IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

ALABAMA-QUASSARTE TRIBAL TOWN, Federal-recognized Indian Tribe,

Plaintiff,

v.

FIRST NATIONAL BANK AND TRUST COMPANY OF OKMULGEE, WILSON YARGEE, ROVENA YARGEE, TAHLINA NOFIRE, all Defendants joined individually And in their official capacity for purposes of declaratory relief as may be necessary, and prospective Injunctive Relief only,

Defendants.

Case No. **22-CV-268-RAW**

MOTION AND MEMORANDUM OF LAW IN SUPPORT OF DISMISSAL OF AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

TABLE OF CONTENTS

I. FACTUAL SUMMARY 2

A. Chief Wilson Yargee and Second Chief Rovena Yargee Were Elected to Office in April, 2021, in an Undisputed Election. 3

B. The Chiefs Expressed Concerns about the Financial Management of Town Funds and Programs and of Town-Owned Enterprises. 3

C. Plaintiffs Hijacked an Ordinary Membership Meeting to Engineer a Surprise Vote to Remove the Defendants from Office. 5

D. Events Following the October 28 Meeting. 7

E. Creation of the AQTT Court. 7

II. LEGAL STANDARD 8

III. ARGUMENT 9

A. The Court Lacks Subject Matter Jurisdiction Over The Complaint Because It Involves An Internal Tribal Leadership Dispute That Does Not Raise A Federal Question. 10

1. Federal question jurisdiction is present only if federal law is determinative of the issues presented. 10

2. The resolution of a tribal governance dispute requires the application of tribal law, not federal law. 11

4. Section 1362 is not an independent basis for federal subject matter jurisdiction. 15

B. Plaintiffs' Attempt to Rely Upon the Indian Civil Rights Act and References to the Sovereign Immunity Of the Town Do Not Create A Federal Question. 15

C. References To the Full Faith and Credit Clause Of The U.S. Constitution, The Oklahoma Indian Welfare Act ("OIWA"), the Indian Self-Determination Act ("ISDA"), and Section 8 (a) of the Small Business Act Do Not Create Federal Question Jurisdiction. 19

1. Plaintiffs' reliance on the full faith and credit clause of the U.S. Constitution, the ISDA and Sec. 8(a) Raise New Claims. 20

2. The federal laws cited by Plaintiffs are not at issue in this case. 21

D. The Request For Relief In The Form Of An Injunction Of The State Court Violates The Anti-Injunction Act (28 U.S.C. § 2283). 23

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Amidax Trading Grp. V. S.W.I.F.T. SCRL,
671 F.3d 140 (2d Cir. 2011) 9

Attorney's Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Mississippi in Iowa,
609 F.3d 927 (8th Cir. 2010) 12, 15

Becker v. Ute Indian Tribe of the Uintah & Ouray,
770 F.3d 944 (10th Cir. 2014) 17, 18

Bos. & Montana Consol. Copper & Silver Min. Co. v. Montana Ore Purchasing Co.,
188 U.S. 632 (1903) 17

Brown v. McCormick,
608 F.2d 410 (10th Cir. 1979) 25

Caterpillar Inc. v. Williams,
482 U.S. 386 (1987) 17

Cent. Green Co. v. United States,
531 U.S. 425 (2001) 9

Dicke v. Cheyenne-Arapaho Tribes, Inc.,
304 F.2d 113 (10th Cir. 1962) 12

Goodface v. Grassrope,
708 F.2d 335 (8th Cir. 1983) 11, 17

Gunn v. Minton,
568 U.S. 251 (2013) 9

Holt v. United States,
46 F.3d 1000 (10th Cir. 1995) 9

In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litig.,
340 F.3d 749 (8th Cir. 2003) 12

Kokkonen v. Guardian Life Ins. Co. of Am.,
511 U.S. 375 (1994) 9

Longie v. Spirit Lake Tribe,
400 F.3d 586 (8th Cir. 2005) 11, 23

Louisville & Nashville R. Co. v. Mottley,
211 U.S. 149 (1908) 17

Mandeville v. Canterbury,
318 U.S. 47 (1943) 25

Martinez v. S. Ute Tribe of S. Ute,
249 F.2d 915 (10th Cir. 1957) 12

Mescalero Apache Tribe v. Martinez,
519 F.2d 479 (10th Cir. 1975) 16

Native Am. Church of N. Am. V. Navajo Tribal Council,
272 F.2d 131 (10th Cir. 1959) 12

New Mexicans for Bill Richardson v. Gonzales,
64 F.3d 1495 (10th Cir. 1995) 9
O'Bryan v. Holy See,
556 F.3d 361 (6th Cir. 2009) 9
Papasan v. Allain,
478 U.S. 265 (1986) 9
Ponca Tribe of Indians of Oklahoma v. Cont'l Carbon Co.,
439 F. Supp. 2d 1171 (W.D. Okla. 2006) 24
Prairie Band of Pottawatomie Tribe of Indians v. Puckkee,
321 F.2d 767 (10th Cir. 1963) .... Passim
Rebecca Torres v. Acting Muskogee Area Director, Bureau of Indian Affairs,
34 IBIA 173 (1999) 7, 17
Runs After v. United States,
766 F.2d 347 (8th Cir. 1985) 13
Sac & Fox Nation v. Hanson,
47 F.3d 1061 (10th Cir. 1995) 26
Sac & Fox Tribe of Mississippi in Iowa v. Bear,
258 F. Supp. 2d 938 (N.D. Iowa) 19
Sac & Fox Tribe of the Mississippi in Iowa, Election Bd. v. Bureau of Indian,
439 F.3d 832 (8th Cir. 2006) 12, 19
Santa Clara Pueblo v. Martinez,
436 U.S. 49 (1978) .... Passim
Smith v. Apple,
264 U.S. 274 (1924) 26
Smith v. Babbitt,
100 F.3d 556 (8th Cir. 1996) 11, 12
Spickler v. Dube,
626 F. Supp. 1092 (D. Me. 1986) 25
Taylor v. Sturgell,
553 U.S. 880 (2008) 25
Tooele Cnty. v. United States,
820 F.3d 1183 (10th Cir. 2016) 24, 25
Tyler v. Russel,
410 F.2d 490 (10th Cir. 1969) 26
Vendo Co. v. Lektro-Vend Corp.,
433 U.S. 623 (1977) 24

Federal Statutes

25 U.S.C. § 1301 11
25 U.S.C. §§ 5201-5210 21
28 U.S.C. § 1331 .... 10, 11, 12
28 U.S.C. § 1362 .... 10, 15, 16
28 U.S.C. § 2201 16
28 U.S.C. § 2283 .... 1, 24, 26

State Statutes

12 Okla. Stat. sec. 30(B) 22
Okla. Stat. tit. 12, § 30.......... 8

Federal Rules

Fed. R. Civ. P. 12(b)(1).......... 2, 8, 9
Fed. R. Civ. P. 65(d)(2).......... 25
Fed.R. Civ. P. 19.......... 19
Rule 12(b)(6) 2
Rule 65(d).......... 25
Rule 65(d)(2)(A) or (B) 25

This case involves an intratribal dispute, the resolution of which requires the interpretation and application of tribal law. The Amended Complaint ("AC", ECF No. 23) is filed in the name of the Alabama Quassarte Tribal Town ("AQTT" or "Town"), a representation that Defendants contest. The persons claiming to represent the Alabama Quassarte Tribal Town in this action are Sam Marshall, who claims to have been appointed to serve as the interim Chief; Lena Wind, Annie Merritt, Bernadette Whitetree, Wendy Wind, and Brina Williams, all of whom previously served on the Town's Governing Committee.[1] *See* Election Confirmation Letter, ECF No. 15 at 32. However, as discussed *infra.* Section I, E, the Defendants contend that these persons were removed from office in December, 2021. As a result, Plaintiffs lack authority to speak for the Town or initiate litigation on its behalf. *See* BIA Confirmation Letter, ECF No. 15 at 34 (noting that Sam Marshall, Lena Wind and other members of the Wind-Marshall group have no authority to act on behalf of the Town).

