

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

REMNANT YUCHI NATION, collectively )  
and by and through CHIEF LEE VEST, )

TANASI TRIBE, collectively and by and )  
through CHIEF ALICE GWIN HENRY, )

AND )

UNITED EASTERN LENAPE TRIBE, )  
collectively and by and through CHIEF )  
BONNIE KNUCKLES, )

Plaintiffs, )

v. )

Case No. \_\_\_\_\_

ROBERT E. COOPER, JR., individually, )  
and in his official capacity as the )  
ATTORNEY GENERAL FOR THE )  
STATE OF TENNESSEE, )

AND )

JANET M. KLEINFELTER, individually, )  
and in her official capacity as DEPUTY )  
ATTORNEY GENERAL FOR THE )  
PUBLIC INTEREST DIVISION OF THE )  
STATE OF TENNESSEE, )

Defendants. )

**COMPLAINT FOR DAMAGES**

COME now the Plaintiffs, Remnant Yuchi Nation, collectively and by and through Chief Lee Vest, Tanasi Tribe, collectively and by and through Chief Alice Gwin Henry, and the United Eastern Lenape Tribe, collectively and by and through Chief Bonnie Knuckles, (hereinafter collectively referred to as "Plaintiffs"), by and through counsel, and submit this Complaint for Damages based on violation of Civil Rights, and other claims, against Robert E. Cooper, Jr.,

individually, and in his official capacity as Attorney General for the State of Tennessee, and Janet M. Kleinfelter, individually and in her official capacity as Deputy Attorney General for the Public Interest Division of the State of Tennessee. For cause, Plaintiffs would allege, state, and otherwise plead as follows:

**I. JURISDICTION AND VENUE**

1. The Plaintiff, Remnant Yuchi Nation, is a Native American Indian Tribe domiciled and located within the State of Tennessee, with a principal location at 437 North Valley View Circle, Kingsport, Tennessee 37664. Chief Lee Vest is the leader of the Tribe, and files this suit on behalf of each Member of the Remnant Yuchi Nation.

2. The Plaintiff, Tanasi Tribe, is a Native American Indian Tribe domiciled and located within the State of Tennessee, with a principal location at 2811 Ravenwood Drive, Memphis, Tennessee 38134. Chief Alice Gwin Henry is the leader of the Tribe, and files this suit on behalf of each Member of the Tanasi Tribe.

3. The Plaintiff, United Eastern Lenape Tribe, is a Native American Indian Tribe domiciled and located within the State of Tennessee, with a principal location at 420 15th Street, Corbin, Kentucky 40701. Chief Bonnie Knuckles is the leader of the Tribe, and files this suit on behalf of each Member of the United Eastern Lenape Tribe.

4. The Defendant, Robert E. Cooper, Jr., is a citizen and resident of the State of Tennessee, and at all times relevant herein was the person appointed by the Governor to serve in the governmental role as the attorney for the State of Tennessee. Robert E. Cooper, Jr. may be served with process at his residence located at 3907 Kimpalong Drive, Nashville, Davidson County, Tennessee 37205.

5. The Defendant, Janet M. Kleinfelter, is a citizen and resident of the State of Tennessee, and at all times relevant herein, was and is the person appointed by the Governor to serve in the governmental role as the Deputy Attorney General for the Public Interest Division of the State of Tennessee. Janet M. Kleinfelter may be served with process in care of Lisa Honey Hayes, Chief Deputy of the Office of the Attorney General and Reporter, at 425 5th Avenue, Nashville, Tennessee 37202-0207.

6. Plaintiffs allege that all relevant times herein, the Defendants were employees of the Office of the Attorney General for the State of Tennessee. Each Defendant was tasked with the directive of representing the State of Tennessee and its political subdivisions, including providing legal advice to the Tennessee Commission of Indian Affairs, at all relevant times herein. Plaintiffs allege that Defendants, jointly and/or individually, implemented, pursued, and then enacted, a policy and practice designed to eliminate the constitutional rights of Plaintiffs, and Plaintiffs' tribal members.

7. Defendants, as representatives and as employees for the Office of the Attorney General, are sued in their official capacity as such representatives. Further, Plaintiffs assert that the policies and directives that have caused the constitutional violations or which have led to direct constitutional rights violations of the Plaintiffs, were created by and/or implemented by the Defendants to the detriment of Plaintiffs.

8. Plaintiffs further allege that Defendants acted under color of law. Specifically, that each Defendant exercised powers possessed by the virtue of laws of the State of Tennessee, and made possible only due to the fact that the Defendants operated, at all times relevant herein, under the authority of such state law.

9. This Court has jurisdiction pursuant to 42 U.S.C. §1983.

10. No prior lawsuits pertaining to civil rights violations or tortuous interference with prospective advantage have been filed by Plaintiffs. Further, no complaint or grievance has been filed by Plaintiffs, through any administrative agency of the State of Tennessee or the United States Government, pertaining to any claims referenced herein.

