

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

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|---|---|------------------|
| THOMAS R. POOR BEAR, |) | |
| |) | Case No. |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| |) | |
| TOM NESBITT, in his official capacity as Superintendent of The Nebraska State Patrol, |) | |
| TERRY E. ROBBINS, in his official capacity as Sheriff of Sheridan County, Nebraska, ROBERT LOGSDON, in his official capacity as Chairman of the Nebraska Liquor Commission, RICHARD COYNE in his official capacity as a member of the Nebraska Liquor Commission, RHONDA FLOWER, in her official capacity as a member of the Nebraska Liquor Commission. |) | COMPLAINT |
| |) | |
| Defendants. |) | |

PRELIMINARY STATEMENT

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 by Thomas R. Poor Bear, a Native American Oglala Lakota, requesting damages, declaratory, and injunctive relief from a pattern and practice engaged in by the Defendants of depriving Plaintiff of his constitutional rights to speech, assembly, association and the free exercise of his Lakota religious practices under the First and Fourteenth Amendments to the United States Constitution. Plaintiff claims that the Defendants have violated his right to travel freely between the Pine Ridge Reservation in South Dakota and Nebraska as secured by the First, Ninth, and Fourteenth Amendments to the United States

Constitution; and the right of the Plaintiff and his family and extended family to be safe and secure in their persons by the equal enforcement of the criminal and regulatory laws of the State of Nebraska, as afforded by the Fifth, Fourth, and Fourteenth Amendments to the United States Constitution. Plaintiff seeks to have his liberty interests protected under the Due Process Clause of the Fourteenth Amendment and not to be discriminated against because of his status as a Native American Oglala Lakota in violation of the Equal Protection Clause of the Fourteenth Amendment.

Finally, Plaintiff as an Oglala Lakota seeks the enforcement of those Executive Orders of the United States' President and the Acts of Congress which created and dedicated the fifty (50) square mile of land in Nebraska known as the Whiteclay Extension as a part of the Pine Ridge Reservation for a buffer zone to protect the 15,000 Lakota on the reservation from the sale of alcohol. Plaintiff further seeks just compensation under the Fifth and Fourteenth Amendment to the United States Constitution from the past and continued denial and refusal to return the Whiteclay Extension to the Lakota for a buffer zone for the Pine Ridge Reservation and the failure of the Defendants to protect the Plaintiff and the Lakota from the sale of alcohol within the Whiteclay Extension.

JURISDICTION AND VENUE

1. The jurisdiction of this Court is based upon 28 U.S.C. § 1331, 28 U.S.C. §§1343 (3) and (4) and 28 U.S.C. § 2201 and § 2202.
2. The claims for relief arise under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution; 42 U.S.C. § 1983; and 42 U.S.C. § 1988.
3. Venue is properly laid in this court pursuant to 28 U.S.C. § 1391 (b) (2).

PARTIES

4. Plaintiff Thomas R. Poor Bear is an Oglala Lakota residing within the Pine Ridge Reservation. He is the brother of murdered Oglala Lakota Wilson “Wally” Black Elk Jr. and is a founder of Camp Justice.

5. Defendant Tom Nesbitt (hereinafter “Nesbitt”) is sued in his official capacity. Defendant Nesbitt in his official capacity is the superintendent of the Nebraska State Patrol. As the superintendent, Defendant Nesbitt is charged with the overall responsibility, formulation, implementation and supervision of the policies, practices, and procedures of the Nebraska State Patrol, which include; *inter alia*, the tactical aspects of Patrol’s crowd control, political dissent and political protest policies and procedures. He further exercises policy responsibilities for the Patrol’s law enforcement activities in Sheridan County, Nebraska, including the unincorporated village of Whiteclay and Highway 87.

6. Terry E. Robbins (hereinafter “Robbins”) is sued in his official capacity. Defendant Robbins in his official capacity is the sheriff of Sheridan County, Nebraska. As the sheriff, Defendant Robbins is charged with the overall responsibility, formulation, implementation of the policies, practices, and procedures of Sheriff’s Department of Sheridan County. He further exercises policy responsibilities for the law enforcement activities in Sheridan County, including the unincorporated village of Whiteclay and Highway 87.

