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Case No. 17-024

IN THE YUMA INDIAN NATION SUPREME COURT

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THOMAS SMITH AND CAROL SMITH

Defendants - Appellants,

v.

YUMA INDIAN NATION

Plaintiff - Appellee

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**BRIEF FOR THE APPELLANTS**

APPEAL FROM THE YUMA INDIAN NATION TRIAL COURT

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## **QUESTIONS PRESENTED**

### **A. Jurisdiction**

Tribal courts have no civil jurisdiction over non-members, unless the facts fall under one of the two exceptions in the *Montana* case. Thomas Smith (“Mr. Smith”) and Carol Smith (“Ms. Smith”) have engaged in a contractual relationship with the Yuma Indian Nation (“Tribe”), allegedly invoking jurisdiction of the Yuma Indian Nation trial court (“trial court”), when the conduct was performed in the interest of the state and on non-Indian land. Does the court still hold personal and subject-matter jurisdiction over Mr. Smith and Ms. Smith?

### **B. Sovereign Immunity**

The state of Arizona considers the growing of marijuana for recreational use to be a crime. Knowing that it is illegal to grow marijuana for recreational use, the Tribe allowed its employees and officials to perform illegal activity in order to make a financial profit. Mr. Smith and Ms. Smith, who have contracted with the Tribe to assist them in their financial decisions, have stated that they have moral obligations against the growing of marijuana, as well as legal obligations not to assist the Tribe commit illegal activity. Should the Tribe, its officers, and employees still be protected by the doctrine of sovereign immunity, when the Tribe and its employees have committed illegal activity?

## **STATEMENT OF THE CASE**

### **A. Statement of Proceedings**

After receiving the letter from the A.G., the Tribal Council, filed suit against both Mr. Smith and Ms. Smith in tribal court, on the grounds of breach of contract, violation of fiduciary duties,

and violation of their duties of confidentiality. R. at. 3. In response to the Tribe's suit, Mr. Smith and Ms. Smith filed special appearances and motions to dismiss, due to lack of personal and subject matter jurisdiction of the trial court, and in the alternative, requested that the trial court stay the suit while they seek a federal court's ruling on the jurisdictional issues. R. at. 3. These motions were ultimately denied by the tribal court. R. at. 3.

Continuing under their special appearances, both Mr. Smith and Ms. Smith filed timely answers denying the Tribe's claims. R. at. 3. They also filed a counterclaim against the Tribe, and as third party defendants, the Yuma Indian Nation's Economic Development Corporation ("EDC") and two of the EDC's employees. R. at. 3. The two EDC employees that were listed were EDC CEO Fred Captain ("Captain"), and accountant for the EDC Molly Bluejacket ("Bluejacket"). R. at. 3. The counterclaim was based on the grounds of defamation for impugning Mr. Smith and Ms. Smith's professional skills, and sought the money due under their employment contracts. R. at. 3. The trial court unsurprisingly dismissed all of Mr. Smith and Ms. Smith's claims against the Tribe and the third party defendants due to the protection of the Tribe's sovereign immunity. R. at. 3. Mr. Smith and Ms. Smith have submitted a timely interlocutory appeal to this Yuma Indian Nation Supreme Court, and now seeks that the court decides the issues of personal and subject matter jurisdiction over them, and sovereign immunity of the Tribe and the third party defendants in regards to their claims. R. at. 3. They also seek a writ of mandamus ordering the trial court to stay the suit, while a federal court makes a ruling on the two issues. R. at. 3.

## **B. Statement of Facts**

The appellants in this case, Mr. Smith and Ms. Smith, are brother and sister, both of which contracted to work along-side the Tribe and its financial subsidiary the EDC. R. at. 1 & 2.

