

ARTICLE V [EXECUTIVE BRANCH]

Section

1. [Principal Chief and Second Chief].
2. [Executive Office of the Principal Chief].
3. [Budget requests; administration of funds].
4. [State of the Nation reports; recommendations; convening of National Council].

Section headings are editorially supplied.

§ 1. [Principal Chief and Second Chief]

(a) The Executive power shall be vested in and shall be known as the Office of the Principal Chief of the Muscogee (Creek) Nation. The Principal Chief shall hold office during a term of four (4) years upon election by majority of the votes cast. The term of office shall begin the first Monday in the new calendar year (January). No person shall serve office of Chief more than two (2) consecutive terms for which he/she is elected.

(b) No person, except a citizen holding full citizenship, having attained the age of thirty (30) and having been a legal residence within the political jurisdiction of the Muscogee (Creek) Nation for one (1) year immediately prior to filing for office, shall be eligible for the Offices of Principal Chief or Second Chief.

(c) In the case of a vacancy, whether by removal, death, or resignation of the Office of Principal Chief, the line of succession shall be the Second Chief who shall be elected in the same manner as prescribed for the Principal Chief. In the event of a vacancy of the Office of Second Chief, that an election be held within sixty (60) days to fill the Office of the Second Chief unless it happens within the last six months of the term in which case the term would remain vacant until the next election.

(d) The Principal Chief and the Second Chief shall, at stated times, receive for their services a fixed compensation, which shall neither be increased nor diminished during the period for which they shall have been elected.

(e) Before the Principal Chief enters on the execution of his office, he shall publicly take the following oath or affirmation:

“I do solemnly swear (or affirm) that I will faithfully execute The Office of Principal Chief of The Muscogee (Creek) Nation, and will, to the best of my ability, uphold the Constitution and the Laws of The Muscogee (Creek) Nation.”

(f) No person shall be eligible for the office of Principal Chief or Second Chief who has a felony conviction from a court of competent jurisdiction. Neither shall any personal with a felony conviction from a court of competent jurisdiction be appointed to hold any appointive office established by, or under, this Constitution.

[Amended by NCA 91-19; 2009, [A45]; 2009, [A46].]

Historical and Statutory Notes

2009 Amendments

The 2009 amendment by [A45] was passed by referendum on Nov. 7, 2009, by a vote of 1,706 to 747. The 2009 amendment by [A46] was passed by referendum on Nov. 7, 2009, by a vote of 1,713 to 742.

1991 Amendments

The 1991 amendment was passed by referendum on Dec. 7, 1991, by a vote of 3,261 to 929.

Cross References

Compensation, see Title 16, §§ 2–101, 2–102.
 Elections, see Const. Art. IV, § 1 et seq.
 Full citizenship, see Const. Art. III, § 4.

Library References

Indians ↻214.
 Westlaw Topic No. 209.
 C.J.S. Indians § 59.

Notes of Decisions

Construction and application 1
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1. Construction and application

It is also important for the parties to be reminded of *Harjo v. Kleppe*. Harjo states that the Principal Chief is not the sole embodiment of the Muscogee (Creek) Nation. These same principles apply to the National Council. The National Council is not the sole embodiment of the Muscogee (Creek) Nation either. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”*, SC 06–07 (Muscogee (Creek) 2007)

This Court agrees that, in general and with constitutional limitations, the National Council has legislative oversight on how money is spent and is entitled to appropriate what funds it decides are proper. This oversight power, however, is subject to the National Council’s constitutional responsibility to fund positions authorized by law such as those discussed *infra* and in our previous Order concerning executive branch employees, and those areas that help the Principal Chief of this Nation perform his constitutional duties as the Chief. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”*, SC 06–07 (Muscogee (Creek) 2007)

As part of the advice and consent process, the National Council can ask the Principal Chief, or a Department Manager, to identify and explain the funds budgeted to determine if the monies are prudently needed. It cannot simply “zero out” or not fund an already budgeted position simply on their whim. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”*, SC 06–07 (Muscogee (Creek) 2007)

[T]he Principal Chief shall have oversight of the National Council’s Budget and cannot continually veto the Council’s Budget. *Ellis v. Mus-*

cogee (Creek) Nation National Council, “Ellis II”, SC 06–07 (Muscogee (Creek) 2007)

The funding level requested in a budget submitted by the Chief to the National Council for its approval is expected to be sufficient to cover all positions authorized by law and such other positions which the Principal Chief is given discretion to employ, thereby enabling the Chief to perform his constitutional duty. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”*, SC 06–07 (Muscogee (Creek) 2007)

Though the National Council has authority to approve or disapprove the Budget submitted by the Principal Chief, the National Council does not have line-item veto power over the Budget. The National Council cannot pick and choose areas of the Budget that it specifically does not like or does not want to fund. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”*, SC 06–07 (Muscogee (Creek) 2007)

Preparation of the Budget is an executive function specifically committed by the Constitution to the Executive Office. It is the constitutional responsibility of the Executive Office to draft and prepare the Budget in the best interests of the Nation. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”*, SC 06–07 (Muscogee (Creek) 2007)

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The key point that seems to be lost on the National Council, however, is that the Principal Chief initiates the Budget process. This is in contrast to the powers of the National Council under the 1867 Constitution where the National Council made the initial decisions. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”*, SC 06–07 (Muscogee (Creek) 2007)

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Art. V, § 1 Note 1

When a governmental entity is responsible for initiating, editing, processing, changing and reviewing a process assigned to it under the Constitution, it is the Court's opinion this entity is the ultimate authority for the process. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

It is our opinion that the Executive Branch of the Nation is the ultimate responsible authority for the Budget. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The National Council cannot manipulate funds by passing National Council Resolutions that the Chief does not see nor have the opportunity to veto. Again, in doing so, these National Council Resolutions affect the Treasury of the Muscogee (Creek) Nation and there must be a check on this seemingly unbridled power of the National Council. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

It seems abundantly clear to this Court that meetings between the Principal Chief and the National Council must continue until the two branches have worked out a mutually agreed upon Budget for the Nation for the year. This Court will not tolerate the negotiations being stone-walled by one branch of government for months at a time, as that branch would be affecting the functions and responsibilities of the other branch. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The Judicial Branch of the Muscogee (Creek) Nation, like the Executive Branch and the National Council, is a Constitutional body and a co-equal branch to the Legislative and Executive branches of this Nation. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

[W]e have not and will not be intimidated by either branch of government; this Court serves the Constitution and the Muscogee people. The Supreme Court is a constitutional body with the responsibility to interpret and uphold the laws. Attempts to control the Supreme Court, under the guise of legislation, will not be tolerated. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

This Court has held in previous cases that each branch of this government has a right to hire legal representation. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

This Court has addressed the issue of legal funds before. As stated *supra*, all three branches have the right to legal counsel. All three Branches of government deserve to have equal funding for legal representation. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

[T]he National Council does not have the right to supplement their legal representation by National Council Resolution, since the Principal Chief has no right of review or veto of this spending of Nation's Treasury. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

This Court has held that a fundamental tenet of our case law is that each branch of government remains autonomous and that each respects the duties of the others. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

There must be a careful balance of power whereupon each branch has special limitations that are constitutionally placed upon them. (emphasis in original) *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

We hold that the Executive Branch of this government is constitutionally responsible for the preparation and administration of the Muscogee (Creek) Nation's yearly Budget. The Legislative Branch's responsibility to the yearly budget is advice and consent to the Principal Chief as was outlined *supra*. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The purpose of advice is: "recommendation regarding a decision or course of conduct." This advice and consent is not to be construed as authorizing the National Council to change line-items or alter the Budget process for their own purposes. Conversely, this does not give the Principal Chief unbridled powers. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Traditionally, in our Creek society, a tribal officer has an important role to fill in our Nation's Government and should be given authority to carry out his or her role without interference. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (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)

