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ORVILLE "RED" LANGDEAU, JR.,	)	
AND JOHN MCCAULEY, SR.	)	<b>CIV. No. 15 – 9 - 0111</b>
Plaintiffs	)	
	)	
	)	<b>DEFENDANTS'</b>
	)	<b>POST-HEARING BRIEF</b>
	)	
v.	)	
	)	
KEVIN WRIGHT, SONNY ZIEGLER	)	
DESIREE LAROCHE, AND	)	
LEWIS GRASSROPE	)	
Defendants	)	

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**I. INTRODUCTION**

Defendants retained Chase Iron Eyes on Oct. 23, 2015 when he made his appearance as the attorney of record in the above-styled case and in that manner Defendant's attorney was granted permission to file a Post-Hearing Brief on behalf of Defendants due to the fact that their attorney with-drew from representing them at a date very close to the hearing day of Oct. 23, 2015.

**II. ARGUMENT**

**1. The Actions Of Defendants During The Contested Council Meetings Were Legal Because The Plaintiffs Violated A Court Order To Remain At The Council Meetings Thus Voluntarily Giving Up Their Right To Complain In Court.**

The record reflects and Plaintiffs admit to abandoning a duly called and noticed Tribal Council meeting on Sept. 2, 2015. Both Plaintiffs were aware of prior court order(s) including that of

Feb. 13, 2015 and June 11, 2015, ordering them upon threat of contempt of court to stay at meetings to conduct business. The Secretary-Treasurer's absconding is particularly troubling in light of his claims that business cannot be conducted in his absence (*See Plaintiff's Complaint*) when a clear reading of the Constitution's Bylaws Article I at Section 3. And 4. shows that the language reads "[Secretary and/or Treasurer] **shall be present at all special and regular meetings of the Tribal Council. (Amendment II, September 2, 1986).**" This language is to be read as referring to a duty imposed on the Secretary and/or Treasurer to be present at the meetings as an attendance requirement mandating that official to be at the meetings. It is not meant to give that office the ability to halt all action of the Council in his absence; that assertion is legally unsound. The above language mandates Plaintiff's presence at meetings; the above language is not to be interpreted as a right to break quorum and prevent the Tribe from functioning. Plaintiffs illegally absconded from their duties to the people of the Lower Brule Sioux Tribe, of their own volition, because they do not agree with actions and policies of the current council. If the Secretary-Treasurer and Plaintiff argue that they thought the Constitution was being violated that is an admission of a willingness to violate a Court Order based on their own lay-person interpretation of a Constitutional question (whether or not the Chairman had a right to vote when the Court said he did). They chose to violate a Court order after profuse warning from Defendants and should be held accountable for their own actions.

**2. Kevin Wright Acts As The Chairman In An Administrative And As-Needed Capacity And Followed This Court's Order In Trying To Vote And Cannot Be Attacked For Complying In Good Faith With Edicts of This Court.**

Kevin Wright was elected as the Vice-Chairman of the Lower Brule Sioux Tribe; he was not and never claimed to hold the office of the Chairman. Kevin Wright acted in good faith when

