

CASE NO. APP-24-001

**IN THE COURT OF INDIAN APPEALS  
FOR THE SOUTHERN PLAINS REGION**

CARLA CARNEY, Plaintiff/Appellant

v.

PONCA BUSINESS COMMITTEE,  
OLIVER LITTLECOOK, SR., Chairman

OLIVER LITTLECOOK SR.,  
Individually and as  
Ponca Business Committee Member,

ROBERT COLLINS,  
Individually and as  
Ponca Business Committee Member,

MATILDA DELAGARZA,  
Individually and as  
Ponca Business Committee Member,

DEBORAH MARGERUM,  
Individually and as  
Ponca Business Committee Member,

LEOTA WHITE,  
Individually and  
Ponca Business Committee Member, and

EARL TREY HOWE III  
Individually and  
Ponca Business Committee Member,

Defendants/Appellees.

**APPEAL FROM ORDER OF THE PONCA DISTRICT COURT**  
**DISMISSING CASE CV 2023-024**  
**APPELLANT'S BRIEF**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

JURISDICTIONAL STATEMENT ..... 1

ISSUES PRESENTED FOR REVIEW ..... 2

STATEMENT OF THE CASE..... 3

SUMMARY OF THE ARGUMENT ..... 9

ARGUMENT ..... 11

    I.    The Ponca District Court Erred When it Failed to Take Jurisdiction Over Plaintiff/  
          Appellant’s Case and Consider Whether Rights Guaranteed Her By the Ponca Tribal  
          Constitution and Laws had Been Violated ..... 12

    II.   Under Ponca Law, Neither the Ponca District Court nor this Court can Refuse to Review  
          Acts by Ponca Authorities and Officers to Determine Whether their Actions are  
          Constitutional, and in Accordance with Ponca and Federal Law ..... 15

    III.  The District Court Improperly Dismissed the Case Based on Deference to an Alternate  
          Tribal Adjudicatory Forum that Does Not Exist ..... 16

    IV.  Under the Ponca Constitution and Laws, the District Court Commits Error When it  
          Takes Jurisdiction Over the Claims Asserted by the Ponca Nation Against an Agency  
          of the Nation, Finds *Ultra Vires* Actions, and issues Relief, then Refuses to Hear Same  
          Claims in This Case..... 22

    V.   The Court Should Enjoin Defendants from Prohibiting Plaintiff/Appellant from  
          Serving as an Elected Official Pending Further Proceedings ..... 23

CONCLUSION..... 31

## TABLE OF AUTHORITIES

<i>Arkeketa v. Ponca Tribal Election Board</i> , CIV-2013-25, April 8, 2014 Order.....	17
<i>Automated Mktg. Sys., Inc. v. Martin</i> , 467 F.2d 1181, 1183 (10th Cir. 1972).....	26
<i>Baskin v. Bogan</i> , 12 F. Supp. 3d 1137 (S.D. Ind. 2014).....	28
<i>Burlington Northern v. Blackfeet Tribe</i> , 924 F.2d 899 (9th Cir. 1991) .....	20
<i>Davis v Colegrove</i> , PO-20-007 (Hoopa Valley Dist. Ct. 2024) .....	11, 30
<i>Davis v. Littell</i> , 398 F.2d 83 (9th Cir. 1968) <i>cert. den.</i> 393 U.S. 1018, 89 S. Ct. 621, 21 L. Ed. 2d 562 (1969).....	20
<i>Florida Democratic Party v. Scott</i> , 215 F. Supp. 3d 1250 (N.D. Fla. 2016).....	28
<i>Honyaoma v. Nuvamsa</i> , 7 Am. Tribal Law 320, 325 (2008).....	22
<i>In the Matter of the Appeal of Vern Lee</i> , SC-CV-32-06, 2006 Navajo Sup. LEXIS 8 (Nav. Sup. Ct. August 11, 2006).....	13
<i>In re Removal of Katenay</i> , 6 Nav. R. 81, 85, 1989 Navajo Sup. LEXIS 3 (Nav. Sup. Ct. 1989) .....	13
Indian Civil Rights Act, 25 U.S.C.S. § 1302, <i>et seq.</i> .....	1, 2, 11, 12
<i>Kasee v. Drew-Skenandore</i> , 2010 WL 7746038, at *1 (Oneida Trial Ct. 2010) .....	28
<i>Kennedy v. Hughes</i> , 60 Fed. Appx. 734, 735, 2003 U.S. App. LEXIS 5475, *1 (10th Cir. N.M. March 20, 2003).....	14
<i>Littlejohn v. Smith</i> , 12 Am. Tribal Law 347, 348 (Cherokee Nation Supreme Court 2015). .....	14
<i>LaRose v. Wilson</i> , 2003 WL 26066795, at *8 (Leech Lake Trial Div. 2003) .....	28
<i>Lomeli v. Kelly</i> , 2014 Nooksack App, Lexis 26, *16-17 .....	21
<i>Macarthur v. San Juan County</i> , 309 F.3d 1216 (10 <sup>th</sup> Cir. 2002) .....	12
<i>Milsen Co. v. Southland Corp.</i> , 454 F.2d 363, 367 (7th Cir. 1971).....	27
<i>Monetathchi v. Flyingman</i> , 10 Okla. Trib. 376 (Cheyenne-Arapaho Trial Ct. 2007) .....	30
<i>Pistor v. Garcia</i> , 791 F. 3d 1104, 1108 (9 <sup>th</sup> Cir. 2015).....	18

<i>Ponca Tribe of Indians of Oklahoma Constitution</i> .....	1, 2, 9,13,16, 21, 28
<i>Ponca Tribal Election Board, Jones and Crain v. Snake and Lieb</i> , 1988WL 521355, Okla. Trib. 209 (1988) .....	15
<i>Ponca Tribe v. Ponca Tribal Election Board</i> , CIV 2023-023 (Ponca Dist Ct 2023) .....	22, 29
<i>Red Eagle v. Osage Nation Congress and Select Committee of Inquiry</i> , SPC-2013-03 .....	29
<i>Somers v. Oneida Bingo &amp; Casino General Manager</i> , 2006 WL 6488211, at *4 (Oneida Trial Ct. 2006) .....	14
<i>Taylor v. Haugaard</i> , 360 F. Supp. 3d 923 (D. S.D. 2019).....	28
<i>Thompson v. New York</i> , 487 F. Supp. 212, 215 (N.D.N.Y. December 13, 1979).....	12
<i>Wells v. Nelson Blaine, Jr.</i> CV-OS-OS-91 (Northern Plains App.1991) .....	20
<i>Whitetail v Chaske</i> , 1992 Northern Plains App. LEXIS *6; 1992 NPICA 6.....	14,19, 20
<i>Winter v. Natural Resources Defense Council, Inc.</i> , 555 U.S. 7, 20 (2008).....	24, 28
<i>White Wing v. Ho-Chunk Nation General Council ex rel. Cloud</i> , 5 Am. Tribal Law 197, 206.....	30

## JURISDICTIONAL STATEMENT

The Ponca Tribe of Indians of Oklahoma Constitution (“the Constitution”), at Article VIII, Section 3 requires its governing body, the Ponca Business Committee, to “exercise its power consistent with the provisions of this Constitution and federal law.” The Ponca Business Committee (“the Business Committee”) in accordance with Article VIII, Section 2 of the Constitution, established the Ponca Tribal Judicial system in law. Title I of the Ponca Code, adopted via Resolution No. 134-07232010, is entitled “Tribal Court Code,” and establishes both a lower court and an appellate court.

The Tribal Courts’ civil jurisdiction is defined in Title I, Section 4, “Civil Jurisdiction”:

The Courts shall have general civil jurisdiction over all civil actions arising under the Constitution, laws or treaties of the Tribe including tribal common law, over all general civil claims which arise within the tribal jurisdiction, and over all transitory claims in which the defendant may be served within the tribal jurisdiction. Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Court, or served anywhere in cases arising within the territorial jurisdiction of the Tribe, and all persons consenting to such jurisdiction.

