

**IN THE CROW COURT OF APPEALS
IN AND FOR THE CROW INDIAN RESERVATION
CROW AGENCY, MONTANA**

CIV. APP. DKT. NO. 02-01

IN RE. MATTER OF CLB 0201:

**ALBERT L. GROS-VENTRE, THOMAS MEDICINE HORSE, AND TIMOTHY
SMELLS,
as the duly elected Judges of the Crow Tribal Court;**

and

**BENJAMIN CLOUD, III, and J.D. STONE,
as Speaker of the House and Secretary, respectively, of the Crow Tribal Legislature;**

and

**CLIFFORD BIRDINGGROUND and VINCENT GOES AHEAD, JR.,
as the Chairperson and Vice-Chairperson of the Tribal Executive Branch;**

Respondents.

Order entered March 5, 2002

[Cite as 2002 CROW 2]

Before Watt, J.

**ORDER INITIATING ORIGINAL *MANDAMUS* PROCEEDING IN THE
CROW COURT OF APPEALS AND
ORDER TO SHOW CAUSE**

¶1 The Crow Court of Appeals, acting through the undersigned Judge, hereby initiates this original mandamus proceeding pursuant to Rule 23 of the Crow Rules of Civil Procedure, to determine whether or not Act No. CLB 0201 of the Tribal Legislature, and the Chairman's order implementing the Act on February 21, 2002, violates the Tribal Constitution approved by the Assistant Secretary of the U.S. Department of the Interior effective on July 14, 2001 (the "2001 Constitution"). This Order is supported by the Court's Preliminary Findings of Fact and Conclusions of Law issued herewith and incorporated herein by reference.

¶2 The enactment and implementation of CLB 0201 has resulted in the immediate removal of all three of the Tribal Court Judges who were duly elected by the membership of the Tribe on October 26, 2001. Under CLB 0201, these elected Judges are to be replaced by judges appointed by the Chairman and approved by the Legislature. For the reasons explained in the Preliminary Findings and Conclusions, this Court has made a preliminary determination that CLB 0201 is void and without effect, because it violates the 2001 Constitution and applicable provisions of Federal law.

Conduct of the Show Cause Hearing

¶3 At the Show Cause Hearing ordered herein, the Respondents are invited to supplement or challenge the Preliminary Findings and Conclusions, and this Court's preliminary determination of invalidity, through documentary evidence, testimony, and oral argument. Counsel for respondents are further invited to submit briefs on the issues of law presented in these proceedings.

¶4 This Court is not unmindful of the desirability of maintaining the Tribal Court's self-determination contract with the Bureau of Indian Affairs in good standing, and of the Bureau's legitimate concerns in ensuring the Tribal Court's compliance with the funding contract. Accordingly, representatives of the Bureau of Indian Affairs and their counsel are invited to submit written comments to this Court, or appear personally to present the Government's position with respect to these proceedings at the Show Cause Hearing. It is not anticipated that sworn testimony would be necessary from the representatives of the United States Government.

¶5 In the event that any Respondent believes there are grounds to remove any of the elected Tribal Court Judges for failure to comply with the qualifications for Tribal Court Judge in Section 3-3-302(3) of the 1978 Law and Order Code, including having been convicted of a disqualifying criminal offense, this Court will consider granting temporary relief upon receipt of a petition in the nature of a *quo warranto* action as authorized by Rule 23 of the Crow Rules of Civil Procedure.

Disclosures

¶6 The undersigned hereby discloses that his initial reaction to CLB 0201 was that it is a shocking and unprecedented assault on the Tribal Judiciary, and contrary to the most fundamental notions of the "rule of law." In the process of deliberating on the proper course of action to preserve and protect the independence of the Tribal Judicial Branch, the undersigned has expressed his shock and concern to a number of attorneys and Tribal Court lay counselors, and obtained advice from the former and current attorney-supervisors of the University of Montana Indian Law Clinic as disinterested experts in Indian law. These communications and consultations have all tended to confirm that CLB 0201 raises grave concerns about the separation of powers and due process. The undersigned has conferred with Chief Judge Gros-Ventre on his position with respect to CLB 0201, and confirmed that he regards it as outside the authority of the Tribal Legislature and Executive. The undersigned expressed his concerns about the constitutionality of CLB 0201 to the Tribal Legislature in a presentation on February 27, 2002, and spoke with at least two Legislators who voted in favor of passage. Finally, the undersigned discloses that he may have some personal interest in the outcome of this proceeding, as the appellate Judge appointed by the Chief Judge under the 1978 Law and Order Code. Notwithstanding these *ex parte* communications and possible bases for disqualification, the undersigned believes that he

can determine the issues in this proceeding in a fair and impartial manner, according to the law. In these extraordinary circumstances, there is no other Judge to decide the issues, and there is no greater reason for disqualifying the undersigned than there would be for disqualifying other Judges who would be appointed pursuant to CLB 0201.

Order to Show Cause

[¶7](#) Now, therefore, consistent with the Court's Preliminary Findings and Conclusions,

IT IS HEREBY ORDERED that the Respondents appear at a hearing before the undersigned Judge of the Crow Court of Appeals **on Thursday, March 14, 2002 at 10:00 a.m.** to show cause:

- (a) Why the elected Tribal Court Judges should not be immediately reinstated to their positions retroactive to their removal date on February 21, 2001; and
- (b) Why Chapters III and VII of Title 3 of the Crow Law and Order Code, as amended by CLB 0201, should not be declared void and without effect as being contrary to the 2001 Tribal Constitution.

[¶8](#) IT IS FURTHER ORDERED that copies of this Order and the Preliminary Findings and Conclusions shall be served on the Respondents in the manner directed by the Tribal Code for service of process in a civil action. In the interest of time, the Clerk is also directed to fax copies of these materials to the Elk River Law Office and Joe Rodriguez, Esq., as counsel for the Tribal Executive Branch and Legislative Branch, respectively. The Clerk is further directed to send copies of these materials to Bureau of Indian Affairs Rocky Mountain Region Director and the Interior Department Regional Solicitor's Office in Billings, Montana and to deliver a copy to the Superintendent of the Crow Indian Agency in Crow Agency, Montana. The Clerk is authorized to make copies of these materials available upon request to members of the public and the press in the interest of accurately explaining for public information the procedures and status of the Crow Tribal Courts.