

IN THE SUPREME COURT  
 OF THE STATE OF NORTH DAKOTA

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Trenton Indian Housing Authority,	)	
	)	
Plaintiff/Appellee,	)	
vs.	)	Supreme Court No. 20210302
	)	
Lisa Poitra and all other unknown,	)	District Court No.: 53-2020-CV-00694
occupants,	)	
	)	
Defendant/Appellant.	)	

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PETITION FOR REHEARING

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APPEAL FROM AN ORDER OF EVICTION  
 DATED OCTOBER 21<sup>st</sup>, 2021  
 THE DISTRICT COURT  
 NORTHWEST JUDICIAL DISTRICT  
 WILLIAMS COUNTY, NORTH DAKOTA  
 THE HONORABLE JOSH RUSTAD

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### STATEMENT OF ISSUE

[1] Because Trenton Indian Housing Authority is not a dependent Indian community subject to Tribal jurisdiction, does it have the legal authority to operate without authorization or recognition as required by N.D.C.C. § 23-11?

### STATEMENT OF PRIOR PROCEEDINGS

[2] October 28, 2021, Ms. Poitra timely filed a Notice of Appeal and Order for Transcript (App. Pg. 165) (Index # 93). April 4<sup>th</sup>, 2022, this matter was heard before the North Dakota Supreme Court. April 28, 2022, the North Dakota Supreme Court issued an opinion finding Trenton Indian Housing Authority (TIHA) to not be a dependent Indian community. The Court allowed the use of State jurisdiction to evict an enrolled Turtle Mountain member living in a housing project operated by TIHA.

### SUMMARY OF ARGUMENT

[3] TIHA may only operate in the State of North Dakota if it is a dependent Indian community operating under Tribal jurisdiction, or under State law. This Court ruled TIHA is not a dependent Indian community. TIHA lacks the necessary legal authority to operate in North Dakota under N.D.C.C. § 23-11.

### LAW & ARGUMENT

[4] There are five ways TIHA's authority to operate can be described. First, TIHA is a dependent Indian community and subject to Tribal jurisdiction. Second, it is a State entity authorized by State law to operate in North Dakota. Third, it is a foreign entity operating in the State of North Dakota. Fourth, TIHA is a private landlord and authorized by State

law. Fifth, TIHA is a foreign or private entity, and derives its authority to operate not from State law but from the federal government.

[5] According to this Court's opinion issued April 28<sup>th</sup>, 2022, TIHA is not a dependent Indian community subject to Tribal jurisdiction. However, the Court's opinion allowing TIHA to use the State Court System to evict a tribal member fails to explain how TIHA can act as a housing authority in Williams County, when Williams County already has a designated housing authority.

*A. State Entity Operating Under State Laws*

[6] In order for a prospective housing authority to operate as State entity in the North Dakota, it must first be created under N.D.C.C. § 23-11-02. N.D.C.C. § 23-11-02 is free and clear of ambiguity, "Such authority may not transact any business nor exercise any powers granted by this chapter until the governing body of the city or of the county, as the case may be, by proper resolution, declares that there is need for an authority to function in such city or county...a petition must be signed by twenty-five residents of the city or county, as the case may be, asserting that there is need for such authority to function in such city or county and requesting that the governing body so declare." TIHA is located in Williams County. The Williams County Board of County Commissioners has not adopted a resolution declaring a need for TIHA to operate within Williams County.

N.D.C.C. § 23-11-03; N.D.C.C. § 23-11-04. The only recognized State housing authority in Williams County is the Housing Authority of the City of Williston:

[https://www.hud.gov/sites/dfiles/PIH/documents/PHA\\_Contact\\_Report\\_ND.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_ND.pdf).

[7] TIHA is lawfully created by Tribal Ordinance, not by N.D.C.C. § 23-11, TIHA should

be viewed legally as a Tribal and not a State entity. Without being a dependent Indian community or a State housing authority properly authorized by Williams County, TIHA cannot operate as a housing authority in Williams County under N.D.C.C. § 23-11. Without the ability to operate as a dependent Indian community or a State housing authority, TIHA lacks the ability to evict Ms. Poitra.

*B. Foreign Entity Operating Under State Laws*

[8] TIHA was created solely by the Turtle Mountain Band of Chippewa Indians through Ordinance 30, TIHA could possibly be viewed as a foreign entity. However, for a housing authority subject to State laws to operate in the State of North Dakota, a foreign entity must still be authorized under N.D.C.C. § 23-11. There have never been any laws or treaties allowing foreign entities build and operate housing authorities in the State of North Dakota. TIHA lacks the authority to operate in this way.

[9] If the Court permits TIHA to go forward with this eviction without authorization under N.D.C.C. § 23-11, the Court would be authorizing any other Tribes or foreign entities to unilaterally build housing authorities or similar entities throughout the State of North Dakota. For example, any Tribe could build and operate a housing authority in downtown Williston without the city's consent, competing directly with the Williston Housing Authority for scarce resources. Such direct competition is supposed to be regulated under N.D.C.C. § 23-11.