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)

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*

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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)*

Today, we still have three co-equal branches of government that we have continued to reiterate in our opinions are co-equal, each sharing powers and each having inherent powers, but with no one branch being more powerful than the other. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”, SC 06–07 (Muscogee (Creek) 2007)*

[O]ur decision in this Opinion is made based on our constitutional prescription and an eye toward our need for separate spheres of authority, and the obligation to our People for a government that will respect these individual spheres of authority. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”, SC 06–07 (Muscogee (Creek) 2007)*

It is therefore imperative that the National Council understand that the constitutional requirement is that the Principal Chief prepares the Budget and the Council approves or disapproves the Budget without line-item veto or line-item amendment power. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”, SC 06–07 (Muscogee (Creek) 2007)*

The Budget is a joint decision and not one where the Council can make changes and then force those changes upon the Chief by using the veto override. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”, SC 06–07 (Muscogee (Creek) 2007)*

Disrespect for the head of a branch of government in performing its constitutionally mandated duties is an insult to the Muscogee (Creek) Nation people. Each branch is to serve the people and not attempt to become more powerful than another branch. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”, SC 06–07 (Muscogee (Creek) 2007)*

[N]o individual within those branches should believe themselves above the law. Our law is a law of the people, for the people, and by the people. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”, SC 06–07 (Muscogee (Creek) 2007)*

The citizens of this Nation need to be aware that those individuals elected to serve on the National Council and represent the people of the Muscogee (Creek) Nation disrespected this Court and the authority of this Court and disrespected the Principal Chief. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”, SC 06–07 (Muscogee (Creek) 2007)*

The Principal Chief, as head of the Executive Branch, is given the duty and power to make judicial appointments to the Supreme Court.

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However, the Principal Chiefs power to make such appointments to the Court is not absolute; it is subject to the majority approval of the National Council. *Oliver v. Muscogee (Creek) National Council, SC 06–04 (Muscogee (Creek) 2006)*

The “checks” of this system refers to the abilities, rights, and responsibilities of each branch of government to monitor the activities of the other two branches. “Balances” refers to the ability of each branch of government in the Creek Nation to use its authority to limit the powers of the other two branches, whether in general scope or in a particular case, so that one branch does not attain power greater than that of either of the other two branches. *Oliver v. Muscogee (Creek) National Council, SC 06–04 (Muscogee (Creek) 2006)*

As officers of this Nation, all three branches are equally obligated to uphold the Muscogee (Creek) Nation Constitution. Each share a co-equal status and no one branch stands above another. *Oliver v. Muscogee (Creek) National Council, SC 06–04 (Muscogee (Creek) 2006)*

[I]f one branch of our government abandons the co-equal model of government (as embodied in the Constitution of this Nation) it no doubt will lead to a weakened government and a true crisis for citizens of this Nation. *Oliver v. Muscogee (Creek) National Council, SC 06–04 (Muscogee (Creek) 2006)*

Each of this Nation’s three branches of government holds great power, but each must also act with a great sense of responsibility and recognition of its rightful authority and its concomitant limitations. *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)*

Under the doctrine of separation of powers, the executive branch is the branch of government charged with implementing, and/or executing the law and running the day-to-day affairs of the government. *Ellis v. Muscogee (Creek) Nation National Council, SC 05–03/05 (Muscogee (Creek) 2006)*

The legislative branch does not have the authority to mandate any member of the executive branch to take or refrain from taking any action without due process of law. *Ellis v. Muscogee (Creek) Nation National Council, SC 05–03/05 (Muscogee (Creek) 2006)*

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Likewise, the executive branch does not have the authority to mandate that the legislative branch regulate in areas that are left squarely to that branch in the Constitution. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The roles of the different branches are clearly defined both in the Constitution of the Nation and in its laws, . . . , there are proper procedures in place to amend the Constitution of this Nation, and those procedures should not be assumed by a document proposing to be an Agreed Journal Entry in a lawsuit litigated between the Principal Chief and the National Council. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Under the Doctrine of Separation of Powers, the Executive Branch as set out in the Muscogee (Creek) Nation Constitution Article V, and further as organized in the laws in Title 16 Muscogee (Creek) Nation Code, “Executive Branch” shall remain in full force and effect unless duly changed by proper procedures to secure a Constitutional Amendment or by Tribal Resolution. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

. . . as the head of the Executive Branch, the Principal Chief continues to have the authority to deal with all Executive Branch employment decisions, except over independent agencies as will be discussed *infra*; including but not limited to all appointments as set out in the Constitution of this Nation and any laws that the National Council shall enact. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

It is also the function of the Executive Branch to continue to deal with its internal employment decisions, excluding those employment decisions over independent agencies (gaming, e.g.). *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

As one of the specifically enumerated powers in the Muscogee (Creek) Constitution, the Principal Chief may call Extraordinary Sessions of the National Council as set forth in Article V Section 4 of the Constitution. With regards to Extraordinary Sessions, it is the order of this Court that the parties shall agree upon fair and proper procedures and rules that shall be effectuated by the National Council within three (3) working days, or at such other times as the parties agree to after this Order, that will clarify with specificity the rules regarding the Principal Chiefs agenda for Extraordinary Sessions and his submission thereof. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Each branch of the Muscogee (Creek) Nation has the rights and powers consistent with the Constitution and this Court’s prior rulings to contract *on behalf of its own branch* for the proper running of day-to-day activities that help

the government run efficiently. (emphasis in original) *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

It is therefore the responsibility of *each* of the three branches to dutifully fulfill their obligations to the Nation when negotiating and contracting with outside entities on their own behalf. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Principal Chief or his designee shall continue to have the primary responsibility to negotiate, execute and carry out contracts *on behalf of the Nation* with the exceptions limited by the Muscogee (Creek) Nation Constitution or by law. (emphasis in original) *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Appropriate language should be drafted that addresses the subjects of subpoena, testimony, and contempt proceedings against the Principal Chief and/or Second Chief consistent with laws on executive privilege. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

This Court holds that Title 30 Sections 3–1 04, 8–101 and 8–102 of the Muscogee (Creek) Nation Code, as such sections pertain to the investigatory powers of the National Council, are hereby stricken as unconstitutional violations of individual rights to due process of law. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Office of Public Gaming is an Executive Branch entity and falls under the auspices of the Executive Branch’s authority to appoint commissioners and set budgets. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Federal regulations of the National Indian Gaming Commission mandate the independence of the Office of Public Gaming. We hold, therefore, that the Executive Branch and the National Council must abide by the federal regulations to keep the independence of the Office of Public Gaming from both executive and legislative influences. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

It is, therefore, imperative that no member of the Executive Branch nor any member of the National Council nor any member of the Judicial Branch use his or her position to influence any Commissioner or independent board officer to gain any advantage for themselves or on behalf of another. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Principal Chief or his designee shall be primarily responsible to negotiate contracts that affect the economic integrity of the Nation. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

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The National Council under the Separation of Powers doctrine as discussed *supra* does not have the power to “mandate” the Principal Chief to act or not act in a certain way in his official capacity as the Chief Executive Officer of this Nation. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

A simple reading of the language of the Constitution indicates that the framers of the Muscogee (Creek) Nation Constitution envisioned a government where the legislature legislated: in other words, made laws for the Office of the Principal Chief to execute. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Nowhere in the Creek Nation’s Constitution does the language state or even imply that the National Council can mandate the Principal Chief to act or refrain from acting in his official capacity. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

This Court declares that TR 05–160 is unconstitutionally overbroad in restricting the powers of the Principal Chief to negotiate with other foreign officials and governments for the betterment of the Muscogee (Creek) Nation, and this Resolution is hereby stricken and shall immediately be considered null and void. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

All branches must coexist equally to continue to strengthen and build the Muscogee (Creek) Nation. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Under traditional Mvskoke law controversies were resolved by clan Vculvkvilke (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)

The Principal Chief is not the sole embodiment of Creek tribal Authority. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

It is a fundamental tenet of our case law that each branch of government remains autonomous and that each respect the duties of the others. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

NCA 89–71 is an ordinance of the Muscogee (Creek) Nation that is constitutional and must

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be followed. *National Council v. Cox*, 5 Okla. Trib. 513 (Muscogee (Creek) 1990).

