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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TIMBISHA SHOSHONE TRIBE,  
et al.,

No. 2:11-cv-00995-MCE-DAD

Plaintiffs,

v.

MEMORANDUM AND ORDER

UNITED STATES DEPARTMENT OF  
THE INTERIOR; et al.,

Defendants.

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Plaintiffs, Timbisha Shoshone Tribe ("Tribe"), Joseph "Joe" Kennedy, Angela "Angie" Boland, Grace Goad, Erick Mason, Hillary Frank, Madeline Esteves and Pauline Esteves filed this action on April 13, 2011, seeking declaratory and injunctive relief against Defendants United States Department of the Interior ("DOI"), Bureau of Indian Affairs ("BIA"), Larry Echo Hawk ("Echo Hawk"), Assistant Secretary of the Interior for Indian Affairs, Amy Dutschke, Director of the Pacific Regional Office of the BIA, and Troy Burdick ("Burdick"), Superintendent of the Central California Agency of the BIA, alleging injuries suffered as a result of a final agency decision issued by Echo Hawk on March 1, 2011 ("EHD").

1 Presently before the Court is Plaintiffs' Motion for Preliminary  
2 Injunction ("Motion") which came on for hearing before the Court  
3 on shortened time on May 12, 2011, at 2:00 p.m. For the  
4 following reasons, Plaintiffs' Motion is DENIED.

5  
6 **BACKGROUND<sup>1</sup>**

7 **A. Tribal History**  
8

9 In 1983, the Tribe was formally recognized by the DOI as a  
10 sovereign Indian nation with whom the United States would  
11 maintain government-to-government relations. The Tribe is  
12 organized under a written Constitution that establishes the  
13 General Council as the Tribe's supreme governing body. The  
14 General Council has delegated some of its powers to a five-member  
15 Tribal Council.

16 The Tribe's Constitution limits tribal membership to persons  
17 "listed on the genealogy role prepared as of March 1978" and to  
18 certain of those members' lineal descendants. The Constitution  
19 and the Tribe's "Enrollment Ordinance" require that the Tribal  
20 Council "revoke membership status from any individual whom the  
21 enrollment committee has determined was erroneously, fraudulently  
22 or otherwise incorrectly enrolled."

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28 <sup>1</sup> Unless otherwise noted, the following facts are taken, at  
times verbatim, from Plaintiffs' Complaint.

1 General elections for the Tribal Council are held every  
2 November, and members serve two-year, staggered terms. The  
3 Tribe's Constitution requires that these elections be certified  
4 by an Election Board, the actions of which are governed by the  
5 Tribe's "Election Ordinance."

6  
7 **B. The Tribe's Leadership Dispute**  
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9 The current lawsuit is the culmination of a long-standing  
10 dispute over the election and composition of the Tribe's proper  
11 Tribal Council. While it is undisputed that in 2006 the Tribal  
12 Council consisted of Chairman Joe Kennedy ("Kennedy"), Vice Chair  
13 Ed Beaman ("Beaman"), Secretary-Treasurer Madeline Esteves, and  
14 Council Members Virginia Beck ("Beck") and Cleveland Casey  
15 ("Casey") ("2006 Council"), since then multiple dueling factions  
16 have claimed to lead the Tribe.

17 The current fracture in the Tribe's governance began on  
18 August 25, 2007, when, at a Tribal Council meeting held by the  
19 2006 Council, charges were brought against Beaman and Beck  
20 seeking their removal from office. Beaman, Beck and Casey left  
21 the meeting, though Casey returned at some point before  
22 eventually leaving once again. The remaining members of the 2006  
23 Council determined Beaman and Beck had resigned, and they  
24 purportedly replaced Beck with another Tribe member (hereafter  
25 this group is referred to as the "2006 Kennedy Faction").  
26 Beaman, Beck, and Casey (the "Beaman Faction") subsequently met  
27 separately and passed resolutions also purporting to take control  
28 of the Tribe's administration.

1 In November of 2007, both the 2006 Kennedy Faction and the  
2 Beaman Faction held general elections that resulted in the  
3 election of the "2007 Kennedy Council" and the "Beaman Council."  
4 On December 14, 2007, Burdick issued a decision declining to  
5 recognize the results of either election.