11. Therefore, this Court has subject matter jurisdiction pursuant to the above-referenced authorities.

## **II. FACTS AND PROCEDURAL HISTORY**

12. Unlike all other states in the United States, Tennessee currently does not have any officially recognized Native American tribes. However, Plaintiffs, and each of their respective Tribes, each trace their lineage to areas wholly within the State of Tennessee.

13. The first Tennessee Commission of Indian Affairs was created in 1983 by the Tennessee legislators. Prior to that time, there was no process in place for recognition of tribes in the State of Tennessee. Twenty-four (24) years later, the Commission developed criteria for obtaining recognition in Tennessee.

14. The Tennessee legislature created the statutory framework to establish the seven (7) member Tennessee Commission on Indian Affairs, which was effectuated on or around 1983. The seven (7) member Tennessee Commission on Indian Affairs operated from 1983 to 2000, and from 2003 to 2010.

15. The purpose of the seven (7) member Commission was to establish appropriate procedures to provide for legal recognition by the State of presently unrecognized tribes, nations, groups, communities, or individuals, and to provide for official recognition by the Commission as such. Tenn. Code Ann. § 4-34-101, *et seq.*

16. On or around June 19, 2010, eleven (11) days prior to the termination of the Commission, the Commission adopted a standing rule recognition procedure and proceeded to provide recognition to six (6) groups, three (3) of which are the Tribes situated as Plaintiffs in the present lawsuit.

17. On or around June 30, 2010, the authority of the Commission of Indian Affairs ended, since the stated goal of the Commission was recognition of Native American tribes existing within the State of Tennessee, pursuant to previous statute Tenn. Code Ann. § 4-34-102(6).

18. On or around June 30, 2010, Mark Greene, a lobbyist for the Cherokee Nation, Oklahoma, and opponent of recognition for the Plaintiffs, and an opponent of recognition for the Plaintiff Indian Tribes, filed suit against the Commission of Indian Affairs alleging, among other things, a violation of Tennessee's "Sunshine law."

19. In 2010, a Bill was introduced to the Tennessee legislature to grant recognition to three (3) tribes and established standards and guidelines for recognition. The Bill passed in the Senate Committee, but died in the House Committee. A representative of the Remnant Yuchi Tribe contacted Representative Bob Ramsey, the Chair of the Tennessee State and Local Government Committee, and asked him when the Summer Study Committee would meet and who would be on the committee. His response was, "There won't be a summer study. They wouldn't show up anyway. I'm going to have Paul Overholser write a paper on it." Repeated attempts to obtain a copy of this "white" paper have failed.

20. In 2011, a Bill was introduced to create a sunshine provision for the Commission of Indian Affairs. That Bill was withdrawn.

21. In 2011, another Bill was introduced granting recognition to tribes in Tennessee and appointing the Tennessee Commission of Indian Affairs as the entity responsible for reviewing the applications and criteria of any future tribes seeking recognition.

22. In 2011, third Bill was introduced to delete references to the defunct Tennessee Commission of Indian Affairs. This Bill passed in the House, but died in the Senate.

23. In 2013, a Bill was introduced to create a task force to study and recommend criteria for the recognition of tribes in Tennessee and report back to the General Assembly by February of 2015. This Bill never came to fruition.

24. The Commission's June 19, 2010 Standing Rule, which granted recognition to six (6) tribes, including the three Plaintiff tribes herein, created the status of specific, recognized tribes in Tennessee. The Commission's subsequent actions, and inactions, allowed for the effective de-recognition of those same tribes.

25. The aforementioned lawsuit against the Commission, in which recognition was challenged by Mark Greene, led to a reversal of the recognition based on a purported violation of Tennessee's Open Meeting Law. No appeal of this reversal was filed by the Commission, the State of Tennessee, or any group or member so authorized by either Defendant.

### **III. APPLICABLE LAW**

26. Plaintiffs hereby incorporate paragraphs 1 through 25 as if fully set forth herein.

27. Although Congress has "plenary and exclusive" power under the Indian Commerce Clause (United States v. Lara, 541 U.S. 193, 200, 202, 124 S.Ct. 1628, 158 L.Ed.2d 420 (2004)), the Supreme Court has also said that the states retain some limited authority over Indian commerce and Indian tribes. Seminole Tribe of Florida v. Florida, 517 U.S. 44, 62, 116 S.Ct. 1114, 134 L.Ed. 252 (1996).

28. As was recited in Opinion No. 07-21, the U.S. Congress has acknowledged and given to state governments the authority to recognize Indian tribes. Specifically, Congress has created causes of action for misrepresentation of goods as Indian-produced (25 U.S.C.A. § 305(e)(d) (2000)) and, if the state has expressly determined that a group is an Indian tribe, funding for community services and block grants are also available. 45 C.F.R. § 96.44(b)(2006). (See State of Tennessee, Op. No. 07-21 (Feb. 2007)).