The Tribe is a federally recognized Indian tribe located in southwest Arizona. R. at. 1. In 2009, the Tribe created the EDC under a 2009 tribal commercial code to help promote the Tribe's economic endeavors. R. at. 1. The EDC was funded with a one-time \$10 million loan that was provided by the Tribe from its general fund. R. at. 1. Although the EDC was founded by the Tribe, and is considered to be an "arm-of-the-tribe", it is to be operated by its own board of directors. R. at. 1. The board is to consist of five people who are required by the Tribe to have experience in business. R. at. 1. Three of the five board members must be members of the Tribe, while the other two members are required be non-Indian. R. at. 1. These members can be removed by the Tribal Council, with or without cause, by a 75% percent vote. R. at. 1. The EDC's Chief Executive Officer is Fred Captain ("Captain"). R. at. 1. The EDC also has an employee/accountant by the name of Molly Bluejacket ("Bluejacket"). R. at. 1.

The EDC was authorized to purchase as well as sell real property in fee simple title, regardless if the land is considered Indian Country or not. R. at. 2. The EDC was expressly authorized by the Tribe to have the ability to purchase any variety of property and to acquire such property in any form of ownership, as well as have the ability to sue and to be sued. R. at. 2. The EDC is required to apply tribal preference when hiring employees and when contracting with outside sources. R. at. 2. Since 2009 the EDC, on average, operated with 25 full-time employees, all of whom are tribal members. R. at. 2. It was mandated by the Tribal Council, that the EDC, the board of directors and all of its employees be protected by Tribe's sovereign immunity. R. at. 2.

Mr. Smith is a certified financial planner and accountant who is a resident of Phoenix, Arizona, where his office is also located. R. at. 1. The initial relationship between the Tribe and Mr. Smith began in 2007 when he agreed to assist the Tribe with financial advice on an as-



needed basis. R. at. 1. This agreement was in the form of a contract and signed at Mr. Smith's office in Phoenix. R. at. 1. The agreement included an arbitration clause, as well as a confidentiality agreement. R. at. 1. For the next 10 years Mr. Smith would exchange emails, telephone calls, or any other sort of communication that was necessary to perform his duties, with Captain, Bluejacket, and the Tribal Council members. R. at. 1. Mr. Smith would diligently prepare and submit quarterly reports on behalf of the EDC and physically present these reports to the Tribal Council for review. R. at. 1. The reason for Mr. Smith's frequent appearances on the EDC's behalf, is because the Tribal Council required that the EDC submit thoroughly prepared quarterly reports regarding its financial and corporate records. R. at. 2.

In 2010, after the Tribe gave him signed and written permission, Mr. Smith signed a contract with his sister Ms. Smith, a licensed stockbroker, who lives and works in Portland, Oregon. R. at. 2. It was agreed that Ms. Smith would offer the Tribe, the EDC, and Mr. Smith advice with regards to stocks, bonds, and securities issues. R. at. 2. Her contract contained the same arbitration clause and confidentiality agreement that her brother's employment contract contained. R. at. 2. Other than sending monthly bills to Captain and visiting the Tribe's reservation twice, Ms. Smith communicated directly through Mr. Smith, using email and telephone, as well as postal delivery form. R. at. 2. All of the communication, between Ms. Smith and Mr. Smith, regarding the EDC and the Tribe's financial interest, Mr. Smith would forward to the Tribal Council, and the EDC's CEO and accountant Captain and Bluejacket. R. at. 2.

In 2016, some years after the contractual relationship had developed between the Tribe and Mr. Smith and Ms. Smith, without a single report of bad faith or any other negative incident on

behalf of Mr. Smith and Ms. Smith, the Tribe became very interested in growing and manufacturing marijuana. R. at. 2. At this time in Arizona, marijuana is legal for medical purposes but not for recreational purposes. R. at. 2. In order to satisfy its growing interest in cultivating recreational marijuana, the EDC convinced the Tribal Council to pass an ordinance that allows the cultivation, selling, and using of marijuana on the reservation for any purpose. R. at. 2. Once the ordinance was passed, the EDC began planning and developing its marijuana operations. R. at. 2.

