

## ARTICLE II [RIGHTS AND PRIVILEGES]

### Section

1. [Opportunity for citizenship].
2. [Rights and privileges as citizens not to be abridged].
3. [Claims against United States].
4. [Trust relationship with United States].
5. [Organization of tribal towns and recognition of traditions].

*Section headings are editorially supplied.*

### § 1. [Opportunity for citizenship]

Each Muscogee (Creek) Indian by blood shall have the opportunity for citizenship in The Muscogee (Creek) Nation.

#### Cross References

Citizenship, see Const. Art. III, § 1 et seq.  
Opportunity for citizenship, records, see Title 7, § 4–103.

### § 2. [Rights and privileges as citizens not to be abridged]

This Constitution shall not abridge the rights and privileges of individual citizens of The Muscogee (Creek) Nation enjoyed as citizens of the State of Oklahoma and of the United States of America.

#### United States Code Annotated

Constitutional rights of Indians, see 25 U.S.C.A. § 1302.

#### Notes of Decisions

##### Due process, notice and opportunity 1 Oklahoma state compact 2

##### 1. Due process, notice and opportunity

[T]his Court reminds the parties that the Indian Civil Rights Act states that: “**no tribe in exercising its powers of self-government SHALL: deny to any persons within its jurisdiction the Equal Protection of the laws.**” (Emphasis added). This mandate in the Indian Civil Rights Act (“ICRA”) requires equal voting rights to all eligible tribal voters. The Equal Protection clause of the ICRA thus requires a “one man one vote” rule to be obeyed in this tribe’s electoral process. (emphasis and bold in original) *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

The Court finds the original formula of one (1) representative per district plus one (1) representative for each 1500 citizens must yield to the Constitutional Amendment that set the maximum number of seats at 26. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

[T]he Court finds that the total enrollment of the Muscogee (Creek) Nation as of July 11th, 2007 is 63,156. This number is the number as supplied in the Citizenship Board’s Memorandum to Principal Chief A.D. Ellis and presented to this Court as Plaintiff’s Exhibit #1 minus the “undefined.” *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

The Court holds the following breakdown as supplied in the Plaintiff’s Exhibit #2 for the 2007 election as the correct number of representatives per district: Creek 3, McIntosh 3, Muskogee 2, Ofuskee 3, Okmulgee 5, Tukvptce 2, Tulsa 7, Wagoner 1, Total 26. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

The concept in our society is that all the roles within our society are important, and to be honored. Kinship and clan responsibilities are the bedrock of our society, in earlier times as warrior and peace keeping communities, and continuing today. *Ellis v. Muscogee (Creek) Nation National Council*, “*Ellis II*”, SC 06–07 (Muscogee (Creek) 2007)

## Art. II, § 2

### Note 1

For our tribal society to function properly, we must honor and respect the respective roles of others. Our Constitution is based on our societal values, as a people, and that interconnectedness lays out the separate powers and duties of the various branches of government. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The Supreme Court has the power to enforce its orders, and judgments subject to the rules of procedure as to "due process" which it has adopted. *Ellis v. Muscogee (Creek) National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Indian tribes were not made subject to the Bill of Rights. However, the laws of the Muscogee Nation are subject to the limitation imposed upon the tribal governments by the Indian Civil Rights Act of 1968, as amended, found at 25 U.S.C. § 1301 et seq. This limits the powers of tribal governments by making certain provisions of the Bill of Rights applicable to tribal governments. *Ellis v. Muscogee (Creek) National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

We think that the highest court of a sovereign government, when created by the Constitution of that government which recognizes the principle of separation of powers, is entitled to be free to function as the framers of that Constitution intended, and it should guard its prerogatives jealously to preserve its powers as an independent co-equal branch of government. *Ellis v. Muscogee (Creek) National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Any demand for jury trial in the Supreme Court that is not based on a right found in the Indian Civil Rights Act, and if granted, would interfere with the inherent powers bestowed upon the Supreme Court by our Constitution. *Ellis v. Muscogee (Creek) National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Unlike other societies, there is nowhere in Creek society that one group or individual has control of all of the affairs of tribal communities. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The separations of authority and the requirement for respect of such separation is an ingrained part of our culture and society. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Due Process allows for a court to have a certain amount of discretion in fashioning indirect civil contempt sanctions as long as the sanction(s) imposed has comported with notions of fair play and justice. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