Additionally, the Tribal Court Code grants both the trial and appellate courts authority to review and determine whether the actions Plaintiff/Appellant complains of here are unconstitutional and violative of the Indian Civil Rights Act and other federal and tribal laws. Section 617 of the Tribal Court Code requires the courts to examine both the actions taken by government entities and officials and the manner in which they were undertaken to ensure conformity with tribal law:

**Section 617. Judicial Review of Legislative and Executive Actions**

The District and Supreme Courts shall have the authority to review any act by the Tribal Legislative Body, or any tribal officer, agent, or employee to determine whether that action, and the procedure or manner of taking that action, is Constitutional under the Tribal Constitution, authorized by tribal law, and not prohibited by the Indian Civil Rights Act. If the Court finds that the contemplated action is authorized by the Constitution and tribal Statutes enacted thereto, or the common law, and that the manner in which the

authorized action is to be exercised is not prohibited by the Tribal Constitution, Tribal statutes enacted pursuant thereto, or federal law, the Court shall dismiss the case. The Court shall not otherwise review the exercise of any authority committed to the discretion of a tribal officer, agency, agent, or employee by Tribal law unless some specific provision of law authorizes judicial review of the merits of the discretionary decision of action.

Under the authority granted by Constitution, Article VIII, “Jurisdiction and Powers of the Ponca Business Committee,” Section 2A, the Business Committee has assigned the Tribe’s appellate judicial authority to the Southern Plains Region appeals court. Resolution 21-041309, “A Resolution Authorizing the Ponca Tribal Business Committee to Provide for Appellate Jurisdiction and Process from Decisions of the Ponca Tribal District Court,” states it is “within the best interest of the Ponca Tribe and Ponca Tribal District Court to have a separate appeal process.” The Business Committee grants “final appellate review jurisdiction to the Southern Plains Region- Pawnee Agency Court of Indian Offenses from all decisions and orders issued by the Ponca Tribal District Court.” That grant is without limitations. Under these authorities, this Court has jurisdiction to hear and decide this appeal.

### **ISSUES PRESENTED FOR REVIEW**

- 1. Did the District Court Err When it Failed to Adjudicate Plaintiff’s Rights Guaranteed by the Ponca Tribal Constitution and the Indian Civil Rights Act?**
- 2. The Ponca Tribal Court Code Provides for Judicial Review over any Action by Ponca Authorities and Officers. Can the Ponca District Court Refuse to Follow Ponca Law and Conduct Such a Review in this Case?**
- 3. Is the District Court allowed to Dismiss this Case in Deference to an Alternate Tribal Forum that Does Not Exist and that is Counter to the Dictates of the Ponca Constitution and Ponca Law?**
- 4. Has the District Court Impermissibly Created Two Standards of Review for Ponca Tribal Disputes Involving Ponca Officials and Allegations of *Ultra Vires* Actions?**
- 5. Is Appellant Entitled to a Temporary Restraining Order/Preliminary Injunction?**

## STATEMENT OF THE CASE

The history of this case dates back to September 2023, when Plaintiff/Appellant's brother announced his intention to circulate a petition among the Ponca People to require a recall election for three Business Committee Members. This action upset the Ponca Tribal Chairman, who requested that Plaintiff/Appellant restrain her brother's effort. Once over 360 signatures were gathered in support of a recall election, in October 2023 the newly elected Election Board began preparing for the election, a process required under the Ponca Constitution with respect to recall of both Business Committee and Election Board members.

In response, the affected Business Committee members purportedly authorized the filing of an action in the Ponca District Court on behalf of the Ponca Nation, seeking an *ex parte* restraining order against the Ponca Election Board. *See Petition and Application for Injunction and Motion for Temporary Restraining Order*, CIV-2023-023, (Ponca Dist. Ct. Nov 8, 2023). The same trial judge that presided over this case below took jurisdiction over the subject matter and parties, interpreted the Ponca Election Code, granted the restraining order, and later entered an injunction. *Ex Parte Temporary Restraining Order*, CIV-2023-023 (Ponca Dist. Ct. Nov 9, 2023). The stated rationale for doing so was to preserve the Ponca Tribe's governmental integrity, and because the processes utilized by the Election Board were contrary to Ponca law.

On Thursday, September 14, 2023, when Plaintiff/Appellant was absent the reservation, and without any direction to her as Secretary that a Special Meeting had been called and she should post notice, it appears the other Business Committee members got together and voted on a number of matters involving Plaintiff/Appellant. There was no Business Committee meeting notice provided to the Ponca member public for that event, no agenda posted, nor minutes of the meeting presented and approved at a subsequent Business Committee meeting. Thus began a course of conduct by the individual Defendants where they intentionally failed to notify Plaintiff/Appellant

or post notice of their gatherings, then declared she was absent from official Business Committee meetings without just cause. On the morning and afternoon of December 6, Plaintiff/Appellant for the first time saw purported minutes taken by defendant Leota White, on September 14 and October 16, 2023 at a time when she was not the Secretary of the Business Committee. There is no indication the Business Committee ever approved any of these minutes. *Ponca Tribe's Response in Opposition to Motion for Temporary Restraining Order*, R. at Tab 6, Ex. 2; *Addendum to Brief in Support of Application for Temporary Restraining Order and for Temporary Injunction*, R. at Tab 10.

Plaintiff/Appellant was not notified of a called Special Meeting on October 16 and did not undertake any of her constitutional secretarial duties to notice a meeting and prepare an order of business, but she did attend the meeting with HUD officials. After the meeting was over around noon, she went to lunch and returned to her office. Later that afternoon Plaintiff/Appellant was approached by the Tribal Administrator and BIA law enforcement while working in her office, told to gather her personal effects, and leave the building. She was later advised by one Defendant she had been removed from her elected office as Secretary/Treasurer by a “reorganization,” because some members felt she was “going in a different direction.” Even though she was undisputedly still a Business Committee member, Plaintiff/Appellant’s tribal email was turned off, she was locked out of access to all tribal information available to other Business Committee members, and her compensation ceased.

On the morning of October 26, 2023, Plaintiff/Appellant texted her fellow Business Committee members via group text that she was not feeling well and would not be at the regular monthly Business Committee meeting that day. This was the sanctioned way to communicate an absence from a meeting and be excused. On November 7, 2023, she verbally inquired of both the



Chairman and the acting Secretary about when the next Business Meeting was scheduled and got no response. On November 15, 2023 Plaintiff received a letter from the Chairman stating she had missed “a duly called meeting” on November 6, and therefore “you are no longer a member of the Ponca Tribal Business Committee effective Monday November 6, 2023.” Purported minutes from that alleged meeting reflect one member moved to remove Plaintiff/Appellant from the Business Committee, another seconded, and the members voted affirmatively. *Ponca Tribe’s Response in Opposition to Plaintiff’s Motion for Temporary Restraining Order*, R. at Tab 6, Ex. 1.

At the November 18, 2023, annual Ponca Tribe General Meeting, the Business Committee Chairman announced that Plaintiff/Appellant had been removed from the Business Committee, and that he intended to request that charges be filed against her for theft the following Monday, stating that “if she is convicted, she won’t be able to run” again for office.<sup>1</sup> His comments were posted on social media that evening and have over 1000 views. Plaintiff/Appellant told the Chairman that his accusations at the General Meeting were wrong, and that she contested both her removal and the methods employed to remove her. She was never provided an opportunity to contest her ouster, and in fact was told to leave a purported official December 8, 2023 Business Committee meeting she attempted to attend.