Mr. Smith and Ms. Smith are honest, hardworking citizens who have done their due diligence on behalf of their obligations to the Tribe, and were morally insulted by the Tribe's illegal activities. R. at. 2. To inflame the situation worse, the Tribe attempted to include Mr. Smith in their marijuana growing scheme, so Mr. Smith did what he believed was the right thing to do, he reported the Tribe's activity to the Attorney General of Arizona. R. at. 2. In response to the unfortunate news, the A. G. sent the Tribe a cease and desist letter requesting the Tribe to stop with its plans of growing marijuana, however far along they were. R. at. 2.

## **SUMMARY OF THE ARGUMENT**

### **A. Jurisdiction**

The trial court erred in denying the motion to dismiss for lack of personal and subject-matter jurisdiction. Supreme Court cases have frequently commented on the pressing state interests that can arise both in reference to Indian behavior on and off the reservation. By denying this motion to dismiss, the court would allow for significant state interests to go unheard and therefore submitting Mr. Smith and Ms. Smith to the jurisdiction of a court due to their acting in accordance with state interests. This decision would be detrimental to public policy and this claim of jurisdiction would not fall within the purpose of the *Montana* case.

If the court decides that the contract alone subjects Mr. Smith and Ms. Smith to the jurisdiction of the trial court, the court should still overrule the motion to dismiss as the conduct that the tribal court is attempting to regulate (the disclosing of information about the Tribe's illegal activity to the A. G.) is not the conduct that is prescribed under the *Montana* decision. This would be due to the fact that the specific conduct did not occur within the boundaries of the Tribe's reservation.

### **B. Sovereign Immunity**

The trial court erred in dismissing Mr. Smith and Ms. Smith's claims against the Tribe and third party defendants due to the protection of the Tribe's sovereign immunity. This court should consider the illegal conduct of the Tribe and its employees to be a waiver of the Tribe's sovereign immunity. The Tribe should also consider the other federally recognized tribes in the United States that have fought long and hard to preserve their sovereign immunity, and take action to show that they are a model tribe who's self-governance is that beyond the expectations set forth by the federal government. One impending factor that this court should take into consideration, is that Congress could limit the power of the Tribe and their use of sovereign immunity. If Congress feels the Tribe's illegal activity is being shrouded by the Tribe's use of its sovereign immunity, then Congress could step in and decide that the Tribe's sovereign immunity will have limitations that discourage this type of conduct. The potential limitations would not only affect this Tribe, but other federally recognized tribes in the United States. As for the third party defendants being protected by the Tribe's sovereign immunity, many cases including *Puyallup Tribe, Inc. v. Department of Game of State of Wash.*, 433 U.S. 165 (1977), and *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), have ruled that the individual defendants of tribes, officers of tribes and employees of tribes, in their capacity, are not protected by the

Tribe's sovereign immunity. Concluding that the trial court misapplied relevant case law and did not consider the policy effects of the Tribe's illegal conduct or their decision when it dismissed the claims.

## ARGUMENT

### **A) THE YUMA INDIAN NATION TRIAL COURT ERRED IN THE DENIAL OF THE MOTION TO DISMISS FOR LACK OF JURISDICTION DUE TO THE INAPPLICABILITY OF THE MONTANA EXCEPTIONS, WITHOUT WHICH THE TRIBAL COURT HAS NO CIVIL JURISDICTION OVER THE APPELLANTS.**

This Court should overrule the trial court and their denial of the motion to dismiss based on a lack of personal jurisdiction and subject-matter jurisdiction over Mr. Smith and Ms. Smith because the jurisdictional power that the court is enforcing is not sufficiently linked to the sovereign right to self-government, therefore limiting their ability to hear cases against nonmembers like Mr. Smith and Ms. Smith. With significant state interests at hand, the Tribe's sovereign ability of self-government must give way to state regulatory authority. *Nevada v. Hicks*, 533 U.S. 353 (2001).