he assumed the administrative and as-needed functions of the office of the Chairman under the authority of the Lower Brule Constitution and Bylaws (*see attached Kevin Wright letter, Post-Hearing Brief Exhibit 1*), exhibit is part of the records. Defendants ask court to take judicial notice. Kevin Wright lawfully assumed the administrative and as-needed authorities of the Chairman because of the emergency situation presenting itself in the Federal Government issuing notices of its intent to with-hold funds meant for the Lower Brule Sioux Tribe because the Tribe had not filed certain audits. *See Letter to Kevin Wright from U.S. Dept. of Interior putting the Tribe on notice that it ration out all contracting funds to the Tribe on a month-to-month basis because the Tribe failed to file its Singe Audit Report for FY 2014 (See Attached Post-Hearing Brief Exhibit 2)*. Kevin Wright does have a vote in the Tribal Council and he performs the duties incumbent on the office of the Chairman since the Tribe would be at risk if he did not. Kevin Wright is voting to please the will of the people of the Lower Brule Sioux Tribe as they elected him to have a vote; Kevin Wright is acting in an administrative capacity as the chairman, in cooperation with Desiree LaRoche and Sonny Zeigler and Plaintiffs, who comprise the majority and are attempting to safe-guard the people's resources, funds, accounts, properties and all conceivable interests, rights and privileges in light of a comprehensive Human Rights Watch report that details scores of millions of dollars being squandered by and stolen from the people by the Plaintiffs or under the watch of Orville Langdeau, John McCauley, Jr, as well as Michael B. Jandreau, and anyone else who violated the Trust of the people of the Lower Brule Sioux Tribe. In addition, Kevin Wright is exercising his duly conferred right to vote at the behest of this Court's hearing and order which reasonably interpreted the emergency and gravity of the situation to confer on Kevin Wright administrative and as-needed authorities on the Vice Chair to step into the shoes of the Chairman for temporary

reasons so the Tribe can function while retaining his right to vote as a popularly elected member of the Tribal Council, just like those similarly situated with him.

Because Kevin Wright could vote at all times and because Plaintiffs absconded on their responsibility in violation of standing court orders and in contravention their own argument that the Bylaws mandate their presence and because even if they would have voted against the sitting majority, had they followed the law and stayed at the meetings, they would have failed in their attempts to stop the progress of the majority, because they comprise only 2 votes, of the Council and because they should not be able to threaten the health, safety and welfare of the people of the Lower Brule Sioux Tribe because they will not appear at or stay at duly called meetings of the Lower Brule Council thereby breaking the quorum and the law at the same time, the Plaintiffs should not interfere with Kevin Wright's right to vote and to act as the Chairman in temporary respects until the vacant Chairman's office is filled.

### **3. Meeting Outside The Reservation Is Not Prohibited By The Constitution And Bylaws.**

Because Langdeau and McCauley broke quorum on the 2<sup>nd</sup> of September and the Tribal Council could not be properly adjourned, the Defendants acted lawfully in calling, noticing, continuing and conducting the meetings on or off the reservation. The Bylaws at ARTICLE IV – MEETINGS Section 1. States “the regular meeting of the Tribal Council shall be held the first Wednesday of each month at the Lower Brule Community Hall or such other place on the reservation designated by the Tribal Council. Special Meetings may be called by the Chairman or by the majority of the Tribal Council and when so called as in regular meetings (Amendment II and V, September 2, 986). The on-reservation requirement is for one monthly meeting which

was held on September 2, 2015; then the Chairman (Kevin Wright acting in that capacity) called for a meeting and moved that location to Rapid City for the safety of the Council which said meeting was duly noticed (*See Attached Post-Hearing Brief Exhibit 3*) and Plaintiffs have held meetings in the past where there is no prior notice provided (see Affidavit / Testimony of Sonny Zeigler in Court), including meetings off the Reservation (Westrock).

**4. It Shocks The Conscience That Only Langdeau, McCauley And Others Unknown Are In Control Of All The People's Money In Wells Fargo And Other Accounts While A Sitting Majority Of The Lower Brule Council Is Denied Access To All Records, Accounts, Funds And Any Other Area Of Access Duly Conferred On The Office Of Council Representatives.**

Sonny Ziegler, Desire LaRoche, and Kevin Wright, duly elected and seated members of the Lower Brule Tribal Council are being shut out of access to essential financial and other accounts in violation of the Constitution and the good order of the Lower Brule Sioux Tribe when they are responsible for ensuring government transparency in light of the ongoing federal investigation and major critical attention resulting from the Human Rights Watch Report. Defendants should not have to prove why they deserve access; Plaintiffs should have to prove why they are denying access and why Defendants should not be allowed access when Plaintiffs and Defendants hold the same level of office as elected officials.

