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JUL 15 2025

CLERK, ISLETA TRIBAL COURT

IN THE TRIBAL COURT
PUEBLO OF ISLETA
ISLETA, NEW MEXICO

JUAN REY ABEITA,
Petitioner,

Case No. CV-IN-0059-2025

vs.

GOVERNOR EUGENE JIRON,
Respondent.

ORDER GRANTING MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

THIS MATTER came before the Court upon the Respondent's May 23, 2025 Motion to Dismiss. The Court held a Motion Hearing on this Motion to Dismiss on July 2, 2025. Juan Rey Abeita appeared *pro se*. Attorneys Emily Soli and Davide Mielke appeared on behalf of the Pueblo and Governor Jiron in his Official Capacity. Judge Horning presided.

The Court allowed both Parties the opportunity for their legal arguments and positions to be heard. The Court being duly informed finds good cause to dismiss this matter for lack of subject matter jurisdiction. Support of this decision is as follows:

Sovereign Immunity

"The Pueblo if Isleta is a sovereign nation which is inherently immune from suit." POI Law and Order Code § 02-01-03(A). "Indian Tribes were self-governing sovereign political communities long before the formation of the United States. As sovereigns, they have the power to determine the jurisdiction of their own courts." *Chavez v. Lucero et al.*, IAC-05-112 at 4 (2017) citing *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 124 S.ct. 2024, 2040 (Sotomayor concurring). "It is settled law that a sovereign [government] is immune from suit unless there is a clear waiver of sovereign immunity." *Zuni v. Isleta Tribal Council*, IAC-201101 at 3 (2011).

"Neither the Governor nor his Lieutenants nor the members of Pueblo of Isleta Council may be subpoenaed or otherwise compelled to appear and testify in the Court of the Pueblo of Isleta ...concerning any matter involving such official's actions pursuant to his/her order official duties, unless the protections of sovereign immunity have been explicitly waived." POI Law and Order Code § 02-01-03(B).

Waivers of sovereign immunity can be created by either, an explicit legislative act of United States Congress abrogating tribal sovereign immunity, or by the Pueblo's express waiver of its sovereign immunity. *Cooper*, IAC-05-011 at 4. "[U]nder, tribal and federal law, a waiver of immunity must be express, unequivocal, and clear and cannot be implied." *Id.* at 6 citing *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). "The Party asserting that the Pueblo has waived its sovereign immunity, "bears the burden of showing an explicit waiver by the Pueblo." *Cooper*, IAC-05-011 at 4; *see also Lente v. Tribal Council et al.*, IAC-05-009 at 7 (2017).

"[A]bsent either consent by the tribe or Congressional action, a tribe retains immunity from suit." *Chavez*, IAC-05-112 at 4.

Once it is determined that sovereign immunity bars a suit, the tribal court no longer has jurisdiction to review of the merits of the case and the case must be dismissed. *Zuni v. Isleta Tribal Council*, IAC-201101 at 3 (2011).

Sovereign Immunity Waivers and Individual Capacity Claims Do Not Apply Here

Pueblo of Isleta law recognizes waivers of its sovereign immunity in the following circumstances:

First, the only Congressional abrogation of the Pueblo's sovereign immunity is the **habeas corpus provision of the Indian Civil Rights Act** (ICRA). *Murphy v. POI and Yvonne Santos*, IAC-22-001, at 7 (2023); 25 U.S.C. § 1303. This ICRA provision provides that the

"privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe." 25 U.S.C. § 1303. Additionally, the Appellate Court has held that that "Congress did not expressly abrogate the Pueblo's sovereign immunity under ICRA to allow employment-related civil rights suits in Tribal Court." *Murphy*, IAC-22-001 at 7. Since the Petitioner has not asserted this type of sovereign immunity waiver in this proceeding, nor has he made any allegations that he was detained by the Pueblo, this type of waiver clearly does not apply to the facts of this case.

Second, the Pueblo has waived its sovereign immunity via the **Pueblo's state gaming compact, but only for personal injuries and property damage** occurring on the Pueblo's Casino premises. *Lente*, IAC-05-009 at 6. The Petitioner has not asserted this type of waiver in this proceeding and the Petitioner's allegations do not relate to anything occurring on Casino premises. Therefore, this type of waiver clearly does not apply to the facts of this case.