The AC is Plaintiffs' second bite at the apple. Defendants filed a Motion to Dismiss ("MTD") the original complaint ("OC") on October 22, 2021.[2] The Court entered an order on October 24, 2022, giving Plaintiffs until November 7, 2022, to file an amended complaint providing "additional legal or factual averments which may vitiate the Defendants' claims of insufficiency."[3] The Court's order instructed that Plaintiffs could drop, but could not add, parties or claims. Plaintiffs sought and were granted a fourteen-day extension of time to file the AC.

[1] Together with Mary Tiger, Famous Marshall, Jr., and Ghastin Harjo, these persons are an extended family that forms the primary opposition to Chief Wilson Yargee and Second Chief Rovena Yargee. They are referred to as the Wind-Marshall group. *See* Brief to BIA, ECF No. 15 at 38.

[2] When Defendants filed the MTD, Town Court Judge Tahlina Nofire was the only Defendant who had been served and an affidavit of service had not been filed with the Court. Judge Nofire is not named as a defendant in the AC although she is listed on the certificate of service. Also, neither Chief Wilson Yargee nor Second Chief Rovena Yargee have been served with the AC. Without waving the right to challenge service upon any of them, this Motion and Memorandum of Points and Authorities is submitted on behalf of both Chiefs and Judge Nofire.

[3] The Court also instructed that Plaintiffs "must" attach a redlined version of the original complaint to the AC, which Plaintiffs failed to do.

Plaintiffs have once again failed to properly plead a cause of action that raises a federal question. The AC does not change the fact that Plaintiffs are asking this Court to resolve an internal tribal governance dispute, the resolution of which requires the interpretation and application of tribal law, not federal law. Thus, Defendants once again respectfully request that the Court dismiss all claims for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Neither federal question nor diversity jurisdiction exists. Defendants further move for the dismissal of Plaintiffs' claim for an injunction pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. The Anti-Injunction Act prohibits such relief. The points and authorities in support of Defendants' Motion are set forth below.

I. FACTUAL SUMMARY

The Plaintiffs and Chief Wilson Yargee and Second Chief Rovena Yargee (the "Chiefs") have been involved in an internal leadership dispute since at least October 28, 2021, when Plaintiffs led an unsuccessful attempt to remove the Chiefs from office. The attempt was unsuccessful because the Chiefs were not provided with due process of law. The Chiefs have continuously disputed their removal from office and have continued to function in their respective roles as Chief and Second Chief. The Plaintiffs have purported to appoint Sam Marshall to serve as the interim chief, and they have used an armed force to take over three Town governmental and enterprise buildings. Unfortunately, this ongoing dispute has disrupted the functioning of Town government and interfered with the provision of services to tribal members. While this dispute is in desperate need of resolution, as many courts have recognized, federal courts do not have subject matter jurisdiction to resolve tribal leadership disputes.

A. Chief Wilson Yargee and Second Chief Rovena Yargee Were Elected to Office in April, 2021, in an Undisputed Election.

The parties named in the Complaint for Injunctive and Declaratory Relief are opposing groups competing for governmental control of the Town. Wilson Yargee is the duly elected Chief of the Town, and Rovena Yargee is the duly elected Second Chief. Both were elected in April, 2021, in an uncontested election conducted according to the AQTT Constitution and bylaws. This election was certified by the AQTT Election Committee Chairperson on May 25, 2021, and the Chiefs were sworn in on May 27, 2021. (*See* Election Confirmation Letter, ECF No. 15 at 32). The outcome of this election is undisputed.

B. The Chiefs Expressed Concerns about the Financial Management of Town Funds and Programs and of Town-Owned Enterprises.

Shortly after Chief Yargee and Second Chief Yargeee assumed office, Molly Moore was hired as the Tribal Administrator. *See* Ex. 1, Affidavit of Molly Moore, ¶¶ 1, 4. Ms. Moore soon began to meet with Town staff, including the Accounting Director, and gather information about the status of the Town programs and financial accounts. Ex. 1 at ¶¶ 5-6. Soon after this process began, the Accounting Director resigned without providing notice. Ex. 1 at ¶ 7. As Ms. Moore began to review bank statements, she discovered considerable accounting discrepancies, including overdraft charges, negative account balances, and program account balances that didn't match the financial reports provided by the Accounting Department to Program Directors, the Governing Committee, and the Chiefs. Ex. 1. at ¶ ¶ 8-9. After gaining access to requisite passwords and access codes to the federal financial systems for drawdowns and reporting, Ms. Moore discovered that federal funds had not been draw down and that the required financial reports for these funds had not been filed for anywhere from one to three years. Ex. 1. at ¶¶ 12-14.

Ms. Moore also contacted the Town's auditing firm in September or October 2021 to check on the audit for FY 2021[4] and learned through a series of emails that the former Accounting Director was delaying the commencement of the audit process and eventually stopped communicating with the audit firm. Ex. 1 at ¶¶ 10-12. The Town was without an Accounting Director due to her hasty resignation, and due to the general disarray of the Town's finances and accounts, Ms. Moore initiated discussions with the Chiefs about the retention of an accounting firm to help reconcile accounts, work with the auditors, help update Accounting Department policy and procedure, and train the two clerks in the Accounting Department. Ex. 1 at ¶¶ 14, 17. Documentation regarding Town programs, the bank accounts, the lack of drawdowns and reporting regarding federal funds, and the status of the audit was provided to the Governing Committee in September of 2021. Ex. 1. at ¶ 16. The Chiefs, the Governing Committee and Ms. Moore met with RedW, a prominent Indian Country accounting firm, which was eventually hired by Chief Yargee to assist with putting the Town's accounts in order and helping to prepare for the conduct of the FY 2021 audit. Ex. 1. at ¶¶ 14, 16, 17.

Ms. Moore also initiated discussions with the Chiefs about drawing down funds for the purpose of funding a variety of federal programs for which the Town had received funding. Ex. 1. at ¶ 15. It was decided to transfer about $325,000.00 for these purposes. Ex. 1. at ¶ 19. Ms. Moore also discussed the status of federal programs and other operational concerns with the Chiefs. Ex. 1. at ¶¶ 21-22. Concerns included the jeopardy that federal programs were placed in due to the lack of reporting and drawdowns, the possibility of funds being co-mingled, and the state of the Tribe's financial accounting and physical record management. Ex. 1. at ¶ 22. Through these discussions, she learned that the Town had been on high-risk status under a previous administration. Ex. 1. at ¶ 21.