Supreme Court of the Muscogee (Creek) Nation may direct tribal Chief and other tribal officers to conform their conduct to validly enacted tribal laws. *National Council v. Cox*, 5 Okla. Trib. 513 (Muscogee (Creek) 1990).

2. Executive power

It is also important for the parties to be reminded of *Harjo v. Kleppe*. Harjo states that the Principal Chief is not the sole embodiment of the Muscogee (Creek) Nation. These same principles apply to the National Council. The National Council is not the sole embodiment of the Muscogee (Creek) Nation either. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”*, SC 06–07 (Muscogee (Creek) 2007)

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[T]he Principal Chief shall have oversight of the National Council’s Budget and cannot continually veto the Council’s Budget. *Ellis v. Muscogee (Creek) Nation National Council, “Ellis II”*, SC 06–07 (Muscogee (Creek) 2007)

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Preparation of the Budget is an executive function specifically committed by the Constitution to the Executive Office. It is the constitutional responsibility of the Executive Office to draft and prepare the Budget in the best interests of the Nation. *Ellis v. Muscogee (Creek)*

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Nation National Council, "Ellis II", SC 06-07 (Muscogee (Creek) 2007)

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The purpose of advice is: "recommendation regarding a decision or course of conduct." This advice and consent is not to be construed as authorizing the National Council to change line-items or alter the Budget process for their own purposes. Conversely, this does not give the Principal Chief unbridled powers. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II", SC 06-07 (Muscogee (Creek) 2007)*

Traditionally, in our Creek society, a tribal officer has an important role to fill in our Nation's Government and should be given authority to carry out his or her role without interference. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II", SC 06-07 (Muscogee (Creek) 2007)*

It is therefore imperative that the National Council understand that the constitutional requirement is that the Principal Chief prepares the Budget and the Council approves or disapproves the Budget without line-item veto or line-item amendment power. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II", SC 06-07 (Muscogee (Creek) 2007)*

The Budget is a joint decision and not one where the Council can make changes and then force those changes upon the Chief by using the veto override. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II", SC 06-07 (Muscogee (Creek) 2007)*

The Principal Chief, as head of the Executive Branch, is given the duty and power to make judicial appointments to the Supreme Court. However, the Principal Chiefs power to make such appointments to the Court is not absolute; it is subject to the majority approval of the National Council. *Oliver v. Muscogee (Creek) National Council, SC 06-04 (Muscogee (Creek) 2006)*

The "checks" of this system refers to the abilities, rights, and responsibilities of each branch of government to monitor the activities of the other two branches. "Balances" refers to the ability of each branch of government in the Creek Nation to use its authority to limit the powers of the other two branches, whether in general scope or in a particular case, so that one branch does not attain power greater than that of either of the other two branches. *Oliver v. Muscogee (Creek) National Council, SC 06-04 (Muscogee (Creek) 2006)*

As officers of this Nation, all three branches are equally obligated to uphold the Muscogee (Creek) Nation Constitution. Each share a co-equal status and no one branch stands above

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another. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

[I]f one branch of our government abandons the co-equal model of government (as embodied in the Constitution of this Nation) it no doubt will lead to a weakened government and a true crisis for citizens of this Nation. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

Each of this Nation’s three branches of government holds great power, but each must also act with a great sense of responsibility and recognition of its rightful authority and its concomitant limitations. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

Under the doctrine of separation of powers, the executive branch is the branch of government charged with implementing, and/or executing the law and running the day-to-day affairs of the government. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The legislative branch does not have the authority to mandate any member of the executive branch to take or refrain from taking any action without due process of law. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Likewise, the executive branch does not have the authority to mandate that the legislative branch regulate in areas that are left squarely to that branch in the Constitution. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The roles of the different branches are clearly defined both in the Constitution of the Nation and in its laws, . . . , there are proper procedures in place to amend the Constitution of this Nation, and those procedures should not be assumed by a document proposing to be an Agreed Journal Entry in a lawsuit litigated between the Principal Chief and the National Council. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Under the Doctrine of Separation of Powers, the Executive Branch as set out in the Muscogee (Creek) Nation Constitution Article V, and further as organized in the laws in Title 16 Muscogee (Creek) Nation Code, “Executive Branch” shall remain in full force and effect unless duly changed by proper procedures to secure a Constitutional Amendment or by Tribal Resolution. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

. . . have the authority to deal with all Executive Branch employment decisions, except over independent agencies as will be discussed *infra*; including but not limited to all appointments as set out in the Constitution of this Nation and any laws that the National Council shall enact.

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Ellis v. Muscogee (Creek) Nation National Council, SC 05–03/05 (Muscogee (Creek) 2006)

It is also the function of the Executive Branch to continue to deal with its internal employment decisions, excluding those employment decisions over independent agencies (gaming, e.g.). *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

As one of the specifically enumerated powers in the Muscogee (Creek) Constitution, the Principal Chief may call Extraordinary Sessions of the National Council as set forth in Article V Section 4 of the Constitution. With regards to Extraordinary Sessions, it is the order of this Court that the parties shall agree upon fair and proper procedures and rules that shall be effectuated by the National Council within three (3) working days, or at such other times as the parties agree to after this Order, that will clarify with specificity the rules regarding the Principal Chiefs agenda for Extraordinary Sessions and his submission thereof. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Each branch of the Muscogee (Creek) Nation has the rights and powers consistent with the Constitution and this Court’s prior rulings to contract *on behalf of its own branch* for the proper running of day-to-day activities that help the government run efficiently. (emphasis in original) *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

It is therefore the responsibility of *each* of the three branches to dutifully fulfill their obligations to the Nation when negotiating and contracting with outside entities on their own behalf. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Principal Chief or his designee shall continue to have the primary responsibility to negotiate, execute and carry out contracts *on behalf of the Nation* with the exceptions limited by the Muscogee (Creek) Nation Constitution or by law. (emphasis in original) *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Appropriate language should be drafted that addresses the subjects of subpoena, testimony, and contempt proceedings against the Principal Chief and/or Second Chief consistent with laws on executive privilege. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

This Court holds that Title 30 Sections 3–1 04, 8–101 and 8–102 of the Muscogee (Creek) Nation Code, as such sections pertain to the investigatory powers of the National Council, are hereby stricken as unconstitutional violations of individual rights to due process of law. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Office of Public Gaming is an Executive Branch entity and falls under the auspices of

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the Executive Branch's authority to appoint commissioners and set budgets. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

Federal regulations of the National Indian Gaming Commission mandate the independence of the Office of Public Gaming. We hold, therefore, that the Executive Branch and the National Council must abide by the federal regulations to keep the independence of the Office of Public Gaming from both executive and legislative influences. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