Third, the Pueblo may waive its sovereign immunity via **express terms of a contract**. *Lente*, IAC-05-009 at 7; *Cooper*, IAC-05-011 at 4. The Petitioner has not asserted this type of sovereign immunity waiver in this proceeding. At the July 2, 2025 Hearing in this matter, both Parties denied the existence of any employment contract or other contract between the Pueblo and/or the Governor in his Official Capacity and the Petitioner. Therefore, this type of waiver clearly does not apply to the facts of this case.

Fourth, the "Pueblo may waive its sovereign immunity by **enacting tribal legislation** ... as long as such waiver is made 'equivocally.'" *Id.* at 4. To date, Tribal Council has never enacted any legislation waiving the Pueblo's sovereign immunity for any reason.[1] Because no legislation

[1] The Pueblo enacted the Governmental Claims Act, 02-01-01 et seq., which codifies many of the sovereign immunity waivers listed in this Order and creates one other waiver for judicial review of POI administrative acts under the Government Accountability Act. § 02-01-04(E). Since this administrative process set fort in the

to which this type of waiver could apply currently exists, and because the Petitioner has not attempted to assert the Pueblo waived its sovereign immunity via legislation, this type of waiver clearly does not apply to the facts of this case.

Fifth, the Appellate Court has found that Section IX, §5 of the Pueblo Isleta Constitution which explicitly authorizes the judiciary **to determine the constitutionally of "enactments" of Tribal Counsel"** waives sovereign immunity. *Murphy*, IAC-22-001 at 7; *See also Olguin v. Padilla*, IAC-05-016-CZC at 4 (2006). Here, because the Petitioner failed to assert that any act of legislation by Tribal Council is unconstitutional, this type of waiver does not apply to the facts of this case.

Sixth, the Appellate Court has found that the **Section IX, § 5 Constitutional waiver** of sovereign immunity extends beyond 'enactments of legislation' and **also waives the Pueblo's sovereign immunity to allow "the Tribal Judiciary" to "review the constitutionality of [non-legislative] *acts* taken by Tribal Counsel and Tribal agencies.**" Emphasis added. *Murphy*, IAC-22-001 at 7; *See also Peigler v. POI Tribal Counsel*, IAC-22-004 at 1 (2022) (stating that "the Isleta Judicial Branch is authorized to review *actions* of the Tribal Counsel to determine compliance with the Constitution").

In his pleadings and at the July 2, 2025 Hearing, the Petitioner asserted that this type of waiver applied to the facts of his case, waived sovereign immunity for his claims, and created a path for the merits his case to be heard. Petitioner did not allege any non-legislative actions by Tribal Counsel that could constitute this type of waiver. Specifically, the Petitioner asserted that this type of waiver applied to independent actions under *Olguin v. Padilla* because that case

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Governmental Claims Act was not initiated prior or during these proceedings, any waiver under the Governmental Claims Act Section 02-01-04(E) cannot apply here.

contained language that extended the exception for unconstitutional 'actions of Tribal Counsel' to unconstitutional actions of the executive branch, including the governor. *See Peigler*, IAC-22-004 at 4. The Petitioner did not allege that the Governor had acted according to an unconstitutional act of Tribal Counsel.

The Pueblo argued that this type of waiver did not apply to this case because, in later case law after the 2006 *Olguin* decision, the Appellate Court clarified and narrowed *Olguin*. The Pueblo supported this argument by explaining: 1) that *Olguin* language referencing acts of the executive was non-binding dicta; 2) that in 2010, the Appellate Court narrowed any implicit sovereign immunity waiver mentioned in *Olguin* dicta to only instances where a governor acted pursuant to an unconstitutional directive of Tribal Council, *see ITMO Lucero, Jiron, Zuni*, IAC-10-007 at 14 (2010); and 3) that in 2017, the Appellate Court held that waivers of the Pueblo's sovereign immunity must be "express, unequivocal, and clear" and not impliedly or implicitly waived. *See Cooper*, IAC-05-011 at 6.

This Court finds that under current Pueblo of Isleta law, there is no implied waiver of sovereign immunity that would allow the Petitioner to sue the Pueblo or the Governor in his official capacity for the acts alleged. This is because the *Olguin* language upon which the Petitioner relies is non-binding dicta that attempted to recognize an implied waiver; Later case law which clarified that a sovereign immunity waiver must be "express, unequivocal, and clear," *Cooper*, IAC-05-011 at 6, and which limited waivers for a governor's acts to only instances where a governor acted pursuant to an unconstitutional directive of Tribal Council, foreclosed upon Petitioner's *Olguin* arguments. *ITMO Lucero, Jiron, Zuni*, IAC-10-007 at 14; Therefore, this type of waiver cannot and does not apply to the facts of this case.