Chief Yargee also requested financial information from the Town's economic development companies, including RedTown, LLC ("RedTown"), but never received

[4] FY 2021 ended on September 30, 2020, nearly eight months before Chief Yargee took office.

the requested information. *See* Report re: Occupation, ECF No. 15 at 41. RedTown is an economic development enterprise of the Town, and like other tribal enterprises, its purpose is to provide income to the Town government and jobs to Town members. *See About RedTown*, https://www.redtown.net, (last visited December 2, 2022). However, it is being operated by members of the Wind-Marshall family for their own benefit rather than for the benefit of the Town as a whole. For example, Chief Yargee expressed concerns that family members of the Wind-Marshall group were being promoted to leadership positions in the company in violation of the AQTT Constitution and Corporate Charter. *See* Report re RedTown, ECF No. 15 at 44. RedTown had estimated revenues of $131,000,000.00 from 2019 to June 30, 2022. ECF No. 15 at 43.

However, the Chief expressed concern that no dividends had been paid to the Town from RedTown or any other tribal enterprises, including the Town's Smoke Shop. *See* ECF No. 15 at 44. The Wind-Marshall group also transferred the accounts of both the Smoke Shop and RedTown to unknown banks, and the Town government has not had access to the companies' bank accounts since the beginning of Chief Yargee's administration. *See* ECF No. 15 at 44.

C. Plaintiffs Hijacked an Ordinary Membership Meeting to Engineer a Surprise Vote to Remove the Defendants from Office.

On October 28, 2021, at a regularly scheduled Membership Meeting, members of the Wind-Marshall group questioned Chief Yargee about his hiring of the accounting firm and other financial matters. *See* October 2021 Minutes, ECF No. 15 at 52. Leaders of the Wind-Marshall Group, including Lena Wind, Annie Merrit, Mary Tiger, Wendi Wind, and Famous Marshall, led the questions and introduced complaints against the Chief. A primary complaint was that Chief Yargee did not alert or request permission from the Governing Committee to hire the accounting firm RedW. *See* ECF No. 15 at 53. The Chief explained that he had called an emergency meeting of the Governing Committee regarding the hiring of RedW but that the Governing Committee "went against it." *See* ECF No. 15 at 59.

Second Chief Yargee explained that the Town had sought three bids but only received one and that the BIA told them that the Town didn't need to get more bids. ECF No. 15 at 60. The Chief signed the contract with RedW because "the Chief has the power to do these things." ECF No. 15 at 59. See also the AQTT By-Laws, Art. I, Duties of Officers (the Chief "shall, at all times, have general supervision of the affairs of the town) (ECF No. 23-1 at 4).

There was no notice to either of the Chiefs or to the Town's membership that a vote to remove the Chiefs from office would be held at this meeting. [5] Despite this fact, after discussion of these issues, a motion to remove both Chiefs was introduced by Brina Williams, a member of the Wind-Marshall group. *See* October 2021 Minutes (ECF No. 15 at 69). The vote was 15-5 in favor of removal. *Id.* at 70. Both Chiefs have continuously contested the legitimacy of their removal. *See AC,* ECF No. 23 at ¶¶ 2 (noting that the Chief contests his removal on the basis of the denial of due process of law), ¶¶ 10-11 (noting that the Chief and Second Chief continue to claim their status as such), ¶ 57 (noting that both the Chief and Second Chief continue to claim that they remain in power), and ¶ 62 (noting again that the Chief and Second legally hold their offices despite the illegal attempt to remove them). Their primary objection to their alleged removal is that they were not accorded due process. The removal of elected officers at regular membership meetings without prior notice is contrary to the Interior Board of Indian Appeals' previous determination that the removal provision of the Town Constitution must be interpreted in a manner consistent with the due process guarantees of §1302 of the Indian Civil Rights Act. *See Rebecca Torres v. Acting Muskogee Area Director, Bureau of Indian Affairs*, 34 IBIA 173 (1999).

[5] Plaintiffs claim that "[b]oth Defendants had been notified of the issues before the Meeting and were given ample opportunity to prepare and to speak on their behalf at the Meeting." AC, ECF No. 23 at ¶ 48. Plaintiffs do not claim that the Chiefs had prior notice that their removal would be considered at the meeting; they claim only that they knew that financial issues would be discussed at the meeting.

D. Events Following the October 28 Meeting.

After the purported removal of both Chiefs, the members of the Wind-Marshall group who served on the Governing Committee purportedly appointed Samuel Marshall as interim Chief. Since the takeover, Mr. Marshall and his followers have hired armed guards using RedTown and Smoke Shop funds and used these armed guards to occupy three tribal office and enterprise buildings. (*See* ECF No. 15 at 41 and Emergency Request, ECF No. 15 at 77). Since February 1, 2022, Chief Yargee's administration has not had access to tribal records and facilities and has been unable to deliver much-needed services to the Town's members. *See* ECF No. 15 at 41. Thus, the conduct of the Wind-Marshall group has interfered with the Chiefs' ability to fulfill their duties under the Town's Constitution.

E. Creation of the AQTT Court.

Due to their obstructive activities, Chief Yargee acted to remove the Wind-Marshall family from the Governing Committee, and other persons were appointed to serve in their stead. *See* ECF No. 15 at 41. On December 18, 2021, the Governing Committee passed a resolution establishing a Court for the AQTT community.[6] *See* Town Court Resolution, ECF No. 15 at 80. Tahlina Nofire, a citizen of the Cherokee Nation who holds a juris doctor with a certificate in Native American Law from the University of Tulsa School of Law, was sworn in as Chief Justice on January 4, 2022. *See* Chief Justice Appointment, ECF No. 15 at 83. By letter dated August 26, 2022, the Supreme Court of Oklahoma added the Town Court to the list of tribal

[6] Plaintiffs state that Town members of the Town are also citizens of the Muscogee Creek Nation ("MCN") and can have claims heard before its courts. AC, ¶ 23. This statement is true but irrelevant. Plaintiffs filed a substantively similar suit in MCN seeking to be declared to be the legitimate AQTT government. However, the MCN Court dismissed the case, citing its ruling in *Thlopthlocco Tribal Town v. Nathan Anderson*, et al, SC-2021-03 which found the MCN Court cannot exercise jurisdiction over sovereign Tribal Towns, including AQTT. The MCN court held that attempting to decide the legitimate AQTT government would possibly involve exercising such jurisdiction over a non-consenting government if the legitimate government was found to be that of Chief Yargee's. *See* Order of Dismissal, CV 2021-117 SL, Ex. 2.

courts that are to receive full faith and credit from Oklahoma state courts. *See*, Full Faith and Credit Acknowledgement, ECF No. 15 at 85.