It is, therefore, imperative that no member of the Executive Branch nor any member of the National Council nor any member of the Judicial Branch use his or her position to influence any Commissioner or independent board officer to gain any advantage for themselves or on behalf of another. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

The Principal Chief or his designee shall be primarily responsible to negotiate contracts that affect the economic integrity of the Nation. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

The National Council under the Separation of Powers doctrine as discussed *supra* does not have the power to "mandate" the Principal Chief to act or not act in a certain way in his official capacity as the Chief Executive Officer of this Nation. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

A simple reading of the language of the Constitution indicates that the framers of the Muscogee (Creek) Nation Constitution envisioned a government where the legislature legislated: in other words, made laws for the Office of the Principal Chief to execute. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

Nowhere in the Creek Nation's Constitution does the language state or even imply that the National Council can mandate the Principal Chief to act or refrain from acting in his official capacity. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

This Court declares that TR 05-160 is unconstitutionally overbroad in restricting the powers of the Principal Chief to negotiate with other foreign officials and governments for the betterment of the Muscogee (Creek) Nation, and this Resolution is hereby stricken and shall immediately be considered null and void. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

All branches must coexist equally to continue to strengthen and build the Muscogee (Creek) Nation. *Ellis v. Muscogee (Creek) Nation National*

al Council, SC 05-03/05 (Muscogee (Creek) 2006)

Muscogee (Creek) Nation's National Council and not the Principal Chief has general appointment powers under the Constitution of the Muscogee (Creek) Nation. *Fife v. Health Systems*, 4 Okla. Trib. 319 (Muscogee (Creek) 1995).

All three branches of government of the Muscogee (Creek) Nation have right to employ legal counsel to assist in accomplishing their constitutional responsibilities. *Fife v. Health Systems*, 4 Okla. Trib. 319 (Muscogee (Creek) 1995).

Muscogee (Creek) Nation Constitution empowers the National Council to legislate on matters subject to constitutionally imposed limitations: "to promote the public health and safety, education and welfare that may contribute to the social, physical well-being and economic advancement of citizens of the Muscogee (Creek) Nation." *Fife v. Health Systems*, 4 Okla. Trib. 319 (Muscogee (Creek) 1995).

National Council is authorized by Article VI § 7 to legislate on 10 categories of matters including the power to exercise any power not specifically set forth in this Article which may at some future date be exercised by the Muscogee (Creek) Nation. The Constitution contains no analogous grant of power to the Executive Branch. *Fife v. Health Systems Board*, 4 Okla. Trib. 261 (Muscogee (Creek) 1995).

The Muscogee (Creek) Nation Constitution intended to incorporate into it the basic parts of the separation of powers between the three branches of government. *Cox v. Kamp*, 5 Okla. Trib. 530 (Muscogee (Creek) 1991).

Each branch of the government has special limitations placed on it. *Cox v. Kamp*, 5 Okla. Trib. 530 (Muscogee (Creek) 1991).

There must be a balance of powers. The founders of the Muscogee (Creek) Constitution gave unbridled authority to the executive branch. *Cox v. Kamp*, 5 Okla. Trib. 530 (Muscogee (Creek) 1991).

The National Council always has the authorization to amend legislation subject only to one Principal Chief veto or constitutional validity as determined by the judicial branch. *Cox v. Kamp*, 5 Okla. Trib. 530 (Muscogee (Creek) 1991).

Supreme Court of the Muscogee (Creek) Nation may direct tribal Chief and other tribal officers to conform their conduct to validly enacted tribal laws. *National Council v. Cox*, 5 Okla. Trib. 513 (Muscogee (Creek) 1990).

When judicial office is created by tribal legislature under due constitutional authority, legislative body may fix term of office or alter it at legislature's pleasure. Extension of judicial terms under such circumstances does not violate appointment power of the Muscogee (Creek) Nation's Principal Chief. *In re District Judge*, 2 Okla. Trib. 100 (Muscogee (Creek) 1990).

Public officers who represent or have interest in entity seeking to contract with public entity

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as to whom the individual is an officer are barred from contracting with such other entities, even absent statute. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

Principal Chief of Muscogee (Creek) Nation may retain legal counsel on behalf of executive branch of government to assist in its responsibilities under tribal Constitution, without approval of tribal legislative branch, within confines of funds appropriated to executive branch of government. *Bryant v. Childers*, 1 Okla. Trib. 316 (Muscogee (Creek) 1989).

NCA 88-15 restructuring certain inferior offices within the executive branch is constitutional. *Kamp v. Cox and Cox v. Childers*, 5 Okla. Trib. 526 (Musc. (Cr.) D.Ct. 1991).

Executive branch of Muscogee (Creek) Nation government has no discretion to refuse to pay funds duly appropriated and budgeted by tribe's legislative branch. In this respect, duties of tribal Director of Treasury and Comptroller of Treasury are ministerial only. *Childers v. Bryant*, 1 Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1989).

3. Principal Chief powers

It is also important for the parties to be reminded of *Harjo v. Kleppe*. Harjo states that the Principal Chief is not the sole embodiment of the Muscogee (Creek) Nation. These same principles apply to the National Council. The National Council is not the sole embodiment of the Muscogee (Creek) Nation either. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

This Court agrees that, in general and with constitutional limitations, the National Council has legislative oversight on how money is spent and is entitled to appropriate what funds it decides are proper. This oversight power, however, is subject to the National Council's constitutional responsibility to fund positions authorized by law such as those discussed *infra* and in our previous Order concerning executive branch employees, and those areas that help the Principal Chief of this Nation perform his constitutional duties as the Chief. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

As part of the advice and consent process, the National Council can ask the Principal Chief, or a Department Manager, to identify and explain the funds budgeted to determine if the monies are prudently needed. It cannot simply "zero out" or not fund an already budgeted position simply on their whim. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

[T]he Principal Chief shall have oversight of the National Council's Budget and cannot continually veto the Council's Budget. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The funding level requested in a budget submitted by the Chief to the National Council for

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its approval is expected to be sufficient to cover all positions authorized by law and such other positions which the Principal Chief is given discretion to employ, thereby enabling the Chief to perform his constitutional duty. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Though the National Council has authority to approve or disapprove the Budget submitted by the Principal Chief, the National Council does not have line-item veto power over the Budget. The National Council cannot pick and choose areas of the Budget that it specifically does not like or does not want to fund. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Preparation of the Budget is an executive function specifically committed by the Constitution to the Executive Office. It is the constitutional responsibility of the Executive Office to draft and prepare the Budget in the best interests of the Nation. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The National Council's role in approving the Budget and subsequently appropriating operating funds to the Nation is one of a coordinated effort acting as an equivalent branch of government with the Principal Chief. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The key point that seems to be lost on the National Council, however, is that the Principal Chief initiates the Budget process. This is in contrast to the powers of the National Council under the 1867 Constitution where the National Council made the initial decisions. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

When a governmental entity is responsible for initiating, editing, processing, changing and reviewing a process assigned to it under the Constitution, it is the Court's opinion this entity is the ultimate authority for the process. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

It is our opinion that the Executive Branch of the Nation is the ultimate responsible authority for the Budget. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The National Council cannot manipulate funds by passing National Council Resolutions that the Chief does not see nor have the opportunity to veto. Again, in doing so, these National Council Resolutions affect the Treasury of the Muscogee (Creek) Nation and there must be a check on this seemingly unbridled power of the National Council. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

It seems abundantly clear to this Court that meetings between the Principal Chief and the National Council must continue until the two

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branches have worked out a mutually agreed upon Budget for the Nation for the year. This Court will not tolerate the negotiations being stone-walled by one branch of government for months at a time, as that branch would be affecting the functions and responsibilities of the other branch. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