In early December 2023, the contracted Ponca Tribal Prosecutor filed a criminal complaint against Plaintiff/Appellant arising from her possession of a tribal laptop computer that was returned on November 18, 2023. The District Judge issued an arrest warrant. On January 3, 2024, Plaintiff/Appellant was arrested in the Tribal Court parking lot after her counsel notified the Court Clerk that she was coming to court to file some papers. Video of this arrest from cameras located

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<sup>1</sup> The Parties will be unable to provide most of the testimony of Plaintiff/Appellant and Defendant Oliver Littlecook, and none of the testimony of defendant Leona White from the morning of the December 6 hearing, because the Ponca District Court’s recorder failed to record. Many of the statements here were testified to at the hearing and are recounted from notes and recollection.

on the Courthouse appeared soon thereafter on social media, along with photographs of Plaintiff/Appellant's paystubs dating back to 2023. The Court required a \$1000 bond, which she has not exonerated. The matter is still pending. Inaccurate information and comments about Plaintiff/Appellant as a result of these social media posts continue to this day.

The Chairman of the Election Board submitted an affidavit to the District Court regarding the status of the seat held by Plaintiff/Appellant as of February 8, 2023. *Motion to Strike a Portion of Individual Officials' Reply in Support of its Motion to Dismiss, Ex. A, Affidavit of Violet Rhodd, R. at Tab 27.* She stated it is the responsibility of the Ponca Election Board (rather than the Business Committee) to declare a Business Committee seat vacant and hold a Special Election to fill any such vacant seat. In December 2023, she requested that the Business Committee Chairman send something official to notify the Election Board of any circumstance that would trigger an election, specifically: 1) the Business Committee had suspended Carla Carney so that a recall election was warranted, or 2) Carney met the criteria for the Board to declare the seat vacant—specifically that she had missed three consecutive meetings without cause. The Chairman told the Chair it didn't matter, because they intended that Carney's seat was going to be filled in the upcoming general election. The Board Chair stated in her affidavit that the Board received nothing official, and therefore did not schedule any election regarding the seat. The Board specifically did not declare the seat held by Plaintiff/Appellant vacant, and did not notice to fill it in the General Election, because that is not how a vacant seat is filled under the Ponca Election law.

Soon thereafter, the Business Committee suspended all but one member of the Ponca Election Board, making it impossible for it to conduct the then-scheduled March 2024 General Election. As such, the Bureau of Indian Affairs has stepped in to oversee the election, which is now rescheduled for May 2024. Plaintiff/Appellant's seat is not part of that election, and yet the

Defendants/Appellees continue to prohibit her from fulfilling her term on the Business Committee, claiming they have removed her from office.

Plaintiff/Appellant filed her *Complaint and Verified Application for Temporary Restraining Order and Temporary Injunction* on November 28, 2023, seeking to restrain and enjoin the Defendant Business Committee members from holding future Business Committee meetings without notice to her, and keeping her from attending and performing her duties as a Business Committee member and an elected officer. *Complaint and Verified Application for Temporary Restraining Order and Temporary Injunction*. R. at Tab 1. The District Court considered the matter *ex parte*, and issued a written order that same day that states “it does not FIND grounds to grant an ex part emergency.” The District Judge set the matter for hearing on December 6, 2023, and ordered Plaintiff/Appellant to serve notice on the Defendants. *Order*, R. at Tab 5. At that hearing, both Plaintiff/Appellant and Defendant Earl Howe presented testimony that negated any claim the Defendants had properly noticed and held legitimate Business Committee meetings and that she vacated her seat by missing three consecutive official meetings (October 24, 26 and November 6) without just cause. Plaintiff/Appellant testified:

Q. Did you receive notice of a November 6th council meeting.

A. No, I did not.

Q. -- committee meeting?

A. No, I did not.

Q. Did you receive notice of any meetings in October outside of knowing about the regular October 26th meeting?

A. No.

*Transcript of Audio Tapes of Hearing on Plaintiff's Motion For Temporary Restraining Order and Preliminary Injunction Taken In The Ponca Tribal Court on December 6, p. 12, l.1-9.* Committee member Earl Howe testified about the fact Plaintiff/Appellant was considered excused at the time she called in ill for the monthly Business Committee meeting on October 26:

Q. Well, she was -- she wasn't there on the 26th. She was sick. That's a reasonable reason not to come to a meeting; right?

A. Yeah.

Q. Doctor's appointment's a reasonable reason not to come to a meeting. Being out of town is a reasonable reason not to come to a meeting; right?

A. Yes.

Q. And that's what the constitution says, that you can have an excuse and that doesn't count as one of your three in a row meetings that you miss. Isn't that right?

A. That -- it could be excused.

Q. And if it's excused, it doesn't count as one of your missed meetings?

A. If it's excused, yes, that would fall in there.

Q. And the way you get excused is by writing your other members and telling them, I've got a doctor's appointment, I'm not feeling well, I'm going to be out of town, I'm going to be late, et cetera; right?

A. Right.

*Transcript of Audio Tapes of Hearing on Plaintiff's Motion For Temporary Restraining Order and Preliminary Injunction Taken In The Ponca Tribal Court on December-- p. 110, l.23- p.111, l.21.*

Plaintiff/Appellant argued that the standard for enjoining the Defendants had been met, and the Court should grant the relief requester *instanter*. Instead, the judge gave each party ten days to file any additional documentation or supplemental briefing desired.

Plaintiff/Appellant timely filed her papers. R. at Tab 10. The Ponca Tribe did not do so, but filed a *Motion to Dismiss*, R. at Tab 8, and a *Motion to Pause* the briefing time on the date the filings were due. R. at Tab 9. Without waiting for a response, the Court granted the *Motion to Pause* the next day, which effectively stayed Plaintiff/Appellant's Application. R. at Tab 10. Because all the individual defendants had failed to answer or otherwise plead, Plaintiff/Appellant filed a *Motion for Default Judgment* against the individual defendants on January 3, 2024. R. at Tab 13. On January 9, the individual defendants filed a *Motion to Dismiss* and on January 17, 2024 the Court ruled the individual defendants had cured their default. R. at Tab 18.

Because the individual defendants had also failed to respond to Plaintiff/Appellant's served discovery within the required time, Plaintiff/Appellant filed a *Motion to Compel Response to*

*Discovery Requests* on January 26, 2024. R. at Tab 21. Defendants responded by filing a *Motion to Stay Discovery* on January 30, 2024. R. at Tab 24. The Judge denied Plaintiff/Appellant's *Emergency Application for Order to Take Deposition* on January 31, 2024, R. at Tabs 22, 25, leaving Plaintiff/Appellant with no discovery prior to the hearing on the dismissal motions. The Court after heard argument on all Defendants' *Motions to Dismiss* on February 2, 2024, and dismissed the entire case via *Order* of February 9, 2024. R. at Tab 28.

### **SUMMARY OF THE ARGUMENT**

The Ponca Constitution at Article VIII, Section 3 requires the Ponca Business Committee to “exercise its power consistent with the provisions of this Constitution and federal law.” The Constitution further provides that Ponca tribal members have certain constitutional rights. The purpose of 25 U.S.C.S. § 1302, *et seq*, known as the Indian Civil Rights Act (“ICRA”), is to prohibit Indian Tribal governments and officials from violating the civil rights of individual members of an Indian tribe. The Constitution adopts the ICRA, and the Business Committee has established in law a Tribal Court to adjudicate claims for violation of these rights. The Defendant Ponca Business Committee members violated the requirements of the Constitution, Section 2 when they voted to remove plaintiff from her office without notice and an opportunity to be heard. The Business Committee is not immune from equitable injunctive relief. As such, the Tribal Court cannot fail to adjudicate Plaintiff/Appellant's claims seeking such relief.