7. Robert Logsdon (hereinafter “Logsdon”) is sued in his official capacity. Defendant Logsdon in his official capacity is the chairman and member of the Nebraska Liquor Control Commission. As the chairman and member of the Nebraska

Liquor Control Commission, Defendant Logsdon is charged with the overall responsibilities formulation, and implementation of those powers and duties pursuant to the Nebraska Liquor Control Act contained in §§ 53- 101 to 53-1,121 in Neb. Rev. Stat. (Reissue 1999). He further exercises the powers, responsibilities, and duties of the Nebraska Liquor Control Act within Sheridan County, including the unincorporated village of Whiteclay.

8. Richard Coyne (hereinafter “Coyne”) is sued in his official capacity. Defendant Coyne in his official capacity is a member of the Nebraska Liquor Control Commission. As a member of the Nebraska Liquor Control Commission, Defendant Coyne is charged with the overall responsibilities formulation, and implementation of those powers and duties pursuant to the Nebraska Liquor Control Act contained in §§ 53- 101 to 53-1,121 in Neb. Rev. Stat. (Reissue 1999). He further exercises the powers, responsibilities, and duties of the Nebraska Liquor Control Act within Sheridan County, including the unincorporated village of Whiteclay.

9. Rhonda Flower (hereinafter “Flower”) is sued in her official capacity. Defendant Flower in her official capacity is a member of the Nebraska Liquor Control Commission. As a member of the Nebraska Liquor Control Commission, Defendant Flower is charged with the overall responsibilities, formulation, and implementation of those powers and duties pursuant to the Nebraska Liquor Control Act contained in §§ 53- 101 to 53-1,121 in Neb. Rev. Stat. (Reissue 1999). She further exercises the powers, responsibilities, and duties of the Nebraska Liquor Control Act within Sheridan County, including the unincorporated village of Whiteclay.

FACTUAL ALLEGATIONS

10. Plaintiff, to avoid repetition, realleges and incorporates herein by reference, as if set forth at length, paragraphs 1 through 9.

11. That at all times relevant hereto, all of the Defendants were acting under color of pretense, custom, and practice of state law and their governmental authority.

12. That on or about June 8, 1999 the beaten, mutilated, and murdered bodies of two Lakota men, Wilson “Wally” Black Elk Jr. and Ronald Hard Heart were found in a roadside ditch along Highway 87 just a few hundred yards north of the unincorporated village of Whiteclay and within walking distance of the Pine Ridge Reservation of the Oglala Lakota.

13. That the unincorporated village of Whiteclay in Sheridan County straddles Highway 87 and consists of a convenience store, auto parts store, a salvage yard and four (4) packaged liquor stores, selling annually millions of cans of beer to the Lakota who travel by foot or vehicle, the short distance down Highway 87 from the dry Pine Ridge Reservation where the sale of alcohol is prohibited. The unincorporated village of Whiteclay, with its packaged beer purveyors, lacks even a public restroom.

14. That the unincorporated village of Whiteclay is the successor to the “whiskey ranches” of the 19th century which flourished adjacent to the Lakota reservation for the sole purpose to trade in whiskey and to exploit the Lakota’s known susceptibility toward alcohol abuse, misuse, and addiction. The “whiskey ranches” exploitative and destructive presence forced the Pine Ridge Agent V.T. McGillicuddy and the Bureau of Indian Affairs (BIA) to seek and secure in 1882 from President Chester Arthur a “no sale

of alcohol buffer zone” encompassing a fifty square mile area in Nebraska to be withdrawn from the public domain and placed with the Lakota as long as it was needed by those Lakota residing on the reservation.

15. On January 24, 1882, President Chester Arthur, by a presidential executive order, removed the fifty (50) square mile of land from the public domain in Nebraska and added it to the Lakota reservation. The extension of the reservation into Nebraska (hereinafter “the Whiteclay extension”) had the twofold purpose to act as a buffer zone wherein the sale of liquor was prohibited and to remain reservation land as long as it was needed for the use and protection of the Lakota receiving rations and annuities at the Pine Ridge Agency.

16. That on or about February 8, 1887, the United States Congress passed the General Allotment Act (hereinafter the “Dawes Act”), which individualized Native American land tenure by allotting the tribally held reservation lands to Native American families and individual Native Americans. The Dawes Act specifically excluded the Whiteclay extension from the allotment scheme and constituted Congressional recognition and acceptance with a Congressional declaration of intent and finding that the Whiteclay extension was to remain in tribal hands as a buffer zone to prevent the resumption of the whiskey trade.