On March 7, 2022, the Chiefs filed a petition before the Town Court seeking an emergency order requiring Defendant First National Bank & Trust of Okmulgee ("Bank"), the bank where many of the Town's funds are deposited, to file an interpleader action with the Town Court. *See* Emergency Order, ECF No. 15 at 87. Finding that it had subject matter jurisdiction and personal jurisdiction over the parties, the Town Court granted the request and ordered the Bank to file an interpleader action. *Id.* The Bank complied with the order and filed a petition for interpleader on May 24, 2022, naming Samuel Marshall as a defendant and itself as a defendant and a third-party plaintiff. *See* Bank Petition, ECF No. 15 at 90. The Town Court issued an order on August 29, 2022, ordering that the Bank deposit the balance of the interpleader funds associated with any accounts of the Town in the Court Registry. *See* Interpleader Order, ECF No. 15 at 96. Despite being properly served, Samuel Marshall did not file a response nor appear in the proceeding. *Id.* The Bank has not appealed the Court's order. The Town submitted the Town Court order to the District Court of Okmulgee County for domestication pursuant to Oklahoma Rule of Civil Procedure 30. *See* Okla. Stat. tit. 12, § 30. The Okmulgee County District Court issued an order on September 30, 2022, domesticating the order of the Town Court. *See* Domestication Order, ECF No. 15 at 100.

II. LEGAL STANDARD

A motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) challenges the subject matter jurisdiction of a court to hear a case. Federal courts are courts of limited jurisdiction. *Gunn v. Minton*, 568 U.S. 251, 256 (2013). They possess "only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). The burden of establishing federal court jurisdiction lies on the party asserting it, which in this case is the Plaintiffs'. *Id.* (citations omitted). *See also*, *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1499 (10th Cir. 1995) ("It is the burden of the complainant

to allege facts demonstrating the appropriateness of invoking judicial resolution of the dispute").

Motions to dismiss under Fed. R. Civ. P. 12(b)(1) may take the form of either a facial attack on the complaint, or a factual attack. *See Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995), *abrogated on other grounds by Cent. Green Co. v. United States*, 531 U.S. 425 (2001). In a facial attack, a court must accept the allegations in the complaint as true. *Id.* at 1002. However, allegations that are contradicted by more specific allegations need not be assumed to be true. *See Amidax Trading Grp. V. S.W.I.F.T. SCRL*, 671 F.3d 140 (2d Cir. 2011). Conclusory allegations and legal conclusions, even if pled as facts, will not be assumed to be true. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986) (courts "are not bound to accept as true a legal conclusion couched as a factual allegation"); *O'Bryan v. Holy See*, 556 F.3d 361, 376 (6th Cir. 2009) ("conclusory allegations . . . will not suffice to prevent a motion to dismiss") (citation and internal quotation marks omitted).

In a factual attack, the defendant may go beyond the allegations contained in the complaint and challenge the facts upon which subject matter jurisdiction is based. *Holt*, 46 F.3d at 1003. When presented with a factual attack, a court may not presume the truthfulness of the complaint's factual allegations, but instead has "wide discretion" to allow affidavits and other documents. The court's reliance upon evidence outside the pleadings does not convert the motion to a Rule 56 motion. *Id.* In this case, the distinction between factual and facial attacks is without a difference because, under either standard, the AC should be dismissed.

III. ARGUMENT

The Court lacks subject matter jurisdiction over the Complaint because Plaintiffs' claims pertain to an internal tribal governance dispute that requires the interpretation of tribal law and not federal law. Although Plaintiffs attempt to allege a federal question by citing various provisions of federal law, those attempts fail because they: (1) violate the well-pleaded complaint rule; (2) allege new claims in violation of the Court's October 24 order; and (3) attempt to rely upon various

sources of federal law through bare allegations that do not raise a federal question. In short, Plaintiffs once again failed to meet their burden of demonstrating the presence of a federal question and the AC should be dismissed.

A. The Court Lacks Subject Matter Jurisdiction Over The Complaint Because It Involves An Internal Tribal Leadership Dispute That Does Not Raise A Federal Question.

Plaintiffs argue that this Court has jurisdiction by virtue of 28 U.S.C. § 1331 and §1362. *See* AC ¶13. Section 1331 authorizes federal courts to exercise jurisdiction over suits that arise under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1362 provides for federal court jurisdiction over civil actions brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior. Plaintiffs make various claims that a federal question exists, but those claims fail because they require the application of tribal law, not federal law.

1. Federal question jurisdiction is present only if federal law is determinative of the issues presented.

Plaintiffs invite this court to exercise federal question jurisdiction to resolve an internal dispute over tribal governance. Unfortunately for Plaintiffs, overwhelming precedent provides that federal courts lack subject matter jurisdiction over such matters. Federally recognized tribes have authority to make their own laws regarding internal matters. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978). Prior to *Santa Clara*, federal courts often exercised jurisdiction over disputes based on the Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1301 *et seq*. *See Goodface v. Grassrope*, 708 F.2d 335, 338, n.4 (8th Cir. 1983) (collecting cases). Since the Supreme Court held in *Santa Clara* that the only form of relief available under ICRA is a writ of *habeas corpus*, federal courts have refused to exercise jurisdiction over actions seeking other forms of relief from alleged tribal deprivations of rights because those matters must be resolved through tribal forums. *Id.*

As a result of the ruling in *Santa Clara*, federal courts exercise jurisdiction under § 1331 "only in those cases in which federal law is determinative of the issues

involved." *Longie v. Spirit Lake Tribe*, 400 F.3d 586, 589 (8th Cir. 2005) (citations omitted). A case will not be considered to "arise under" federal law "unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends." *Id.* A federal court "ask[s] whether federal law or . . . tribal law controls the existence and enforceability of" the asserted right. *Id.* A federal question will be found to exist only if the "outcome is 'controlled or conditioned by Federal law.'" *Id.* at 589–90 (citing *Prairie Band of Pottawatomie Tribe of Indians v. Puckkee*, 321 F.2d 767, 770 (10th Cir. 1963). No federal question will be found if "the real substance of the controversy centers upon something other than the construction of federal law." *Id.* at 590. (Internal quotation marks and citation omitted). "If an interpretation of tribal . . . law is necessary to establish or clarify a right sought to be enforced . . . then jurisdiction under section 1331 does not exist." *Id. See also*, *Goodface*, 708 F.2d at 338 (federal courts lack jurisdiction if the question presented involves the interpretation of a tribal constitution and by-laws).

A plaintiff's "bare allegation" that a claim arises under federal law does not create federal question jurisdiction under § 1331. *Puckkee*, 321 F.2d at 770. Indeed, the Court will look beyond the naked allegations of the complaint "to determine whether the asserted claim is controlled or conditioned by Federal law." *Id. See also*, *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996) (making a "careful examination" of the complaint and using the "plaintiffs' own words" to determine that the underlying dispute was one over which the court would not have jurisdiction).

2. The resolution of a tribal governance dispute requires the application of tribal law, not federal law.

Tribal governance disputes like the one at issue in this case are controlled by tribal law, and as a result, they fall within the exclusive jurisdiction of tribal institutions. *See Attorney's Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Mississippi in Iowa*, 609 F.3d 927, 943 (8th Cir. 2010). Whether an elected tribal official "was properly removed from office and whether he had general authority to act on behalf of the Tribe in a governmental capacity are pure questions of tribal

law, beyond the purview of . . . the federal courts." *Id. See also*, *Sac & Fox Tribe of the Mississippi in Iowa, Election Bd. v. Bureau of Indian Affs.*, 439 F.3d 832, 835 (8th Cir. 2006) (finding that the resolution of internal tribal governance disputes and the interpretation of tribal constitutions and laws should be done in tribal institutions and not in the federal district courts). The resolution of an internal tribal leadership dispute "is a form of relief that federal courts cannot provide," and such claims are not justiciable. *Id.* (citing *In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litig.*, 340 F.3d 749, 763 (8th Cir. 2003)).