[T]he ideals of justice and fairness embodied in the doctrine of Due Process, which must be afforded to all citizens of the Muscogee (Creek) Nation, do not disappear at the door when a

## CONSTITUTION

political appointee's nomination is being reviewed by either a Committee, a Subcommittee, a Planning Session, or the full membership of the National Council. *Oliver v. Muscogee (Creek) National Council, SC 06-04* (Muscogee (Creek) 2006)

Each and every political appointee should be afforded an opportunity to relate and discuss his or her qualifications for the position to which he or she has been nominated by the office of the Principal Chief-this is the opportunity to be heard. *Oliver v. Muscogee (Creek) National Council, SC 06-04* (Muscogee (Creek) 2006)

[A]ny such nominee should be given reasonable notice of his or her required appearance in front of any gathering of members of the National Council-whether a Committee, a Subcommittee, the Planning Session, or a regularly scheduled meeting of the full National Council. A couple of hours notice-as occurred in the instant case-is insufficient to serve as reasonable notice. *Oliver v. Muscogee (Creek) National Council, SC 06-04* (Muscogee (Creek) 2006)

[W]orking hand in hand with the nominees right to be heard is the duty of the National Council to provide the Citizens with an open and outward assurance that-regardless of whether the nomination was approved or rejected-the nomination was considered in as unbiased a fashion as possible, that the Council's decision comports with the best interests of the citizens and of the Nation, and that its decision was not arbitrary or capricious. *Oliver v. Muscogee (Creek) National Council, SC 06-04* (Muscogee (Creek) 2006)

Neither the National Council Planning Session, the Business & Government Committee, or any other Committee or Sub-committee should be deemed to speak for the National Council, whose voice must be the voice of the citizens. Such Committees may make recommendations to the National Council; but it would be granting far too great a power to such a small number of representatives to allow such Committees to make a final determination regarding nominees and appointments from the office of the Principal Chief. *Oliver v. Muscogee (Creek) National Council, SC 06-04* (Muscogee (Creek) 2006)

Under traditional Mvskoke law controversies were resolved by clan Vculvkvke (elders). Their integrity was considered beyond reproach. They were obligated by the responsibilities of their position to decide cases fairly, and honestly, regardless of clan or family affiliation. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation, SC 04-02* (Muscogee (Creek) 2005)

Nothing therein [Article VII of the Muscogee (Creek) Nation Constitution] mandates that said Justices and Judges shall be full citizens of the Muscogee (Creek) Nation and as is specifically set forth and provided for in the articles that pertain to the elected offices of Chief, Second Chief, and members of the National Council.

## RIGHTS AND PRIVILEGES

## Art. II, § 2 Note 2

*Bruner, d/b/a Chebon's Indian Smoke Shop v. Muscogee (Creek) Nation, ex rel. Creek Nation Tax Commission*, SC 86–03 (Muscogee (Creek) 1987)

Article III, Section 4 of the Constitution of the Muscogee (Creek) Nation, and wherein the phrase appears: “All Muscogee (Creek) Indians by blood, who are less than one-fourth Muscogee (Creek) Indian by blood, shall be considered citizens and shall have all rights of entitlement as members of the Muscogee (Creek) Nation EXCEPT THE RIGHT TO HOLD OFFICE”, is construed to be of a general nature and application, and, therefore, subordinate to Article III which is controlling. [emphasis in original]. *Bruner, d/b/a Chebon's Indian Smoke Shop v. Muscogee (Creek) Nation, ex rel. Creek Nation Tax Commission*, SC 86–03 (Muscogee (Creek) 1987)