6 Kennedy subsequently called a General Council meeting, which  
7 was convened on January 20, 2008. Satisfied a quorum existed,  
8 the General Council adopted several resolutions purporting to  
9 ratify, as relevant here: 1) the general election resulting in  
10 election of the 2007 Kennedy Council; 2) the actions taken by the  
11 Tribal Council from August 25, 2007 onward; and 3) interpretation  
12 of the term "resign" in the Timbisha Constitution.

13 On February 29, 2008, Burdick rescinded his December 14,  
14 2007 decision and purported to recognize the 2007 Kennedy  
15 Council. The Beaman Council appealed that decision, staying its  
16 effect.

17 During September and October of 2008, the 2007 Kennedy  
18 Council Enrollment Committee performed a review of the Tribe's  
19 membership rolls and determined seventy-four (74) people did not  
20 qualify for membership in the Tribe. The Enrollment Committee  
21 notified those members they were to be disenrolled and, when the  
22 time to appeal expired, the Tribal Council adopted resolutions  
23 confirming the membership revocations.

24 During this same timeframe, in September 2008, George  
25 Gholson ("Gholson"), a member of the Tribe purportedly  
26 disenrolled pursuant to the above 2007 Kennedy Council efforts,  
27 convened another General Council meeting.

28 ///

1 At this meeting, Gholson allegedly recalled Kennedy and replaced  
2 him with both Gholson and another disenrolled individual. On  
3 October 17, 2008, based on the actions taken at that General  
4 Council meeting, Burdick issued a decision recognizing Gholson as  
5 the Chairman of the Tribe. Though Burdick's decision was not yet  
6 effective, Gholson allegedly used it to justify the removal of  
7 Tribal assets from the Tribal Office on the Death Valley  
8 reservation.

9 Just a few weeks later, on November 10, 2008, Burdick issued  
10 another decision recognizing the 2006 Council.

11 The following day, the 2007 Kennedy Council Tribal Election  
12 Board conducted a general election, resulting in the election of  
13 the "2008 Kennedy Council." No other election was held at this  
14 time.

15 On December 4, 2008, Defendant Dutschke's predecessor,  
16 Regional Director Dale Morris ("Morris") nonetheless recognized  
17 Gholson as the Tribe's chairman. A few days later, on  
18 December 12, 2008, Gholson again allegedly removed Tribal  
19 property from the Tribal Office in Death Valley.

20 On December 22, 2008, Morris rescinded his December 4, 2008,  
21 decision recognizing Gholson. Gholson nevertheless refused to  
22 return any Tribal property.

23 On February 17, 2009, Morris reversed Burdick's decision  
24 recognizing the 2007 Kennedy Council, and, on March 24, 2009, he  
25 reversed Burdick's October 17, 2008 decision recognizing Gholson,  
26 proposing in both decisions to recognize the 2006 Tribal Council.

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1 The 2008 Kennedy Council appealed Morris's February 17  
2 decision, and Gholson, among others, appealed his March 24  
3 decision. These two groups will hereafter be referred to as the  
4 "Kennedy Faction" and the "Gholson Faction." Echo Hawk took  
5 jurisdiction over and consolidated these appeals.

6 In November of both 2009 and 2010, the Kennedy Faction and  
7 the Gholson Faction each purportedly held general elections  
8 resulting in the election of what will be referred to as the  
9 "current Kennedy Council" and the "Gholson Council." According  
10 to Plaintiffs, the Gholson Faction permitted disenrolled members  
11 to vote in its elections and to elect to its council disenrolled  
12 members or individuals who did not qualify for membership.

13 The Gholson Faction eventually withdrew its appeal of the  
14 March 24, 2009 decision, but nonetheless continued to work to  
15 freeze Tribe bank accounts.

16 On February 24, 2010, Burdick issued a decision determining  
17 no Tribal Council existed. The Kennedy Faction appealed the  
18 decision, and the BIA has not yet acted on that appeal.

19 Plaintiffs allege Gholson used Burdick's latest decision to  
20 again freeze Tribal funds and to convince federal agencies to  
21 cease funding of various of the Tribe's services.