The Constitution, Article V, Section 2A recognizes it is not within the power of the Business Committee to remove or expel a committeeperson. That decision rests exclusively with the Ponca electorate via a recall election called and conducted by the Ponca Election Board. Ponca law delegates authority to the Ponca Election Board to declare a business committee seat vacant. Under Ponca law, the Ponca District Court must take jurisdiction over the parties and subject

matter, and review the actions of the Business Committee members to ensure compliance with the Constitution and laws before any dismissal is proper. There is no alternative adjudicatory forum or process established to undertake that review. The Ponca judge committed error when she refused to do so.

The evidence presented at the December 6, 2023 hearing proves the actions and the processes the Business Committee members used to remove Plaintiff/Appellant did not comply with the Constitution and law. The individual Defendant Ponca Business Committee members held gatherings without a call, agenda, or notice to the public or Plaintiff/Appellant, then removed her from her offices without notice and an opportunity to be heard. In doing so, they acted *ultra vires* any authority they had as Tribal officials. Some individual defendants admitted under oath at the December 6 hearing they were motivated to act as they did because of the recall petition circulated by Plaintiff/Appellant's brother. Those admissions demonstrate a clear violation of Ponca law. Additionally, defendants have slandered Plaintiff/Appellant in public and on social media, have withheld her earned compensation, published her private information, and promoted the filing of bogus criminal charges, all in an attempt to sway to Ponca community against her, and to further deny her a seat on the Business Committee in the future. The District Judge improperly dismissed the claims against the individual defendants.

Plaintiff/Appellant met her burden for the Court to prospectively enjoin the members from barring her participation as the elected Secretary-Treasurer and member of the Ponca Business Committee. She met the test for the Court to grant immediate injunctive relief. Previous Ponca District Court judges have issued injunctions against Ponca officials in the face of due process violations, and the Court of Indian Appeals had taken appeals from and affirmed rulings involving similar subject matter. A Tribe's sovereign immunity does not prohibit this Court from issuing

injunctive relief against an otherwise-sovereign entity of a Tribe when it violates its own Constitution and the Indian Civil Rights Act. Just prior to this case being filed, the District Judge enjoined elected officials from holding a recall election against three sitting Business Committee members based on what she determined were improper processes. As such, she cannot properly distinguish this case from others involving similar allegations.

The status quo creates conflicting outcomes within the same court, which erodes its accountability to the Ponca People. This Court should review the matter de novo, reverse the dismissal, and remand with instructions to the District Court to enter the injunctive relief sought pending decision on the merits.

### **ARGUMENT**

It is in the Tribe's public interest to know that this Court will uphold the integrity of the Tribe's Constitution and the basic rights of its members.

*-Davis v Colegrove, PO-24-007 (Hoopa Valley Tribal Ct 2024)*

The above recent statement from a tribal court judge summarizes what should be the utmost consideration for tribal courts generally and this Court in particular – ensuring that tribal citizens have access to a tribal court that upholds the integrity of the Constitution and inalienable rights. In this case, the Tribal District Judge has sent the opposite message by abdicating her responsibility to uphold the Ponca Constitution and laws and dismissing Plaintiff/Appellant's case in its entirety. The Court never considered the merits of granting prospective injunctive relief against the Ponca Business Committee members who refuse to this day to allow Plaintiff/Appellant to serve as an elected official, finding any relief would need to come from the Business Committee itself. R. at Tab 28, p. 6. Furthermore, she ignored the fact that the Court has civil jurisdiction to hear Plaintiff/Appellant's tort claims against individual defendants she claims acted outside their authority. The Court's rationale for refusing to hear those claims- that they were brought against

Business Committee members and the Business Committee serves as its own forum for those types of disputes- is not soundly based in the Constitution nor Ponca law and custom and must not stand.

**I. The Ponca District Court Erred When it Failed to Take Jurisdiction Over Plaintiff/Appellant's Case and Consider Whether Rights Guaranteed Her By the Ponca Tribal Constitution and Laws had Been Violated.**

Plaintiff/Appellant presented undisputed facts to the District Court that the Business Committee does not have authority to remove any business committee member from office, because removal of a business committee member belongs to the Ponca People. Yet, that is exactly what the Defendants did on November 6, 2023 at a gathering that was void *ab initio*. Business Committee gatherings outside the constitutional processes mandated for the body to meet and conduct official business are *ultra vires*. Removal of a member at a void meeting, and without notice and an opportunity to respond, violates both the Constitution and the ICRA.

The purpose of the ICRA is to prohibit Indian Tribal Governments from violating the civil rights of individual members of an Indian tribe. *Thompson v. New York*, 487 F. Supp. 212, 215 (N.D.N.Y. December 13, 1979). Congress in passing the ICRA sought to impose certain restrictions upon tribal governments similar to those contained in the Bill of Rights and the Fourteenth Amendment. *Macarthur v. San Juan County*, 309 F.3d 1216 (10<sup>th</sup> Cir. 2002). The ICRA is an express divestiture of tribal authority, providing, among other things, that no Indian tribe may deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. 25 U.S.C.S. § 1302(7). The Ponca Constitution and laws are replete with references to the rights that Ponca citizens possess not only under tribal law and customs, but also under federal and state law.

Every two years, the Ponca People choose their leaders by popular vote. Once an elected official takes his or her oath and begins to serve, it is the liberty right of the People, under both the



Ponca Tribe's Bill of Rights and Ponca traditions, to have the continued service of their chosen leaders, to have oversight through public meetings and the sanction process of recall, and to remove those leaders if desired via the polls. See *In the Matter of the Appeal of Vern Lee*, SC-CV-32-06, 2006 Navajo Sup. LEXIS 8 (Nav. Sup. Ct. August 11, 2006). The office of an elected official belongs to the voting public. *In re Removal of Katenay*, 6 Nav. R. 81, 85, 1989 Navajo Sup. LEXIS 3 (Nav. Sup. Ct. 1989). That fact is clearly spelled out in the Constitution, where only the Ponca electorate can vote to remove a Business Committee member.

Many Constitutional provisions are aimed at protecting the Ponca Peoples' access to information that helps inform their decisions. Under Section 3 of Article X, for example, the Secretary-Treasurer "shall" keep an accurate account of all proceedings of the Business Committee. The Constitution further requires the Secretary-Treasurer to make out "the order of business" before each Business Committee meeting and issue "notices of meetings." The obvious purpose of that mandate is to keep the citizenry advised of their elected officials' governance. The Secretary-Treasurer is required to "receive all monies of the tribe" and be bonded- both additional attempts to safeguard accountability and tribal funds. Because Defendants prohibited Plaintiff/Appellant her from undertaking her Secretarial-Treasurer duties, the People had no notice that their leaders were engaged in illegal meetings, nor an agenda of the items to be considered at any meetings for many months. Defendants' improper actions mean the Ponca citizenry was not advised of the actions they took against Plaintiff/Appellant until November 18, 2023. As a consequence, the Tribe currently has a defendant acting as Treasurer who is not bonded as required by law, and no way to remove the offending officials. The recent rulings of the District Court allows such violations of the Constitution and Ponca laws to go unchecked.

Tribal courts have repeatedly been recognized as having exclusive adjudicatory power over disputes against tribal officials affecting important personal and property interests of individual Indians. *Kennedy v. Hughes*, 60 Fed. Appx. 734, 735, 2003 U.S. App. LEXIS 5475, \*1 (10th Cir. N.M. March 20, 2003). This is especially true when the rights at issue require due process. Ponca law requires that the due process guarantees of the Indian Civil Rights Act be upheld. The Ponca Tribal Court is the proper place to vindicate Plaintiff/Appellant's rights created by the ICRA. In *Whitetail v. Chaske*, 1992 Northern Plains App LEXIS \*6; NPICA 6, the Appeals Court expressed concern "in regard to due process that needs to be afforded to all parties who may be interested in a hearing." *Whitetail* at \*10. It stated it would have been appropriate in that case to give both advance notice and a meaningful opportunity for a proper hearing prior to making a decision as required under "basic due process." *Id.* An action against a Ponca Business Committee member requires no less. That Plaintiff was undeniably not afforded those processes should have alerted the District Court it needed to restore the Business Committee structure to pre-violation to correct those omissions.

