

LOWER BRULE SIOUX TRIBAL COURT )  
LOWER BRULE SIOUX TRIBE )SS  
LOWER BRULE SIOUX TRIBAL JURISDICTION )

TRIBAL COURT  
CIVIL DIVISION

ORVILLE LANDEAU, JR., )  
JOHN MCCAULEY, )  
Plaintiff/Appellee, )

DEFENDANT'S NOTICE OF APPEAL  
REQUEST FOR EXPEDITED REVIEW

v. )

KEVIN WRIGHT, SONNY ZIEGLER, )  
AND DESIREE LAROCHE, )  
Defendant/Appellant. )

CASE NO. CIV14-0119

**PLEASE TAKE NOTICE:** The Defendant(s), Kevin Wright, Sonny Ziegler and Desiree Laroche, in the above-entitled action hereby appeal to the Lower Brule Sioux Tribal Court of Appeals, from the Judgment of the Lower Brule Sioux Tribal Court, issued on July 9, 2015. Defendant(s) respectfully request an expedited scheduling order be issued based upon the irreparable harm presently being suffered by the Lower Brule Sioux Tribe, which is proximately caused by the unconstitutional actions of the Plaintiff/Appellee(s).

CASE NAME: Orville Landeau, Jr. et al. vs. Kevin Wright, et al., Case No. 2014-0119

APPELLANT(S): Kevin Wright, Vice President Rosebud Sioux Tribe, Sonny Ziegler and Desiree Laroche Tribal Council Members.

APPELLEE(S): Orville Landeau, Jr. and John McCauley.

ATTORNEY FOR APPELLEE(S): Mr. Terry Pechota  
1617 Sheridan Lake Rd  
Rapid City, SD 57702  
Email: [tpechota@1868treaty.com](mailto:tpechota@1868treaty.com)

ORDER APPEALED FROM: Order Re: Quorum and Certification Interlocutory Appeal  
Issued July 9, 2015  
See, attached Exhibit "A"

PRESIDING JUDGE:

Judge B.J. Jones

REASON(S) FOR APPEAL:

(1) The lower court erred in its determination that the court had subject matter jurisdiction over the causes of action contained in the Plaintiffs' Amended Complaint, as absolutely no expressed waiver of Defendant's sovereign immunity substantively exists within any of the laws of the Lower Brule Sioux Tribe or based upon any Congressional act.

(1) The lower court erred in its interpretation of the Lower Brules' Sioux Tribe's By-laws, Article IV, Section 4, which indicates that "[I]n all instances, resolution, or motions the duly elected tribal councilmen **may** act by two third (2/3) majority vote of the full Tribal Council...." when said Court held that it requires the affirmative vote of four (4) members of the Tribal Council to approve the appointment of a replacement to fill the vacancy of Mr. Michael Jandreau who died while in office. (emphasis added)

(2) The lower court further erred when it held that three (3) members of the Tribal Council or even two (2) members of the Tribal Council can fill a vacancy on the Tribal Council when a quorum of five members are present as per *Article IV, Section 2* of the By-laws of the Lower Sioux Tribe.

The Appellant(s) hereby incorporates by reference each and every document submitted to the lower Court in Case No. 2014-0119 and any and all motions filed therein.

DATED this 15<sup>th</sup> day of July, 2015.



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Montana & Associates, PLLC  
Attorney for Appellant  
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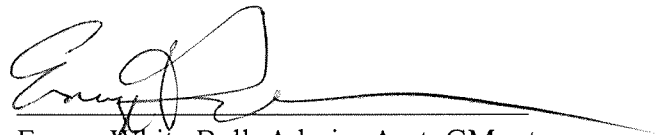
**CERTIFICATE OF SERVICE**

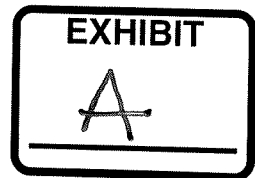
I do hereby certify that I mailed a true and correct copy of the foregoing *Notice of Appeal, Exhibit "A"* to the below indicated legal counsel for the Plaintiff(s) in their individual and official capacity, United States postage prepaid and *via* email:

Terry Pechota  
Attorney for Plaintiff(s)  
1617 Sheridan Lake Rd  
Rapid City, SD 57702  
Email: [tpechota@1868treaty.com](mailto:tpechota@1868treaty.com)

Lower Brule Sioux Tribal Court  
Clerk of Court  
Hand Delivery  
*Via* Email: No Email due to Storm  
Judge Jones: [hon.bj.jones@gmail.com](mailto:hon.bj.jones@gmail.com)

DATED this 15<sup>th</sup> day of July, 2015.

