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JAN 12 2000

IN THE TRIBAL COURT OF THE SHAKOPEE
MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

JEANNE A. SZULIM
CLERK OF COURT

COUNTY OF SCOTT

STATE OF MINNESOTA

The Business Council of the)
Shakopee Mdewakanton Sioux)
(Dakota) Community, on its own)
behalf and on behalf of the)
Shakopee Mdewakanton Sioux (Dakota))
Community,)

Plaintiff,)

vs.)

File No. 00-421

A group calling itself T.I.M.E.)
Working Committee of the General)
Council,)

Defendant.)

MEMORANDUM AND ORDER

This matter was filed on January 11, 2000. In the Complaint, the Plaintiffs allege that the Defendant group has been holding itself out to members of the Shakopee Mdewakanton Sioux (Dakota) Community ("the Community") to "undermine and expropriate for itself the governmental power" of the Community's government. (Complaint, ¶6). The specific actions which the Defendant group is alleged to have taken include drafting and distributing a notice of and agenda for a meeting, which was to be held on (and which apparently was held on) January 11, 2000, in Minneapolis, Minnesota. The letterhead on the agenda identifies its sender as "Shakopee 2000", and gives an address of P.O. Box 15025, Minneapolis, Minnesota. The

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letterhead uses the seal of the Community. (Complaint, Ex. 2). The body of the agenda includes a number of matters that, if they were to be effectively dealt with, clearly would require the exercise of the governmental power of the Shakopee Mdewakanton Sioux (Dakota) Community, such as "Approval of Current Voting Members' List", "Enrollment of Constitutionally Qualified Persons", "Approval of Tribal Election Ordinance", "Nomination and Election of Officers of the Business Council", and "Amendment of By-Laws". (Ibid.). The Defendant group also allegedly circulated a list captioned "74 Constitutionally Qualified Members Who are Eligible to Vote in the Shakopee Tribal Election for Officers of the Community in January, 2000". (Complaint, Ex. 4). A casual perusal of that list reveals that the Community's current Chairman, Vice-Chairman, and Secretary-Treasurer do not appear, and that the names of a number of persons who have unsuccessfully sought membership through litigation in this Court do appear.

The Plaintiffs seek injunctive and declaratory relief against the Defendant group, to prevent it from holding itself out as possessing or exercising any powers of the Community's government; and the Plaintiffs seek a Temporary Restraining Order, under Rule 65 of this Courts Rules of Civil Procedure, restraining the Defendant group and its members from "taking, or purporting to take any action under the guise of General Council or Business Council authority, and from disrupting, or attempting to disrupt normal Community government and business operations", or "attempting to interfere with the Community's normal election processes". (Proposed Temporary Restraining Order, filed December 11, 2000).

The undersigned Judge held a hearing on the Plaintiff's Motion for Temporary Restraining Order by a telephonic conference, on the record, beginning at 1:00 p.m., December

12, 2000. Participating on behalf of the Plaintiffs were Andrew Small, Esq. and Jack Blair, Esq., of the law offices of Bluedog, Olson & Small, P.L.L.P.. William Hardacker, General Counsel for the Community, was present on the conference call but did not participate. Also present on the conference call was James H. Cohen, Esq., who is identified in the Complaint as being an attorney and advisor to the Defendant group. The Plaintiffs filed with the Court an affidavit of Ms. Danielle Olson, which stated that on January 10, 2000 she served Mr. Cohen with a true copy of the Summons and Complaint, Motion for Temporary Restraining Order, and supporting papers on Mr. Cohen. The Plaintiffs also filed an affidavit of Mr. Scott A. Gray, stating that on January 11, 2000 he left copies of the pleadings in a meeting at Suite 100 of the Minneapolis Grain Exchange. However, during the telephonic hearing Mr. Cohen denied knowing who the Defendant group was, denied having been served with the pleadings herein, and denied having any knowledge or the contents of the pleadings.

During the telephonic hearing, Mr. Small argued that the actions of the Defendant group could work great harm to the Community if its pretense to governmental authority were not the subject of a Restraining Order. Mr. Cohen responded by contending that it seemed to him that the actions complained of were simply those of disgruntled Community members who were voicing their protest against actions of the Community government.