[T]he National Council does not have the right to supplement their legal representation by National Council Resolution, since the Principal Chief has no right of review or veto of this spending of Nation's Treasury. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

We hold that the Executive Branch of this government is constitutionally responsible for the preparation and administration of the Muscogee (Creek) Nation's yearly Budget. The Legislative Branch's responsibility to the yearly budget is advice and consent to the Principal Chief as was outlined *supra*. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The purpose of advice is: "recommendation regarding a decision or course of conduct." This advice and consent is not to be construed as authorizing the National Council to change line-items or alter the Budget process for their own purposes. Conversely, this does not give the Principal Chief unbridled powers. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Traditionally, in our Creek society, a tribal officer has an important role to fill in our Nation's Government and should be given authority to carry out his or her role without interference. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

It is therefore imperative that the National Council understand that the constitutional requirement is that the Principal Chief prepares the Budget and the Council approves or disapproves the Budget without line-item veto or line-item amendment power. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The Budget is a joint decision and not one where the Council can make changes and then force those changes upon the Chief by using the veto override. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The citizens of this Nation need to be aware that those individuals elected to serve on the National Council and represent the people of the Muscogee (Creek) Nation disrespected this Court and the authority of this Court and disrespected the Principal Chief. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The Principal Chief, as head of the Executive Branch, is given the duty and power to make judicial appointments to the Supreme Court. However, the Principal Chiefs power to make such appointments to the Court is not absolute; it is subject to the majority approval of the National Council. *Oliver v. Muscogee (Creek) National Council, SC 06-04* (Muscogee (Creek) 2006)

The "checks" of this system refers to the abilities, rights, and responsibilities of each branch of government to monitor the activities of the other two branches. "Balances" refers to the ability of each branch of government in the Creek Nation to use its authority to limit the powers of the other two branches, whether in general scope or in a particular case, so that one branch does not attain power greater than that of either of the other two branches. *Oliver v. Muscogee (Creek) National Council, SC 06-04* (Muscogee (Creek) 2006)

As officers of this Nation, all three branches are equally obligated to uphold the Muscogee (Creek) Nation Constitution. Each share a co-equal status and no one branch stands above another. *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)

Under the doctrine of separation of powers, the executive branch is the branch of government charged with implementing, and/or executing the law and running the day-to-day affairs of the government. *Ellis v. Muscogee (Creek) Nation National Council, SC 05-03/05* (Muscogee (Creek) 2006)

The legislative branch does not have the authority to mandate any member of the executive branch to take or refrain from taking any action without due process of law. *Ellis v. Muscogee (Creek) Nation National Council, SC 05-03/05* (Muscogee (Creek) 2006)

Likewise, the executive branch does not have the authority to mandate that the legislative branch regulate in areas that are left squarely to that branch in the Constitution. *Ellis v. Muscogee (Creek) Nation National Council, SC 05-03/05* (Muscogee (Creek) 2006)

The roles of the different branches are clearly defined both in the Constitution of the Nation and in its laws, . . . , there are proper procedures in place to amend the Constitution of this Nation, and those procedures should not be assumed by a document proposing to be an Agreed Journal Entry in a lawsuit litigated between the Principal Chief and the National Council. *Ellis v. Muscogee (Creek) Nation National Council, SC 05-03/05* (Muscogee (Creek) 2006)

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Under the Doctrine of Separation of Powers, the Executive Branch as set out in the Muscogee (Creek) Nation Constitution Article V, and further as organized in the laws in Title 16 Muscogee (Creek) Nation Code, “Executive Branch” shall remain in full force and effect unless duly changed by proper procedures to secure a Constitutional Amendment or by Tribal Resolution. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

... as the head of the Executive Branch, the Principal Chief continues to have the authority to deal with all Executive Branch employment decisions, except over independent agencies as will be discussed *infra*; including but not limited to all appointments as set out in the Constitution of this Nation and any laws that the National Council shall enact. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

It is also the function of the Executive Branch to continue to deal with its internal employment decisions, excluding those employment decisions over independent agencies (gaming, e.g.). *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

As one of the specifically enumerated powers in the Muscogee (Creek) Constitution, the Principal Chief may call Extraordinary Sessions of the National Council as set forth in Article V Section 4 of the Constitution. With regards to Extraordinary Sessions, it is the order of this Court that the parties shall agree upon fair and proper procedures and rules that shall be effectuated by the National Council within three (3) working days, or at such other times as the parties agree to after this Order, that will clarify with specificity the rules regarding the Principal Chiefs agenda for Extraordinary Sessions and his submission thereof. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Each branch of the Muscogee (Creek) Nation has the rights and powers consistent with the Constitution and this Court’s prior rulings to contract *on behalf of its own branch* for the proper running of day-to-day activities that help the government run efficiently. (emphasis in original) *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

It is therefore the responsibility of *each* of the three branches to dutifully fulfill their obligations to the Nation when negotiating and contracting with outside entities on their own behalf. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Principal Chief or his designee shall continue to have the primary responsibility to negotiate, execute and carry out contracts *on behalf of the Nation* with the exceptions limited by the Muscogee (Creek) Nation Constitution or by law. (emphasis in original) *Ellis v. Muscogee*

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(Creek) Nation National Council, SC 05–03/05 (Muscogee (Creek) 2006)

Appropriate language should be drafted that addresses the subjects of subpoena, testimony, and contempt proceedings against the Principal Chief and/or Second Chief consistent with laws on executive privilege. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

This Court holds that Title 30 Sections 3–1 04, 8–101 and 8–102 of the Muscogee (Creek) Nation Code, as such sections pertain to the investigatory powers of the National Council, are hereby stricken as unconstitutional violations of individual rights to due process of law. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Office of Public Gaming is an Executive Branch entity and falls under the auspices of the Executive Branch’s authority to appoint commissioners and set budgets. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Federal regulations of the National Indian Gaming Commission mandate the independence of the Office of Public Gaming. We hold, therefore, that the Executive Branch and the National Council must abide by the federal regulations to keep the independence of the Office of Public Gaming from both executive and legislative influences. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

It is, therefore, imperative that no member of the Executive Branch nor any member of the National Council nor any member of the Judicial Branch use his or her position to influence any Commissioner or independent board officer to gain any advantage for themselves or on behalf of another. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Principal Chief or his designee shall be primarily responsible to negotiate contracts that affect the economic integrity of the Nation. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The National Council under the Separation of Powers doctrine as discussed *supra* does not have the power to “mandate” the Principal Chief to act or not act in a certain way in his official capacity as the Chief Executive Officer of this Nation. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

A simple reading of the language of the Constitution indicates that the framers of the Muscogee (Creek) Nation Constitution envisioned a government where the legislature legislated: in other words, made laws for the Office of the Principal Chief to execute. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

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Nowhere in the Creek Nation's Constitution does the language state or even imply that the National Council can mandate the Principal Chief to act or refrain from acting in his official capacity. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

This Court declares that TR 05-160 is unconstitutionally overbroad in restricting the powers of the Principal Chief to negotiate with other foreign officials and governments for the betterment of the Muscogee (Creek) Nation, and this Resolution is hereby stricken and shall immediately be considered null and void. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

All branches must coexist equally to continue to strengthen and build the Muscogee (Creek) Nation. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

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

The National Council always has the authorization to amend legislation subject only to one Principal Chief veto or constitutional validity as determined by the judicial branch. *Cox v. Kamp*, 5 Okla. Trib. 530 (Muscogee (Creek) 1991).

