

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

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WILLIAM L. WHITTAKER
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CAL.

3 THE HOOPA VALLEY TRIBE, et al.,)
4 Plaintiffs,)
5 vs.)
6 RICHARD NEVINS, et al.,)
7 Defendants,)
8 and)
9 H. WESTBROOK, III and R.L.)
10 WESTBROOK, d/b/a RESERVATION)
11 RANÇH, et al.,)
12 Defendants and)
13 Cross-Defendants.)

NO. C-82-5903-MHP

MEMORANDUM DECISION
AND ORDER

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14 Plaintiffs brought this action in October 1982 against the
15 California State Board of Equalization, five individual members
16 of the Board, and the State of California, challenging the
17 application of state statutes taxing timber harvested on tribal
18 land. Plaintiffs sought partial summary judgment on both
19 preemption and tribal sovereignty grounds. In June 1984, the
20 court granted plaintiffs' motion on preemption grounds. The
21 United States Court of Appeals for the Ninth Circuit has since
22 held that preemption of state law under the supremacy clause will
23 not support a claim of attorneys' fees under 42 U.S.C. § 1988.
24 White Mountain Apache Tribe v. Williams, 810 F.2d 844, 850 (9th
25 Cir. 1984).¹ Plaintiffs are now before this court on a renewed
26 motion for summary judgment under Fed. R. Civ. P. Rule 56(c) and
27 on their motion for section 1988 attorneys' fees. They seek
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1 adjudication of the tribal sovereignty issue in order to qualify
2 for attorneys' fees. In the alternative, they request the court
3 to find that the tribal sovereignty claim constitutes a
4 substantial but unadjudicated claim for purposes of obtaining
5 attorneys' fees under section 1988. Upon careful consideration
6 of the memoranda and accompanying documents filed both in support
7 of and in opposition to the motions, the pleadings on file herein
8 and counsels' arguments before this court, the court denies
9 plaintiffs' motions for summary judgment and attorneys' fees for
10 the reasons set forth below.

11
12 Background

13 Plaintiffs originally brought this action on October 26,
14 1982, challenging application of the timber yield tax and the
15 timber reserve fund tax established by the 1976 California Forest
16 Taxation Reform Act (Cal. Rev. & Tax. Code §§ 38101-38908).
17 Specifically, plaintiffs claimed that application of the taxing
18 statutes and regulations was an unconstitutional burden on Indian
19 commerce which violated the supremacy clause, United States
20 Constitution, art. I, § 8, cl. 3, as well as 25 U.S.C. §§ 405-407
21 and 25 C.F.R. § 163 (1982). They further claimed that such
22 application violated their tribal sovereignty and infringed upon
23 their right to self-government, violated various California laws,
24 and deprived them of their rights, privileges, and immunities in
25 violation of 42 U.S.C. § 1983.

26 Plaintiffs moved for summary judgment on federal preemption
27 and infringement of tribal sovereignty grounds. On July 6, 1984,
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1 this court granted plaintiffs' motion for partial summary
2 judgment. Hoop Valley Tribe v. Nevins, 590 F. Supp. 198 (N.D.
3 Cal. 1984). Because the court concluded that the state taxing
4 statute was preempted by federal law, it did not reach the issue
5 of tribal sovereignty. Id. at 199.

6
7 Meanwhile, on February 7, 1984, the Ninth Circuit held that
8 preemption of state law under the supremacy clause generally will
9 not support an action under section 1983, and therefore will not
10 support a claim of attorneys' fees under 42 U.S.C. § 1988, the
11 Civil Rights Attorneys' Fees Award Act of 1976. White Mountain
12 Apache Tribe v. Williams, 810 F.2d at 850. On June 23, 1986,
13 plaintiffs, in an effort to preserve an attorneys' fees claim,
14 moved to amend their complaint to clarify that a section 1983
15 cause of action not based on preemption was asserted in the
16 original complaint. On August 1, 1986, this court denied the
17 motion to amend the section 1983 claims, concluding that whether
18 such a cause of action was asserted in the original complaint
19 would best be decided by recourse to the original complaint.