In *Prairie Band of the Pottawatomie Tribe of Indians v. Puckkee*, the Tenth Circuit found that the district court lacked federal question jurisdiction under § 1331 over a suit between members of the same tribe concerning the method and procedure for the distribution of the proceeds of a judgment fund appropriated by Congress. *Puckkee*, 321 F.2d at 769, 770. The court held that the dispute was "an intra-tribal controversy, over which Federal court jurisdiction has been traditionally denied." *Id.* at 770 (citing *Martinez v. S. Ute Tribe of S. Ute Rsrv.*, 249 F.2d 915 (10th Cir. 1957); *Native Am. Church of N. Am. V. Navajo Tribal Council*, 272 F.2d 131 (10th Cir. 1959); *Dicke v. Cheyenne-Arapaho Tribes, Inc.*, 304 F.2d 113 (10th Cir. 1962)). *See also*, *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996) (the district court lacked jurisdiction to resolve an intra-tribal dispute over tribal membership); *Runs After v. United States*, 766 F.2d 347, 352 (8th Cir. 1985) (holding that the resolution of "disputes involving questions of interpretation of the tribal constitution and tribal law" are not within the jurisdiction of the district courts). Therefore, the law of this Circuit is clear that disputes which are internal to the tribe and are determined based on tribal law are not within the jurisdiction of the federal courts.

Applying the law of this Circuit, it is evident that the AC still fails to raise a federal question. Plaintiffs have offered nothing more than bare allegations, which are insufficient to create a federal question. *See Puckkee*, 321 F.2d at 770. As the Tenth Circuit directed, it is appropriate to look beyond the naked allegations asserting federal question jurisdiction to determine if the claim is controlled by

federal law. *Id.* Notwithstanding Plaintiffs' bare allegations, the Complaint is replete with allegations and prayers for relief that make it abundantly clear that they are asking this Court to resolve an intra-tribal governance dispute that requires the application of tribal law, not federal law.

Paragraph 7 of the AC, and ¶ 3 of the Prayer for Relief ("Prayer") set forth the ultimate issues presented by the AC and clearly demonstrate that Plaintiffs ask this Court to resolve a tribal governance dispute which requires the application of Town law and not federal law. In ¶ 7, Plaintiffs ask for declaratory relief freeing them "from Yargee's unlawful usurpation of AQTT's governmental powers," and ¶ 3 of the Prayer asks for injunctive relief "preventing the Yargee Defendants from representing themselves as the authorized leadership of the AQTT." Clearly, the essence of the AC is a tribal leadership dispute which Plaintiffs ask this Court to resolve.

That the granting of the requested relief is dependent upon the application of AQTT law is demonstrated throughout the AC. According to ¶ 3, the establishment of a Town Court violates the Town Constitutions and Corporate Charter ("Charter"), and ¶¶ 19-28 provide a civics lesson on various sources of Town law, including the Constitution and Charter. Paragraphs 36-37, 42 and 44(c) allege that the Chiefs took various action in violation of a variety of Town laws, all of which ostensibly provide grounds for their purported removal. In further reliance upon Town law, ¶¶ 51 and 56 allege that the removal of the Chiefs and the appointment of Sam Marshall to serve the unexpired term of the Chief were conducted in accordance with the Constitution and the AQTT Standing Policy and Rules of Procedures. The Chiefs are accused at ¶¶ 4, 61-63 of continuing to maintain that they are the legitimate Chief and Second Chief despite their ostensible removal pursuant to the Town Constitution and By-Laws.

The AC further alleges at ¶¶ 52-55, 61-62 that the Town Solicitor "ruled" on the removal process and "resolved the dispute." The office of Town Solicitor has been vacant for many years, including at the time of the purported removal of the Chiefs. *See* Ex. 3, Affidavit of Wilson Yargee, ¶¶ 4-5, Elton Smith was appointed to

that position by Sam Marshall after Mr. Marshall was supposedly appointed to the office of Chief following the illegal removal of the Chiefs. Ex. 3, ¶ 7-8. Moreover, the Office of Solicitor is an elected position. *See* Art. V of the AQTT Constitution and By-Laws (listing the Solicitor as an Officer and providing that Officers shall be elected every four years). While vacancies that occur after an election can be filled by appointment of the Governing Committee, Constitution and By-Laws, Art. VII, the Governing Committee has no authority to appoint a Solicitor in the first instance. Thus, the validity of any purported ruling on, or resolution of, the present leadership dispute by Mr. Smith is also a question of Town law, and part of, and inseparable from, the larger dispute.

Plaintiffs also place great weight on the Town Charter as a source of governing law. *See* ECF No. 23 at ¶¶ 14 (claiming that it gives rise to a federal question), ¶¶ 25-27 (discussing the history of its adoption and the powers granted therein), and ¶¶ 76h and 1h of the Prayer (citing it as a source of law providing Plaintiffs with a right to declaratory relief).[7]

In sum, Plaintiffs' allegations that the Chiefs have been validly removed from office depend for their resolution on the application of Town law. Likewise, the Court cannot grant the relief they request freeing them from Chief Yargee's supposed "unlawful usurpation of AQTT's governmental powers," or preventing the Chiefs from holding themselves out as the legitimate leaders of the Town without applying Town law.

The legitimacy of the Town Court is attacked in ¶¶ 71-74. According to ¶¶ 71a-b, the Town Constitution does not explicitly provide for the creation of a tribal court, and therefore the Town is without authority to create such a court unless it amends the Constitution. This argument is legally wrong because a tribe's retained, inherent sovereignty permits it to create a court system. *See Attorney's Process and Investigation Services, Inc.*, 609 F.3d at 934 ("Where . . . tribal jurisdiction is not

---

[7] By raising the Charter for the first time in the AC, and particularly by relying upon it as a source of law entitling them to relief, Plaintiffs have violated the Court's October 24 order by raising a new claim.

specifically authorized by federal statute or treaty, a tribe's adjudicatory authority must stem from its 'retained or inherent sovereignty.'"). Federal law is clear that tribes can create tribal courts pursuant to their retained, inherent sovereignty without regard to the existence of a constitution. Thus, whether the AQTT Constitution requires amendment to authorize the creation of a tribal court depends strictly on the interpretation of Town law.

3. Section 1362 is not an independent basis for federal subject matter jurisdiction.

Plaintiffs also assert jurisdiction on the basis of 28 U.S.C. § 1362. This statute provides for federal court jurisdiction over civil actions brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior. *Id*. Whether this case has been brought by a tribe or band within the meaning of § 1362 would require the Court to decide whether Wilson Yargee was properly removed from office and whether Sam Marshall has been properly appointed to serve the remainder of Chief Yargee's term. Moreover, a federal question is still a necessary element even when 28 U.S.C. § 1362 does otherwise support federal court jurisdiction. *See Mescalero Apache Tribe v. Martinez*, 519 F.2d 479, 482 (10th Cir. 1975). There, the Tenth Circuit held that Section 1362 "does not dispense with the requirement of pleading a federal question." *Id*. Indeed, "in order for jurisdiction to attach under § 1362, the matter in controversy, and we emphasize that phrase, must itself arise under the Constitution, laws, or treaties of the United States." *Id.* at 483. Therefore, Plaintiffs' arguments under 28 U.S.C. § 1362 fail for two reasons: it is in dispute whether the Plaintiffs properly represent the Town; and since this dispute does not in and of itself raise a federal question, there is no federal jurisdiction.