29. In Tennessee, Tennessee law provided for benefits to Indians by making them eligible to receive scholarships, grants, or other benefits typically provided to individuals classified as “minorities” from the University of Tennessee System, the Board of Regents of the University of Tennessee, or any other recognized Tennessee school system. Id.

30. In 2003, the Second Tennessee Commission of Indian Affairs was created. The Commission was tasked to “establish appropriate procedures to provide for legal recognition by the state of presently unrecognized tribes, nations, groups, communities, or individuals, and to provide for official recognition by the Tennessee Council Internal Affairs of such.” Tenn. Code Ann. § 4-34-103(6)(2003).

#### **IV. CAUSES OF ACTION**

##### **A. Indian Civil Rights Act of 1968**

31. Plaintiffs hereby incorporate paragraphs 1 through 32 as if fully set forth herein.

32. The State of Tennessee, by and through the previously established Commission of Indian Affairs, intended for, and indeed effectuated, the recognition of the three (3) Plaintiff Indian tribes, and by extension their members, as previously referenced herein.

33. The State of Tennessee, by and through the Tennessee Commission of Indian Affairs, after having recognized Plaintiff tribes and their members, both officially and

unofficially, subsequently directed or allowed for the rescission of such recognition of the above-referenced Plaintiff tribes and their members.

34. This rescission, intentional, negligent, or otherwise, is a direct violation of the Civil Rights Act of 1968, as codified in 25 U.S.C. §§1301-1303.

35. Plaintiffs are unable to exercise the following rights afforded to them through the above-referenced Civil Rights Act of 1968:

a. Receive Federal and State educational assistance, in the form of grants and educational subsidies, for recognized tribes or tribal members;

b. Sell Native American crafts without violating the 1990 Indian Arts and Crafts Act, PO104-644, 104 S.Ct. 4662, 25 U.S.C. § 306; and

c. Exercise the powers of self-governance, as defined in the Indian Civil Rights Act, which includes all governmental powers possessed by Indian tribes, including executive, legislative, and judicial, and all offices, bodies, and tribunals, by and through which they are executed, including courts of Indian offenses. This includes the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians.

d. Denial of funding to an Indian tribe or tribal organization pursuant to 42 U.S.C. § 9911 (§677 of the Committee Services Block Grant Act). This section allows for funding to “a tribe, band, or other organized group recognized in the State in which the tribe, band, or group resides, or considered by the Secretary of the Interior, to be an Indian tribe or an Indian organization for any purpose.”

e. Denial of Plaintiffs’ rights to exercise their religious beliefs, customs and ceremonial practices, due to the fact that the Plaintiffs, now de-recognized, are not afforded the right to notice of incidents affecting their ancestral burial grounds. Also, Plaintiffs are not able

to be afforded the protection of the Act when performing certain ceremonial religious acts considered illegal, e.g., using protected bird of prey feathers during a religious ceremonies.

36. These violations by the Defendants, and each of them, have caused Plaintiffs, and each of them, damages. Plaintiffs, and their members, have lost their status as legal, identifiable minorities, and the protections afforded therefrom.

**B. Violation of Title VII of the Civil Rights Act of 1964.**

37. Plaintiffs hereby incorporate paragraphs 1 through 36 as if fully set forth herein.

38. The individual members of the Plaintiff tribes represent individual and collective class members/minorities, as identified by the Civil Rights Act of 1964. 42 U.S.C. § 1981.4.

40. Plaintiffs represent ethnic Native Americans from three (3) distinct Tennessee tribes: Remnant Yuchi Nation, Tanasi Tribe, and Eastern United Lenape Tribe. As such, they represent ethnic minorities protected under §1981.4.

41. The acts of the State, its Commissions and political subdivisions, as outlined above, reflect intentional discrimination in violation of §1981.

42. The State, its Commissions and political subdivisions have recognized the three (3) Plaintiff Native American Tribes in this Complaint as bona fide Tennessee Indian tribes. However, their failure to prevent de-recognition, and continued failure to construct options for recognition, amount to intentional discrimination against Native Americans living in Tennessee.

43. Plaintiffs have suffered damages as a result of Defendants discrimination as outlined above. Plaintiffs, and their members, have lost their status as legal, identifiable minorities, and the protections afforded therefrom.

**C. Indian Child Welfare**

44. Plaintiffs hereby incorporate paragraphs 1 through 43 as if fully set forth herein.

45. The State of Tennessee is in violation of the Indian Child Welfare Act by failing to recognize Plaintiff tribes, which denies said tribes the protection of the Act. The Act affords protection only to children of recognized tribes.