Indian tribes have the inherent authority as sovereigns to regulate those to which are members of the affiliated tribe and their conduct whilst on reservation. This inherent authority is not extended to nonmembers. *Montana v. United States*, 450 U.S. 544, 566 (1981). This limitation of jurisdiction was established due the inherent powers encompassed by the sovereign are, "[T]he powers of self-government, including the power to prescribe and enforce internal criminal laws. . . They involve only the relations among members of the tribe".

There have been limited exceptions established that allow for tribe's court to exercise civil jurisdiction over nonmembers. The first being that "A tribe may regulate through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with

the tribe or its members thorough commercial dealing, contracts, leases, or other arrangements”. 450 U.S. 544 at 566. The second exception is, “A tribe may also retain inherent power to exercise civil authority of the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Id.* Lastly, civil jurisdiction may be vested in the tribal court by an “express congressional delegation”. *Id.*

The exceptions that were formally established in Montana derived from an attempt to maintain “. . . inherent sovereign power to retain some forms of civil jurisdiction over non-Indians on their reservations. . .” *Id.* The jurisdiction must be significantly related to the tribe’s sovereign right to self-govern. These exceptions have been narrowly interpreted and tailored by the Supreme Court.

Because of the exceptionally limited jurisdiction given to the tribal court and the “case by case” factual analysis required by the Montana decision, it should be found that there is no exception for the case of Mr. Smith and Ms. Smith. Therefore, there is no subject-matter or personal jurisdiction over them due to outstanding state interests overriding the inherent power to self-govern.

**I. The relation of this action and significant state interests are so intertwined that the Tribe’s self-regulation authority must give way to those state interests.**

The Supreme Court has found that when significant state interests are at issue in a particular case, the tribe’s sovereignty and self-government must give way to the state regulatory authority. In *Nevada v. Hicks*, Nevada authorities searched the plaintiff’s home to investigate an ongoing poaching case against Hicks. The argument brought forth by the plaintiff sought to establish jurisdiction based on the second exception of Montana which required the action was one which

threatened tribal self-government. *Nevada v. Hicks*, 533 U.S. 353 (2001). The court went on to elaborate the requirements for such a violation to be deemed successful by stating that “tribal assertion of regulatory authority over nonmembers must be connected to the right of the tribe to make their own law and be governed by them”. 533 U.S. 353 at 379. The court grounded its decision on the specific activities that the tribe sought to regulate and the relation of the activities to the tribe’s to the ability to self-govern. The court found the tribe’s argument unpersuasive and ultimately ruled in favor of the state stating “When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State’s regulatory interest is likely to be minimal. . . . When however, state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land”. *Id.* at 562.

In this case, Mr. Smith and Ms. Smith are assumed, by the Tribe, to be subject to the jurisdiction of the its trial court under the Montana ‘contract’ exception. Given the similar nature of both Montana exceptions, the applicability of the state interest assessment should hold firmly to both. In this case, there is a significant state regulatory interest. Mr. Smith is a certified financial planner and Ms. Smith is a licensed stockbroker, both of whom were employed by the Tribe and EDC. Both Mr. Smith and Ms. Smith are held to an ethical standard in their professions which are regulated by The Code of Professional Conduct for Accountants and The Securities and Exchange Commission. They provide the rules that licensed members of their professional communities must abide by, concerning possible conflicts with clients. The issue in this case is the disclosure of a marijuana business, which all parties to this suit knew was illegal under Arizona law. R. at. 2. Disclosure of illegal activity and regulation of illegal activity is very important to the state. Other interests to consider for the state, in relation to the cultivation of marijuana, would be the outside state interests. Just as those listed in Hicks, one of which is the

state's ability to investigate criminal activity on and off of the reservation. *Nevada v. Hicks*, 533 U.S. 353 (2001) Outside interests in the regulation of illegal activity is so stringent that even professional groups have ethical codes to abide by when potential clients may be violating the law, such as the CPCA and the SEC which could require disclosure of the illegal activity or revocation of services. Though in *Hicks*, the actors were agents of the government acting in their capacity, the state interests are overwhelmingly intertwined with the disclosure made by Mr. Smith. It would be detrimental, from public policy perspective, for this court to discourage the discovery and/or disclosure of illegal activity that would negatively impact the surrounding state.