Plaintiff/Appellant claims that Defendants have violated and continue to violate her due process and equal protection rights. The Constitution and Ponca law requires the Ponca Tribal Court, and upon appeal, this Court, to review Business Committee actions to ensure conformity with the Ponca Constitution, and the due process guarantees of the Indian Civil Rights Act. Sovereign immunity is no defense to tribal officers when injunctive relief is sought. *Somers v. Oneida Bingo & Casino General Manager*, 2006 WL 6488211, at \*4 (Oneida Trial Ct. 2006) ("We hold that the Tribe's sovereign immunity permits suits by tribal members against entities, and/or officials for prospective injunctive relief."); *Littlejohn v. Smith*, 12 Am. Tribal Law 347, 348

(Cherokee Nation Supreme Court 2015). Defendants may be sued for prospective injunctive relief in their official capacity, and the District Court was obliged to consider the merits of the claim.

**II. Under Ponca Law, Neither the Ponca District Court nor this Court can Refuse to Review Acts by Ponca Authorities and Officers to Determine Whether their Actions are Constitutional, and in Accordance with Ponca and Federal Law.**

In 2010, the Ponca Business Committee via Resolution 134-07232010, (the “Resolution”) legislatively passed a series of codes as Ponca law. The Resolution states that the codes are adopted for the “effective exercise of the governmental authority of the Ponca Tribe of Oklahoma.” Title I is entitled “Tribal Court Code.” On or about February 21, 2024, Plaintiff’s counsel received a copy of the Resolution. Two of the signatories of the Resolution, which passed unanimously in 2010, are Earl Howe, III and Oliver Littlecook, Sr. These are the same individuals who have been participating in the case as defendants in their official and individual capacities, and who have wrongfully represented that a 1984 resolution is the last word from the Business Committee on the issue of judicial authority to resolve disputes involving the legislative body.

The Tribal Court Code contains the following mandated review:

**Section 617. Judicial Review of Legislative and Executive Actions** The District and Supreme Courts shall have the authority to review any act by the Tribal Legislative Body, or any tribal officer, agent, or employee to determine whether that action, and the procedure or manner of taking that action, is Constitutional under the Tribal Constitution, authorized by tribal law, and not prohibited by the Indian Civil Rights Act.

The District Court never mentioned this law in its Order, nor undertook the required review. Instead it found it lacked jurisdiction under what it deemed a “reservation” of judicial authority to the Business Committee as described in a 1984 Business Committee resolution. This Court in *Ponca Tribal Election Board, Jones and Crain v. Snake and Lieb*, 1988WL 521355, Okla. Trib. 209 (1988) rejected that argument and whether the Tribal Court was prohibited from acting under tribally passed laws not approved by the Secretary of the Interior. It pronounced:

The lower court maintained that the provisions contained within the ordinance had not been approved by the Secretary of the Interior (“Secretary”) pursuant to 25 C.F.C. §11.1(e) and the Ponca Constitution and subsequently were without force and effect, [citation omitted]. We disagree with the conclusion of the lower Court. We believe that the requirement of Secretarial approval of tribal laws relates to “law and order” codes that the tribe may adopt to supplement or replace the somewhat outdated Code of Tribal Offenses contained in the Code of Federal Regulations. This requirement is limited to criminal ordinances or codes.

*Id.* at \*\*8. (emphasis added). The Tribal Court ordinance makes clear that the Tribal Court is the forum for determining whether Business Committee actions, and the procedure and manner of taking those actions, are constitutional, authorized by tribal law, and not prohibited by the Indian Civil Rights Act. The Court cannot rely on a dated resolution over well-reasoned tribal law.

The Ponca Court Clerk has stated she maintains a copy of the Tribal Court Code in PDF format at the Courthouse. The Court Code should have governed the December 6 proceedings, and it was certainly was on everyone’s radar by January 4, 2024 when the Tribe’s counsel requested it and the Judge represented it would be forwarded by the Court Clerk. It has to this date not been provided by the Court, even as it utilizes and cites to equally “unapproved” tribal codes. It is unknown why the Judge chose not to cite nor follow this law, but she does not have the discretion to ignore it. Abiding by the Constitution and laws of the Ponca Tribe is not a discretionary act. The District Court failed to undertake the review required by the statute, therefore, this Court should remand the matter back with the requirement that it do so.

### **III. The District Court Improperly Dismissed the Case Based on Deference to an Alternate Tribal Adjudicatory Forum that does Not Exist**

Article VIII, Section 4 of the Constitution authorizes the Ponca Business Committee to exercise those powers set forth in the Tribe’s Corporate Charter, which specially states the Ponca Tribe can “sue and be sued.” The Resolution adopting a series of laws in 2010 states that the Business Committee is adopting codes for the “effective exercise of the governmental authority of the Ponca Tribe of Oklahoma.” The Tribal Court Code defines the Ponca Tribal Court as both a

“general trial court” operating within the jurisdiction of the Tribe, and a court of last resort from which appeals from the lower district court may be taken. The Tribal Court has been operational, with the Court of Indian Appeals acting in place of a Ponca Supreme Court, for over twenty years. No other adjudicatory forum has been established by the Business Committee to hear claims against it for the types of wrongdoing alleged here.

Over time, the Business Committee has passed and amended criminal, civil, and appellate procedure codes governing cases before the Tribal Court, as well as an Election Ordinance and a Government Code of Conduct. Both these codes recognize the jurisdiction of the District Court to hear claims brought under them which may involve government officials. Conversely, the Business Committee has not granted jurisdiction to itself or established any laws or procedures governing its authority and process for settling Constitutional disputes against it nor tort claims involving individuals who are also Business Committee members. The Tribe continues to utilize the Southern Plains Court of Indian Appeals as its appellate court. No one has produced any Business Committee edict after 2010 that indicates the Business Committee claims immunity from appeals to the Southern Plains Court when District Court decisions involving it or individual committee members are appealed. It is well settled that sovereign immunity is not a defense available to the individual defendants in this case. .

By custom and practice, the Tribal Court has been the entity to decide intra-tribal disputes and disputes between the members and tribal entities. For example, in January 2014, the Ponca Tribal District Court heard a motion filed by Bennett Arkeketa, a candidate for the Ponca Business Committee, seeking to restrain the Ponca Election Board. The Court heard and rejected the Board’s Motion to Dismiss, and sustained the relief Plaintiff requested against the Board. *Arkeketa v. Ponca Tribal Election Board*, CIV-2013-25, January 27, 2014 Minute Order. In that case, the

Election Board specifically argued the Court lacked subject matter jurisdiction over intra-tribal disputes. The *Arkeketa* Court, Hon. D.C. Revard, obviously found the argument unpersuasive, as he assumed jurisdiction and entered both a temporary restraining order and later a permanent injunction. *Arkeketa v. Ponca Tribal Election Board*, CIV-2013-25, April 8, 2014 Order.

Plaintiff alleges in her complaint and in subsequent pleadings that, in varying degrees, all members of Ponca Business Committee individually acted in contravention of any authority granted under the Ponca Constitution, and in contravention of Ponca and Federal law. *See, e.g.*, R. at Tab 1, ¶¶ 19, 20, 24, 25, 26, 27, 28, 30. Officials sued in their personal capacity come to court as individuals and, although entitled to certain personal immunity defenses, cannot claim sovereign immunity from suit, so long as the relief is sought not from the government treasury but from the official personally. *Pistor v. Garcia*, 791 F. 3d 1104, 1108 (9<sup>th</sup> Cir. 2015). There is no law, precedent or custom that suggests the Plaintiff/Appellant cannot bring claims against individual business committee members for torts and violation of the Ponca\_Tribal Government Code of Conduct. The latter at §702 (D), specifically requires the matter be heard “in a court of competent jurisdiction within the parameters of due process as mandated by the Indian Civil Rights Act of 1968.”