Muscogee (Creek) Nation NCA 88-15, which requires that cabinet appointments of Principal Chief be confirmed by National Council, is constitutional. *Cox v. Kamp*, 2 Okla. Trib. 303 (Muscogee (Creek) 1991).

Muscogee (Creek) Nation Supreme Court has power to direct Nation's Principal Chief to show cause as to why he is not in contempt, where Nation's executive branch or Principal Chief continued employment of individuals in violation of earlier order from that Court. *Cox v. Kamp*, 2 Okla. Trib. 303 (Muscogee (Creek) 1991).

Muscogee (Creek) Const. Art. VI, section 6(a) requires vote of at least two thirds of full membership of National Council—not counting abstentions as affirmative votes—to override veto of ordinance by Principal Chief. *Cox v. Childers*, 2 Okla. Trib. 276 (Muscogee (Creek) 1991).

Muscogee (Creek) Nation Supreme Court may issue writ of mandamus directing manager of a tribal business to provide books and records of such business to auditors upon petition by Principal Chief. *Cox v. McIntosh*, 2 Okla. Trib. 182 (Muscogee (Creek) 1991).

Supreme Court of the Muscogee (Creek) Nation may direct tribal Chief and other tribal officers to conform their conduct to validly enacted tribal laws. *National Council v. Cox*, 5 Okla. Trib. 513 (Muscogee (Creek) 1990).

Muscogee (Creek) Nation Ordinance NCA 87-37, which authorizes Principal Chief to enter

into contracts and leaves details of such contracts to his discretion is constitutional. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

Principal Chief of Muscogee (Creek) Nation may retain legal counsel on behalf of executive branch of government to assist in its responsibilities under tribal Constitution, without approval of tribal legislative branch, within confines of funds appropriated to executive branch of government. *Bryant v. Childers*, 1 Okla. Trib. 316 (Muscogee (Creek) 1989).

Principal Chief of Muscogee (Creek) Nation lacks powers to remove members of tribal Hospital and Clinics Board without cause and due process as set out in ordinance establishing the Board. *Cox v. Moore*, 1 Okla. Trib. 263 (Muscogee (Creek) 1989).

Principal Chief of Muscogee (Creek) Nation may remove purely executive unelected officials and officers. *Cox v. Moore*, 1 Okla. Trib. 263 (Muscogee (Creek) 1989).

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).

Muscogee (Creek) Nation NCA 89-07 which requires disclosure of certain financial information by Nation's executive branch is Constitutional. *Frye v. Cox*, 5 Okla. Trib. 516 (Musc. (Cr.) D.Ct. 1990).

Courts of the Muscogee (Creek) Nation have power to impose monetary civil contempt sanctions against executive branch officers where such officers have failed to comply with a court order. *Frye v. Cox*, 5 Okla. Trib. 516 (Musc. (Cr.) D.Ct. 1990).

Muscogee (Creek) Nation Ordinance NCA 89-07, which directs Nation's executive branch to publish to National Council and tribal citizens financial information concerning salaries and other compensation paid to employees of the Nation, is constitutional. *Frye v. Cox*, 2 Okla. Trib. 115 (Musc. (Cr.) D.Ct. 1990).

When Principal Chief of Muscogee (Creek) Nation exercises veto over proposed bill, at least two-thirds of full membership of National Council must vote to override veto for override to be successful. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

"Full membership" of Muscogee (Creek) National Council, for purposes of computing two-thirds necessary to override veto by Principal Chief relates to total number of representative seats available on National Council according to number of citizens in each district, and does not mean that all those representative seats must be occupied, and occupying representative present and voting, before override may succeed. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Number of votes required on measures necessitating two-thirds vote of full membership of

Art. V, § 1

Note 3

Muscogee (Creek) National Council is calculated including Speaker of National Council; thus, Speaker must be allowed to vote on such measures, including attempted overrides of vetoes by Principal Chief. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Principal Chief of Muscogee (Creek) Nation has responsibility to nominate, and National Council to approve, appointments to Supreme Court of Muscogee (Creek) Nation; failure of those branches of government to agree on nominees, however does not constitute obstruction of justice. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Muscogee (Creek) Nation Ordinance NCA 87-37 does not grant to either Principal Chief or Executive Management Board for Administration of Hospitals and Clinics authority to enter into any agreement or contract with corporation. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Muscogee (Cr.) D.Ct. 1989).

Grants of power to all branches of government of Muscogee (Creek) Nation must be strictly construed against the power. *Burden v. Cox*, 1 Okla. Trib. 247 (Musc. (Cr.) D.Ct. 1988).

Article VI, section 6, clause (a) of Muscogee (Creek) Nation's Constitution requires that two-thirds of full membership (not members present and voting) vote to override veto by Nation's Principal Chief before veto override is successful. *Burden v. Cox*, 1 Okla. Trib. 247 (Musc. (Cr.) D.Ct. 1988).

Principal Chief has complete authority to delegate his duties at his sole discretion. Op.Atty. Gen. 93-3 (April 8, 1993).

4. Second Chief powers

Appropriate language should be drafted that addresses the subjects of subpoena, testimony, and contempt proceedings against the Principal Chief and/or Second Chief consistent with laws on executive privilege. *Ellis v. Muscogee (Creek)*

§ 2. [Executive Office of the Principal Chief]

(a) The Principal Chief shall create and organize the Executive Office of the Principal Chief; and

(b) With the advice and consent of The Muscogee (Creek) National Council appoint offices of the Executive Office. The National Council may, by ordinance, vest the appointment of such inferior offices as they think proper in the Principal Chief alone or in the officers.

(c) The Principal Chief shall have the power to fill vacancies by granting commissions which shall expire at the beginning of the next National Council meeting.

Cross References

National Council Representatives, outside office prohibited, see Const. Art. VI, § 5.
Organization of Executive Office of the Principal Chief, see Title 16, § 1-101 et seq.

CONSTITUTION

Nation National Council, SC 05-03/05 (Muscogee (Creek) 2006)

This Court holds that Title 30 Sections 3-1 04, 8-101 and 8-102 of the Muscogee (Creek) Nation Code, as such sections pertain to the investigatory powers of the National Council, are hereby stricken as unconstitutional violations of individual rights to due process of law. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

Federal regulations of the National Indian Gaming Commission mandate the independence of the Office of Public Gaming. We hold, therefore, that the Executive Branch and the National Council must abide by the federal regulations to keep the independence of the Office of Public Gaming from both executive and legislative influences. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

It is, therefore, imperative that no member of the Executive Branch nor any member of the National Council nor any member of the Judicial Branch use his or her position to influence any Commissioner or independent board officer to gain any advantage for themselves or on behalf of another. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

The Principal Chief or his designee shall be primarily responsible to negotiate contracts that affect the economic integrity of the Nation. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

Second Chief has no independent Constitutional authority. Only in event of removal, death, or resignation of Principal Chief could Second Chief exercise any authority. Constitutional amendment would be required to vest any authority in Second Chief. Op.Atty.Gen. 93-3 (April 8, 1993).