17. That on or about March 2, 1889, Congress reinforced its earlier finding and intent in the Dawes Act when it divided the Great Sioux (Lakota) Reservation into separate reservations for the Pine Ridge Agency, Rosebud Agency, Standing rock Agency, Cheyenne River Agency, Lower Brule Agency, and the Crow Creek Agency and specifically preserved the Whiteclay Extension for “a permanent reservation for the

Indians receiving rations and annuities at the Pine Ridge Agency, in the Territory of Dakota...provided that that the said tract of land in the State of Nebraska shall be reserved by Executive order, only so long as it may be needed for the use and protection of the Indians receiving rations and annuities at the Pine Ridge Agency.”

18. That on or about February 10, 1890, President Benjamin Harrison issued a presidential proclamation acknowledging the acceptance by the Lakota under the consent requirements of the Fort Laramie Treaty of 1868 of the division of their reservation into separate reservations and reserving the Whiteclay Extension into Nebraska so “long as it may be needed for the use and protection of the Indians...”

19. That by the General Allotment Act of 1887 and the Act Dividing the Sioux (Lakota) Reservation of 1889, the United States Congress legislatively mandated that the Whiteclay extension could only be removed from the reservation and control of the Lakota upon a specific finding that it was not needed for both the use and protection of the Lakota on the reservation.

20. That on or about January 25, 1904, President Theodore Roosevelt, in violation of the mandate of the Congress and without a finding that the Whiteclay Extension was no longer needed for the use and protection of the Lakota withdrew the Whiteclay Extension by Executive order from the Pine Ridge Reservation without compensation and placed it back in the public domain. Within one year, the “whiskey ranches” and the purveyors of the alcohol exploitation had returned to the Whiteclay extension where they remain today.

21. That since the early to mid-1970s, there have been over 50 unsolved murders which have occurred on the Pine Ridge Reservation home to over 15,000 Oglala Lakota

within its approximate 5,000 square miles. That within the past five years in the immediate proximity of the unincorporated village of Whiteclay, there has been six unattended deaths.

22. That subsequent to the discovery of the murdered bodies of the two Lakota men, Wilson “Wally” Black Elk Jr. and Ronald Hard Heart, the Plaintiff, brother of Wally Black Elk and an Oglala Lakota tribal official and American Indian Movement (AIM) member, organized prayer marches in the Lakota religious tradition and conducted rallies to petition the governmental law enforcement authorities of Sheridan County and the State of Nebraska to conduct a professional criminal investigation.

23. That on or about June 26, 1999, the Plaintiff and fellow American Indian Movement (AIM) leaders Russell Means, Dennis Banks, and Clyde Bellacourt organized and conducted a prayer service in memory of the murdered Lakota men on the Pine Ridge Reservation for the Lakota with the traditional Lakota religious practice of burning tobacco and sage as prayers were uttered.

24. That the Plaintiff, tribal leaders, elders, AIM leaders, and 2,000 Lakota men, women, and children walked south down Highway 87 from the Pine Ridge Reservation to the site in Nebraska at the ditch along Highway 87 just north of Whiteclay where the bodies of the murdered Lakota men were discovered. At the ditch, Plaintiff and the 2,000 Lakota continued the religious service as they prayed and once again practiced the traditional Lakota religious practice of burning tobacco and sage.

25. That the Plaintiff, AIM leaders, and tribal leaders had earlier requested from the Defendant Robbins that he and his Sheridan County Sheriff’s Department protect the Lakota religious marchers from any intoxicated individuals who had been drinking

around the few buildings in Whiteclay from causing any trouble or disrupting the religious and political purposes of the march.