**5. Plaintiffs Have Conducted Business In The Past With Less Than 2/3 Of A 6 Person Council**

Now that Plaintiffs find themselves in the minority and a new day is turning for the people of Lower Brule, Plaintiffs are now asserting that Tribal Council cannot act without a full 2/3 of the Council in agreement while 5/6 of the Council is present. Plaintiffs have done the same in the past however and cannot now contend to be attempting to uphold the Constitution when their actions in the past “violated” the Constitution under their arguments today. (*See Attached Post-Hearing Brief Exhibit 4 -actions of the Tribal Council showing action taken with less than 2/3 majority requirement*). Defendants admit that the Constitution states a quorum of 5 is required and a 2/3 majority vote is required but Defendants maintain that they are afforded the same customary lawful practices as past councils have afforded themselves to be able to act with a 3 person majority or with a majority of any sitting council. In fact, allowing the current majority to act may be the only hope the people of Lower Brule have at achieving transparency. The Court is now requiring all members of the council to constitute a quorum because there are only 5 remaining council members; that is impracticable and impossible unless the Court Orders demanding their appearance are enforced. This Court is also requiring a 2/3 majority to do Council business which is impossible when Plaintiffs Langdeau and McCauley are a disobedient minority in their approach to the governing of the Lower Brule Sioux Tribe. The Court, in taking this case, should be willing to entertain practical and necessary solutions in cases where the Constitution (written during the terms of Jandreau, Langdeau and McCauley) does not contemplate the functioning of its government in the event that one council member dies; that is former Chairman Jandreau in this instance.

With respect to a majority vote: Two-thirds (2/3) expressed as a percentage is .6666666...7 or 67%; Three-fifths (3/5), which is the case right now, expressed as a percentage is .60 or 60%.

With respect to a quorum: Five-Sixths (5/6) expressed as a percent is .8333333... or 83% and

Four-fifths (4/5), which is the case now with Jandreau gone, expressed as a percent is .80 or 80%. Given the fact that the minority is illegally holding up a majority vote by breaking quorum and violating the Constitution & Bylaws (Art. I Sec. 3 and 4. Mandating Plaintiff's attendance) and this Courts Order(s) mandating Plaintiff's attendance, it is our prayer for relief that this Court consider a functional majority that reconciles the mathematical impasse all members find themselves in by reducing the quorum and action-taking numbers by 1 until a Chairperson is seated or until a Constitutional amendment can rectify this egregious situation but at all times leave in place an order requiring council attend and stay at meetings until properly adjourned under threat of contempt findings, criminal and/or civil. This would achieve a workable solution that deters from the strict and inherently flawed mathematical dictates of the Constitution by a factor of .06 or 6% (in regard to the 2/3 vs. 3/5 majority vote requirement)/ Defendants argue that this Court decided it had jurisdiction (to the continued unbriefed objection of Defendants) and should exert itself in restoring order for the benefit of the Lower Brule Sioux Tribe.

**6. This Court Asserted Jurisdiction Over This Case And Prolonged The Impasse And Must Now Take Action To Resolve The Mathematical Impasse Created By The Constitution.**

This Court has allowed the repeated legal whims of two minority council members to put the entire Tribal Government at risk by taking jurisdiction in the first place and entertaining them to the Defendant's continued objection. However, more important, since the Constitution(s) is/are grossly inadequate to deal with the present impasse this Court needs to act to alleviate a potential Appellate Court ruling in Civ. No. 14-12-0119 (the first TRO and Injunction filed on Defendant's excluding Lewis Grassrope, which now sits at Appellate Court) because Defense counsel was denied the ability to file an appellate brief on their behalf regarding the quorum (5