From the use of the language, “except the right to hold office”, the clear intent of the framers of our Constitution is evident since appointments to office are not held as a matter of right, but exit as an honor, and a privilege; and said language only applies to the elective offices of Chief, Second Chief and members of the National Council. *Bruner, d/b/a Chebon's Indian Smoke Shop v. Muscogee (Creek) Nation, ex rel. Creek Nation Tax Commission*, SC 86–03 (Muscogee (Creek) 1987)

In the case at bar, it was necessary to show only that notice and due process were afforded Appellant at said revocation hearing, and the Court may take judicial notice of the laws and official records of the Muscogee (Creek) Nation. *Bruner, d/b/a Chebon's Indian Smoke Shop v. Muscogee (Creek) Nation, ex rel. Creek Nation Tax Commission*, SC 86–03 (Muscogee (Creek) 1987)

### 2. Oklahoma state compact

This Court acknowledged Oklahoma did not take steps to assume jurisdiction under the previous PL–280 in *Lewis v. Sac and Fox Tribe of Oklahoma Housing Authority*. We held that “[b]ecause Oklahoma did not take the appropriate steps to take jurisdiction under PL–280, the proper inquiry to be made in this case must focus upon the congressional policy of fostering tribal autonomy in the light of pertinent U.S. Supreme Court jurisprudence.” *Cossey v. Cherokee Nation*, 212 P.3d 447 (Okla. 2009)

The IGRA provides at § 2710(d)(3)(C) a list of provisions which any negotiated tribal-state compact “may” include. “May” is ordinarily construed as permissive, while “shall” is ordinarily construed as mandatory. See *Osprey L.L.C. v. Kelly–Moore Paint Co., Inc.*, 1999 OK 50, 984 P.2d 194; *Shea v. Shea*, 1975 OK 90, 537 P.2d 417. Section 2710(d)(3)(C) provides in part: (C) Any Tribal–State compact negotiated under subparagraph (A) may include provisions relating to—(i) the application of the criminal and civil laws and regulations of the Indian

tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity; (ii) the **allocation** of criminal and civil **jurisdiction** between the State and the Indian tribe necessary for the enforcement of such laws and regulations; . . . (emphasis added). The Compact here does not include any such allocation of jurisdiction. Instead, the Compact provides only: “This Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction” and that tort claims may be heard in a “court of competent jurisdiction.” The Tribe could have, but did not, include such jurisdictional allocation in this Compact. Neither the IGRA nor the Compact as approved enlarged the Tribe’s jurisdiction. *Cossey v. Cherokee Nation*, 212 P.3d 447 (Okla. 2009)

A “court of competent jurisdiction” is one having jurisdiction of a person and the subject matter and the power and authority of law at the time to render the particular judgment. (string cites omitted) *Cossey v. Cherokee Nation*, 212 P.3d 447 (Okla. 2009)

The Compact is derived from the Oklahoma Statutes. It incorporates Oklahoma’s Governmental Tort Claims Act (GTCA) into its provisions. The district courts of Oklahoma thus have subject matter jurisdiction of any claim arising under the GTCA, including one which originates under the Compact. *Cossey v. Cherokee Nation*, 212 P.3d 447 (Okla. 2009)

In *Nevada v. Hicks*, 533 U.S. 353, 121 S.Ct. 2304, 150 L.Ed.2d 398 (2001), the Supreme Court recognized the authority of state courts as courts of “general jurisdiction” and further acknowledged our system of “dual sovereignty” in which state courts have concurrent jurisdiction with federal courts, absent specific Congressional enactment to the contrary. *Cossey v. Cherokee Nation*, 212 P.3d 447 (Okla. 2009)

Thus, a tribal court is not a court of general jurisdiction. Its jurisdiction could be asserted in matters involving non-Indians **only** when their activities on Indian lands are activities that may be regulated by the Tribe. (citing *Nevada v. Hicks*, 533 U.S. 343 (2001)) *Cossey v. Cherokee Nation*, 212 P.3d 447 (Okla. 2009)

The Oklahoma district court is a “court of competent jurisdiction” to hear Cossey’s tort claim. The Tribe’s sovereign interests are not implicated so as to require tribal court jurisdiction under the exceptions in *Montana, supra*. Cossey’s right to seek redress in the Oklahoma district court is guaranteed by our Constitution. Moreover, the United States Supreme Court has upheld *Montana* and the cases following it, indicating the Court’s continued recognition of the need to protect the sovereign interests of Indian tribes, while acknowledging the plenary powers of the states to adjudicate the rights of their citizens within their borders. *Cossey v. Cherokee Nation*, 212 P.3d 447 (Okla. 2009)

**§ 3. [Claims against United States]**

This Constitution shall not abridge the rights and privileges of persons of Muscogee (Creek) blood for purposes of claims against the United States of America.