*C. TIHA is a private landlord subject to State laws*

[10] It could be argued TIHA is operating as a private landlord and therefore not subject to N.D.C.C. § 23-11, but this argument lacks merit. TIHA fully holds itself out as a

housing authority, and created to serve the public's interest and contractually obligated to directly serve the housing needs of low-income Turtle Mountain enrolled members. (App. Pg. 205, L. 9-15); NAHASDA § 210. TIHA receives approximately \$270,000 in Indian Housing Block Grants (IHBG) federal funds. (App. Pg. 151, Pg. 203, L. 19-24). TIHA accepts its IHGB's through NAHASDA with the approval of HUD (App. pg. 205, L. 5-8). Virtually every significant legal consequence of TIHA is governed by NAHASDA or Turtle Mountain Tribal Ordinance, TIHA's authority over the housing project is limited to managing the properties for the public good and any (or all) of its officers can be removed for violating any section of NAHASDA (Brief of Appellant, ¶ 28); NAHASDA § 401-402. Neither the State nor the federal government allow TIHA to be taxed. NAHASDA § 101(d); N.D.C.C. § 23-11-28. Moreover, TIHA has a Board appointed solely by the Turtle Mountain Tribal Council (App. Pg. 73), which may be removed by Council for cause (App. Pg. 74) (Index # 23, pg. 6-7). TIHA's actions show it is not a private landlord, and by not being a dependent Indian community, it must be subject to State housing authority laws N.D.C.C. § 23-11. TIHA has not been authorized by Williams County under N.D.C.C. § 23-11, without the necessary authorization it lacks the authority to evict Ms. Poitra.

*D. Authority to Operate from the Federal Government*

[11] It is possible an argument could be made TIHA is operating under the authority of the federal government and therefore TIHA does not require authority under N.D.C.C. § 23-11. As noted in ¶ 10, TIHA receives the bulk of its funding from the federal government, and must comply with a comprehensive set of regulations through

NAHASDA and the Turtle Mountain Tribal Code. There are at least three difficulties with this argument. First, Ms. Poitra not aware of any specific federal laws requiring States to allow the construction and operation of federally funded off-reservation Tribal Housing Authorities without State or local consent. Second N.D.C.C. § 23-11 recognizes housing authorities operating under State jurisdiction maybe acting as agents of the federal government, yet the law still requires any of these prospective housing authority to still be authorized under§ 23-11 to operate in the State of North Dakota. N.D.C.C. § 23-11-11 (9), (31); N.D.C.C. § 23-11-32; N.D.C.C. § 23-11-34; N.D.C.C. § 23-11-29; N.D.C.C. § 23-11-01; N.D.C.C. § 23-11-02; N.D.C.C. § 23-11-03; N.D.C.C. § 23-11-04. In *City of Ponca City*, acting under a law very similar to N.D.C.C. § 23-11-02 , N.D.C.C. § 23-11-03, and N.D.C.C. § 23-11-04, the City of Ponca was granted a permanent injunction prohibiting the Kaw Tribe of Indians of Oklahoma from operating a housing authority within the city limits without consent of the city housing authority. *City of Ponca City v. Hous. Auth. of Kaw Tribe of Indians of Oklahoma*, 1992 OK CIV APP 127, 840 P.2d 653, 653, n. 5. *City of Ponca City* suggests Indian Housing Authorities, like TIHA, which operate completely outside of Indian Country, must abide by State laws including the consent of local governing bodies before operating as a housing authority.

[12] Third, the Court by allowing TIHA to operate without State law compliance would be granting other Tribes or foreign entities the authority to unilaterally build housing authorities or similar entities in the State of North Dakota without need to comply with well established State law. Even if TIHA has the authority to operate under federal law, the basic principals of federalism require it to comply with State law when operating



beyond the boundaries of a federally recognized Indian Reservation, intentionally using the State Court system to enforce the governing laws and policies as authorized to TIHA by Ordinance 30.

#### CONCLUSION

[13] Lisa Poitra requests this Court pursuant to Rule 40 of the North Dakota Rules of Appellate procedure to reconsider its decision finding TIHA not to be a dependent Indian community as TIHA lacks the authority under North Dakota State law to operate as a public housing entity in Williams County.

#### PRAYER FOR RELIEF

[14] WHEREFORE, Lisa Poitra respectfully request the Court reverse the decision of the District Court, or restore the case to the calendar for re-argument or re-submission.

Dated this 10th day of May, 2022.

*Alexander Turner*

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CERTIFICATE OF COMPLIANCE

The undersigned, as attorney for Appellant, in the above-matter, and as the author of the Petition for Rehearing, hereby, certifies compliance with Rule 32 and Rule 40 of the North Dakota Rules of Appellate Procedure. Appellant's Petition is compliant with the page length requirement under N.D. R. App. P. 32(8)(A), and Appellant's Petition for Rehearing is 9 pages in length.

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	)	
Lisa Poitra,	)	
And All Other Unknown Occupants,	)	CERTIFICATE OF SERVICE
	)	
	)	
Defendant and Appellant.	)	

The undersigned attorney, does hereby certify that a true and correct copy of the above and foregoing **Petition for Rehearing** was served upon following persons by electronic mail and through the North Dakota Supreme Court E-Filing Portal on the 10<sup>th</sup> day of May, 2022:

Jordan Evert (ID #06969)  
[jordon@furusethlaw.com](mailto:jordon@furusethlaw.com)

Dated this 10<sup>th</sup> day of May, 2022.

Alexander Turner  
LEGAL SERVICES OF N.D.  
By: Alexander Turner ID 09215