.3d 757 (2019).

⁹ See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); see also *Hanson v. Parish*, 473 F.Supp.3d 970 (2020) (stating in relevant part that a tribe must clearly and explicitly state its intention to waive immunity and that courts are not to infer a waiver from ambiguous language or conduct).

136 In this case the Appellants contend that the Tribe has waived its sovereign
137 immunity by virtue of Article VI Section 3(b) of the Constitution. Article VI, Section
138 3(b) of the TAT Constitution states – *“The people of the Three Affiliated Tribes, in*
139 *order to achieve a responsible and wise administration of this sovereignty delegated*
140 *by this Constitution to the Tribal Business Council, hereby specifically grant to the*
141 *Tribal Court the authority to enforce provision of the Indian Civil Rights Act, 25 U.S.C.*
142 *1301, et seq., including the award of injunctive relief only against the Tribal Business*
143 *Council if it is determined through an adjudication that the Tribal Business Council has*
144 *in a specific instance violated the Act.”*

145
146 Based upon a clear interpretation of Article VI Section 3(b) of the
147 Constitution, sovereign immunity is waived by TBC only when it is first determined
148 through adjudication that the ICRA has been violated. This requires a complaining
149 party to set forth in their complaint facts or evidence, which if proven or admitted
150 would prove the existence of a right under the ICRA, and which would support a
151 claim that the established right has been violated by specifically pled actions of the
152 TBC.

153
154 After having held a hearing on a Motion to Dismiss, the District Court granted
155 the Motion finding no colorable claim to support the existence of a right under the
156 ICRA nor an action of the TBC that could be deemed in violation of a right. In
157 arriving at a decision on the Motion to Dismiss the District Court reviewed and
158 assessed the sufficiency of the pleadings in a light most favorable to the Appellants.
159 The District Court also provided an opportunity to the Appellants to amend
160 pleadings and held a hearing on the Motion to Dismiss affording yet another
161 opportunity to produce factual evidence.

162
163 To begin our analysis, we will therefore consider whether the District Court
164 erred in finding the pleadings to be deficient for failure to set forth a colorable claim.
165 To meet this standard the Appellants complaint must include well-plead factual
166 allegations which, if proven, would both establish the existence of a right under the
167 ICRA and a deprivation of that right without due process of law.⁹ Factual allegations
168 must be sufficient enough to potentially lead a party to prevail.¹⁰ Doing so would
169 constitute a colorable claim. The District Court was therefore correct to look first to
170 the sufficiency of the pleadings, considering facts alleged in the light most favorable

⁹ *Mundell v. Frickstad*, 648 F.2d 1175 (1981).

¹⁰ *Id.*; See also *Johnson v. Fitzgerald*, 1984 WL 154 (S.D. New York, 1984) (reviewing the sufficiency of pleadings including a review of the sufficiency of factual allegations and citing to *Mundell* which found that where conclusory allegations are made the Court will measure the adequacy of the complaint only on the factual claims).

171 to the non-moving party, to determine whether the claim as plead is valid and has
172 reasonable chance of success if facts are proven.¹¹ Even in the light most favorable
173 the pleadings were found to be insufficient by the District Court.
174

175 First, the Appellants have the burden of demonstrating the existence of a
176 property right. Merely alleging a broad statement that an ICRA violation has
177 occurred is not sufficient to trigger the Constitutional waiver, rather specific facts
178 must be contained in the complaint which, if proven, would prove an ICRA right and
179 a violation of that right. The District Court acknowledged that it need not decide
180 that an actual property right in the People's Fund existed at this point in
181 adjudication rather Appellants simply had to plead a colorable claim regarding the
182 existence of a proprietary right and a deprivation of that right in the absence of due
183 process under the ICRA.¹²
184

185 Appellants were afforded opportunities to establish a colorable claim to a
186 property right through filed pleadings and the adjudication on the Motion to
187 Dismiss. The District Court also provided Appellants an opportunity to amend their
188 complaint prior to holding a preliminary hearing on the motion to dismiss.¹³ In
189 arriving at its conclusion, the District Court properly considered the pleadings as
190 well as the enabling resolution and language pertaining to referendum vote on
191 distribution plan which seems to vest people with some authority. However, the
192 District Court took care to consider communal property and individual property
193 rights associated with communal property. The District Court correctly stated that
194 the enabling resolution does not preclude the TBC from ending the Peoples Fund in
195 the future if oil revenue dwindles to point that the Fund is no longer sustainable.¹⁴ It
196 necessarily follows that of the TBC can end the People's Fund should revenues be
197 depleted. A transfer property in or out of the Peoples fund would also be
198 permissible. Collectively these factors failed to demonstrate that an actionable
199 property right existed within the fund itself. However, the District Court stopped
200 short of making such determination and instead moved forward on an assumption
201 that a property right existed, noting that for an ICRA violation to be properly plead

¹¹ *Good Bear v. TBC* CV 2024-0269

¹² See Order Granting Motion for Leave to File Amended Complaint and Order Dismissing Complaint, January 24, 2025 at page 17. See also *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972) (requiring a legitimate claim of entitlement to a benefit for that benefit to be considered a property interest).