26. That on or about June 26, 1999, as the Plaintiff and the Lakota religious marchers approached the unincorporated village of Whiteclay to petition the governmental authorities for the capture and prosecution of the murderers of Black Elk and Hard Heart. That the Defendant Robbins and Defendant Nesbitt failed to protect the marchers from intoxicated individuals who had been drinking outside the liquor stores in violation of provisions of the Liquor Control Act as was the custom and practice in Whiteclay, and which practice and custom was known and tolerated by the Defendant and his employees of the Sheriff's Department of Sheridan County and employees of the Defendant Nesbitt. That as a direct result of the failure of the Defendant Robbins and Defendant Nesbitt to protect the Plaintiff and the Lakota marchers and enforce the statutes of the State of Nebraska, a disturbance ensued and certain acts of vandalism by the intoxicated individuals occurred. That as an additional direct result of the failure of Defendant Robbins and his employees and Defendant Nesbitt and his employees to maintain the peace and order, Plaintiff and the prayer marchers were denied an opportunity to present their petitions to the governmental authorities.

27. That subsequent to the prayer march of June 26, 1999, Defendant Nesbitt directed his officers of the Nebraska State Patrol to blockade Highway 87 and prevent Plaintiff and other Oglala Lakota travel on the highway south of the Pine Ridge Reservation.

28. That after Defendant Nesbitt reopened Highway 87 south of the Pine Ridge Reservation, Plaintiff and the Lakota held, on or about July 3, 1999, another

prayer service on the Pine Ridge Reservation after which Plaintiff and hundreds of Lakota men, women, children, and elders proceeded to walk south on Highway 87 to the site of the murdered bodies of the Lakota men where prayers and the religious practice of burning of tobacco and sage. As Plaintiff and the religious marchers approached Whiteclay, they were met by a sizeable force of Nebraska State Patrol Officers in riot gear with SWAT teams, snipers with automatic weapons on rooftops, attack dogs in reserve and a helicopter hovering overhead directed by the Defendant Nesbitt and the Sheridan County Sheriff's Department deputies directed by Defendant Robbins.

29. That the Plaintiff and the Lakota marchers were blockaded by the specific order of Defendant Nesbitt and Defendant Robbins and stopped and prevented from entering Whiteclay and precluded from petitioning the local governmental authorities of their grievances regarding the lack of a criminal prosecution of the murderers of the Lakota men; the unenforced liquor violations of the beer purveyors in Whiteclay; and the belief that under treaties, acts of Congress and executive orders, Whiteclay belonged to the Oglala Lakota. Officers of the State Patrol and the Sheridan County Sheriff's Department, at the specific direction control, order, and supervision of Defendant Nesbitt and Defendant Robbins, prevented Plaintiff and the Lakota prayer marchers from walking and traveling into Whiteclay; praying and conducting their Lakota religious ceremony; speaking their political grievances and views; continuing their assembly and petitioning the governmental authorities. Nebraska State Patrol officers and Sheridan County Sheriff's deputies at the direction, control and supervision of Defendant Nesbitt and Defendant Robbins, threatened them with arrest if they crossed the arbitrary yellow line Defendant Nesbitt's and Defendant Robbins' officers had placed across Highway 87.

That at all material times, on or about July 3, 1999, Plaintiff and the Lakota men, women, children, and elders had not engaged in any act of violence or threatened any act of violence.

30. That the Plaintiff and eight (8) other leaders of the prayer march continued to peacefully walk into the cordon of State Patrol Officers in riot gear and Sheridan County Sheriff's deputies to exercise their religious views and to continue to assemble, voice their political views, and attempt to petition their governmental authorities. The Nebraska State Patrol and the Sheridan County Sheriff's Department arrested Plaintiff and eight other leaders of the prayer march and seized their persons and placed them in custody.

31. That on or about July 3, 1999, agents and employees of the Nebraska State Patrol and the Sheridan County Sheriff's Department acting under the direction and within the scope of their orders and employment of Defendant Nesbitt and Defendant Robbins, agreed to release Plaintiff and the eight others on their own recognizance in lieu of posting bail if the assembled Lakota men, women, and children would relinquish their religious ceremony, stop speaking, cease the assembly and their efforts to petition their government, disperse, and return to the Pine Ridge Reservation. The Lakota turned around and trekked north back up Highway 87 to the reservation. Plaintiff and the other leaders were released on their own recognizance and rejoined on the reservation, the prayer marchers for a continuation of the religious ceremony and political assembly.

32. That on or about July 4, 1999, Plaintiff erected tipis and dedicated Camp Justice at the site of his slain brother in the ditch alongside of Highway 87, as a political expression and symbol of the inability of the State Patrol and Sheridan County to solve

the murder of his brother and friend and the continued pervasive lawlessness in and around Whiteclay.