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1           **C.     Echo Hawk's Decision On The Pending Appeal**

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3           On March 1, 2011, Echo Hawk issued a decision on the 2008  
4 Kennedy Council appeal, first denying the appeal and, second,  
5 recognizing, "for the limited purpose of carrying out essential  
6 government-to-government relations and holding a special election  
7 that complies with the tribal law," the Gholson Council. EHD,  
8 p. 10. Echo Hawk justified his decision for two reasons: 1) more  
9 votes were cast in the Gholson-conducted election, supporting the  
10 conclusion it would be less intrusive to vest temporary  
11 recognition in that council; and 2) despite Kennedy's belief that  
12 numerous members voting in the Gholson-conducted elections had  
13 been disenrolled, because those disenrollments had been rejected  
14 by the DOI on procedural grounds, any election barring those  
15 members from voting was facially invalid.

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17           **D.     The Current Litigation**

18  
19           Six weeks after issuance of the EHD, Plaintiffs, both as  
20 individuals and as members of the current Kennedy Council, which  
21 is purportedly empowered to act on behalf of the Tribe, filed  
22 their Complaint in this action arguing that the EHD was arbitrary  
23 and capricious because Echo Hawk: 1) improperly considered  
24 evidence outside of the Administrative Record in deciding the  
25 appeal; 2) misapplied Tribal enrollment law; 3) misapplied Tribal  
26 Election law; and 4) relied on irrelevant factors and ignored  
27 relevant factors. Plaintiffs also contend the EHD was issued in  
28 violation of Defendants' federal trust responsibilities.

1 Plaintiffs subsequently filed the instant Motion arguing a  
2 preliminary injunction should issue because the EHD "did not  
3 consider tribal membership or the qualifications of candidates or  
4 voters as at all relevant; based its conclusions and reasoning on  
5 facts not in the record, including vote totals using very  
6 different qualifications for voting in to elections held by two  
7 rival factions; authorized the replacement tribal government to  
8 conduct a new election...even though the EHD also denied the  
9 validity of the election that is the sole claim to legitimacy for  
10 the replacement tribal government; and offered no sensible or  
11 reasonable basis for replacing the tribal government or  
12 authorizing the replacement government to conduct a new  
13 election." Motion, 1:8-14. Plaintiffs specifically seek an  
14 order enjoining Defendants from: "(1) assisting in the conduct,  
15 or recognizing the results of, the imminent purported special  
16 election administered by the Gholson faction in which persons who  
17 do not meet the criteria for membership in the Tribe are  
18 permitted to vote or run for office; (2) further recognition or  
19 assistance to the replacement tribal government; and (3) failing  
20 to recognize and assist legitimate Tribal Council led by  
21 plaintiff Tribal Council members." Id., 1:19-2:3.

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**STANDARD**

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3 A preliminary injunction is an extraordinary remedy never  
4 awarded as of right, and Plaintiffs have the burden of proving an  
5 injunction should issue. Winter v. Nat'l Res. Def. Council,  
6 Inc., 555 U.S. 7, 129 S. Ct. 365, 376 (2008); see Granny Goose  
7 Foods, Inc. v. Teamsters, 415 U.S. 423, 442-43 (1974). As such,  
8 the Court may only grant such an injunction "upon a clear showing  
9 that the plaintiff is entitled to such relief." Winter at 375-76  
10 (citing Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (per  
11 curiam)). To prevail, "[a] plaintiff seeking a preliminary  
12 injunction must establish that he is likely to succeed on the  
13 merits, that he is likely to suffer irreparable harm in the  
14 absence of preliminary relief, that the balance of equities tips  
15 in his favor, and that an injunction is in the public interest."  
16 Id. at 374. Alternatively, under the so-called sliding scale  
17 approach, as long as the Plaintiffs demonstrate the requisite  
18 likelihood of irreparable harm and show that an injunction is in  
19 the public interest, a preliminary injunction can still issue so  
20 long as serious questions going to the merits are raised and the  
21 balance of hardships tips sharply in Plaintiffs' favor.  
22 Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1134-35  
23 (9th Cir. 2011) (finding that sliding scale test for issuance of  
24 preliminary injunctive relief remains viable after Winter).

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1 **ANALYSIS**

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3 Plaintiffs have not met their burden of proving they are  
4 likely to succeed on the merits of their claims, or that the  
5 Court can even reach the merits of these claims, because they  
6 have failed to make the requisite showing that: 1) the Tribe is a  
7 proper party-plaintiff; 2) this Court has jurisdiction to  
8 determine whether Plaintiffs can properly represent the Tribe;  
9 3) this action can proceed even if the Tribe is not joined as a  
10 party; or 4) this action can proceed despite the fact that the  
11 Gholson Faction is not a party. Because Plaintiffs have failed  
12 to make even a threshold showing that they are likely to succeed  
13 on the merits, Plaintiffs' instant Motion is denied.