20 On July 22, 1987, plaintiffs again moved for summary
21 judgment and attorneys' fees pursuant to section 1988. They
22 argue that they have sufficiently alleged a preemption claim, a
23 tribal sovereignty claim, and a general tax immunity claim, at
24 least one of which is cognizable under section 1983 and for which
25 attorneys' fees are available under section 1988. Although the
26 challenge to the state tax was adjudicated in 1984 on preemption
27 grounds, plaintiffs request that summary judgment be granted on
28 tribal sovereignty grounds. In the alternative, they request

1 that the court find that either the tribal sovereignty or the
2 general tax immunity claim constitutes a substantial but
3 unadjudicated claim for purposes of collecting attorneys' fees
4 under section 1988, as provided for in Hagans v. Lavine, 415 U.S.
5 528 (1974).
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7 Discussion

8 A. Summary Judgment

9 Although plaintiffs prevailed on their challenge to the
10 California taxing statutes in July 1984, they seek to
11 readjudicate that challenge on the basis of either tribal
12 sovereignty or general tax immunity in order to qualify for
13 attorneys' fees. Plaintiffs failed to raise or argue the general
14 tax immunity claim in the original motions for summary judgment,
15 and only briefly argued the tribal sovereignty claim at that
16 time. Plaintiffs neglected to press further the tribal
17 sovereignty claim or bring to this court's attention the problems
18 associated with the Ninth Circuit's holding in Williams until
19 three years after judgment on the merits. Both the defendants
20 and this court understood damages to be the only remaining issue
21 after this judgment.

22 Although plaintiffs did raise the tribal sovereignty claim
23 before the present motion, their delayed efforts evoke a similar
24 response to that of the Ninth Circuit in Williams. "[T]his is a
25 case where the . . . claims were never pressed beyond the
26 original federal complaint until they were dusted off for use in
27 seeking a fee award under § 1988." 810 F.2d at 854.
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1 Plaintiffs have been awarded relief for violation of their
2 substantive rights. This court will not now reach the merits of
3 the tax immunity claim or the tribal sovereignty claim except as
4 necessary to reach the issue discussed below.

5 B. Substantial Unadjudicated Claim

6 Plaintiffs argue that the tribal sovereignty claim is a
7 substantial but unadjudicated claim cognizable under section
8 1983. Although Hagans does provide for attorneys' fees where
9 substantial legal issues are raised but not adjudicated,
10 plaintiffs are not eligible for fees because their claim is not
11 cognizable under section 1983. 415 U.S. at 537-38. Section 1983
12 is a remedy for deprivations of rights secured by the United
13 States Constitution or by some federal statute.² Plaintiffs
14 acknowledged this at oral argument. The Ninth Circuit explained
15 in Williams that "[s]ection 1983, as interpreted in Thiboutot and
16 its progeny, enforces federal statutory rights only against
17 direct violations of the federal statute in question." 810 F.2d
18 at 851 n.9. The court held that the supremacy clause, which does
19 not secure any federal rights, generally would not support an
20 action under section 1983. Id. at 850.

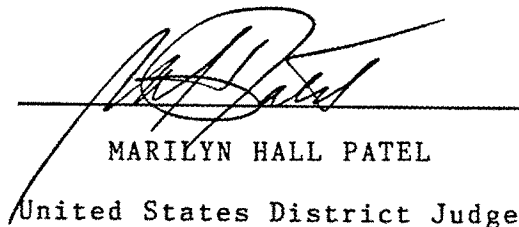
21 Similarly, the Hoopa Tribe's right to self-government
22 preceded, and therefore is not secured by, any federal statute or
23 the Constitution. McClanahan v. Arizona State Tax Comm'n, 411
24 U.S. 164, 172 (1972). Plaintiffs argue that subsequent federal
25 laws "protect" the right to self-government. Specifically, they
26 argue that the Act of April 1864, 13 Stat. 39, and the Executive
27 Order of June 23, 1876 created the Hoopa Indian reservation and
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1 implicitly secured the right to self-government. Plaintiffs,
2 however, never alleged the violation of these laws in the
3 complaint. Like the preemption claim in Williams, the tribal
4 sovereignty claim is not premised on any federal statute, and is
5 therefore not cognizable under section 1983.

6 Accordingly, plaintiffs' motions for summary judgment and
7 for attorneys' fees are denied.

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10 IT IS SO ORDERED.

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12 Dated: OCT 6 - 1987

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18 MARILYN HALL PATEL
19 United States District Judge
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FOOTNOTES

¹Williams was originally cited as 798 F.2d 1205. That decision was withdrawn after a series of rehearings. The original holding, however, appears intact in the final decision.

²"Every person who . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983 (emphasis added).