33. That on or about July 5, 1999, the beer stores reopened for business in Whiteclay and were served written eviction notices on or about July 10, 1999 by Plaintiff and the Lakota that they were on land dedicated for the protection and need of those Oglala Lakota who reside on the Pine Ridge Reservation.

34. That on or about July 26, 1999, Plaintiff and eight other marchers were formally charged in Sheridan County by Sheridan County Officials with One Count of Obstructing a Peace Officer by Violently Using Force which carried a one (1) imprisonment and One Count of Failure to Obey a Lawful Order of Law Enforcement which carried a three (3) month imprisonment and a Five Hundred Dollar (\$500.00) fine.

35. That the Plaintiff was found guilty by the Sheridan County Court of Failure to Obey a Lawful Order of Law Enforcement and was fined \$200.00 plus court costs.

36. That the murderers of Wilson “Wally” Black Elk Jr., and Ronald Hard Heart remain at large and the violations of the Nebraska Liquor Control Act continue unabated in Whiteclay.

FIRST CAUSE OF ACTION
Freedom of Expression and Right of Assembly and Petition

37. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 36 of this Complaint.

38. Defendants Nesbitt’s and Robbins’ policy, practice, and custom of prohibiting the Plaintiff and the Lakota from gathering and assembling to present their grievances to the governmental authorities on July 3, 1999 and subsequent times, is violative of the First and Fourteenth Amendments to the United States Constitution.

39. Defendants Nesbitt's and Robbins' policy, practice, and custom of relying upon § § 28-906 and 81-2008 of Neb. Rev. Stat. (Reissue 1999) to restrict the Plaintiff's and the Lakota's speech and assembly is violative of the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, in that the Defendants Nesbitt's and Robbins' use of the aforementioned statutory sections to restrict a lawful and peaceful assembly and attempt to petition the government, is arbitrary and capricious and lacking in ascertainable standards of culpability and surrenders the First Amendment protections of Plaintiff and the Lakota to the racial prejudices, whims, and caprice of law enforcement officers while being overly broad and criminalizing innocent conduct.

40. That the aforesaid actions, policies, practices of the Defendants Nesbitt and Robbins and employees acting under their orders, control, direction and supervision have a "chilling effect" upon the future exercise by Plaintiff and the Lakota of rights of speech, petition, assembly, and association secured by the First and Fourteenth Amendments to the United States Constitution.

41. That these past violations and the imminent threat of subsequent violations and the past pattern of unequal treatment of Plaintiff and the Lakota by law enforcement, because of their status as Lakota constitutes deprivation of the federally secured rights to speech, assembly, association, petition, equal protection of the laws, and due process guaranteed by the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

42. That as a direct and proximate result of the unconstitutional actions of the Defendants Nesbitt and Robbins, Plaintiff has suffered injuries and incurred special

damages in the amount of \$10,250.00 and has suffered continued humiliation, mental anguish and distress and incurred general damages.

SECOND CAUSE OF ACTION

The Free Exercise of Religious Practices and Equal Protection of the Laws

43. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 41 of this Complaint.

44. That the actions, policies, custom, and practice of the Defendants Nesbitt and Robbins, on or about June 26, 1999 and July 3, 1999, interfering with, restricting and impeding the prayer marches and religious practices of Plaintiff and the Lakota and continuing to the present, violated Plaintiff's right to the free exercise of his Lakota religion and practices in violation of the First and Fourteenth Amendment to the United States Constitution.

45. That the continued reliance by the Defendants Nesbitt and Robbins upon the unconstitutionally vague and overly broad Nebraska statutes §§ 28-906 and 81-2008 of Neb. Rev. Stat. (Reissue 1999) as applied and interpreted by them to Plaintiff and the Lakota constitutes an ongoing violation of the First and Fourteenth Amendment to the United States Constitution, and furthermore violates the Equal Protection Clause of the Fourteenth Amendment in that the Defendants have subjected the religious practices of the Plaintiff and the Lakota to criminal prosecution while not subjecting the religious beliefs and practices of the white majority in Sheridan County to criminal prosecution.

