

**THE SUPREME COURT OF  
THE SISSETON-WAHPETON OYATE  
OF THE LAKE TRAVERSE RESERVATION**

SISSETON WAHPETON SUPREME COURT  
FILED  
AUG 28 2024  
*[Signature]*  
CLERK OF COURTS

IN THE MATTER OF:	)	
AMY TREVINO, and 64 other named members	)	
Of the Lake Traverse District,	)	APPEAL NO. AP-24-005-009
Respondent/Appellee	)	CASE NO. T-23-040-024
	)	
vs.	)	
	)	
LAKE TRAVERSE DISTRICT	)	
EXECUTIVES, including Darwin James,	)	
Dionne Crawford, C.R. James, and Jessica	)	
Redthunder,	)	
Petitioner/Appellant	)	

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**OPINION AND ORDER**

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*Per Curiam* (Lenor Scheffler Blaeser, Presiding Justice, Associate Justices Michael Harralson, and Terry Mason-Moore)

**I. Background and Procedural History**

This appeal is taken from a Tribal Court Order dated December 8, 2023 denying a motion to dismiss and declaring unconstitutional the Lake Traverse District Involuntary Relinquishment Policy (the “Policy”) at issue in this case.

Appellants filed an action on September 5, 2023, in the Tribal Court as a Complaint for Temporary Restraining Order and Injunctive Relief. Appellees on September 28, 2023, filed a

Notice of Limited Appearance and Motion to Dismiss contesting jurisdiction by arguing that (a) the doctrine of sovereign immunity bars Plaintiffs' action, (2) the Complaint does not allege a case in controversy required for the Court to exercise jurisdiction, and (3) the lead plaintiff is not an attorney and cannot represent the other plaintiffs. Counsel for Plaintiffs on October 12, 2023, filed a Notice of Appearance and a Response to Defendants' motion arguing the motion should be denied and the matter proceed to hearing.

The Tribal Court heard oral arguments on November 17, 2023, and December 8, 2023. The Tribal Court denied the motion and granted judgment declaring unconstitutional the Policy at issue in this case.<sup>1</sup>

Appellees filed an appeal to this Court on December 29, 2023, stating the decision was in opposition to the Sisseton Wahpeton Oyate of the Lake Traverse Reservation (the "SWO") Constitution and Bylaws (the "Tribal Constitution") and Lake Traverse District Constitution and Bylaws (the "LTD Constitution"), and asked that the decision be declared null and void and the matter reinstated and relitigated in front of another judicial officer.

## **II. Issues on Appeal**

Given that jurisdiction is a threshold issue, the first issue to address is whether sovereign immunity applies to the District Executives in their official or personal capacities.

Further, this Court in its order dated January 22, 2024, and in its Revised Order for Hearing dated February 8, 2024, listed two other issues on appeal:

1. Whether the Involuntary Relinquishment Policy was within the authority of the Lake Traverse District Executive Council and meets basic due process standards;
2. Whether the SWO Tribal Council approved the policy per motion; and

## **III. Standard of Review**

The first issue raised in this appeal involves questions of law. Appeals challenging legal conclusions are reviewed "de novo."

The second issue raised in this appeal involves a dispute of the facts. Thus, this Court will apply the "clearly erroneous" standard to the Trial Court's Finding of Facts.

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<sup>1</sup> There are issues with the Tribal Court's analysis of sovereign immunity generally and as it applies to this case specifically. This Court requested an amicus brief from SWO which addressed the issue of sovereign immunity as it may relate to District Officers among other issues.



This Court will apply the “abuse of discretion” standard if it finds that the Tribal Court made an error of law or misapplied the law to the facts.<sup>2</sup>

#### IV. Analysis

##### 1. Whether Sovereign Immunity Applies to District Executive Council Members in Their Personal Capacities

Sovereign immunity is a threshold issue in any lawsuit involving SWO, its District Executive Council, tribal agencies, entities, instrumentalities, and political subdivisions, and its tribal officers, employees, and official representatives. As such, this Court must assess whether sovereign immunity applies to this suit challenging the actions of the Lake Traverse District Executive Council, before we consider the issues before the Court on appeal.