  
Emmy White Bull, Admin. Asst. GMont.



LOWER BRULE SIOUX TRIBAL COURT )
LOWER BRULE SIOUX TRIBE ) : SS IN TRIBAL COURT
LOWER BRULE SIOUX JURISDICTION )

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ORVILLE LANGDEAU JR., )
JOHN MCCAULEY, )
Plaintiff-Intervenors ) Civ.# 14-12-0119

vs. )

KEVIN WRIGHT, SONNY ZIEGLER, ) NOTICE OF ENTRY OF
AND DESIREE LAROCHE, ) JUDGMENT AND/OR
Defendants. ) ORDER

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TO: Terry Pechota and Gary Montana

PLEASE TAKE NOTICE THAT the Lower Brule Sioux Tribal Court has entered
a (n ORDER and CERTIFICATION of APPROPRIATENESS FOR
INTERLOCUTORY APPEARL in the above-entitled matter on the 9th day of July 2015,
by B.J. Jones, Lower Brule Sioux Tribal Court Special Judge, A copy of which is attached
hereto.

Dated this 13th day of July 2015

Maurice Langdeau
Clerk of Courts

Pechota Law Office
Attn: Terry Pechota
1617 Sheridan Lake Road
Rapid City, SD 57702
Email the Order

Montana & Associates
Attn: Gary Montana
N12923 North Prairie Road
Osseo, WI 54758
Email the Order

CERTIFICATE OF SERVICE

I, Clerk of Courts for the Lower Brule Sioux Tribal Court, do hereby certify that a
true and correct copy of the Judgment and the Notice of Entry of ORDER and
CERTIFICATION of APPROPRIATENESS FOR INTERLOCUTORY APPEARL
were served upon the following persons, by first class mail with postage prepaid, on the
dated shown below.

Dated this 13th day of July 2015.

Maurice Langdeau
Clerk of Courts



Plaintiffs, did not seem to be within the realm of a judicial order, absent some stipulation from the Parties, because the Constitution states that the vacancy has to be filled by a vote of the Council.

The Council met in good faith and on a motion made to fill the Chairman's vacant seat with Lewis Grassrope two voted in favor of said motion, one voted against and one abstained. Vice-Chair Kevin Wright did not vote because he was acting Chairman for purposes of the July 1, 2015 regular Council meeting. This Court indicated that it was not confident that the Vice-Chair should have been disqualified from voting because even though he was chairing the meeting the Tribal Constitution does not indicate that he becomes the Chairman by default when the Chairman dies. This Court therefore received his vote on the record and he indicated he would vote in favor of Mr. Grassrope.

The Court then indicated that it was denying the request for reconsideration of this Court's order of June 30, 2015 finding that the Lower Brule Sioux Tribal Constitution and By-Laws require at a minimum a 2/3's vote of the full Council in favor of the replacement for the vacant Chairman's seat. This Court does note, however, that the language of the By-Law does state that the Council "may" pass motions and resolutions by 2/3's vote of the majority, but the Court interprets this provision in light of the last sentence of that By-Law, which indicates that the Council shall try in every case to vote by consensus or unanimous vote. 2/3's of the majority thus appears to be the minimum vote, although a unanimous vote would be preferable.

However, this Court notes that the Defendants have provided to this Court proof that in the past the Tribal Council has passed ordinances, resolutions and motions by less than a 2/3's vote of the full Council. This proof, which was also attached to the

Defendants' brief on the majority vote issue, is proof that the Tribal Council, in its prior practices and customs, would oftentimes ignore the 2/3's of the full council vote requirement. There is even proof that a vacancy on the Council was filled by a vote of less than 4 council members. Plaintiff Langdeau was on the Council when many of these votes were taken. Therefore, it does appear to this Court that the Tribal Council, including at least Plaintiff Langdeau and the former Chairman, would take action on the Council contrary to the position they take in this litigation.

However, this Court must interpret the Constitution as written because it is the voice of the people of the Tribe and the only reasonable interpretation of that provision is that laid out in the Court's June 30, 2015 order. If former Councils have ignored this provision they will have to answer for their actions if called into question later.