46. That the imminent threat of criminal violations by the Defendants for the exercise of Plaintiff's and the Lakota's religious beliefs and practices constitutes an ongoing violation and has an unconstitutionally "chilling effect" upon the exercise of federally protected rights.

THIRD CAUSE OF ACTION
Right to Travel

47. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 46 of this Complaint.

46. That the actions, policies, practices, and customs of the Defendants Nesbitt and Robbins upon the aforesaid date of July 3, 1999, and continuing into the present, violated Plaintiff's right to engage in interstate travel in violation of the Fifth, Ninth, and Fourteenth Amendments to the United States Constitution and constitute an unreasonable restriction upon the liberty interests of the Plaintiff and those Lakota who wish to exercise the right to freely travel between the Pine Ridge Reservation and the State of Nebraska to petition the governmental authorities.

FOURTH CAUSE OF ACTION
Protection from Harm

48. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 47 of this Complaint.

49. That the Defendants Nesbitt, Robbins, Logsdon, Coyne, and Flower knew, or should have known, that the Lakota are particularly vulnerable to alcohol and that the white owned and operated businesses in Whiteclay were exploiting this vulnerability and addiction.

50. That the Defendants Nesbitt, Robbins, Logsdon, Coyne, and Flower knew, or should have known, that there were ongoing violations of the Nebraska Liquor Control Act contained in §§ 53- 101 to 53-1,121 in Neb. Rev. Stat. (Reissue 1999).

51. That the Defendants Nesbitt, Robbins, Logsdon, Coyne, and Flower knew, or should have known, that the rampant alcohol abuse, misuse, and addiction among the Lakota, fuels increased criminal activity around and near the Whiteclay beer purveyors' shops and along Highway 87 leading to and from the Pine Ridge Reservation. That the Defendants have adopted and implemented a policy of non enforcement of those liquor violations and have adopted a policy, practice, and custom of minimal law enforcement, including, *inter alia*, to wit: a diminished or minimal utilization and deployment of professional homicide, forensic, and criminalistic investigative specialists and technicians when the victims of violent crime are Oglala Lakota; the failure to utilize undercover agents and employ standard law enforcement sting operations against the stores in Whiteclay; and the failure to use standard law enforcement surveillance procedures and techniques to secure compliance with the liquor and criminal laws of the State of Nebraska. That these practices, policies, customs, and procedures have existed for years and are the current practices, policies, customs, and procedures of the Defendants. The direct and proximate result of these policies and practices is the failure to apprehend and prosecute the perpetrators of violent crime against Lakota victims such as Plaintiff's brother.

52. That the Defendants' actions and omissions, and each of them, set forth above, constitutes a "deliberate indifference" to or a "reckless disregard" of the constitutional rights of the Plaintiff and his family members to personal safety and bodily integrity, fair and impartial law enforcement, as secured by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

53. That the continued actions and omissions by the Defendants to enforce the liquor and criminal laws in the Whiteclay extension, violates the Plaintiff's right to Equal Protection of the Law and discriminates because of his status as a Lakota.

FIFTH CAUSE OF ACTION
Separation of Powers and Unlawful Taking without Just Compensation
Unjust Enrichment and Conversion

54. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 53 of this Complaint.

55. That the Plaintiff, as a member of the Oglala Lakota, is a beneficiary of the treaties, statutes and regulations of the United States of America and is entitled for himself and his family and extended family, the protections enacted by the Congress of the United States' and the obligations and responsibilities to the the Oglala Lakota nation.

56. That the Whiteclay Extension, more specifically described: as the land in the State of Nebraska beginning at a point on the boundary line between the State of Nebraska and the State of Dakota (South) where the range line between ranges 44 and 45 west of the sixth principal meridian, in the State of Dakota (South), intersects said boundary line; thence east along said boundary line 5 miles; thence due south 5 miles; thence due west 10 miles; thence due north to said boundary line; thence due east along said boundary line to the place of beginning, was set aside initially by Executive Order and then ratified by the legislative mandate of the United States Congress to protect the Plaintiff and his Lakota brethren from the exploitation of whiskey traders; and was to remain in the possession of the Lakota nation until that need to protect them no longer existed.