Given these precedents, it is hard to fathom how the District Court concluded that the Business Committee is the only forum available to resolve civil disputes involving it or its members. The District Court’s rejection of the Appeals Court’s analysis in *Snake* and the outcome in *Arkeketa* is likewise puzzling. The Court’s suggestion that “The Plaintiff should have petitioned the Business Committee itself for a hearing” defies every undisputed fact about how illegally this body is operating at this time. The Court had before it undisputed evidence the committee members with regularity intentionally defy the Constitution and Ponca law. The notion that

Plaintiff/Appellant could even get the Committee to officially meet on her claims, much less give her a fair hearing seems naïve at best.

Other tribal courts have directly addressed the issue of official and individual liability suits, and their analysis is instructive. *Whitetail v Chaske*, 1992 Northern Plains App. LEXIS \*6; 1992 NPICA 6, for example, stands for the proposition that judicial review of officials' actions is warranted in tribal court despite claims of immunity from suit when purported official action is taken at an improper meeting. The factual parallels to this case are quite striking. After a Devil's Lake Sioux tribal council district election was held, tribal election board officials met to hear a challenge from the loser concerning voter coercion at the election poll. At the close of an admittedly proper meeting, the Tribe's Election Board voted to hold a new election due to improprieties. A day later, at a gathering assembled via phone calls, most of the Board held an improper meeting, where members "just started talking and Maxine started taking minutes" and later by show of hands reversed their earlier decision. *Id.* at \*2. The aggrieved candidate sued the Election Board by their individual names as "members of the Election Board", and the matter was decided by the trial court in plaintiff's favor. Defendants appealed.

The Northern Plains Intertribal Court of Appeals considered defendants' claim of sovereign immunity and ruled that both courts had jurisdiction to examine the actions of the tribal officials: "When public officials act outside the scope of their authority, the cloak of immunity dissolves and courts of law are authorized to review their actions. Since we hold that there was no official meeting of the Election Board on May 24, 1991, any actions attempted to be taken by the individuals who comprise part of the Election Board on May 24, 1991 was outside the scope of their authority, and thus is reviewable by both Tribal court and this Court." *Id.* at \*6. The court considered the circumstances surrounding the meeting and found that certain members had

attended the gathering pursuant to a phone conversation with no proper call, no meeting notice, and no notice to the interested party. The Court examined whether the Board had been conferred authority to hold the meeting in the manner it did, and concluded it had not. *Id.* The Court cited previous rulings by that tribunal which held: “Governmental officials or Tribal officials may be subjected to suit for acts done under authority not validly conferred, or for acts in excess of their authority.” *Id.* at \*7. Because defendants had *no* authority to call and hold the meeting as they had, the Court ruled the meeting was not a valid meeting of the Election Board, and therefore any actions taken at that gathering and subsequent thereto were *ultra vires* and null and void. *Id.* at \*7-8. As such, the court affirmed the lower court’s order enjoining the Election Board defendants from carrying out any of the actions decided in the illegal meeting, because “an official acting in excess of his authority cannot claim immunity from an “injunctive process.”” *Id.* at \*7, citing *Wells v. Nelson Blaine, Jr.* CV-OS-OS-91 (Northern Plains App.1991), *Davis v. Littell*, 398 F.2d 83 (9th Cir. 1968) *cert. den.* 393 U.S. 1018, 89 S. Ct. 621, 21 L. Ed. 2d 562 (1969) and *Burlington Northern v. Blackfeet Tribe*, 924 F.2d 899 (9th Cir. 1991).

The Ponca Tribal Government Code of Conduct, Article III, Section 301(B)(5) prohibits a government official from taking any action which could result in, or create the appearance of making a government decision outside official channels. Surreptitious gatherings of some Business Committee members with no written notice to the Ponca membership and no indication of the business to be undertaken are not official meetings. The governing documents and Ponca law do not support that Defendants acted in conformity with the requirements of the Ponca Constitution to hold official meetings. They exceeded their assigned duties, and were not engaging in a legitimate legislative process during the events which form the basis of Plaintiff’s Complaint.



The notion that the Committee itself is the only proper forum for examining these acts and the harm to Plaintiff/Appellant is mind-boggling.

The Constitution states it and all enacted laws “shall” be the supreme law of the Ponca Indian Tribe, and the Business Committee “shall” only exercise its power consistent with the provisions of the Constitution and laws. If the Business Committee fails to perform its duties lawfully, the Ponca members *must* have a forum to compel the Business Committee members to do what the Ponca Constitution requires. If the Committee members attempt to enforce a constitutional provision in an unlawful way, the Tribal members *must* have a judicial forum to prohibit that illegal enforcement, or the Constitution’s limit on the Business Committee’s powers becomes meaningless. *Lomeli v. Kelly*, 2014 Nooksack App, Lexis 26, \*16-17. The Court cannot ignore statutory and common law in favor of its own theory that the Ponca People chose the Business Committee to be its own forum for resolving Plaintiff’s dispute against it and the individual members. This is the ultimate example of allowing the fox to guard the hen house.

The District Court is plainly misguided in its approach with respect to what forum should hear such claims. At the December 6 hearing, the Chairman and members of the Business Committee testified most members attended a series of uncalled meetings (including two in one day) in an attempt to invoke the Constitution’s provision that a member’s seat is declared vacant if he/she misses three consecutive meetings without proper cause. At two such gatherings, they voted to remove Plaintiff from both her officer position and the Business Committee. The Chairman then wrote her a letter to advise her seat had been declared vacant due to her missing meetings, but the body never officially made such a declaration to either Appellant or the Election Board. That is certainly *not* how the Constitution contemplates that the Business Committee members will carry out a Constitutional proviso regarding absences from meetings, and even the

Chairman admitted their undertaking is no way to run a tribe. That the Ponca District Court would refuse to protect the Ponca People from such wrongdoing, but instead proclaim that Plaintiff/Appellant should ask these same perpetrators to overturn their own wrongful conduct in a fair and open forum is ludicrous.

In *Honyaoma v. Nuvamsa*, 7 Am. Tribal Law 320, 325 (2008), the Hopi Tribe’s appellate court held that certain members of the tribal council could be held accountable in tribal court for acting outside the scope of their authority by attempting to pursue the removal of the Tribe’s Vice-Chairman. The court recognized that enjoining and holding government officials liable for unconstitutional actions was critical to protecting the tribal rule of law. Without requiring defendants to litigate the matter with judicial gatekeeper oversight, the *Honyaoma* court expressed fear of a “far more dangerous harm” - an “unrestrained, unaccountable legislator.” *Id.* This Court should be weary of an equally chaotic result if it allows the District Court’s deference to a non-existent forum to stand.

**IV. Under the Ponca Constitution and Laws, the District Court Commits Error When it Takes Jurisdiction Over the Claims Asserted by the Ponca Nation Against an Agency of the Nation and its elected officials and issues Relief based on Ultra Vires acts, then Refuses to Hear Same Claims in This Case.**

In November 2023, the Ponca Tribe invoked the jurisdiction of the District Court through a civil filing involving an intra-tribal dispute. In *Ponca Tribe v. Election Board*, CIV-2023-023, the Tribe specifically alleged in its Petition, “the Court has jurisdiction over this action,” meaning both subject matter and jurisdiction over the parties, and sought affirmative relief against the Election Board and its elected members. The District Court assumed jurisdiction and restrained the Board from establishing a recall process it found would cause irreparable harm to the integrity of the Tribe’s government functions. *Ponca Tribe v. Election Board*, CIV-2023-023, November 9, 2023 Order at 1. The Court has continued to exercise jurisdiction, including staying a recall

election, voiding filings, and ordering members of the Business Committee and Election Board not to “harass, act with hostility, or retaliation against other parties.” Neither the Business Committee, nor its members have challenged the jurisdiction of the Court nor the propriety of the rulings made with respect to them.