B. Plaintiffs' Attempt to Rely Upon the Indian Civil Rights Act and References to the Sovereign Immunity Of the Town Violate the Well-Pleaded Complaint Rule.

Plaintiffs' attempts to create a federal question by citing ICRA and by references to the sovereign immunity of the Town fail to raise a federal question

because their reliance thereon violates the well-pleaded complaint rule. Plaintiffs' reliance on the Town's sovereign immunity begs the primary issues presented by the AC; whether the Chiefs were properly removed from office and whether Sam Marshall was validly appointed to the office of Town Chief and has authority to initiate this lawsuit.

Having the benefit of seeing Defendants' MTD, Plaintiffs now seek a declaratory judgment pursuant to 28 U.S.C. § 2201 that the Chiefs removal did not violate their due process rights under the U.S. Constitution, ICRA, "or other federal law." ECF No. 23 at ¶¶ 5, 76a, 78a, ¶ 1a Prayer. In support of this claim for relief, they allege that a federal question is presented as to whether the purported removal of the Chiefs comported with due process requirements of the U.S. Constitution and ICRA. ECF No. 23 at ¶ 14.

ICRA does not create a federal question because it does not appear on the face of Plaintiffs' Complaint. Instead, Plaintiffs are anticipating a defense that they expect will be raised by the Chiefs in defense of this lawsuit, which is not a proper method to invoke federal jurisdiction because it blatantly violates the well-pleaded complaint rule.[8] Under that rule, a case arises under federal law "only when the plaintiff's statement of his own cause of action shows that it is based upon" federal law. *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908). *See also Becker v. Ute Indian Tribe of the Uintah & Ouray Rsrv.*, 770 F.3d 944, 947 (10th Cir. 2014) ("Nor can federal question jurisdiction depend solely on a federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue.") (citations and quotations omitted). Accordingly, "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). One party's anticipation that the other party will "set up a claim" under federal law does not

---

[8]Because they have seen Defendants' MTD, Plaintiffs know that Defendants contest their removal on the basis that they were denied due process. *See* ECF No. 15 at 10 citing *Rebecca Torres v. Acting Muskogee Area Director, Bureau of Indian Affairs*, 34 IBIA 173 (1999).

mean that the suit arises under federal law. *Mottley*, 211 U.S. at 153. Indeed, it is "wholly unnecessary and improper" for a plaintiff "to go into any matters of defense which the defendants might possibly set up" in an effort to show that a federal question might arise in the course of the case. *Bos. & Montana Consol. Copper & Silver Min. Co. v. Montana Ore Purchasing Co.*, 188 U.S. 632, 638–639 (1903).

ICRA does not create federal question jurisdiction for another reason. In *Santa Clara Pueblo v. Martinez*, 436 U.S. at 72, the Court held that ICRA does not authorize private actions for declaratory or injunctive relief against either a tribe or its officers. As the Eighth Circuit noted in *Goodface*, 708 F.2d, 338, n.4 (collecting cases), after the *Santa Clara* decision, federal courts discontinued their prior practice of exercising jurisdiction over causes of action seeking relief under ICRA other than a writ of *habeus corpus* from alleged tribal deprivations of rights. Thus, the Chiefs could not obtain relief from this Court on the basis that they were denied the right of due process of law when the Wind-Marshall group tried to remove them from office. Just as ICRA does not raise a federal question and provides no basis for relief for the Chiefs, it is equally unavailing in raising a federal question that provides a basis for Plaintiffs' claim for relief.

Plaintiffs also seek a declaratory judgment that the Chiefs' removal did not violate their due process rights under the U.S. Constitution "or other federal law." Once again, Plaintiffs are anticipating an argument that Defendants might raise in defense, which violates the well-pleaded complaint rule. Moreover, the U.S. Constitution is not applicable to tribal governments. *See Santa Clara Pueblo* at 56 ("As separate sovereigns pre-existing the Constitution, tribes have historically been regarded as unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority.")

Plaintiffs' reliance upon the Town's sovereign immunity also violates the well-pleaded complaint rule. Plaintiffs posit that a federal question is presented by whether orders issued by the Town Court "violate the federally-recognized sovereign immunity of the AQTT." ECF No. 23 at ¶ 14. Plaintiffs further state that "AQTT reserves all rights, claims, and protections of its Tribal sovereignty, including

immunity from any suit arising under this action." ECF No. 23 at ¶ 16. The AC asserts that an actual controversy exists for the granting of declaratory relief with regard to whether orders issued by the Town Court "that purport to bind the AQTT violate the federally recognized sovereign immunity of the AQTT," and they seek an order to that affect. ECF No. 23 at ¶¶ 76i, 77i, Prayer ¶ 1i. The issue of sovereignty is raised in anticipation of Defendants raising it as a defense to Plaintiffs' suit. However, similar to Plaintiffs' arguments regarding ICRA, "federal question jurisdiction [cannot] depend solely on a federal defense . . . even if the defense is anticipated in the plaintiff's complaint . . . .") *Becker v. Ute Indian Tribe of the Uintah & Ouray Rsrv.*, 770 F.3d at 947.

Moreover, Plaintiffs' assertion of sovereign immunity begs the central question presented by Plaintiffs' complaint: who, under Town law, is authorized to represent the Town. Chief Wilson Yargee and Second Chief Rovena Yargee claim that they are the rightful Chief and Second Chief of the Town and that they, and not Plaintiffs, are authorized to protect the sovereignty of the Town, up to and including immunity from unconsented suit. To determine whether sovereign immunity was properly invoked, this Court would have to resolve the tribal governance dispute by deciding whether Chief Yargee was properly removed under the Constitution and other laws of the Town and properly succeeded by Mr. Marshall.

Because this Court does not have jurisdiction to resolve the internal leadership dispute, it cannot resolve these issues. *See Sac & Fox Tribe of the Mississippi in Iowa, Election Bd. v. Bureau of Indian Affs.*, 439 F.3d 832, 835 (8th Cir. 2006) (noting that the district court would have to construe and apply tribal law to determine which of two competing tribal election boards was the proper plaintiff, a task for which the court lacked jurisdiction). *See also*, *Sac & Fox Tribe of Mississippi in Iowa v. Bear*, 258 F. Supp. 2d 938, 944 (N.D. Iowa), *aff'd sub nom. In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litig.*, 340 F.3d 749 (8th Cir. 2003) (holding that the district court did not have jurisdiction to determine which of two competing tribal councils was properly in place under the tribe's

constitution to enable it to determine if the other tribal council had violated federal law). For this reason, the Chiefs have not moved to dismiss this case for lack of jurisdiction because the Town is immune to suit or that they, as tribal officials, are cloaked in the sovereign immunity of the Town. Likewise, the Chiefs have not moved for dismissal due to the Plaintiffs' failure to join the Town as a required party under Fed.R. Civ. P. 19. If the Court decides that it has jurisdiction, the Defendants request the opportunity to provide further briefing on these alternative bases for dismissal.