57. That the need to protect the Plaintiff and his Lakota family members from the purveyors of beer and whiskey traders has continued and the taking of the Whiteclay Extension in January 25, 1904, from Plaintiff's ancestors and the Lakota nation constituted an unconstitutional taking without just compensation in violation of the Fifth Amendment to the United States Constitution and violated the Congressional mandates to preserve it as part of the Lakota Pine Ridge Reservation.

58. That as the direct and proximate result of the unconstitutional action on or about January 25, 1904, Plaintiff and his family and extended family, have suffered a diminished value of the enjoyment of life due to the exploitation of the Lakota by the beer purveyors in the Whiteclay Extension.

59. That as the direct and proximate result of the unconstitutional action on or about January 25, 1904, and continuing to the present, the State of Nebraska and the business owners in the Whiteclay extension have been unjustly enriched by the profits of the exploitation of the vulnerability of the Lakota to alcohol use, abuse, and addiction while subjecting the Plaintiff and the Lakota to race discrimination, unequal opportunity, poverty, substandard health care, the absence of any alcohol treatment programs or services, racial profiling, substandard housing and education; and the permanent and long standing consequences of alcohol abuse throughout generations of Lakota in the form of fetal alcohol syndrome.

60. That as the direct and proximate result the Defendants as agents of the State of Nebraska in association with those owners and operators of the liquor stores in the Whiteclay Extension have misappropriated and converted to their own use the value of the land which belonged to the Plaintiff and the Lakota for their communal protection;

and the State of Nebraska and its agents such as the Defendants have unjustly enriched themselves with profits in the form of sales tax income from the continued sale of alcohol in the buffer zone of the Whiteclay Extension.

PLAINTIFF'S PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Honorable Court grant him the following relief:

A. Issue a Declaratory Judgment that the Defendants have violated Plaintiff's federal constitutional rights;

B. Issue a Declaratory Judgment that the Defendants' pattern, practice, actions and omissions violated the Plaintiff's rights under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution and declaring further that the rights so violated are present rights which must be immediately respected;

C. Issue a permanent injunction enjoining the Defendants from their policy and practice of restricting and prohibiting lawful and peaceful assemblies to petition governmental authorities and religious ceremonies and practices by Plaintiff and the Lakota; and enjoining the Defendants from their policy and practice of restricting the Plaintiff from his right to travel freely between the Pine Ridge Reservation and the State of Nebraska;

D. Issue a permanent injunction enjoining the Defendants from their practice of failing to enforce violations of the criminal and regulatory provisions of the Liquor Control Act;

E. Issue an Order requiring the Defendants to create a Task Force of law enforcement officials, specialized in the investigation of homicides and crimes of violence, and individuals, with an extensive familiarity of and respect for the Oglala Lakota traditions and history, to assist the Defendants in developing and implementing a plan to thoroughly investigate the unsolved deaths in and near the Whiteclay Extension, apprehend and arrest the perpetrators, and to assist the governmental prosecuting authorities in the subsequent prosecution of those individuals responsible for the homicides;

F. Issue an Order creating an independent historical commission to issue recommendations to the Court for the resolution of Plaintiff's claim, as an Oglala Lakota, and the Lakota claims to the Whiteclay Extension as part of the Pine Ridge Reservation for a buffer zone which is still needed to protect those Lakota residing on the reservations from the sale of alcohol and the claims of the Plaintiff and the Lakota to compensation for the unjust taking and continued refusal to protect the Lakota of the Pine Ridge Reservation from the sale of alcohol in the Whiteclay Extension;

G. Issue an Order for the Defendants to create a task force of individuals, trained in the treatment of alcoholism and knowledgeable in the traditions and history of the Oglala Lakota, to develop and implement a plan to establish within the Whiteclay Extension or adjacent to it a continuum of alcohol services and programs, including but not limited to; *inter alia*, in-patient, out-patient, supervised residential facilities; day programs and services; rehabilitative and specialized educational services for those Lakota of school age who are diagnosed with fetal alcohol syndrome;

H. Award Plaintiff compensatory damages in an amount to be determined by the Court.

I. Issue an Order awarding such other and further relief as this Court may deem just and proper;

J. Award the Plaintiff's attorney his costs and attorney fees as provided under 42 U.S. C. § 1988.

Plaintiff requests trial in Omaha, Nebraska.

Dated: July 2, 2003

Respectfully submitted,

Thomas R. Poor Bear, Plaintiff

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