

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI (Northern (Jackson))**

HOWARD BROWN and BRANDON SIBLEY,	)	
	)	
	)	
Plaintiffs,	)	
	)	
V.	)	Civil Action No. 3:22-cv-00256-DPJ-FKB
	)	
CHOCTAW RESORT DEVELOPMENT ENTERPRISE, ET AL.,	)	
	)	
Defendants.	)	
	)	

RESPONSE TO PLAINTIFFS' MOTION TO SHOW CAUSE (DOC. 20)

COME NOW the Defendants by and through their counsel of record, C. Bryant Rogers, VanAmberg, Rogers, Yepa, Abeita, Gomez & Wilkinson, LLP, and hereby submit their Response to Plaintiffs' Motion to Show Cause (Doc. 20).

1. This Motion (Doc. 20) is basically an argument that attacks the wisdom and constitutionality of the Tribe's mask mandate and contends that the governing standard for Defendants' pending Motions should be F.R.Civ.P. Rule 56 rather than F.R.Civ.P. 12(b). Defendants have previously shown why Rule 12(b) is the appropriate mechanism for addressing the grounds set for Defendants' pending Motions to Dismiss. (Docs. 4, 5, 6, 7, 11 and 12).

2. Further, nothing in any of these arguments overcomes Plaintiffs' duty to exhaust their tribal remedies and Defendants have already demonstrated that none of the U.S. Constitutional provisions Plaintiffs rely upon apply to the Tribal Defendants (Doc. 7, p. 9, n.3; Doc. 11, p. 2, n.1; Doc. 12, p. 5, ¶ 6).

3. In this regard, Plaintiffs' falsely assert (¶ 5) that "Defendants strategically fails to mention U.S.C. Title 25 § 1302 in any of his reply brief ..." But Defendants' expressly cited to 25 U.S.C. § 1302 at Doc. 7 Reply, p. 9, n.3. in their Doc. 11 Reply, at p. 2, n.1 and in their Doc. 12 Reply, p. 5, ¶ 6.

4. Finally, in Doc. 18, ¶ 14 and Doc. 21, pp. 1, 2 and 4, Plaintiffs' Memorandum filed in support of their Doc. 20 Motion, Plaintiffs' argue that they have a right to seek injunctive relief to stop alleged violations of rights conferred by 25 U.S.C. § 1302. What Plaintiffs continue to ignore is that such injunctive relief may only be sought in the Choctaw Courts, not in this Court, since *inter alia* § 1302 does not create any private right of action to litigate such claims in the federal courts. That is the plain and controlling holding of *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 61, 65-72 (1978):

As we have repeatedly emphasized, Congress' authority over Indian matters is extraordinarily broad, and the role of courts in adjusting relations between and among tribes and their members correspondingly restrained. See *Lone Wolf v. Hitchcock*, 187 US 553, 565, 47 L Ed 299, 23 S Ct 216 (1903). Congress retains authority expressly to authorize civil actions for injunctive or other relief to redress violations of § 1302, in the event that the tribes themselves prove deficient in applying and enforcing its substantive provisions. But unless and until Congress makes clear its intention to permit the additional intrusion on tribal sovereignty that adjudication of such actions in a federal forum would represent, we are constrained to find that § 1302 does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers.

5. This whole Motion and Memorandum (Docs. 20 and 21) is really an unauthorized backhanded and utterly ineffective attempt to supplement their Doc. 9 Response to Plaintiffs' pending Motions, made without leave of the Court. This Motion and Memo should simply be disregarded by the Court.

Respectfully submitted,

VanAMBERG, ROGERS, YEPa, ABEITA
GOMEZ & WILKINSON, LLP

By: /s/ C. BRYANT ROGERS
C. BRYANT ROGERS
Post Office Box 1447
Santa Fe, NM 87504-1447
Phone: (505) 988-8979
Fax: (505) 983-7508
E-mail: cbrogers@nmlawgroup.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed to the Plaintiffs by United States Mail, postage prepaid, on September 2, 2022.

/s/ C. BRYANT ROGERS
C. BRYANT ROGERS