14  
15 **A. Plaintiffs Have Failed To Show That The Tribe Is**  
16 **Properly Before The Court.**

17 Plaintiffs purport to bring the instant action on behalf of  
18 the Tribe, arguing that "[t]he Kennedy Council has the authority  
19 to bring this suit as the duly elected Tribal Council of the  
20 Tribe, elected in the certified and unappealed elections of 2009,  
21 which BIA observed, and 2010." Reply, 4:12-14. The first  
22 problem with this argument is that it assumes the correctness of  
23 the very question at issue in this case, namely, that the Kennedy  
24 Council is the Tribe's properly enacted and functioning Tribal  
25 Council. See Paramount Pictures Corp. v. Holden, 166 F. Supp.  
26 684, 691 (S.D. Cal. 1958) ("An injunction pending suit should not  
27 issue where to do so will call for a decision of the fact  
28 ultimately involved in the lawsuit.").

1 While Plaintiffs believe they are the properly elected Council,  
2 they would have to prove that fact to make a clear showing that  
3 they are empowered to act on the Tribe's behalf in the first  
4 place. Since the Gholson Council is currently recognized by the  
5 BIA for government-to-government purposes, however, Plaintiffs  
6 have not shown that the Tribe is properly before the Court.  
7 Timbisha Shoshone Tribe v. Bureau of Indian Affairs, 2003 WL  
8 25897083, \*3 (E.D. Cal.) ("Timbisha 2003") (holding that since  
9 the tribal council recognized by the BIA had not authorized  
10 filing of the suit, the tribe was not a proper party-plaintiff).

11  
12 **B. Plaintiffs Have Failed To Show That This Court Has**  
13 **Jurisdiction To Determine Whether Plaintiffs Can**  
14 **Properly Represent The Tribe.**

15 Moreover, Plaintiffs have failed to make a clear showing  
16 that this Court even has jurisdiction to reach the question of  
17 whether Plaintiffs can properly represent the Tribe. Defendants  
18 contend that Plaintiffs' claims present "election disputes  
19 between competing tribal councils" that constitute  
20 "nonjusticiable, intertribal matters." Opposition, 17:10-13.  
21 Plaintiffs nonetheless argue that their "claims against defendants  
22 do not require this Court to 'construe and apply tribal law,' and  
23 plaintiffs have not requested that this Court grant injunctive  
24 and declaratory relief based on tribal law." Reply, 5:26-28.  
25 According to Plaintiffs, they "seek only review of defendants'  
26 reasoning in the EHD to determine whether it meets the  
27 requirements of the APA." Id., 6:1-2.

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1 Plaintiffs' argument ignores the fact that for this Court to  
2 reach the merits of Plaintiffs' claims it would have to resolve  
3 the parties' disenrollment and election disputes because the only  
4 way to determine whether the Tribe is properly joined as a  
5 plaintiff is to determine whether the individual Plaintiffs have  
6 the authority under Tribal law to bring this action on the  
7 Tribe's behalf.

8 This case is thus similar to Sac & Fox Tribe of the  
9 Mississippi in Iowa v. Bureau of Indian Affairs, 439 F.3d 832  
10 (8th Cir. 2006). In Sac & Fox Tribe, two tribal councils claimed  
11 authority to govern that tribe. An election board operating  
12 under one of the councils filed suit against the BIA seeking,  
13 among other things, judicial review of the BIA's decision to  
14 recognize the competing council. Id. at 834. "The district  
15 court concluded that it would necessarily have to recognize the  
16 [plaintiff] Election Board as the proper plaintiff to reach the  
17 merits of the case" and thus dismissed the action for lack of  
18 subject matter jurisdiction. Id. at 834-35.

19 The Eighth Circuit affirmed stating, "[i]n cases involving  
20 tribal affairs, we exercise section 1331 jurisdiction only when  
21 federal law is determinative of the issues involved.  
22 'Jurisdiction to resolve internal tribal disputes [and] interpret  
23 tribal constitutions and laws...lies with Indian tribes and not  
24 in the district courts.' We have characterized election disputes  
25 between competing tribal councils as nonjusticiable, intratribal  
26 matters." Id. at 835 (internal citations and quotations  
27 omitted).