The District Court in CIV-2023-023 had no trouble analyzing whether the Election Board had undertaken certain acts *ultra vires* their authority. The Business Committee Chairman at a public meeting of the citizenry (which was posted on social media) accused Plaintiff/Appellant of theft and stated that charges would be filed against her. He added that if she was convicted, she could no longer run for office. Over six weeks later, Plaintiff/Appellant was arrested and frivolously charged, with the Court willing to sign an arrest warrant, set \$1000 bail rather than waiving it, and oversee claims against her that are undoubtedly intra-tribal and political in nature. Meanwhile, the Court continues to assert jurisdiction over the Election Board, an Election Board recall or new election, and the upcoming general election. Yet it refuses to take jurisdiction over and examine the alleged individuals’ *ultra vires* actions in this case. Taking jurisdiction in one case and refusing it in another involving the same claims destabilizes the Tribal government, the exact outcome the District Court stated it was attempting to avoid. It sows distrust in the Court. The Court’s refusal to consider Defendants’ deprivation of rights claims harms not only Plaintiff/Appellant but all Ponca citizens. This Court should correct that error and order the District Court to consider whether the individual defendants in this case acted without authority or in excess of permissible authority.

**V. The Court Should Enjoin Defendants from Prohibiting Plaintiff/Appellant From Serving as an Elected Official Pending Further Proceedings.**

By December 6, 2023, Plaintiff/Appellant had established through sworn complaint, affidavit and testimony: 1) she was likely to succeed on the merits of her claims that

Defendants had acted in contravention of the Ponca Constitution; 2) she was suffering and would continue to suffer irreparable harm-being barred from her elected offices- in the absence of preliminary injunctive relief; 3) the balance of equities, namely upholding the Constitution and laws of the Ponca Tribe, are in her favor; and 4) that an injunction is in the public interest.” *See Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). As such, the District Court should have enjoined the Defendants from prohibiting her from serving in her elected offices. This Court can and should correct that error.

Plaintiff/Appellant testified that as Secretary of the Business Committee, her job was to notice in writing the regular monthly meetings and any Special Meetings called, and prepare and post the meeting agenda at the direction of the Chairman in accordance with the Ponca Constitution. On September 14, 2023, when Plaintiff/Appellant was absent from the reservation, most of the other members purportedly met without any notice to her. It happened again about a month later:

Q. Do you remember where you were on September 14th?

A. My son had surgery and I was not at work that day.

Q. So you weren't here at all?

A. No.

Q. It's your testimony that you never received any notice of a September 14th meeting?

A. No, I did not.

Q. Do you think they had that meeting because you were absent?

A. Yes.

Q. All right. With respect to October 16th, were you given notice of that meeting?

A. Not that I can remember, no.

Q. Did you attend part of that meeting?

A. I did in the morning.

Q. So it's your testimony that you were there at that meeting in the morning of that meeting; is that right?

A. I went in until part of it -- until it ended for lunch, yeah.

*Transcript of December 6 Hearing on Application for Temporary Restraining Order and Preliminary Injunction*, p. 15, l. 25- p. 16, l. 21.

She arranged the October 16 morning meeting with HUD officials herself, which was not noticed as a Business Committee meeting. After it ended, an unofficial gathering purportedly took place later in the day while Plaintiff/Appellant was in her office at the Tribe working to keep from losing a grant. There, she was confronted by the Tribal Administrator who stated the Business Committee had removed her as Secretary-Treasurer and she was to leave her office and the building immediately:

Q. On October 16th, you testified there was a meeting and you were at that meeting for at least part of that meeting?

A. Yes.

Q. That's when you were actually removed as secretary that afternoon and told to leave; correct?

A. Yes, in the afternoon.

Q. And during the time you were at that October 16th meeting, was there any mention made of making a motion to remove you as secretary-treasurer?

A. No.

Q. Was that on an agenda?

A. No.

*Transcript of December 6 Hearing on Application for Temporary Restraining Order and Preliminary Injunction, p.30, 1.8-20.*

The individual Business Committee members said nothing to her about the fact they were taking this action, but immediately shut off her email, suspended her pay, and did not notify her of any subsequent meetings save the regular monthly meeting:

Q. All right. And it's your testimony that from October 16th forward, the only notice you had was of the October 26th regular monthly meeting?

A. Yes.

Q. And we've got a text that shows that?

A. Yes, I do.

Q. Now, did you find November 6th on your phone?

A. No, I did not.

Q. There's no text that day?

A. No.

Q. How about November 6th?

A. No.

Q. No text? Okay. Is there any other place that you would get information about meetings that you would have gotten on November 6th?

A. Sometimes e-mail or a call.

Q. Do you remember getting any email?

A. No. My e-mail was shut off on the 16th.

Q. October 16th?

A. Or it -- it was -- might have been given to a couple of council members, attached to theirs.

Q. So October -- from October 16th on, you never received any emails?

A. No.

Q. From the tribe or from other council members?

A. No, I did not.

Q. Why was your e-mail turned off on October 16th?

A. I was never given a reason.

Q. What about getting your compensation? How often does the council get compensated?

A. Every week.

Q. And from October 16th, did you receive any compensation?

A. Maybe three weeks later, they gave me my last check.

*Transcript of December 6 Hearing on Application for Temporary Restraining Order and Preliminary Injunction*, p.31, l. 16- p. 33, l. 13.

The Business Committee Chairman testified there was no written notice or agenda for any of the three consecutive meetings he claimed Plaintiff/Appellant missed that led to her removal:

Q. Well, so you count up October 24th, October 26th, and November 6th as the three meetings that automatically vacated her seat?

A. Right.

Q. And you -- and if there's no notice to her, then she can't attend a meeting that she doesn't know notice -- that she has no notice of?

A. And we contend she did receive --

Q. I understand --

A. -- the notice.

Q. -- that you say that. But I'm asking you --

A. Right.

Q. -- do you have anything in writing -- text, e-mail, note, sticky note, anything -- that shows that she had notice of a Tuesday, October 24th meeting or a Monday, November 6th meeting that she just intentionally missed?

A. That, I don't know, but they --

Q. Okay.

A. -- they know. They're aware, everyone. Why would other people be aware and know and she not come?

Q. Do you have it in writing to her?

A. I don't have it in writing, no.

*Transcript of December 6 Hearing on Application for Temporary Restraining Order and Preliminary Injunction* p. 90, l.5- p.91,l. 5.

The most common test courts use to determine whether the movant's claim shows "a reasonable probability that he will ultimately be entitled to the relief sought" is violation of existing law. *Automated Mktg. Sys., Inc. v. Martin*, 467 F.2d 1181, 1183 (10th Cir. 1972).

Where a movant can prove that the non-movant(s) is in violation of existing law, the first element to issue an injunction is fulfilled. *Milsen Co. v. Southland Corp.*, 454 F.2d 363, 367 (7th Cir. 1971). The Chairman testified about violating Plaintiff/Appellant's due process rights in her removal:

Q. You can't point to anything in writing that tells me that you notified her to come to this meeting, and particularly the subject matter of the meeting? Why didn't you just tell her --

A. As we --

Q. -- we're going to remove you? Come on?

A. As we said -- yeah, if she would have attended, she would have known. Why didn't she attend?

Q. Agenda?

A. Why didn't she attend?

Q. Agenda?

A. Agenda?

Q. Do you have agendas for these meetings?

A. Sometimes we do even and sometimes we don't.

Q. Is that any way to run a tribe?

A. No, it ain't.

*Transcript of December 6 Hearing on Application for Temporary Restraining Order and Preliminary Injunction*, p. 85, l.12- p. 86, l.11.