¹³ The District Court noted that the complaint as amended failed to satisfy the requirement of colorable claim. According to the record, the only change to the complaint requested an alternative remedy but no additional facts were plead to support the existence of a property right and a violation of that right by action of the TBC.

¹⁴ Order Granting Motion for Leave to File Amended Complaint and Order Dismissing Complaint, January 24, 2025 at 18.

the Appellants must not only demonstrate a property right but also a deprivation of that right without due process.¹⁵

Appellants' complaint alleges that their property rights have been deprived by TBC without due process. Although this Court is not convinced that the Appellants produced facts or evidence to adequately demonstrate the actual existence of a property right, were we to assume, as the District Court did, that a property right in the People's Fund did exist, that property right in and of itself would not be sufficient to trigger a Constitutional waiver of sovereign immunity.¹⁶ To assess the validity of an ICRA violation, this Court must also consider whether the pleadings established a colorable claim to support their assertion that their property right had been unlawfully deprived. The relevant provision of the ICRA is stated at 18 USC 1362 [1](B): *No Indian Tribe can... deprive person of property without due process of law. This right is implicated when any governmental action affects individual property and requires government to follow fair procedures and provide legal basis for actions.*¹⁷ To prevail on this argument, Appellants have the burden to demonstrate a colorable claim to both the existence of a property right and an unlawful deprivation of that property by action of the TBC.

Appellants fell short of pleading or citing to any factual evidence that property had been taken but rather argue that the transfer of funds by the TBC could not occur without the provision of due process to Tribal members. At no time do they argue that they have been deprived of property. Instead, Appellants contend that they, along with all Tribal members not a party to the cause of action, hold a proprietary interest in the Peoples Fund and they claim their proprietary interest was potentially impacted in a negative way by the TBC when they transferred some money from the Peoples Fund to a private equity pursuant to Resolution No. 24-248-FWF.

There are several problems with this line of argument. There is no allegation of actual loss or deprivation of property only transfer. There are no facts that would demonstrate that the Peoples Fund ceased to exist. There are no facts plead or provided during the preliminary hearing or at oral argument before this Court which would demonstrate that enrolled members would not continue to receive payments or that payments would decrease.¹⁸ In fact, during oral arguments before this Court, Appellants acknowledged ongoing receipt of payments. At oral

¹⁵ *Id.* at 17.

¹⁶ See Order Granting Motion for Leave to File Amended Complaint and Order Dismissing Complaint, January 24, 2023 at page 20.

arguments Appellants did question where the funds for recent distribution came from but again provided nothing more than mere speculation regarding the source of the distribution.

The District Court determined the "takings" issue was not sufficiently plead or established to justify a waiver of sovereign immunity.¹⁷ The Court asked whether the transfer of funds from trust account to private equity account may constitute a taking but ultimately determined that while the transfer may result in less disbursements to individual members such a position was speculative. As the District Court noted, a transfer of funds does not constitute a deprivation of funds¹⁸ and in fact Appellants admitted as of the date of the oral arguments in this case they continued to receive regular distributions. Additionally, the parties at oral argument agreed that any financial gains or losses related to the transfer of funds was speculative and could result in greater gains from an investment perspective. We agree with the District Court that there is no colorable claim to support the contention that actions of TBC constituted a deprivation of a property right were we to assume that a property right existed.¹⁹ The District Court could have stopped the analysis here. Finding no colorable claim that actions of TBC constituted a deprivation of an assumed property right was a sufficient to determine there was no colorable claim that an ICRA right, if one existed, had been violated. The foregoing is a prerequisite to finding a Constitutional waiver of sovereign immunity under Article VI Section 3(b) of the Constitution.