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1 That court went on to reason that “[t]o reach the merits of this  
2 case, the district court would necessarily have to construe and  
3 apply tribal law to determine whether an election board has  
4 authority to file suit on behalf of the Tribe. The district  
5 court would then have to determine which election board is the  
6 proper plaintiff.” Id.

7 The same is true here. In order to determine if the Tribe  
8 is properly before the Court, the Court would have to determine  
9 whether Plaintiffs are entitled to sue on the Tribe’s behalf.  
10 This determination would require the Court to resolve the  
11 parties’ enrollment and election disputes, and, under Sac & Fox  
12 Tribe, the Court lacks jurisdiction to do so.

13 The above analysis is further supported by another decision  
14 from this Court arising out of an earlier dispute between two  
15 rival factions of this same Tribe. Timbisha Shoshone Tribe v.  
16 Kennedy, 687 F. Supp. 2d 1171 (2009) (“Timbisha 2009”). In  
17 Timbisha 2009, when evaluating those plaintiffs’ motion for  
18 preliminary injunction, this Court determined that “[i]nternal  
19 matters of a tribe are generally reserved for resolution by the  
20 tribe itself, through a policy of Indian self-determination and  
21 self-government as mandated by the Indian Civil Rights Act.  
22 Unless surrendered by the tribe, or abrogated by congress, tribes  
23 possess an inherent and exclusive power of matters of internal  
24 tribal governance. Moreover, a tribe’s right to define its own  
25 membership for tribal purposes has long been recognized as  
26 central to its existence as an independent political community.”  
27 Id. at 1185 (internal citations and quotations omitted).

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1 The defendant faction members in that case argued the  
2 plaintiff faction members lacked standing because they had been  
3 disenrolled from the Tribe. The Timbisha 2009 Court stated,  
4 "[W]ithout authority, this Court will not interfere in the  
5 internal affairs of the Tribe." Id. at 1185. The Court  
6 reasoned, "[n]either party points to a provision of the Tribe's  
7 Constitution, a Congressional Act, or other controlling authority  
8 to allow this Court to resolve the issue of disenrollment....  
9 [R]esolution of the disenrollment issue turns on the parties'  
10 election dispute. These issues are central to Indian self-  
11 determination and self-government." Id. The Court held it was  
12 unable to determine whether Plaintiffs had standing without  
13 resolving the legitimacy of the disenrollment and, derivatively,  
14 resolving the election dispute. Id. Accordingly, because the  
15 Court could not reach the standing issue without interfering with  
16 tribal affairs, it determined Plaintiffs failed to meet their  
17 burden of showing that they were likely to succeed on the merits.  
18 Id.

19 As in Timbisha 2009, for this Court to determine whether  
20 Plaintiffs here have properly filed suit on behalf of the Tribe,  
21 it would have to entertain the merits of the parties' election  
22 and disenrollment issues. Because neither party has pointed to  
23 any authority permitting this Court to interfere in these  
24 conflicts, the Court will not do so. Accordingly, Plaintiffs  
25 have failed to make a clear showing that this Court has  
26 jurisdiction to evaluate whether Plaintiffs can represent the  
27 Tribe.

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1           **C.     Plaintiffs Have Failed To Show That This Action Can**  
2           **Proceed If The Tribe Is Not A Party.**

3           Plaintiffs have likewise failed to make a clear showing  
4 that, if they cannot represent the Tribe or if this Court lacks  
5 the jurisdiction to make that determination, this action can  
6 proceed in the Tribe's absence. Pursuant to Federal Rule of  
7 Civil Procedure 19(a)(1): "A person who is subject to service of  
8 process and whose joinder will not deprive the court of subject-  
9 matter jurisdiction must be joined as a party if: (A) in that  
10 person's absence, the court cannot accord complete relief among  
11 existing parties; or (B) that person claims an interest relating  
12 to the subject of the action and is so situated that disposing of  
13 the action in the person's absence may: (i) as a practical matter  
14 impair or impede the person's ability to protect the interest; or  
15 (ii) leave an existing party subject to a substantial risk of  
16 incurring double, multiple, or otherwise inconsistent obligations  
17 because of the interest." "If a person who is required to be  
18 joined if feasible cannot be joined, the court must determine  
19 whether, in equity and good conscience, the action should proceed  
20 among the existing parties or should be dismissed." Fed. R. Civ.  
21 Proc. 19(b).