Library References

Indians ↻214.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

Notes of Decisions

Other tribal officers 1
Removal of tribal officers 3
Replacement of resigned or removed tribal officers 2

1. Other tribal officers

The funding level requested in a budget submitted by the Chief to the National Council for its approval is expected to be sufficient to cover all positions authorized by law and such other positions which the Principal Chief is given discretion to employ, thereby enabling the Chief to perform his constitutional duty. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Increasing or decreasing a Lighthorse officer's or an employee's salary within his or her respective authorized pay scale is a personnel function. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Lighthorse and other officers and employees have an expectation that their compensation will be determined by the persons to whom they are responsible and not by the National Council by way of the budgeting process. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

As part of the advice and consent process, the National Council can ask the Principal Chief, or a Department Manager, to identify and explain the funds budgeted to determine if the monies are prudently needed. It cannot simply "zero out" or not fund an already budgeted position simply on their whim. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

[T]his Court holds that a Supreme Court judicial nominee from the office of the Principal Chief must be brought to a vote of the full National Council at a regularly scheduled monthly meeting and shall not be deemed approved or rejected by Committee nor in Planning Session. A vote of the constitutionally mandated quorum necessary to conduct business shall suffice as the full National Council, and no super-majority will be required. *Oliver v. Muscogee (Creek) Nation National Council, SC 06-04* (Muscogee (Creek) 2006)

This Court hereby interprets the language of the Constitution to direct the National Council, at a regularly scheduled monthly meeting, to consider and vote either in affirmation or disaffirmation each and every Supreme Court Justice appointee presented by the office of the Princi-

pal Chief. *Oliver v. Muscogee (Creek) National Council, SC 06-04* (Muscogee (Creek) 2006)

[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 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)

This Court holds that failing to bring the nomination of a Supreme Court Justice nominee to a vote of the full National Council is a violation of the Constitution and a breach of the fiduciary duty owed to the Nation's citizenry as a whole. *Oliver v. Muscogee (Creek) National Council, SC 06-04* (Muscogee (Creek) 2006)

The Principal Chief, as head of the Executive Branch, is given the duty and power to make judicial appointments to the Supreme Court. However, the Principal Chief's power to make such appointments to the Court is not absolute; it is subject to the majority approval of the National Council. *Oliver v. Muscogee (Creek) National Council, SC 06-04* (Muscogee (Creek) 2006)

The Office of Public Gaming is an Executive Branch entity and falls under the auspices of the Executive Branch's authority to appoint commissioners and set budgets. *Ellis v. Muscogee (Creek) Nation National Council, SC 05-03/05* (Muscogee (Creek) 2006)

Federal regulations of the National Indian Gaming Commission mandate the independence of the Office of Public Gaming. We hold, therefore, that the Executive Branch and the National Council must abide by the federal regulations to keep the independence of the Office of Public Gaming from both executive and legislative influences. *Ellis v. Muscogee (Creek) Nation National Council, SC 05-03/05* (Muscogee (Creek) 2006)

It is, therefore, imperative that no member of the Executive Branch nor any member of the National Council nor any member of the Judicial Branch use his or her position to influence any Commissioner or independent board officer to gain any advantage for themselves or on

Art. V, § 2

Note 1

behalf of another. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Appropriate language should be drafted that addresses the subjects of subpoena, testimony, and contempt proceedings against the Principal Chief and/or Second Chief consistent with laws on executive privilege. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

It is also the function of the Executive Branch to continue to deal with its internal employment decisions, excluding those employment decisions over independent agencies (gaming, e.g.). *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Under the doctrine of separation of powers, the Executive Branch as set out in the Muscogee (Creek) Nation Constitution Article V, and further as organized in the laws in Title 16 Muscogee (Creek) Nation Code, “Executive Branch” shall remain in full force and effect unless duly changed by proper procedures to secure a Constitutional Amendment or by Tribal Resolution. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

... as the head of the Executive Branch, the Principal Chief continues to have the authority to deal with all Executive Branch employment decisions, except over independent agencies as will be discussed *infra*; including but not limited to all appointments as set out in the Constitution of this Nation and any laws that the National Council shall enact. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Tribal Attorney General may be given leave to intervene where issues raised could have substantial impact upon tribe. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Muscogee (Creek) Nation’s Supreme Court may take judicial notice of fact that persons have not been confirmed in their appointments to cabinet positions in Nation 5 executive branch, may declare such positions vacant, and may issue permanent injunction regarding former occupants of such positions and their current status. *Cox v. Kamp*, 2 Okla. Trib. 303 (Muscogee (Creek) 1991).

Supreme Court of the Muscogee (Creek) Nation may direct tribal Chief and other tribal officers to conform their conduct to validly enacted tribal laws. *National Council v. Cox*, 5 Okla. Trib. 513 (Muscogee (Creek) 1990).

Contract entered into by tribal Executive Director without approval of National Council is void ab initio. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

NCA 88–15 restructuring certain inferior offices with in the executive branch is constitutional. *Kamp v. Cox and Cox v. Childers*, 5 Okla. Trib. 526 (Musc. (Cr.) D.Ct. 1991).

CONSTITUTION

Muscogee (Creek) Nation Ordinance NCA 89–07, which directs Nation’s executive branch to publish to National Council and tribal citizens financial information concerning salaries and other compensation paid to employees of the Nation, is constitutional. *Frye v. Cox*, 2 Okla. Trib. 115 (Musc. (Cr.) D.Ct. 1990).

Executive branch of Muscogee (Creek) Nation government has no discretion to refuse to pay funds duly appropriated and budgeted by tribe’s legislative branch. In this respect, duties of tribal Director of Treasury and Comptroller of Treasury are ministerial only. *Childers v. Bryant*, 1 Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1989).

Speaker is presiding officer of Muscogee (Creek) National Council, and during course of voting on ordinary legislation, does not vote unless National Council is equally divided. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Number of votes required on measures necessitating two-thirds vote of full membership of Muscogee (Creek) National Council is calculated including Speaker of National Council; thus, Speaker must be allowed to vote on such measures, including attempted overrides of vetoes by Principal Chief. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Article VI, section 6, clause (a) of Muscogee (Creek) Nation’s Constitution requires that two-thirds of full membership (not members present and voting) vote to override veto by Nation’s Principal Chief before veto override is successful. *Burden v. Cox*, 1 Okla. Trib. 247 (Musc. (Cr.) D.Ct. 1988).

2. Replacement of resigned or removed tribal officers

Muscogee (Creek) Constitution, Article VII, section 2 mandates that newly-appointed and approved Justices of tribal Supreme Court serve full six-year terms, even where appointment is to a vacancy which did not result from the expiration of a previous Justice’s term. *In re Term of Office*, 2 Okla. Trib. 411 (Muscogee (Creek) 1992).

Where emergency exists due to expiration of all terms on appointed tribal board, and where no one has been nominated and/or confirmed to fill the vacancies, tribal Supreme Court may designate persons to sit on such board pending nomination and/or confirmation of their successors. *In re Hospital and Clinics Board*, 2 Okla. Trib. 155 (Muscogee (Creek) 1991).

Constitution of Muscogee (Creek) Nation is silent as to procedure to be followed where vacancy on tribal Supreme Court occurs before a term of office expires. *In re Term of Office*, 2 Okla. Trib. 385 (Musc. (Cr.) D.Ct. 1992).

Framers of Muscogee (Creek) Nation Constitution did not anticipate any extended vacancies on Tribe’s Supreme Court. *In re Term of Office*, 2 Okla. Trib. 385 (Musc. (Cr.) D.Ct. 1992).

EXECUTIVE BRANCH

Art. V, § 3 Note 1

3. Removal of tribal officers

Muscogee (Creek) Nation Supreme Court may take judicial notice of fact that persons have not been confirmed in their appointments to cabinet positions in Nation's executive branch, may declare such positions vacant, and may issue permanent injunctions regarding former occupants of such positions and their current status. *Cox v. Kamp*, 2 Okla. Trib. 303 (Muscogee (Creek) 1991).

Principal Chief of Muscogee (Creek) Nation lacks powers to remove members of tribal Hospital and Clinics Board without cause and due process as set out in ordinance establishing the Board. *Cox v. Moore*, 1 Okla. Trib. 263 (Muscogee (Creek) 1989).