At the conclusion of Mr. Small's and Mr. Cohen's argument, I denied the Community's motion. As I made clear on the record, my reasons for doing so had nothing whatever to do with any notion that there is any legitimacy to the actions of the Defendant group as those actions are outlined in their "agenda" and "membership list". To the contrary, the body of caselaw built up over the years in this Court makes it abundantly clear who the Community's

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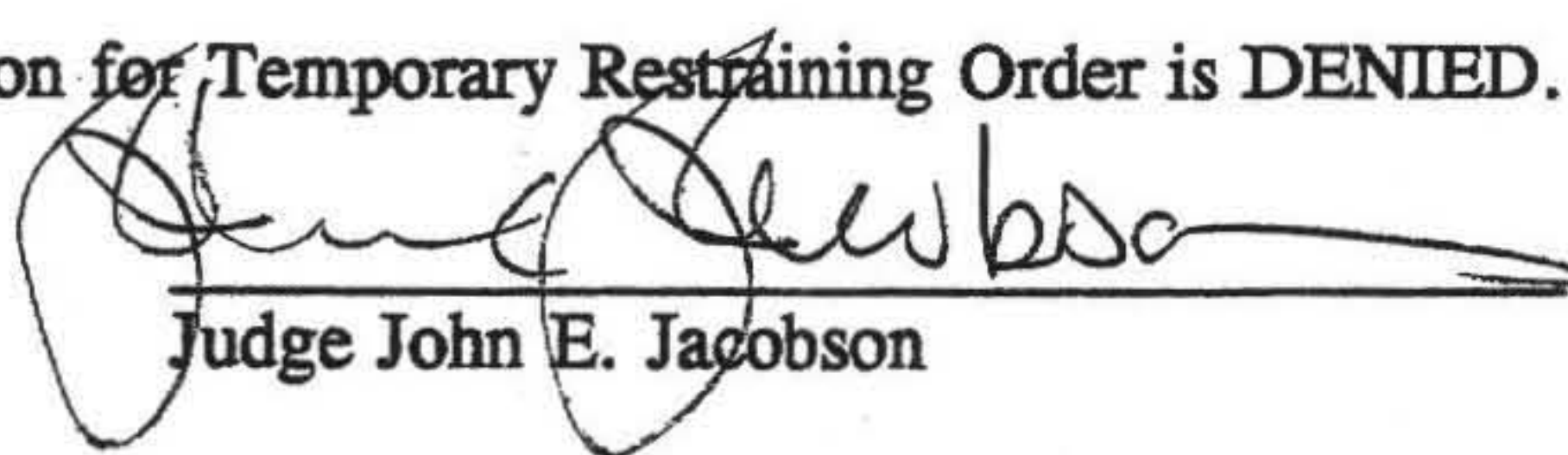
government is, and who constitutes the Community's membership. Instead, the reasons for my denying temporary relief largely lie in the transparency of the pretense which the Defendant group is engaged. It is absolutely clear that no governmental authority could be or has been invoked by their activities. I suspect that the plain truth of that statement is evidenced by the fact that when Mr. Gray, the process server, entered the group's meeting room yesterday he found only five persons present.

The right of persons to express views which differ from those of the majority, and are contrary to those of the government of the Community, is a profoundly important one. It is embodied in Article VI of the Constitution of the Community, and is protected by the Indian Civil Rights Act of 1968, 25 U.S.C. §1326 (1994). The right protects the expression of views that are contrary to the views of the majority -- indeed, that is its primary purpose, since it is unlikely that efforts would be made to stop the expression of popular views. The right also protects the expression of views that are demonstrably false. Clearly, however, the right does not extend to expressions where there is a clear and present danger of direct and tangible harm following from them -- classically, one cannot yell "Fire!" in a crowded theater. But in my view, the facts that are before the Court do not present such a case. The efforts of the Defendant group are patently those of persons without a legitimate claim to governmental authority, and harm of the sort which is required to override their rights to free speech has not been demonstrated to flow from their actions.

ORDER

For these reasons, the Plaintiffs' Motion for Temporary Restraining Order is DENIED.

January 12, 2000


Judge John E. Jacobson

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