This court should apply the state interest reasoning of the *Hick*'s decision and overrule the trial court's denial of the motion to dismiss for lack of personal jurisdiction and subject-matter jurisdiction due to the overwhelming state interests in the disclosure of the known illegal activity or the potential of illegal activity.

## **II. The conduct that the trial court has set forth to regulate is not the type of conduct that is recognized under the *Montana* rule.**

Over time, the Supreme Court has narrowed the *Montana* exceptions with its interpretation of the requirements for each exception. The court clarified its decision in *Montana* by stating in *Plains Commerce Bank v. Long Family Land*, 544 U.S. 316 (2008), "*Montana* and its progeny permit tribal regulation of nonmember conduct inside the reservation that implicated the tribe's sovereign interests". The court went on to state that "the sovereignty that the Indian tribes retain is of unique and limited character. It centers on the land held by the tribe. . ." 544 U.S. 316 at 327. Indian country is defined in 18 U.S. Code § 1151, which the Tribe's reservation would clearly fall under. Additionally, the conduct which is sought to be regulated by the tribe must have "a close nexus to the consensual relationship itself". *Atkinson Trading Co., Inc v. Shirley*,

532 U.S. 645 (2001). The 7<sup>th</sup> Circuit applied this reasoning in their analysis of the *Atkinson* case which established that the tribal court did not have jurisdiction over a nonmember economic firm which had a consensual contractual relationship with the tribe because the firm's conduct did not occur on the tribe's reservation. This court found that the conduct to which the Montana exception was meant to regulate was on-reservation activity, which would invoke the sovereign right. *Stifel, Nicolaus & Co. v. Lac Du Flambeau Band*, 807 F.3d 184 (7<sup>th</sup> Cir. 2015)

The facts of this case are similar to the facts of the *Stifel* case. Here, the activities that are sought to be regulated by the trial court, in order to subject Mr. Smith and Ms. Smith to jurisdiction, is not conduct that occurred inside of the reservation. Therefore, this set of circumstances does not fall within either of the two Montana exceptions. Though it is true that Mr. Smith and Ms. Smith did visit the reservation on occasion, "multiple meetings" were found not to be a determinative factor in the jurisdiction decision because that specific conduct was not at issue, but later conduct of the defendants. 807 F.3d 184 at 207. The conduct at issue in this case is the disclosure of information to the Attorney General. (R. at 2.) This conduct did not occur on the reservation; therefore, it does not meet the requirements of the *Montana* exception. The Supreme Court emphasized that it has never "upheld under Montana the extension of tribal civil authority of nonmembers on non-Indian land". *Nevada v. Hicks*, 533 U.S. 353, 360 (2001).

This court should overrule the denial of the motion to dismiss for lack of personal jurisdiction and subject-matter jurisdiction because without the Montana exception, the trial court does not have jurisdiction over Mr. Smith and Ms. Smith because they are nonmembers of the Tribe to which civil authority has not been granted by Congress or would it be applicable with current case-law.