The Court asked the parties to meet and try to resolve this issue by having four of them approve of a replacement for the deceased Chairman. They did meet in good faith, but were only able to effect the action described above. Instead of ordering them to continue to meet, much like a Court can do to a jury, this Court recognized its limitations on forcing elected leaders to take some action, and instead opted to put their vote on the record and allow the Defendants to file an interlocutory appeal on the 2/3's vote issue. The Appellate Court can also determine if this Court is correct in determining whether 4 of the remaining Council must vote for the replacement for the Chairman. This Court also finds that although the Parties acted in Council session as if Defendant Wright could not vote, this is not clear to this Court because only the Chairman is denied the right to vote unless there is a tie. Is Mr. Wright the Chairman? Not clear, although he was certainly

Chairing the meeting in question. This Court therefore got his vote on the record in case the Appellate Court rules that he did have the right to vote.

The Plaintiffs ask that this Court enter a preliminary injunction enjoining any actions of Defendants that purported to remove them from office on December 12, 2014 and also to enjoin any actions to enforce the motions of the Council on May 6, 2015 purporting to terminate the attorneys for the Tribe and to terminate certain employees. For the reasons stated herein this Court continues its preliminary injunction on the removal issue, but denies the request for additional relief because this Court is not confident that the Plaintiffs have made a sufficient showing of this Court's jurisdiction to order further relief.

To grant a preliminary injunction the Plaintiffs must establish irreparable harm, a likelihood of succeeding on the merits, harm to the public and an inadequate remedy at law. The Court has already granted a restraining order preventing the Defendants from removing them from their elected seats without adhering to the Constitution and the Indian Civil Rights Act. As indicated before this Court believes the Defendants are not immune from claims for injunctive relief arising under the Indian Civil Rights Act and a removal of them from their elected positions without due process of law states an ICRA claim.

The Plaintiffs also claim that the Court should declare invalid the actions of the Tribal Council dated May 6, 2015 where the Council ratified the actions of Wright to terminate the tribal attorneys, some employees and to hire additional employees. Assuming for the sake of argument that the Plaintiffs would have standing to raise these issues- under a theory that their ability to function as a government is compromised by



these actions- this Court does not believe that these claims arise under the ICRA. The Lower Brule Sioux Tribal Constitution and laws do not waive immunity from suits against elected leaders. This Court found a waiver in the ICRA under the Bay Mills case. However, this Court does not find that an elected leader has a property right to claim that a vote that he disagrees with is taking a property right from him. The Court can understand the argument that his vote is a property right that cannot be taken without due process, but the undisputed testimony is that the Plaintiffs opted to leave the meeting on May 6, 2015 instead of casting a vote on the controversial measures ratified that day. Had they voted and their vote was ignored or not counted this may state an ICRA violation. The Court is very hesitant, however, to permit an elected leader to come into Court and ask the Court overturn an action of the Council that he disagrees with, even if there are apparent procedural irregularities.

Of course if the Appellate Court affirms this Court's assessment of the 2/3's vote issue such a ruling calls into question the legality of the actions taken by the Tribal Council on May 6, 2015. It would be up to the fully-constituted Council, if that ever gets accomplished, to address those actions and either ratify them or deem them invalid. However, the Court does not see those claims arising under ICRA however. This ruling is of course not binding upon any attorney or employee terminated that day to bring any private action they may have, provided of course they could document either a waiver of immunity or an abrogation of that immunity.

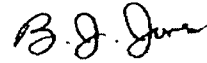
WHEREFORE it is hereby

ORDERED, ADJUDGED, AND DECREED that the Court denies the Defendant's motion for reconsideration of its order of June 30, 2015 on the quorum and

the 2/3's of full Council vote issue, but certifies that this Court's determination of this issue is a final order under the rules of civil procedure that can be appealed right away. In the alternative the Court finds it to be an interlocutory order appropriate for appellate review at this time, and it is further

ORDERED, ADJUDGED, AND DECREED that the Court grants a preliminary injunction preventing the Defendants from removing the Plaintiffs from their elected positions or attempting to effectuate the actions they took on December 12, 2014 to remove the Plaintiffs from their positions. The further request for preliminary injunctive relief is DENIED but the Court also certifies that denial as appropriate for interlocutory appeal.

So ordered this 9<sup>th</sup> day of July 2015.



B.J. Jones  
Lower Brule Sioux Tribe  
Special Judge

ATTEST: 