Chapter 33 of the SWO Code, clearly states:

The Court shall have no jurisdiction over any suit brought against the Tribe without consent of the Tribe, unless by specific legislation the Tribe has restricted its sovereign immunity under certain circumstances. Nothing in this Code shall be construed as consent by the Tribe to be sued<sup>3</sup>.”

The SWO, its District Executive Councils, tribal agencies, entities, instrumentalities, and political subdivisions, and tribal officers, employees, and official representatives enjoy the defense of sovereign immunity in a lawsuit as long as they are acting in their official capacity unless such sovereign immunity is expressly waived by the SWO Tribal Council.

There is no specific waiver of sovereign immunity explicitly mentioned in the LTD Constitution. The SWO Districts with their Constitutions are political subdivisions or instrumentalities of the SWO. The Court agrees with the SWO in its Amicus Brief that a straightforward *Ex parte Young* analysis allows suit against the LTD Executives, not in their official capacity but in their personal capacity for injunctive relief.

The SWO Supreme Court, in *Deutsch v. Sisseton-Wahpeton School Board*, previously referenced *Ex parte Young* to show that sovereign immunity does not apply to suits filed against Tribal officials in their personal capacities when the party filing suit is seeking prospective or injunctive relief. *Deutsch*, 14-216-149 (SWO S.Ct. 2015). Specifically, “tribal immunity does not bar such a suit for injunctive relief against *individuals*, including tribal officers, responsible for unlawful conduct.” *Michigan v. Bay Mills Indian Cmty.*, 134 S.Ct. 2024, 2035 (2014), citing, *Santa Clara Pueblo*, 436 U.S. at 59. The Appellants arguments regarding sovereign immunity were not correct or helpful.

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<sup>2</sup> Sisseton-Wahpeton Oyate Rules of Appellate Procedure, Rule 12.

<sup>3</sup> At least thirteen of the 80 some SWO Codes require that any waiver of sovereign immunity is explicit and clearly expressed by the SWO Tribal Council or permits a waiver under certain specific and limited circumstances.

As explained in the sections below, the Lake Traverse District representatives are being enjoined from issuing an unconstitutional policy and therefore, this suit is properly before the Court.

2. **Whether the Involuntary Relinquishment Policy was within the Authority of the Lake Traverse District Executive Council and Meets Basic Due Process Standards**

The SWO Constitution at Article IV-District Organization Section 4 states

“Each District shall manage its own affairs not inconsistent with the Tribe’s Constitution.”

The desire to have policies and procedures to address behaviors of Lake Traverse District Executive Council (the “LTD or District”) members at meetings or elections or other circumstances to keep order, protect the health and safety of all LTD members, and to carry out the responsibilities and powers pursuant to the LTD Constitution is reasonable. This is especially true given that the LTD Constitution at Article VI Powers listing a number of powers including at Section 1 (d)

“To make rules governing the relationship of the District members, to one another as members of the Tribe, to District Property, and to assess fees of members to implement the District goals.”

At oral argument, it was explained that the various Districts of the SWO were created at the time of the creation of the SWO. The Districts were also given Constitutions and Bylaws.

The only limitation on Districts’ policies and procedures creation is that such policies and procedures shall not be inconsistent with the Tribal Constitution. The alleged passage of the Policy is based on the record in this case and the oral argument. The Policy in effect removes a LTD District member from the LTD membership roster for one year. The District Roster is also the registry for District voting.<sup>4</sup> The Policy in effect prohibits voting under the current system of voting of the SWO and District. Additionally, Article II, Section 1 (a) states

“The Membership of the Lake Traverse District shall consist of:

- (a) All persons of Sisseton Wahpeton Indian blood whose names appear on the official census roll of the Tribe as of January 1, 1940, which is the basic tribal membership roll and resided within the Lake Traverse District.”

Someone who has their District membership involuntarily relinquished adversely impacts their basic tribal membership rights in the SWO.

The SWO Chapter 3 Election Code at Part 4 Qualification of Voters sets out the importance of being a District member who is then listed on the registered voter list for voting purposes.