46. Under the Indian Child Welfare Act, an Indian tribe has exclusive jurisdiction over an Indian child who resides or is domiciled within the tribe's land. This includes either reservation lands or other tribal lands that are held in trust by the Federal government for the benefit of a tribe or individual subject to a restriction by the United States against alienation. The last two describe tribal lands such as those in Oklahoma that were transferred to individual Indians under various laws. The Indian tribal courts also have exclusive jurisdiction over Indian children who are wards of the court or tribe, regardless of their location.

47. The recognition of six (6) Tennessee Native American Tribes, followed by the de-recognition of those tribes, has denied those tribes of the benefits afforded to Native American Tribes as codified by the Indian Child Welfare Act. Plaintiffs have been damaged as a result of the acts and omissions of the Defendants, and seek damages for such acts and omissions. Plaintiffs, and their members, have lost their status as legal, identifiable minorities, and the protections afforded therefrom.

#### **D. Tortious Interference with Prospective Contract**

48. Plaintiffs hereby incorporate paragraphs 1 through 48 as if fully set forth herein.

49. Plaintiffs, once recognized as Native American Tribes by the State of Tennessee and the Commission of Indian Affairs, were allowed to contract with the Federal Government for specific grants and cooperative agreements, and apply for programs provided only to recognized Native American tribes, simply by virtue of their status as state recognized tribes.

50. Defendants were aware of such potential, cooperative agreements and contracts, and further were aware that the de-recognition of the tribes would operate to terminate or otherwise cancel such grants and contracts.

51. Defendants acts and omissions amounted were malicious in nature, and caused the termination of grants, cooperative agreements and contracts, in addition to causing the preventing of establishing future grants and contracts between the Plaintiffs and the Federal Government.

52. The Defendant's acts and omissions were the proximate cause of the termination of said grants and contracts.

53. Plaintiffs have been damaged from Defendants' acts and omissions, due to the inability of the Plaintiff tribes to benefit from the grants, cooperative agreements and contracts available to only recognized state Native American Tribes.

#### **E . Interference with Indian Self Reliance**

54. Plaintiffs hereby incorporate paragraphs 1 through 53 as if fully set forth herein.

55. 25 U.S.C. § 450f(a) provides that the Federal Government, through its representatives, is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof, pursuant to the stated policy of Congress.

56. The Defendants are not in compliance with Title 25 of the Code of Federal Regulations or the Indian Self Determination Act on its face. Defendants' acts and omissions have operated to terminate the very contracts, cooperative agreements and grants specifically requested by tribes for tribal benefit.

57. The Remnant Yuchi Nation, Tanasi Tribe, and United Eastern Lanape Tribe are historical tribes with a continuous lines of governance for more than one hundred (100) years in the State of Tennessee. Each has a history of peaceful co-existence. They have endeavored over the years to utilize diplomacy to stand up for their rights and their existence. They have exhausted a great deal of time, energy, expense, and worry for future generations.

58. Plaintiffs, and their members, have suffered damages as a result of Defendant's acts and omissions and violations of the above-referenced code. Plaintiffs, and their members, have lost their status as legal, identifiable minorities, and the protections afforded therefrom, as a result of Defendants acts and omissions.

## **VI. DAMAGES**

59. Plaintiffs hereby incorporate paragraphs 1 through 58 as if fully set forth herein.

60. Section 677 of the Community Services Block Grant in the State of Tennessee (CSBG), directs funding for tribal organizations in Tennessee.

61. 42 U.S.C. § 9911 permits direct CSBG funding to an "Indian tribe or tribal organization," which it defines as a "tribe, band or other organized group recognized in the State in which the tribe, band or group resides, or considered by the Secretary of the Interior, to be an Indian tribe or an Indian organization for any purpose."

62. The Defendant State of Tennessee informed the Department of Health and Human Service, through the Office of Community Services (OCS), that it was unable to provide recognition to the Plaintiff tribes referenced herein.

63. This communication from the Defendant State of Tennessee to the Department of Health and Human Services operated to prevent Plaintiffs from entering into any direct funding relationship with the Plaintiffs, all to the Plaintiff tribes' detriment.

**WHEREFORE, PREMISES CONSIDERED, PLAINTIFFS' PRAY:**

1. That each Plaintiff tribe listed herein be awarded Compensatory Damages in the amount of Fifty Thousand Dollars (\$50,000.00);
2. That each Plaintiff tribe listed herein be awarded Punitive Damages in the amount of Ten Million Dollars (\$10,000,000.00);
3. That each Plaintiff tribe listed herein be awarded Expectancy damages in the amount of Twelve Million Dollars (\$12,000,000.00); and
4. That Plaintiffs be awarded such other and further relief as they may be entitled, under the premises.

Respectfully submitted this 8 day of May, 2015.

  
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