**United States Code Annotated**

Claims or suits of Tribes against United States, rights unimpaired by Indian Self-Determination and Educational Assistance Act, see 25 U.S.C.A. § 475.

**§ 4. [Trust relationship with United States]**

This Constitution shall not affect the rights and privileges of individual citizens of The Muscogee (Creek) Nation in their trust relationship with the United States of America as members of a federally recognized tribe.

**§ 5. [Organization of tribal towns and recognition of traditions]**

This Constitution shall not in any way abolish the rights and privileges of persons of the Muscogee (Creek) Nation to organize tribal towns or recognize its Muscogee (Creek) traditions.

**Notes of Decisions**

**Powers of Charter Tribal Communities 1**

**1. Powers of Charter Tribal Communities**

[T]hat the Motion for Emergency Stay filed by Plaintiff/Appellant Thlopthlocco Tribal Town be, and the same hereby is GRANTED and the District Court’s June 20, 2007 order dissolving its June 11, 2007 Temporary Restraining Order is stayed pending the conclusion of proceedings in this Court on Thlopthlocco Tribal Town’s Application for a Writ of Mandamus. . . *Thlopthlocco Tribal Town v. Moore, Anderson, et al.*, SC 07–01 (Muscogee (Creek) 2007)

Per Capita payment *ipso facto* in and of itself is wrongful. It has to be for some community or public use and purpose. *Reynolds v. Skaggs*, 4 Okla. Trib. 116 (Muscogee (Creek) 1994).

Indian Gaming Regulatory Act allows for per capita payments for Class II gaming activities. These payments must follow a plan and be approved by the secretary. *Reynolds v. Skaggs*, 4 Okla. Trib. 116 (Muscogee (Creek) 1994).

Indian Gaming Regulatory Act does not prohibit Indian tribes from making per capita payments but does set forth terms and conditions before per capita payments may be made to tribal members. *Reynolds v. Skaggs*, 4 Okla. Trib. 116 (Muscogee (Creek) 1994).

Indian Gaming Regulatory Act does not address how an independent management firm may spend the monies earned by its management contract with an Indian tribe. *Reynolds v. Skaggs*, 4 Okla. Trib. 116 (Muscogee (Creek) 1994).

A Muscogee (Creek) Nation Chartered Community is not a federally recognized tribe. *Reyn-*

*olds v. Skaggs*, 4 Okla. Trib. 116 (Muscogee (Creek) 1994).

Muscogee (Creek) Nation NCA 83–11 requires both constitutions and amendments to constitutions of Creek Nation charter communities to be signed by Muscogee (Creek) National Principal Chief. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Validity of Muscogee (Creek) Nation NCA 83–11, which grants to Creek Nation charter communities ability to adopt constitutions granting separate rights, privileges, or immunities than those of the Muscogee (Creek) Nation was not properly before court, and not addressed by it. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Creek Nation charter community’s constitution may grant more rights and liberties than Constitution of Muscogee (Creek) Nation, but not less; it may never be more restrictive than Creek Nation’s. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Checotah (Creek) charter community’s constitutional amendment procedure, which permits bare majority to amend its constitution, is more restrictive than the Muscogee (Creek) Nation’s constitutional amendment procedure, which requires 2/3 vote, and is therefore invalid, denying Checotah citizens due process of law. *Courtwright v. July*, v. Okla. Trib. 132 (Muscogee (Creek) 1993)

Any classification restriction voting franchise of Muscogee (Creek) Nation citizens and/or citizens of any Creek Nation charter community on grounds other than residence, age, or citizenship cannot stand unless government can demonstrate that classification is necessary to pro-

## RIGHTS AND PRIVILEGES

## Art. II, § 5 Note 1

moting a compelling governmental interest. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Checotah (Creek) Community's restriction of right to vote in community elections to those Checotah citizens who have attended three consecutive community meetings impermissibly restricts 1/4 franchise rights of such citizens in denial of equal protection of the laws. *Courtwright, v. July*, 3 Okla. Trib 132 (Muscogee (Creek) 1993).