Seventh, the Appellate Court has found that the Pueblo's sovereign immunity is waived to allow "a plaintiff to sue a Tribal official or employee in the Tribal Court for declaratory or injunctive relief (not monetary damages), if **the official or employee either acted beyond (a) the scope of their authority, or (b) the authority that the Tribe has the power to legally confer.**" *Murphy*, IAC-22-001 at 7-8. Here, the Petitioner argued that the Governor had waived sovereign immunity because he acted beyond his authority by removing him from the office of Second Lieutenant Governor without affording him due process under Article VII § 2 of the Pueblo of Isleta Constitution.[2] The Petitioner's position was that the Article VII § 2 removal process was the only way that a governor could constitutionally remove an appointed official and that an appointed official could only be removed if they were found guilty of one of the offenses listed in Article VII and received the process from Article VII § 2. The Petitioner also stated that Article VII § 2 did not apply to him because he was not found guilty of a misdemeanor or malfeasance.

The Petitioner's interpretation of Article VII, fails to consider other ways that appointed officials can be removed. In *Murphy,* which addressed a governor's termination of a Dental Clinic employee, the Appellate Court found that that governor's termination of an at-will employee was not an "act beyond the scope of his authority." IAC-22-001 at 8. The *Murphy* Court held that because the Pueblo's "Constitution expressly confers authority upon the Governor to 'to supervise and direct all employees of the pueblo government' it also conferred the power for governors to "terminate employees." *Id.* at 8 citing POI Const. Art. IV § 5(a).

[2] Article VII § 1 requires any elected or appointed officers of the Pueblo who are convicted of a felony to forfeit their office. Article VII § 2 applies to any elected or appointed officers of the Pueblo found guilty in court of certain misdemeanors, or found guilty by Tribal Council of "malfeasance in office. Article VII § 2 requires a process for removal or recall of these officials that includes 1) receiving a written statement of the charges against them from Tribal Council and 2) an opportunity to appear and be heard in front of Tribal Council within 10 days.

Similar to Article IV § 5(a), Article IV § 6 of the Constitution provides that "the first and second lieutenant governors shall function under the direction of the governor and shall assist him in the performance of his duties." Reading Article IV § 5(a), and Article IV § 6 together, in light of the Pueblo's long-standing tradition and custom of having the governor elect select and appoint his chosen lieutenant governors, it is clear that the Governor's constitutional power to select and appoint his lieutenant governors (who are also the Pueblo's employees) also confers upon the governor the power to remove appointed lieutenant governors for cause or no cause at any time. *Id.* Because the Governor's removal of the Petitioner was within the scope of the Governor's constitutional authority, and because Article VII § 2 is not the only way an appointed official can be removed, the Governor's act of removing the Petitioner does not constitute a waiver of sovereign immunity. Therefore, this type of waiver cannot and does not apply to the facts of this case.

Eighth, though not a waiver of sovereign immunity, **a true individual capacity lawsuit** is one final way for a Petitioner to surpass the general sovereign immunity bar. Generally, tribal sovereign immunity "protects tribal officials against claims in their official capacity." *Lente*, IAC-05-009 at 8. However, employees of the Pueblo "may be sued individually in certain circumstances." *Chavez*, IAC-05-112 at 6. "If the remedy sought is truly against the sovereign, or if the act sued over is the sovereign's act or one for which it has the primary legal liability, then sovereign immunity applies, naming individual officers of the defendants does not change the character of the suit." *Id.*

"[C]ourts must look beyond the mere allegation that an officer is being sued in his or her individual capacity. Courts must "review the substance of the allegations, including the kind of claims being brought and the relief being sought in order to determine wither sovereign

immunity applies." *Id.* To determine whether a case is a true individual capacity lawsuit or is actually case against the Pueblo or a Pueblo official in his or her official capacity, this Court must determine if the Pueblo is the 'real party in interest.' *Id.* The Pueblo is the real party in interest "when the judgment sought would expend itself on the public treasury or domain, or interfere with public administration" or where "the effect of the judgment would be to restrain the [sovereign] from acting, or to compel it to act." *Id.* at 6-8. Where the Pueblo is the real party in interest, the Pueblo is "an indispensable party to the suit due to the nature of the Plaintiff's remedies, which only the Pueblo can provide." *Jojola et. al. v. Chavez et al.*, IAC-03-078 at 2 (2003). The Appellate Court has instructed that the following factors guide a real party in interest determination:

1) whether the official's actions were tied to their official duties;
2) whether if the desired relief had been authorized at the outset the burden would have been born by the sovereign;
3) whether a judgment would operate against the sovereign;
4) whether the officials acted to further their personal interests; and
5) whether the official's actions were *ultra vires* (beyond the scope of their legal authority).