In summary, ICRA and the US Constitution have no application in determining the rights of either the Plaintiffs or the Defendants. Neither appear on the face of a well-pleaded complaint and do not create a federal question over which this Court can exercise jurisdiction. Likewise, Plaintiffs' references to the Town's sovereign immunity are nothing more than an inartful and unavailing attempt to manufacture federal question jurisdiction where it does not exist. The Town's status as a sovereign tribal government under federal law that enjoys immunity to unconsented lawsuits is unquestioned and presents no issue for the Court's consideration, and the attempt to interject the issue also violates the well-pleaded complaint rule. The Court should reject Plaintiffs' attempts to manufacture federal question jurisdiction.

C. References To the Full Faith and Credit Clause Of The U.S. Constitution, The Oklahoma Indian Welfare Act ("OIWA"), the Indian Self-Determination Act ("ISDA"), and Section 8 (a) of the Small Business Act Do Not Create Federal Question Jurisdiction.

Plaintiffs' citation to various sources of federal law fails to create a federal question. First, with the exception of the OIWA, the provisions of federal law cited by Plaintiffs add new claims in violation of the Court's October 24th order, and second, the provisions of federal law cited by Plaintiffs are not at issue in this case. To reiterate, federal jurisdiction over a claim does not arise "on the bare allegation"

that it arises under the Constitution or other laws of the United States. *See Puckkee*, 321 F.2d at 770.

1. *Plaintiffs' reliance on the full faith and credit clause of the U.S. Constitution, the ISDA and Sec. 8(a) Raise New Claims.*

The Court's October 24th order permitted Plaintiffs to add legal or factual averments but it prohibited adding parties or claims. In addition to adding averments regarding the above-referenced provisions of federal law, Plaintiffs also rely upon them as sources of law entitling them to relief. By doing so, Plaintiffs raise new claims in violation of the Court's order.

Although the full faith and credit clause was not raised in the OC, Plaintiffs now argue that whether orders issued by the Town Court are entitled to full faith and credit under the U.S. Constitution presents a federal question. ECF No. 23 at ¶ 14. They next argue that an actual controversy exists for the purposes of obtaining declaratory relief as to whether Town Court orders are entitled to full faith and credit, *Id.* at ¶ 76e, and they claim that they are entitled to such relief on this question. *Id.* at ¶ 78e. They conclude by asking for declaratory relief that orders of the Town Court are not entitled to full faith and credit. *Id at* ¶ 1e Prayer. By relying upon the full faith and credit clause in alleging an actual controversy for the purposes of declaratory relief and by relying upon it in their Prayer, they go beyond merely including a new legal averment but actually present a new claim in violation of this Court's October 24th order.

Similarly, Plaintiffs rely for the first time upon the ISDA and Sec. 8(a), claiming that each gives rise to a federal question regarding Chief Yargee's "authority to represent AQTT with respect to" these statutes. *Id.* at ¶ 14. They also cite these statutes in asserting that an actual controversy exists for the purposes of declaratory relief, *Id.* at ¶¶ 76f and 76g, and they claim that they are entitled to relief declaring that the Chiefs are not authorized to represent the Town with regard to these statutes. *Id.* at ¶¶ 78f and 78g. They conclude by asking for declarations regarding the Chiefs lack of authority. *Id.* at ¶¶ 1f and 1g, Prayer. Once again, by relying upon these statutes in trying to set up a controversy for

declaratory relief and by resting their claims for relief upon them, Plaintiffs go beyond merely including a new legal averment and present new claims in violation of this Court's October 24th order.

2. The federal laws cited by Plaintiffs are not at issue in this case.

Even if Plaintiffs' new-found reliance upon the full faith and credit clause of the U.S. Constitution, the ISDA and Sec. 8(a) do not raise new claims, they, along with Plaintiffs' continued reliance upon the OIWA[9] fail to raise a federal question. The full faith and credit clause has nothing to do with whether a tribal court judgment can be domesticated by Oklahoma state courts pursuant to a statute enacted by the Oklahoma legislature. The Oklahoma Supreme Court has recognized that AQTT tribal court orders must be given full faith and credit in the courts of the State of Oklahoma. This recognition by the Oklahoma Supreme Court complies with 12 Okla. Stat. sec. 30(B), which provides that "[t]he district courts of the State of Oklahoma shall grant full faith and credit and cause to be enforced any tribal judgment where the tribal court that issued the judgment grants reciprocity to judgments of the courts of the State of Oklahoma, provided, a tribal court judgment shall receive no greater effect or full faith and credit under this rule than would a similar or comparable judgment of a sister state." *See* ECF No. 15 at 85.

The OIWA, ISDA and Sec. 8 (a) also have nothing to do with the ultimate issues presented by the AC, which are whether the Chiefs have been legally removed from office, whether they should be prevented from representing themselves as the legitimate leaders of the Town and whether they are entitled to access to the Town's accounts held at the Bank. Despite the allegations and claims to the contrary, the OIWA sheds no light on whether the Town Court was legally created. *See* ECF No. 23 at ¶¶ 3, 5, 14, 71, 76b-d, 78b-d, 1f and 1g. Prayer. There is nothing in the OWA regarding tribal courts, and, as discussed in Section III. A. 3 *supra*., federal law is clear that tribes can create tribal courts pursuant to their

[9] The OIWA is codified at 25 U.S.C. §§ 5201-5210, not § 5101 *et seq*.

retained, inherent sovereignty. Despite the claims for relief regarding the Town's sovereign immunity to suit, *See* ECF No. 23 at ¶¶ 76d, 78d, the OIWA has no relevance to this issue because it does not address sovereign immunity, which is a federal common law doctrine. *See Santa Clara Pueblo, 436 U.S. at* 58 ("Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.") This attempt also fails to create a federal question because neither party has questioned the Town's sovereign status and its concomitant immunity from suit, nor are these matters at issue in this case.[10] Finally, no provision of the OIWA purports to govern the conduct of elected tribal officials in Oklahoma.

Plaintiffs' attempted reliance upon the ISDA and Sec. 8(a) are equally unavailing in raising a federal question. *See* ECF No. 23 at ¶¶ 14, 32-33. Neither do they provide a right to the relief Plaintiffs seek. *Id.* at ¶¶ 76f, 78f, 1f Prayer (ISDA) and ¶¶ 76g, 78g, 1g Prayer (Sec. 8(a)). Nothing in these laws speaks to whether the Chiefs were legally removed or whether the Town Court was validly created and they provide no right to declaratory or injunctive relief with regard to either of these questions. Not surprisingly, Plaintiffs have not even tried to explain their relevance; instead they cite these laws as though they are magical incantations that summon federal question jurisdiction from thin air.