Principal Chief of Muscogee (Creek) Nation may remove purely executive unelected officials and officers. *Cox v. Moore*, 1 Okla. Trib. 263 (Muscogee (Creek) 1989).

Appointment and approval of a Justice to Muscogee (Creek) Nation Supreme Court to a vacancy which does not result from the expiration of another Justice's term, and which occurs after January 1 of any year, will result in the newly-appointed and approved Justice serving in office in excess of six years, and there is no requirement in tribal Constitution for reconfirmation after the partial year has expired. *In re Term of Office*, 2 Okla. Trib. 385 (Musc. (Cr.) D.Ct. 1992).

Principal Chief of Muscogee (Creek) Nation has responsibility to nominate, and National Council to approve, appointments to Supreme Court of Muscogee (Creek) Nation; failure of those branches of government to agree on nominees, however does not constitute obstruction of justice. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

§ 3. [Budget requests; administration of funds]

(a) The Principal Chief shall prepare the annual budget request and supplements thereto.

(b) Budget requests, other appropriations, and amendments thereto shall be considered by the National Council with the same limitations and rules as any other bill.

(c) The Principal Chief shall administer appropriated funds with the advice and consent of the National Council.

[Amended by 2009, [A51].]

Historical and Statutory Notes

2009 Amendments

The 2009 amendment was passed by referendum on Nov. 7, 2009, by a vote of 1,441 to 963.

Cross References

Funds and accounts, see Title 37, § 2-201 et seq.

Required annual budget items, see Title 37, § 2-101 et seq.

Notes of Decisions

Budget responsibility 1

1. Budget responsibility

This Court agrees that, in general and with constitutional limitations, the National Council has legislative oversight on how money is spent and is entitled to appropriate what funds it decides are proper. This oversight power, however, is subject to the National Council's constitutional responsibility to fund positions authorized by law such as those discussed *infra* and in our previous Order concerning executive branch employees, and those areas that help the Principal Chief of this Nation perform his constitutional duties as the Chief. *Ellis v. Muscogee*

(*Creek*) Nation National Council, "Ellis II", SC 06-07 (Muscogee (Creek) 2007)

As part of the advice and consent process, the National Council can ask the Principal Chief, or a Department Manager, to identify and explain the funds budgeted to determine if the monies are prudently needed. It cannot simply "zero out" or not fund an already budgeted position simply on their whim. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

[T]he Principal Chief shall have oversight of the National Council's Budget and cannot continually veto the Council's Budget. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Art. V, § 3

Note 1

It is also important to understand that the National Council cannot continue to circumvent the budget process by passing National Council Resolutions that appropriate Muscogee (Creek) Treasury monies that have no check or balance upon them. National Council Resolutions are for the internal business of the National Council, not supplements to the budget that leave the Principal Chief out of the oversight of appropriations being spent. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

The funding level requested in a budget submitted by the Chief to the National Council for its approval is expected to be sufficient to cover all positions authorized by law and such other positions which the Principal Chief is given discretion to employ, thereby enabling the Chief to perform his constitutional duty. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

Though the National Council has authority to approve or disapprove the Budget submitted by the Principal Chief, the National Council does not have line-item veto power over the Budget. The National Council cannot pick and choose areas of the Budget that it specifically does not like or does not want to fund. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

Preparation of the Budget is an executive function specifically committed by the Constitution to the Executive Office. It is the constitutional responsibility of the Executive Office to draft and prepare the Budget in the best interests of the Nation. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

The National Council's role in approving the Budget and subsequently appropriating operating funds to the Nation is one of a coordinated effort acting as an equivalent branch of government with the Principal Chief. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

The key point that seems to be lost on the National Council, however, is that the Principal Chief initiates the Budget process. This is in contrast to the powers of the National Council under the 1867 Constitution where the National Council made the initial decisions. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

When a governmental entity is responsible for initiating, editing, processing, changing and reviewing a process assigned to it under the Constitution, it is the Court's opinion this entity is the ultimate authority for the process. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

It is our opinion that the Executive Branch of the Nation is the ultimate responsible authority for the Budget. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

CONSTITUTION

The National Council cannot manipulate funds by passing National Council Resolutions that the Chief does not see nor have the opportunity to veto. Again, in doing so, these National Council Resolutions affect the Treasury of the Muscogee (Creek) Nation and there must be a check on this seemingly unbridled power of the National Council. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

It seems abundantly clear to this Court that meetings between the Principal Chief and the National Council must continue until the two branches have worked out a mutually agreed upon Budget for the Nation for the year. This Court will not tolerate the negotiations being stone-walled by one branch of government for months at a time, as that branch would be affecting the functions and responsibilities of the other branch. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

Any attempt of the National Council to raise or lower any particular employee or tribal officer's compensation, or to cause the dismissal of a person by withholding funding for that person's position through the Budget approval process is a clear interference in the execution of the laws of the Nation which the National Council itself has passed. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

This Court has addressed the issue of legal funds before. As stated *supra*, all three branches have the right to legal counsel. All three Branches of government deserve to have equal funding for legal representation. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

[T]he National Council does not have the right to supplement their legal representation by National Council Resolution, since the Principal Chief has no right of review or veto of this spending of Nation's Treasury. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

We hold that the Executive Branch of this government is constitutionally responsible for the preparation and administration of the Muscogee (Creek) Nation's yearly Budget. The Legislative Branch's responsibility to the yearly budget is advice and consent to the Principal Chief as was outlined *supra*. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

The purpose of advice is: "recommendation regarding a decision or course of conduct." This advice and consent is not to be construed as authorizing the National Council to change line-items or alter the Budget process for their own purposes. Conversely, this does not give the Principal Chief unbridled powers. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

EXECUTIVE BRANCH

Art. V, § 4 Note 1

Traditionally, in our Creek society, a tribal officer has an important role to fill in our Nation's Government and should be given authority to carry out his or her role without interference. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

It is therefore imperative that the National Council understand that the constitutional requirement is that the Principal Chief prepares the Budget and the Council approves or disapproves the Budget without line-item veto or line-item amendment power. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The Budget is a joint decision and not one where the Council can make changes and then force those changes upon the Chief by using the

veto override. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

Disrespect for the head of a branch of government in performing its constitutionally mandated duties is an insult to the Muscogee (Creek) Nation people. Each branch is to serve the people and not attempt to become more powerful than another branch. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06-07 (Muscogee (Creek) 2007)

The Office of Public Gaming is an Executive Branch entity and falls under the auspices of the Executive Branch's authority to appoint commissioners and set budgets. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)

§ 4. [State of the Nation reports; recommendations; convening of National Council]

The Principal Chief shall from time to time, however not less than once a year, give to The Muscogee (Creek) National Council information of the state of The Muscogee (Creek) Nation and recommend for their consideration such measures as he shall judge necessary and expedient. He may on extraordinary occasions convene The Muscogee (Creek) National Council.

Library References

Indians ↻214.
Westlaw Topic No. 209.
C.J.S. Indians § 59.

Notes of Decisions

Extraordinary sessions 1

1. Extraordinary sessions

As one of the specifically enumerated powers in the Muscogee (Creek) Constitution, the Principal Chief may call Extraordinary Sessions of the National Council as set forth in Article V Section 4 of the Constitution. With regards to Extraordinary Sessions, it is the order of this

Court that the parties shall agree upon fair and proper procedures and rules that shall be effectuated by the National Council within three (3) working days, or at such other times as the parties agree to after this Order, that will clarify with specificity the rules regarding the Principal Chiefs agenda for Extraordinary Sessions and his submission thereof. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05-03/05 (Muscogee (Creek) 2006)