

**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.	)	
	)	

**MEMORANDUM OF LAW IN SUPPORT OF PROVISIONAL RESPONSE TO
PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT (DOC. 28)**

Plaintiffs’ have asked this Court to enter an Order granting them partial summary judgment on claims they now characterize (Doc. 29, p. 3) as arising from violation of rights (via enactment and enforcement of the Tribe’s mask mandate) which they claim to be grounded in:

- a. The Bill of Rights of the U.S. Constitution;
- b. 25 U.S.C. § 1302, the Indian Civil Rights Act; and,
- c. The Bill of Rights of the Constitution and Bylaws of the Mississippi Band of Choctaw Indians.

Plaintiffs now characterize these as claims based on violations of various due process, equal protection and free exercise provisions of the U.S. and Tribal Constitutions and 25 U.S.C. § 1302. *See*, Doc. 28 at p. 3¹ and claim there are no disputed issues of material fact which would otherwise bar the entry of partial summary judgment for them on these claims.

¹ *See*, the following excerpt from p. 3 of Plaintiffs’ Doc. 28 Motion:

The fatal flaw in Plaintiffs' Motion is Plaintiffs' utter failure to identify any body of law under which they would be entitled to judgment as a matter of law on these claims in this Court even if they could otherwise prevail on the merits of such claims. It is axiomatic that a party is not entitled to summary judgment on their claims unless they can establish that they are entitled to judgment as a matter of law under the applicable controlling law respecting those claims. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Celotex Corp. v. Catrell*, 477 U.S. 317, 323 (1986); *accord, Johnson v. Mississippi Home Corporation*, 2013 WL 12313327 (S.D. Miss.), p.2.

But here, none of the sources of "constitutional" law Plaintiffs' rely upon apply to Defendants' actions or impose any duties or restrictions on Defendants' actions (or confer any rights upon Plaintiffs) enforceable against Defendants in this Court.

Defense Counsel is correct in his assertion that the plan of attack being executed by the Plaintiffs is on the wisdom and constitutionality of Ordinance 2020-06-B, issued and executed by the "Tribe" through their Tribal Chief, Cyrus Ben. Defense Counsel in his reply brief (Doc. 23) failed to identify any dispute of genuine material fact to the safety and medical efficacy of "scarves, bandanas, or other suitable fabrics." Therefore, this Court must take Judicial Notice that the arbitrary and capricious discrimination carried out by Tribe members was done so without any legal or lawful authority.

The Tribe cannot claim sovereign immunity when their Ordinance 2020-06-B is in violation of both Article X of the constitution and charter of the Mississippi Band of Choctaw Indians, which incorporates wholly § 1301 (a) and (b) of the Indian Civil Rights Act of 1968 AND as applied to non-tribe members, is in violation of the 1st and 4th amendments of the United States Constitution, as plead sufficiently by Plaintiffs in their Complaint (Doc. 1).

As previously noted (Docs. 24 and 13), the Tribal Defendants have not raised their sovereign immunity defense in this proceeding, nor have they waived it. That defense will be raised in any tribal court proceedings refiled per dismissal of Plaintiffs' suit from this Court for failure to exhaust their tribal remedies. Nonetheless, the above assertions from page 3 of Plaintiffs' Doc. 28 Motion clearly show that they are seeking relief in this Court based on claimed violations of the U.S. and Choctaw Constitutions and 25 U.S.C. § 1302, none of which claims are actionable in this Court as shown in text.

Specifically, the Bill of Rights of the U.S. Constitution does not apply to the Tribal Defendants. *Talton v. Mayes*, 163 U.S. 986 (1896); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *Twin Cities Chippewa Tribal Council v. Minnesota Chippewa Tribe*, 370 F.2d 529, 533 (8th Cir. 1967) (constraints on governmental action imposed by Fifth and Fourteenth Amendments do not apply to Indian tribes).

And, there exist no private right of action in this Court to rule upon or grant relief upon any claims based on alleged violations of rights under 25 U.S.C. § 1302. *Santa Clara Pueblo v. Martinez*, *supra*, 436 U.S. at 69-80.

Further, Plaintiffs' claims that the Tribal Defendants' violated Plaintiffs' rights under the Bill of Rights of the Tribe's Constitution, utterly fails to state any claim arising under federal law. Hence, not only fails to state claims upon which relief may be granted by this Court, but also fails to invoke this Court's federal question jurisdiction. *Twin Cities Chippewa Tribal Council v. Minnesota Chippewa Tribe*, *supra* at 532 (suit arising from alleged violations of tribal constitution or other tribal law do not present federal question); *Rosebud Sioux Tribe of South Dakota v. Driving Hawk*, 407 F.Supp. 1191 (D.S.D. 1976) (claims arising from alleged violation of tribal constitution are not actionable in federal district courts). Other cases holding that claims arising under tribal law are not actionable in federal district courts are set out at Doc. 6, p.6.

Thus, Plaintiffs have not and cannot show that they are entitled to partial summary judgment on these claims as a matter of law. Hence, this Court should enter an Order denying Plaintiffs' Doc. 28 Motion.

Respectfully submitted,

VanAMBERG, ROGERS, YEPA, ABEITA
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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 26, 2022, at the addresses listed with the Clerk of the Court and to Brandon Sibley at 17517 Cline Drive, Maurepas, LA 70449.

/s/ C. BRYANT ROGERS
C. BRYANT ROGERS