As demonstrated in Section III. A. 1-2, the answer to the questions involving Town leadership all depend on the interpretation of Town law. No provision of federal law has anything to do with this case. This case does not "really and substantially involve[] a dispute or controversy respecting the validity, construction or effect" of federal law and the result certainly does not depend on any provision of federal law. *See Puckkee*, 321 F.2d at 770. At best, this case has an indirect relationship to federal law in that the Town is a federally recognized tribal government that is organized under the OIWA and that can enter into contracts

---

[10] See the discussion *supra* at Section III.B regarding the authority to claim and invoke the Town's sovereign immunity to suit.

under the ISDA and operate Sec. 8(a) companies, but that is not enough to create federal question jurisdiction because those statutes do not address the central issues in this case, which are whether the Chiefs were legally removed, whether the Town Court was validly created under the Town Constitution and who is entitled to control of the Town's Bank accounts, all of which are questions of Town law. *See Longie*, 400 F.3d at 590 (Section 1331 "does not broadly incorporate every case that indirectly implicates an interest that is grounded in the laws of the United States"). *See also*, *Ponca Tribe of Indians of Oklahoma v. Cont'l Carbon Co.*, 439 F. Supp. 2d 1171, 1174 (W.D. Okla. 2006) (Federal court jurisdiction does not attach to a claim merely because it was brought by an Indian tribe; jurisdiction exists only where the claim "arises under the Constitution, laws, or treaties of the United States."). After stripping away Plaintiffs' bare allegations that the U.S. Constitution and other various federal laws, it is clear that the AC, like the OC, fails to establish a federal question under § 1331.

D. The Request For Relief In The Form Of An Injunction Of The State Court Violates The Anti-Injunction Act (28 U.S.C. § 2283).

Plaintiffs deem themselves "entitled" to preliminary and permanent injunctive relief "ordering any state court not to domesticate or otherwise honor any orders from" the Town Court. Contrary to Plaintiffs' assertion, they are not entitled to an injunction because the Anti-Injunction Act, 28 U.S.C. § 2283, prohibits this very type of relief.

According to the Supreme Court, "the Act is an absolute prohibition against any injunction of any state-court proceedings, unless the injunction falls within one of the three specifically defined exceptions in the Act." *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 630 (1977). According to the Tenth Circuit, "[t]he Anti-Injunction Act's exceptions are narrow and are not to be loosely construed." *Tooele Cnty. v. United States*, 820 F.3d 1183, 1188 (10th Cir. 2016) (citation omitted). "As a result, courts should resolve doubts about the applicability of an exception in favor of allowing the state-court proceeding to continue." *Id.* None of the three narrow

exceptions included in the Act (express authorization by Congress, aid of federal jurisdiction, or protection of federal court judgments) are implicated by the AC.

The first exception does not apply because no Act of Congress expressly authorizes this Court to enjoin state courts from domesticating tribal court judgments. The second exception does not apply because, as recognized by the Tenth Circuit, the U.S. Supreme Court has applied the second exception only when: 1) both the federal and state suits constitute *in rem* or *quasi in rem* proceedings; and 2) the federal court was the first to take possession of the *res*. *See Tooele Cnty. v. United States*, 820 F.3d 1183, 1188 (10th Cir. 2016) (citing *Mandeville v. Canterbury*, 318 U.S. 47, 48–49 (1943)). This case does not qualify as an *in rem* or *quasi in rem* proceeding. Finally, under the third exception, a federal court may issue an injunction against a state court proceeding that seeks to relitigate issues already determined by a valid federal decree. *See Brown v. McCormick*, 608 F.2d 410, 416 (10th Cir. 1979). The third exception does not apply here because no federal court has issued any orders regarding Chief Yargee's authority within the government of the Town or the creation of the Town Court. Thus, none of the three exceptions in the Anti-Injunction Act apply.

Beyond this statutory bar to Plaintiffs' claim for injunctive relief, their request for an injunction must be dismissed for another critical reason: Plaintiffs have failed to name any state court or state-court official as a defendant in this lawsuit. The longstanding principle that, absent very limited exceptions, one is not bound by a judgment in litigation in which one was not a party has been codified by Fed. R. Civ. P. 65(d)(2). *See also*, *Taylor v. Sturgell*, 553 U.S. 880, 884 (2008). Under the Rule, the persons who may be bound by an order granting an injunction are limited to: "(A) the parties; (B) the parties' officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B)." Fed. R. Civ. P. 65(d)(2). Because no state court official is named as a defendant, Rule 65(d)(2) also prohibits the Court from enjoining an Oklahoma state court in this action.

In addition, the Anti-Injunction Act and Rule 65(d) would preclude "enjoining the enforcement of or setting aside of a state court judgment" if the state court proceedings were to conclude. *Spickler v. Dube*, 626 F. Supp. 1092, 1095 (D. Me. 1986). The District Court in and for Okmulgee County issued an order on September 30, 2022, domesticating the Town Court's order of July 22, 2022, ordering the Bank to, *inter alia*, deposit all Town funds with the Clerk of the Town Court. *See* ECF No. 15 at 100.

In sum, Plaintiffs cannot obtain the relief they seek, and their request for injunctive relief against the State courts should be dismissed pursuant to Rule (12)(b)(6). *See Sac & Fox Nation v. Hanson*, 47 F.3d 1061, 1063 (10th Cir. 1995) (citing *Smith v. Apple*, 264 U.S. 274, 279 (1924)) ("The Anti-Injunction Act is not a jurisdictional statute; '[i]t merely limits [the district courts'] general equity powers in respect to the granting of a particular form of equitable relief'"). Section 2283 serves as "a limitation upon the exercise by a district court of its equity jurisdiction." *Tyler v. Russel*, 410 F.2d 490, 491 (10th Cir. 1969) (affirming dismissal for failure to state a claim). Since the requested relief cannot be granted, the Plaintiffs have failed to state a claim and this claim should be dismissed under Rule (12)(b)(6).

IV. CONCLUSION

The AC makes clear that the relief requested by Plaintiffs would require the resolution of an internal tribal governance dispute turning on the interpretation of tribal law, exclusively. The references in the AC to federal law fail to raise a federal question. The federal common law doctrine of tribal sovereign immunity is of no consequence in deciding whether the Chiefs were properly removed, or if the Town Court was validly created pursuant to Town law. Likewise, no provision of the US Constitution has any relevance to these questions. The ISDA, ICRA, the OIWA and Section 8(a). provide no insight into these questions. The answers to these questions turn exclusively on the interpretation of Town law.

Dated: December 5, 2022.

/s/ *Derril B. Jordan*

Victoria Holland, Esquire
E.D. Okla. Bar# 33197
VS Holland, LLC
15205 Traditions Lake Parkway
Edmond, OK 73013
Telephone: 405-225-2300
vholland@devollaw.com

Derril B. Jordan, Esquire
Bar No.: 470591DC
Jeffrey C. Nelson, Esquire
Bar No.: 462481DC
mctlaw
1015 15th Street NW, Suite 1125
Washington, DC 20005
Telephone: 888-952-5242
Facsimile: 888-952-5042
Primary: djordan@mctlaw.com
Primary: jnelson@mctlaw.com
Secondary: ebanfelder@mctlaw.com
Secondary: achildress@mctlaw.com
Secondary: nderakhshani@mctlaw.com

Altom M. Maglio, Esquire
Bar No.: 88005FL
Sophie D. Asher, Esquire
Admission Pending
mctlaw
1605 Main Street, Suite 710
Sarasota, Florida 34236
Telephone: 888-952-5242
Facsimile: 888-952-5042
Primary: amm@mctlaw.com
Primary: sasher@mctlaw.com
Secondary: ebanfelder@mctlaw.com
Secondary: achildress@mctlaw.com
Secondary: nderakhshani@mctlaw.com