out of 6) and majority (2/3) required to take action and other issues associated with Civ. No. 14-13-0119. Since Defendant's counsel was denied the right to submit an appellate brief the Appellate Court may decide, that in the wake of Mr. Jandreau's passing, a 100 percent attendance policy of each remaining 5 council members is required and that 4 votes out of the remaining 5 are required to take action even though the Plaintiffs have participated in past actions where less than 4 out of 6 have taken action (see attached Post Hearing Brief Exhibit 4). Given the cantankerous insubordination of Mr. Langdeau and Mr. McCauley since Jandreau's passing and in light of the federal investigation and world-wide attention placed squarely on the Lower Brule Sioux Tribe at this moment, Defendants urge a solution that includes a "workable majority." Even if the Court rules that nothing changes as far as quorum and majority requirements upon the death of a Chairperson/Councilperson, and the Plaintiffs are allowed to enter Boyd Gourneau and Boyd Gourneau is declared eligible, pays his fees, passes muster of the Election Board's province to determine candidacy, and wins, this still does not solve the impasse as the majority (Defendants) will still have a 3 to 2 majority vote where a seated Chairman (who holds only the office of the Chairperson) cannot vote unless and only if there is a tie; this gives an objective impression that the actions of the Plaintiffs are futile in nature and still they seek attorney's fees from Defendants, which Defendants vehemently deny they are due. Further, Defendants agreed to the potential special election upon the premise that they would be able to file a brief, and such filing of a brief has now been denied by the Appellate Court (at least the Hon. Gotland has denied it via email to Plaintiffs' and Defendants' counsel).

### **III. CONCLUSION**

For the aforementioned reasons Defendants pray this Court enters an order that mandates, by threat of contempt holdings, that all Council Members be present at duly called and special

meetings properly noticed and that the majority will of the people of Lower Brule can be expressed by a majority vote of the Council as mentioned above. Defendants pray for relief to include:

a. Any Orders from this Court shall apply to all Council Members equally, that Kevin Wright can both act as the Chairman administratively and as-needed at the same time keep his vote that was entrusted to him by the people of the Lower Brule Sioux Tribe.

b. that this Court order Kevin Wright, Desire LaRoche, Sonny Zeigler and anyone holding a duly elected or appointed office of the Lower Brule Council to have unfettered access to any and all accounts, financials, and any other conceivable information of any Tribal account, Board, Organization, Casino or other interest of the Lower Brule Sioux Tribe where the Tribe is in whole or in part owner or possessor of an interest so they can protect the interest of the people in light of the Human Rights Watch and ongoing federal investigation.

c. That all actions taken at the September meetings are of legal force except those involving hiring of new legal and media/security teams.

And for any other relief this Court sees fit to order in light of the magnitude and gravity of this current and ongoing impasse.

**DATED** this 30<sup>h</sup> day of October, 2015.

Respectfully Submitted By:



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Chase Iron Eyes  
Attorney for Defendants

**CERTIFICATE OF SERVICE**

I, Chase Iron Eyes, hereby certify that on the 30th day of October, 2015, I caused copies of the foregoing Defendants' (Lewis Grassrope, Kevin Wright, Desire LaRoche, Sonny Zeigler) Post-Hearing Brief, Certificate of Service and exhibits thereto, if any to be served via U.S. Mail or hand carried delivery at Lower Brule, upon the Clerk of relevant Court or other Personnel and Counsel for Plaintiffs:

Lower Brule Sioux Tribal Court  
ATTN: Marlys Langdeau, Court Administrator  
P.O. Box 122  
Lower Brule, SD 57548-0122  
Phone 605-473-5528  
Email marlys.langdeau@lowerbrule.net

Hon. Judge B.J. Jones  
Email hon.bj.jones@gmail.com

Terry Pechota  
Plaintiffs' Counsel  
1617 Sheridan Lake Road  
Rapid City, SD 57702  
Email tpechota@1868treaty.com

by either electronic service, and addressed to the above-named person at the foregoing address, the same being the last-known address of that person.

Dated: this 30<sup>th</sup> day of October, 2015.

By: 

Chase Iron Eyes, SD Bar # 3981

P.O. Box 888  
Fort Yates, ND 58538  
Phone: 701.455.3702  
Fax: 866.810.6099  
E-mail: chaseironeyes@gmail.com