**B) NEITHER THE TRIBE, ITS OFFICERS, OR ITS EMPLOYEES, SHOULD BE PROTECTED BY THE DOCTRINE OF SOVEREIGN IMMUNITY. THEY ARE RESPONSIBLE FOR THE ILLEGAL CONDUCT OF GROWING RECREATIONAL MARIJUANA, AND THEIR CIVIL LIABILITY SHOULD NOT BE EXCUSED.**

“Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory,” *United States v. Mazurie*, 419 U.S. 544 (1975). Tribes have an almost unimaginable amount of responsibility and duty that is owed to the governing of its people and the maintaining and controlling of its land. Most federally recognized Indian tribes have the sovereign ability of self-governance, giving it the power to create law and govern its people so that the functional basis of its modern government can still satisfy the tribe’s historical customs and traditions. Although, the federal government has established limitations to tribe’s self-governing powers. Tribes have these sovereign powers of legislating their own laws and regulations, but not if the law and regulations are “inconsistent with the overriding interests of the National Government.” *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980). The federal government has an interest in keeping marijuana illegal to help fight the war on drugs. This Tribe could face federal pressures if it does not act in a way that shows the federal government it is willing to co-exist with its national interests.

Sovereign Immunity for Indian tribes is extremely important, and must be held to the highest standard possible. The federally recognized tribes in the United States have fought long and hard to attain and preserve their sovereign status, as well as enjoy protection from suit just as any other sovereign state or nation would. Sovereign immunity should be used responsibly and carefully by the tribes, as a tool for the tribe’s preservation of their customs and traditions and general well-being. It should not be used to cloak illegal activity by the Tribe, its employees, or its officials, as it was done so here.

## **I. Illegal activity should automatically waive the Tribe's sovereign immunity**

Indian tribes are “domestic dependent nations” that exercise inherent sovereign authority over their members and territories. *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831). Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). As Mr. Smith and Ms. Smith acknowledge that there has not been a clear expressed waiver of the Tribe's sovereign immunity, nor is there any congressional abrogation in this particular situation, they take the position that this court should assume that the Tribe waived its sovereign immunity as soon as it allowed its employees to conduct illegal activity on its reservation.

In *Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024 (2014), a case regarding an issue under the Indian Gaming Regulations Act, 25 U.S.C. § 2701 (1988), the Supreme Court states that in general, sovereign immunity does not bar suit against individuals that commit unlawful conduct. The court inevitably found that in that particular instance though, sovereign immunity applied for the Bay Mills Indian Community and affirmed the lower court's decision. This was decided because the state of Michigan had other means of settling the agreement other than relying on the tribe waiving its sovereign immunity. The *Bay Mills* court did distinguish that illegal conduct should preempt the assumption of being protected by the doctrine of sovereign immunity.

Here, Mr. Smith and Ms. Smith do not have other means of settling this dispute properly other than the court ordering that the Tribe waive its sovereign immunity, after exhausting their resources in the negotiations. This unlawful conduct by the Tribe's employees and officials not only hurts Mr. Smith and Ms. Smith, but it also could negatively impact the Tribe and its future economic endeavors by possibly spreading fear into future investment partnerships. In this light,

sovereign immunity appears to be used simply as a way to disguise the illegal conduct of the Tribe's employees. This would not appear to Congress that all self-governing decisions made by the Tribe were above board, if they were to look at this issue.

## **II. Public Policy Reasoning for the Tribe waiving its sovereign immunity**

In *Oklahoma Tax Com'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991), the court states, “[T]he sovereignty doctrine, it maintains, should be limited to the tribal courts and the internal affairs of tribal government, because no purpose is served by insulating tribal business ventures from the authority of the States to administer their laws.” The court in this case recognizes the importance of the relationship between the State authority, of which the Tribe and its business are located in or affects, and the tribal business ventures.

A tribe and the state of which the tribe is located, share many common interests. They share the interest and obligation of protecting and providing a constitutionally satisfied lifestyle for their citizens. When the interests of the two entities cross paths then, reasonable steps should be taken by both parties in order to ensure a healthy relationship will be maintained. This relationship is extremely important from an intertribal policy stand-point and the Tribe should understand that this not only affects their people, but could eventually lead to congressional bills being passed that affects other Tribe's people and their ways of life. By maintaining a healthy relationship between the state and its business ventures, the Tribe is showing the state of Arizona, as well as Congress, that the Tribe can be trusted in terms of business transactions that affect both the state and the Tribe.