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<sup>4</sup> LTD Constitution and Bylaws, Section III, Section 4.



The Appellee's argument that their intent was different than removal and no one objected or asked that the Policy be changed or rescinded is not useful. The Policy has real and practical adverse impacts on District members and in ways that are inconsistent with the SWO Constitution.

The Court does not have to get to the issue of whether the Policy met basic due process standards, because the Policy is inconsistent with the SWO Constitution. The Policy is unconstitutional.

### **3. Whether the SWO Tribal Council approved the policy per motion**

A District Executive Council action to remove a District member from a District roster is fundamentally inconsistent with the SWO Constitution because of the protections afforded all District members in the SWO Constitution. Given that the Policy is facially unconstitutional, discussion of the SWO Tribal Council's action regarding passage of the August 8, 2023 LTD meeting minutes is moot. A brief discussion of Ordinance and Resolution creation, however, is relevant.

Since the SWO Tribal Council has plenary authority regarding Tribal membership, the individual Districts require explicit delegated authority via Ordinance or Resolution from the SWO Tribal Council to remove a District member from a District roster. As the Tribal Court correctly found, such delegation did not occur in this case.

Additionally, if the SWO Tribal Council delegated authority to the Districts to restrict Tribal membership rights through the Policy, the mere approval of District Executive Council minutes is not the proper process to do so based on the record and oral argument. The SWO Tribal Council formally adopts Ordinances and Resolutions applicable to the Districts. Nothing in the record or the SWO Constitution supports the idea that the SWO Tribal Council's approval of District Executive Council meeting minutes equates to a ratification of an Ordinance or Resolution adopted by the SWO Tribal Council.

Appellants in their appeal even acknowledge that approval of the LTD Executive Council Meeting Minutes "may seem like a formality," but suggest that given that the SWO Tribal Council can approve or disapprove portions of the minutes equates to an acceptance of the Policy. Appellants cite Article VI, Section 2 of the LTD Constitution for explanation of how District Ordinances and Resolutions are approved or disapproved by the SWO Tribal Council. The record shows that the SWO Tribal Council received and approved the July 23, 2023 LTD Executive Council Meeting Minutes, nothing more. To reiterate, the SWO Tribal Council has the authority to create rules governing the relationship of members of the Tribe under Article VII (d) of the SWO Constitution, and that authority is primary under Article VII (j)(i)-(ii) of the same. The Policy was not directly considered by the SWO Tribal Council and therefore was neither approved nor denied by the Tribal Council.<sup>5</sup>

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<sup>5</sup> The SWO Tribal Council has primary authority to create rules and whether to approve Ordinances or Resolutions, SWO Const. Art. VII (d), (j). Formal action can also be made by initiative and referendum following the filing of a petition with the SWO Tribal Council, SWO Const., Art. X.

**V. Conclusion**

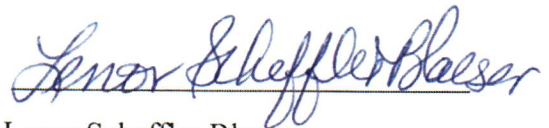
For the reasons stated above,

- A. The Tribal Court's Order of December 8, 2024 finding the Lake Traverse Involuntary Relinquishment Policy unconstitutional is **AFFIRMED**;
- B. We find that the issue of whether the Lake Traverse Involuntary Relinquishment Policy provides due process is **MOOT**;
- C. The Lake Traverse Involuntary Relinquishment Policy was **NOT PROPERLY APPROVED** by the Sisseton Wahpeton Oyate of the Lake Traverse Reservation Tribal Council; and
- D. The Lake Traverse District Officers enjoy the defense of sovereign immunity from a lawsuit, and are only subject to suit under the *Ex parte Young* doctrine or an expressed waiver of sovereign immunity by the Sisseton Wahpeton Oyate Tribal Council.

IT IS SO ORDERED.

Dated this 27<sup>th</sup> day of August, 2024.

BY THE COURT:



Lenor Scheffler Blaeser

Presiding Justice