22           "[T]here is no precise formula for determining  
23 whether a particular non-party is necessary to an  
24 action. In determining whether a party is necessary,  
25 the court must consider whether complete relief is  
26 possible among those parties already present in the  
action and whether the absent party has a claim to a  
legally protected interest in the outcome of the  
action. A party is necessary if either one of these  
factors is present."

27 Timbisha 2003, 2003 WL 25897083, \*5 (internal citations and  
28 quotations omitted).

1 In Timbisha 2003, two rival factions of this same Tribe again  
2 disputed which faction should properly govern. While various  
3 decisions were on appeal before the BIA, the BIA had recognized  
4 one faction as the interim tribal council. Id. at \*2.  
5 Plaintiffs, the non-recognized council, filed suit against the BIA  
6 and members of the rival faction in this Court. After determining  
7 the Tribe was not a proper party-plaintiff, the Court went on to  
8 hold that both the tribe and the rival faction (i.e., the faction  
9 currently recognized by the BIA) were necessary parties. The  
10 Court reasoned that the Tribe was a necessary party since it  
11 "ha[d] an interest in the outcome of the suit" and the parties'  
12 dispute "raise[d] questions about compliance with the Tribe's  
13 Constitution and Election Ordinance, questions in which the Tribe  
14 as a whole has an interest." Id. at \*5. Indeed, "[t]he governance  
15 of the Tribe [was] at stake in [that] dispute, and the Tribe ha[d]  
16 an interest in any such change in its governing body." Id.

17 For the same reasons here, the Tribe is again likely a  
18 necessary party. The Tribe as a whole has an interest in this  
19 current suit because the dispute between the Kennedy and Gholson  
20 Factions raises questions about compliance with the Tribe's  
21 Constitution, Election Ordinance and Membership Ordinance and  
22 because the governance of the Tribe is once again at stake. In  
23 fact, by attempting to join the Tribe as a Plaintiff in the first  
24 place, Plaintiffs tacitly admit the Tribe is a necessary party to  
25 this action. Since Plaintiffs have failed to put forth any  
26 meaningful argument to the contrary, Plaintiffs have failed to  
27 make a clear showing that this litigation can proceed in the  
28 Tribe's absence.



1           **D. Plaintiffs Have Failed To Show That This Action Can**  
2           **Proceed Even Though The Gholson Council Is Not A Party.**

3           The Gholson Council is also likely a necessary party, and  
4 Plaintiffs have not shown otherwise. In Timbisha 2003, this  
5 Court held that the faction then recognized by the BIA as the  
6 acting Tribal Council had "an interest in the outcome of the suit  
7 because it [was] the Tribe's interim governing body, and its  
8 status would be changed should plaintiffs succeed." 2003 WL  
9 25897083, \*5. The same is again true here. In addition in this  
10 case, Plaintiffs vehemently attack the membership status of a  
11 number of members of the Gholson Council as well as those  
12 individuals who voted for that Council. Plaintiffs likewise  
13 point to the Gholson Council as the cause of the majority of the  
14 injuries suffered by the Tribe. As such, the case for joining  
15 the Gholson Council is even stronger here than in Timbisha 2003,  
16 and Plaintiffs have again failed to make a contrary showing.

17           Accordingly, because Plaintiffs have failed to make the  
18 requisite showing that they are entitled to bring this action on  
19 behalf of the Tribe, that this Court even has the jurisdiction to  
20 determine whether they can represent the Tribe, or that this case  
21 can proceed absent joinder of the Tribe or the Gholson Council,<sup>2</sup>  
22 Plaintiffs have failed to carry their burden to show that this  
23 Court can reach the merits of their claims, let alone adjudicate  
24 those claims in Plaintiffs' favor.

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27           <sup>2</sup> In Timbisha 2003, the Court went on to determine that both  
28 the Tribe and the faction recognized by the BIA were  
indispensable parties. There is simply not enough information  
before the Court to delve into a similar inquiry at this time.

**CONCLUSION**

Accordingly, for the reasons just stated, Plaintiffs' Motion for Preliminary Injunction (ECF No. 11) is DENIED.

IT IS SO ORDERED.

Dated: May 16, 2011



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MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE

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