Sometime after October 26, individual members of the Business Committee planned to claim that Plaintiff/Appellant's absence from meeting she didn't attend could be deemed "unexcused" and without just cause. The Chairman admitted to an unlawful, ulterior motive in doing so:

Q. Regarding the October 26th meeting, you've heard testimony that there was a notice sent out and she said she didn't feel well?

A. Uh-huh.

Q. Why did the board not excuse that absence? What information do you have that -- that made you guys determine that was not good cause?

A. At the time, during that time as -- as she -- she brought up, Ms. Carney brought up, there was a portion of our tribal members that were -- that were petitioning three of our council members, you know, petitioning to removal, and it was creating a lot of discord among our tribe, our people, a lot of divisive -- divisive actions that were going on a lot. And we were getting phone calls from various people around the state stating that they -- she and other members were at their home, trying to get them to sign a petition. So we weren't -- we weren't real sure that she was really sick. We figured she must have been out to -- doing the petition.

*Transcript of December 6 Hearing on Application for Temporary Restraining Order and Preliminary Injunction*, p.68,l.24-p. 69- 1.

The Constitution at Article VII entitled “Bill of Rights” reads as follows:

SECTION 1. All members of the Ponca Tribe of Indians of Oklahoma shall enjoy without hindrance, freedom of worship, conscience, speech, press, assembly, and association.

SECTION 2. This Constitution shall not in any way be construed to alter, abridge, or otherwise jeopardize the rights and privileges of the Ponca Tribe as citizens of the State of Oklahoma or of the United States.

SECTION 3. The individual vested property rights of any member of the Ponca Tribe shall not be altered, abridged, or otherwise affected by the provisions of this Constitution without the consent of such individual members of the tribe.

As a citizen of the Ponca Tribe and the United States, and an elected official of the Tribe, Plaintiff has important personal, property, assembly and association rights which no person can abridge. *Ponca Tribe Constitution, Article VII*. Despite the extraordinary clarity of the Ponca Constitution and tribal and federal law, the members of the Ponca Business Committee on October 16, 2023 and thereafter randomly invoked powers they do not possess. Without authority, they demanded that Ponca and BIA employees force Plaintiff from her office upon threat of physical removal, turned off her access to tribal records, and instructed that she should not be compensated. These actions reflect serious civil rights violations.

Plaintiff/Appellant is further required to show that irreparable harm is likely in the absence of this Court granting her requested relief. *Winter*, 555 U.S. at 22. Irreparable harm is “generally an action that cannot be undone or remedied with money.” *Kasee v. Drew-Skenandore*, 2010 WL 7746038, at \*1 (Oneida Trial Ct. 2010). A violation of a party’s constitutional rights equates to irreparable injury. *Taylor v. Haugaard*, 360 F. Supp. 3d 923 (D. S.D. 2019) *Florida Democratic Party v. Scott*, 215 F. Supp. 3d 1250 (N.D. Fla. 2016); *Baskin v. Bogan*, 12 F. Supp. 3d 1137 (S.D. Ind. 2014). Littlecook’s allegations on November 18, 2023, where he publicly accused her of stealing from the Tribe and stated he would cause “charges” to be filed against her, something he did that resulted in her unfounded arrest, are just some of the actions that have caused her irreparable harm.



Importantly, the accounting, compliance, auditing and reporting safeguards put in place by a bonded Treasurer to protect the Tribe's financial resources are being undone every day that Plaintiff/Appellant is banned from her elected office. These facts warrant temporary injunctive relief.

In *LaRose v. Wilson*, 2003 WL 26066795, at \*8 (Leech Lake Trial Div. 2003) the tribal court determined that the public interest weighed in favor of granting an injunction in an unconstitutional removal because of the substantial number of voters who voted for the officer subject to removal. The neighboring Osage Court has granted similar relief, finding the citizens have a vested interest in who their leaders are, and that who they elect as leaders should remain in office absent misconduct warranting removal. *See Red Eagle v. Osage Nation Congress and Select Committee of Inquiry*, SPC-2013-03. The Ponca People have just as much interest in removing their elected officials as they do in selecting them. If certain requirements must be fulfilled to be elected, so too must they be fulfilled to be removed.

Additionally, the equities favor that Plaintiff/Appellant, and others like her, always be afforded due process and a fair and accurate proceeding to determine if any suspension/recall action is warranted. The Business Committee know this is a requirement, as they held a hearing with notice for the Election Board members before suspending them. *See Ponca Tribe v. Ponca Tribal Election Board*, CIV 2023-023 (Ponca Dist Ct 2023). Yet they refused to honor those rights with respect to Plaintiff/Appellant.

The best interests of the Ponca public are served by the issuance of a temporary injunction. Any other result will pave the path for others to suffer the same illegalities. The Chairman and the Business Committee members have declared the Constitution can be

waived at will. Public officials now believe they can engage in unconstitutional actions unchecked by the judiciary— a grave scenario for a Constitutional government.

Relief has been granted in tribal removal proceedings where the law of removal is not followed and injunctive relief is in the public interest. *See, e.g., Davis v Colegrove, PO-20-007* (Hoopa Valley Dist. Ct. 2024) (Injunction prohibiting Chairman’s removal hearing granted); *Monetathchi v. Flyingman*, 10 Okla. Trib. 376 (Cheyenne-Arapaho Trial Ct. 2007) (Preliminary injunction issued preventing removal of tribal officer); *White Wing v. Ho-Chunk Nation General Council ex rel. Cloud*, 5 Am. Tribal Law 197, 206. This is especially true when there is an improper motive behind the removal. Plaintiff/Appellant testified:

Q. Do you know why you were removed -- why you think you were removed from being a secretary-treasurer of the Ponca business committee?

A. I believe it was retaliation from a recall petition.

Q. Tell the Court about that.

A. My brother started a recall petition in September of '23, and then he was set to get signatures on October 4th. And then he got all the signatures he needed within three weeks, about 400 people, to remove three business committee members.

Q. And who was the subject of the recall petition?

A. Oliver Littlecook, Robert Collins, and Matilda DeLaGarza.

Q. Okay. When did that petition -- when was that petition noticed?

A. That was noticed on -- when they had this meeting, September 14th

Q. The same day that you were supposedly relieved of some of your duties?

A. Yes.

Q. Okay. And why do you think that you were removed -- purportedly removed from council on October 26th -- or November 6th? Excuse me.

A. I still think it was because of the recall petition.

Q. Because you hasn't missed three consecutive meetings?

A. That's correct.

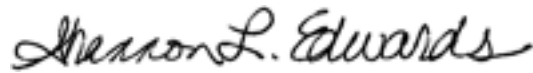
*Transcript of December 6 Hearing on Application for Temporary Restraining Order and Preliminary Injunction*, p.35, l.17-p. 36, l.11

Under Ponca Tribal Rules of Civil Procedure I-9D, and 65D, the District Court should have enjoined the Defendants pending further proceedings. This Court should reverse that dismissal with instructions to the Court to enjoin the Defendants and restore Plaintiff/Appellant to her offices pending further proceedings.

**CONCLUSION**

This Court should overturn the District Court’s dismissal of all of Plaintiff/Appellant’s claims, order that the District Court take jurisdiction over the claims and review them in accordance with the Constitution, the Indian Civil Rights Act, and Ponca law, and order that Plaintiff/Appellant be restored to her elected positions prior to the individual members’ *ultra vires* actions pending further proceedings.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing document was emailed on the 29th day of April, 2024 to:

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