Chavez, IAC-05-112 at 6.

In this case, it is clear that this matter is not a true individual capacity suit against the Pueblo. While the Petitioner names "Governor Eugene Jiron" as the sole Respondent, the substance of the allegations show that the Pueblo is an indispensable Party because only the Pueblo itself could provide the relief the Petitioner is requesting. *Jojola*, IAC-03-078, at 2; *Chavez*, IAC-05-112 at 6. Considering the real party in interest factors, 1) as explained above, Governor Jiron's act of removing the Petitioner from office was within the scope of his official Article IV constitutional duties, 2) the Pueblo would bear the burden of compensating the Petitioner for the monetary and injunctive relief he requests by expending government funds and making governmental changes, 3) any judgment this Court could issue granting the relief the

Petitioner requests would require a withdrawal from the Pueblo's treasury (as opposed to the Governor's personal funds) and/or require the Pueblo to act, 4) the Petitioner has alleged no personal interests of the Governor served by this removal,[3] and 5) as explained above, this act of removal was within the scope of the Governor's constitutionally authorized power and was not *ultra vires*. *Id.* Because the, substance of the allegations in the Petition show that this matter is truly against the Pueblo, not Governor Jiron in his individual capacity, this matter cannot be permitted to proceed under the general tribal sovereign immunity bar.

Given that the waivers of sovereign immunity discussed above are the only waivers of sovereign immunity recognized by the Pueblo, the Petitioner's assertions that sovereign immunity was waived because he believed he still held office and because the Pueblo's attorneys entered a standard entry of appearance instead of a 'special appearance' are not supported by any legal grounds for this Court to find a sovereign immunity waiver.

Because Petition has not alleged and cannot meet any of the possible sovereign immunity waivers under Pueblo of Isleta law, nor does the Petition allege facts that show this is a lawsuit against Governor Jiron in his individual capacity, sovereign immunity bars this Court from having subject matter jurisdiction to hear this case and, therefore, bars any-part of this matter from proceeding to a hearing on the merits of this case. For this reason alone, this matter must be dismissed.

Political Question

The Political question doctrine is rule that courts will refuse to hear a case if it presents a political question. *Baker v. Carr*, 369 U.S. 186, 217 (1962). Political question doctrine has long

[3] At the July 2, 2025 Hearing, the Petitioner alleged that the Governor benefited from his removal because the Governor wanted him removed and because he had done all the work for the Governor when he was in Office. This Court finds that these reasons do not rise to the level of demonstrating any personal benefit received by the Governor.

been recognized under Pueblo of Isleta law as well as in other jurisdictions as a non-justiciability doctrine which bars courts from making the purely political decisions for which the decision-making authority has been constitutionally delegated to other branches of government. *Id.* at 217. See *Peigler*, IAC-22-004 at 2-3 citing *ITMO Lucero, Jiron, Zuni*, IAC-10-007 at 15 (stating, "the Courts are bound to accept the decisions by political branches within their political authority and "it is not the role of the courts to determine whether an elected official's actions warrant removal").

Here, by asking the Court to essentially reinstate him to the Second Lieutenant Governor position and to remove his successor, the Petitioner is requesting that the Court step into the Governor's shoes and function under the Executive branches' Article IV powers, which is contrary to the separation of powers required by the Constitution and barred by the political question doctrine. Therefore, these non-justiciable political questions cannot be decided by this Court and must be dismissed. *See Peigler*, IAC-22-004 at 2-3 and *ITMO Lucero, Jiron, Zuni*, IAC-10-007 at 15.

CONCLUSION

Because this matter is barred by the Pueblo's sovereign immunity and raises non-justiciable political questions, it must be dismissed.

IT IS THEREFORE SO ORDERED ADJUDGED, AND DECREED that:

1. This matter is DISMISSED, in its entirety, with prejudice.
2. The July 17, 2025 Hearing in this matter is VACATED.
3. All pleadings filed after July 2, 2025 in this matter are moot.

IT IS SO ORDERED on July 14, 2025 by:

HON. MEGAN HORNING
Isleta Tribal Court Associate Judge