There have been cases that have stated as to what they consider to be Congress's intentions and aspirations are towards Indian tribes when passing legislation, “The goal of Indian self-government, including its ‘overriding goal’ of encouraging tribal self-sufficiency and economic

development.” *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216 (1987). There are some instances where tribes need to be aware that self-governing requires some level of accountability. Specifically, where illegal activity creates unnecessary hardship and burdens unto contractual business partners. This Tribe must understand that the actions of their officials and employees could negatively affect the Tribe and other tribes in surrounding states, when those actions consist of illegal activity.

### **III. Tribal officers and employees are not protected by the Tribe’s sovereign immunity**

In *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) the court states that an officer of the tribe was not protected by the tribe’s immunity in his full capacity. The Governor of the tribe in this case denied a young woman membership into the tribe, when she brought suit against him and the tribe in federal court under the Indian Civil Rights Act 25 U.S.C. 1301 (1968), he claimed that he was protected under the tribe’s sovereign immunity. The claim failed, because the court determined that it did not fall under a violation of the Indian Civil Rights Act, but the court determined that an officer of the tribe was not protected by the tribe’s sovereign immunity. See also in *Puyallup Tribe, Inc. v. Department of Game of State of Wash.*, 433 U.S. 165 (1977).

Captain, as CEO of the EDC and a member of the Tribe, shall be considered an officer or employee of the Tribe because he was head of the Tribe’s EDC and was paid a salary by the Tribe. Bluejacket, as an accountant for the EDC and a member of the Tribe, shall be considered an officer or employment for the purposes of these legal proceedings, because she was employed by the EDC of the Tribe and was paid a salary by the Tribe. The individual board of directors of EDC as well, shall be considered officers or employees, because they were appointed by the

Tribal Council and are subject to election subsequent the original appoints. R. at. 1. Also, they make financial and corporate decisions every three months based upon the performance of the EDC. R. at. 1.

“[T]he successful assertion of tribal sovereign immunity in this case does not impair the authority of the state court to adjudicate the rights of the individual defendants over whom it properly obtained personal jurisdiction.” *Puyallup Tribe, Inc., v. Department of Game of State of Wash.*, (1977). This case was regarding a fishing matter that impacted the state’s wildlife conservation and management laws. Here, the court distinguishes that even when a Tribe still has sovereign immunity, it does not extend to the individual defendants that are tribal members.

Consistent with current case law and the Tribe’s own interest in this case, the ruling for this issue should be easy for this court to decide. Sovereign immunity of the Tribe does not extend to its employees or officials. They, as individual defendants, must face Mr. Smith and Ms. Smith’s claims, even if this court decides that the Tribe is immune from suit. The employees, and board of directors listed above may not enjoy the protection of the Tribe’s sovereign immunity from their liability in this action.

## **CONCLUSION**

In conclusion, this court should find that the tribal court does not have civil jurisdiction over Mr. Smith and Ms. Smith due to the requirements for personal and subject-matter jurisdiction under the *Montana* rules not being sufficiently met in this case. Without the *Montana* exceptions, the tribal court does not have jurisdiction over non-Indians and therefore, they do not have jurisdiction in this case.

As stated in the facts above, Arizona state law prohibits the cultivation, selling and using of marijuana for any purpose other than for the use of medical benefits from the plant. The Tribe

and its employees recklessly decided to grow the marijuana specifically for recreational purposes. Therefore, this court should find three rulings: 1) The court should consider the illegal activity to be a waiver by the Tribe of its sovereign immunity. 2) The Tribe should also consider the larger effects that its actions have on other federally recognized tribes in the United States. The Tribe should take responsibility and act on this matter before Congress is forced to. 3) That the individual officials and employees of the Tribe are not protected from suit under the Tribe's sovereign immunity. Therefore, this court should reverse the erroneous ruling of the trial court.