District Court has power to prescribe method of establishing an agenda for meetings of the Eufaula (Creek) Indian Community and how notices of meetings are to be posted. *McGirt v. Tiger*, 5 Okla Trib. 557 (Musc. (Cr.) D.Ct. 1993).

Where smokeshop within Muscogee (Creek) Nation's jurisdiction is operating without requisite tribally-issued license, and unstamped cigarettes are seized by Nation as contraband and subsequently forfeited to Nation, Creek Nations charter communities or tribal towns lose any tax lien on cigarettes which they otherwise might have had. *Tax Commission v. Nave*, 3 Okla Trib 118 (Musc. (Cr.) D.Ct. 1993).

No evidence found that by-laws of Checotah (Creek) Indian Community need approval of Principal Chief of Muscogee (Creek) Nation. *Courtwright v. July*, 3 Okla Trib. 75 (Musc. (Cr.) D.Ct. 1993).

Requirement provided in by-laws of Checotah (Creek) Indian Community that members thereof must attend three consecutive Community meetings in order to vote in community elections is valid. *Courtwright v. July*, 3 Okla. Trib. 75 (Musc. (Cr.) D.Ct. 1993).

District Court of the Muscogee (Creek) Nation has power to appoint an Ahaka Mvhereuca for purposes of mediating disputes within a Muscogee (Creek) Nation Chartered Community. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

District Court of the Muscogee (Creek) Nation has power to suspend control by officers or directors of Muscogee (Creek) Nation Chartered Communities over such communities and their resources where exigent circumstances exist. *Muscogee (Creek) Nation v. Holdenville Indian*

*Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

District Court of the Muscogee (Creek) Nation has power to direct officers of the Muscogee (Creek) Nation to provide training and technical assistance to officers and/or directors of Muscogee (Creek) Chartered Communities. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

Where dispute threatening stability and/or economic well being of a Muscogee (Creek) Nation Chartered Community has occurred that resulted in litigation, District Court may direct Community to pay reasonable attorneys' fees from Community funds. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

District Court of Muscogee (Creek) Nation has power to direct that selection and or removal of officerholders by Kellyville Muscogee Indian Community be effectuated in accordance with the Community's Constitution and By-laws and Muscogee (Creek) Nation laws. *Kellyville Indian Community v. Watashe*, 5 Okla. Trib. 538 (Musc. (Cr.) D.Ct. 1991).

Vacancies in office of the Kellyville Muscogee Indian Community shall be filled in accordance with Kellyville Muscogee Indian Community Constitution and by-laws. *Kellyville Indian Community v. Watashe*, 5 Okla. Trib. 538 (Musc. (Cr.) D.Ct. 1991).

It is not the business of the Tribal Courts to interfere with the affairs of any Creek communities that is why by-laws and constitutions were passed and ratified. *Johnson v. Holdenville Indian Community*, 5 Okla. Trib. 543 (Musc. (Cr.) D.Ct. 1991).

District Court of the Muscogee (Creek) Nation has power to enjoin application of amendments to Holdenville (Creek) Indian Community's Constitution and by-laws until receipt of documentation that amendments were properly adopted. *Johnson v. Holdenville Indian Community*, 5 Okla. Trib. 543 (Musc. (Cr.) D.Ct. 1991).

District Court of the Muscogee (Creek) Nation may direct officers of Holdenville (Creek) Indian Community to follow proper business practices with respect to funds and enterprises owned and operated by the community. *Johnson v. Holdenville Indian Community*, 5 Okla. Trib. 543 (Musc. (Cr.) D.Ct. 1991).