Despite the lack of colorable claim regarding the deprivation of an ICRA right, the District Court chose to also address allegations of due process violations. To prevail on a due process violation Appellants also had to provide factual information which, if proven, would demonstrate a right to due process and a violation of that right. Underlying the right to due process is the premise that there should be fairness in government actions that affect individual rights. In this case there were a couple of arguments advanced through pleadings and at oral argument regarding due process. The first pertained to the actions of TBC in passing Resolution No. 248-FWF in a closed session, however any due process claims pertaining to this action of TBC became a moot issue as the TBC did, prior to transferring funds, repass the resolution in general session.

¹⁷ Id. at 18.

¹⁸ Id. at 19.

¹⁹ Id. at 5 (wherein the District Court noted that while the Plaintiff's may have plead a property right to the People's Fund the assertion that the Defendant's actions in transferring some of the monies in that Fund out of a federal trust fund to a private investment resulted in a deprivation under ICRA is rejected.)

273 The second argument made by Appellants relevant to due process claimed a
274 denial of due process resulted when the District Court dismissed the case after
275 preliminary hearing on the Motion to Dismiss. Appellants argue that denying a full
276 trial on the merits constituted a denial of due process.⁴⁰ We disagree. Adjudication
277 is not limited to a trial on the merits and may be satisfied through various formal
278 court proceedings so long as the parties were all afforded notice and an opportunity
279 to be heard on the issues. To this end, adjudication does not require nor mandate a
280 trial on the merits and can be met through a preliminary hearing wherein the
281 District Court provides an opportunity to the parties to meet their burden of proof.
282 A full trial on the merits is not guaranteed to a party who is not able to successfully
283 prove a Constitutional waiver of sovereign immunity.

285 In the absence of a colorable claim demonstrating a property right exists and
286 that the property right has been deprived by the TBC without due process of law,
287 the MHA Nation Constitutional provisions waiving sovereign immunity are not
288 triggered thereby barring adjudication. To decide otherwise would completely
289 undermine the purpose of the sovereign immunity defense. Proper recourse when
290 there is no colorable claim of an ICRA right and violation is not adjudication; it is
291 through referendum vote.

293 The final question addressed by the District Court was whether the case was
294 barred by the political question doctrine. The District Court cited to the purpose of
295 political question doctrine which supports separation of powers and precludes
296 courts from second guessing decisions of legislative bodies that are exclusively
297 within their discretion.⁴¹ We need not address the political question doctrine as it is
298 clear the case is barred by sovereign immunity.

300 CONCLUSION

301 Viewing the pleadings and evidence presented at the November 7, 2024,
302 hearing in the light most favorable to the Appellants this Court finds no abuse of
303 discretion nor errors of law by the District Court. This Court hereby AFFIRMS the

⁴⁰ Appellants argue that a full trial was needed to obtain evidence to support their claim but admittedly made no attempts to acquire such evidence in advance of litigation through discovery. During oral argument the Appellants acknowledged there had been no specific facts plead, and no discovery request made in advance of litigation that demonstrated a property right or a violation of that right. Rather Appellants expressed that they wanted to utilize a trial on the merits to uncover information or facts that they hoped would demonstrate both an ICRA right and a violation of that right. To be clear the purpose of a trial is to present evidence to the court; it is not a forum for investigation or discovery.

⁴¹ See Order Granting Motion for Leave to File Amended Complaint and Order Dismissing Complaint, January 24, 2025 at 21.

301 District Court does not in so far as sovereign immunity bars further adjudication in
302 this case. This Court need not address the issue of political question.
303

304 The Court notes that Appellant filed additional motions with this Court
305 namely a Motion for Leave to File Motion for Judicial Notice filed on September 17
306 2023. Since this case is barred by a finding of sovereign immunity the Court denies
307 the Motion. Further, the document tendered for judicial notice is not self-
308 authenticating and lacks the required government seal for judicial notice
309

310 It is so Ordered this 17th day of October 2023, 17
311

312 438441

313
314 MICHAEL F. RIVARD, JUDGE
315 MINNESOTA SUPREME COURT

316
317 KELLY STONER, JUSTICE
318 MINNESOTA SUPREME COURT

319
320 JAMES MAXSON, JUDGE
321 MINNESOTA SUPREME COURT

322
323 OFFICE OF MINN. SUPREME COURT
324 I hereby certify that I have compared the
325 within instrument with the original Case No. AP 2023-001
326 Now on file in my office, and that it is a true
327 copy of the same, and the above is true copy of the
328 thereon.
329 Dated at New Town, North Dakota this 20th
330 day of October 2023
331 S.D. Mota
332 MINN. SUPREME COURT CLERK