ARTICLE VI [LEGISLATIVE BRANCH]

Section

Section headings are editorially supplied.

§ 1. [Districts]

The Muscogee (Creek) Nation, as it geographically appeared in 1900, shall be divided into eight (8) districts corresponding namely with the counties of Creek, Hughes/Seminole, McIntosh, Muskogee, Okfuskee/Seminole, Okmulgee, Tulsa, and Wagoner/Rogers/Mayes, in whole or portion thereof.

Cross References

District elections, eligible voters, see Const. Art. IV, § 8.
Funds for out-of-boundaries citizens, see Title 35, § 5–101 et seq.
Legal residence, elections, see Const. Art. IV, § 9.
Political jurisdiction, see Const. Art. I, § 2.
Tukvpvtce district, see Title 30, § 2–101 et seq.

Notes of Decisions

Reapportionment 1

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1. Reapportionment

[T]he Court finds Petitioner's Application is not ripe for appellate review and that the Court will not exercise original jurisdiction in this case. The Court notes that this action would have been more properly brought before the District Court, where a Special Judge would be appointed to hear it. *Muscogee (Creek) Nation National Council and Trepp v. Muscogee (Creek) Election Board, A.D. Ellis and Muscogee (Creek) Constitutional Convention Commission,* SC 09–10 (Muscogee (Creek) 2009)

This Court has jurisdiction to hear the above styled case in accordance with the Muscogee (Creek) Nation Constitution. This dispute involves the citizens of the Nation and elections as held in accordance with the Muscogee (Creek) Constitution. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

The Muscogee (Creek) Nation Constitution is the Supreme Law of the Muscogee (Creek) Nation and allows for the reapportionment. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

[T]he Muscogee (Creek) Nation's Constitution takes precedence over all laws and ordinances passed by the National Council. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

[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 Election Board of the Muscogee (Creek) Nation is constitutionally responsible for elections in accordance with the Muscogee (Creek) Nation Constitution Article 4 Section 1. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

The Election Board is also responsible for the apportionment of National Council seats. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

This Court finds that Election Board should have promulgated rules and regulations for reapportionment after the 1995 amendments to the Muscogee (Creek) Nation Constitution capping the number of National Council seats available to twenty-six (26). *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, Tukvpvtce 2, Tulsa 7, Wagoner 1, Total 26. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

§ 2. [National Council; Representatives; Speaker]

All legislative power herein shall be vested in the Muscogee (Creek) National Council, which shall consist of one (1) House with two (2) representatives from each district elected. Each eligible voter of the Muscogee (Creek) Nation shall be allowed to vote for each and every National Council Representative. There shall be no district residency requirement for eligible voters. And further that the number of National Council Representatives will be set at a maximum of sixteen (16) members and additional seats may not be added without constitutional amendments.

(a) Each representative shall be elected by a vote of all the eligible voters of the Nation and shall hold office for four (4) years. Beginning with the first election after this Article is effective, there is to be an election for one (1) council representative from each district. These eight (8) seats shall be designated seat B. Those council members currently at mid-term shall serve the remainder of their term or two (2) years. The second election after this Article is effective is to be an election for one (1) council representative from each district. These eight (8) seats shall be designated seat A.

(b) Each representative shall be a legal resident of his/her district for one full calendar year, prior to filing for office and shall be required to be an actual full time resident within that district for the term of office. When the representative ceases to be an actual resident of the district, they disqualify themselves as a representative of that district.

(c) No person shall be a representative who has not attained the age of eighteen (18) and hold full citizenship nor has a felony conviction within the past ten (10) years as of date of filing for candidacy, in a court of competent jurisdiction.

(d) The Muscogee (Creek) National Council shall elect from their numbers a Speaker, who shall preside over the Muscogee (Creek) National Council but shall have no vote unless the National Council be equally divided, and they shall choose a Second Speaker, who shall preside in the absence of the Speaker.

[Amended by NCA 95–37; NCA 95–45; NCA 95–79; NCA 05–151; 2009, [A67].]

Historical and Statutory Notes

2009 Amendments

The 2009 amendment was passed by referendum on Nov. 7, 2009, by a vote of 1,292 to 1,128.

2005 Amendments

The NCA 05–151 amendment was passed by referendum on Feb. 18, 2006, by a vote of 785 to 337.

1995 Amendments

The NCA 95–79 amendment was passed by referendum on Oct. 28, 1995, by a vote of 3,928 to 285.

The NCA 95–45 amendment was passed by referendum on July 22, 1995, by a vote of 1,351 to 261.

The NCA 95–37 amendment was passed by referendum on July 22, 1995, by a vote of 1,336 to 277.

1991 Amendments

The 1991 amendment was passed by referendum on Dec. 7, 1991, by a vote of 3,714 to 486.

Cross References

Full citizenship, see Const. Art. III, § 4.
Speaker, see Title 30, §§ 5–101, 5–102.

Library References

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

Notes of Decisions

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1. Powers—In general

The Court further holds that the receipt of a waiver from sovereign immunity must be obtained from the National Council as a condition precedent to filing suit against the GOAB [Gaming Operations Authority Board]. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

The right of the National Council to provide by law the right to a jury trial in the cases coming before the District Court is not affected by this opinion, for it is an inferior court ordained the National Council. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

It is the prerogative of the National Council to assign the judicial function of fact finding in the district court to trial by jury. The inherent powers of the District Court are also not addressed in this opinion. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

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 sale 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)

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 Coun-

cil, 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)

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)

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)

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)

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)

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)

The type of infringement repeatedly exhibited by the National Council simply cannot continue. It is manipulative, disruptive, and in contradiction to the established law of the Muscogee (Creek) 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. (em-

phasis 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 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)

In a previous case, this Nation's District Court aptly stated, ''Th[e District] Court should be ever hesitant to interfere in the operations of the Executive and Legislative branches.'' *Burden v. Cox*,1 Mvs. L. Rep. 135 (1988). This Court agrees. *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)

[A]ny such nominee should be given reasonable notice of his or her required appearance in front of any gathering of members of the Na-

tional 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)

[A] ''majority approval'' in its most basic interpretation means a simple majority vote of the quorum present as opposed to a super-majority. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

This Court hereby interprets the language of the Constitution to direct the National Counsel, 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 Principal Chief. *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)

[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) National Council*, SC 06–04 (Muscogee (Creek) 2006)

This Court recognizes that some limitation on the number of times a nominee is submitted may be appropriate, but refuses to encroach upon the legislative function of the National Council which must author and pass such laws into effect. However, until such legislation is in place, this Court notes that there is no limit on the number of times a nominee may be resubmitted. *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)

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)

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)

In cases of original jurisdiction such as the instant case, the duty of this Court is to interpret the laws and determine what statutes are constitutional or unconstitutional-it is not the National Council's duty to make such determinations. *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)

The Court agrees that the Plaintiff was entitled to a reasonable notice to appear before and be heard by either a Committee of the National Council, the Planning Session, or the regularly scheduled monthly meeting of the full National Council. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

The very essence of separation of powers is an easy enough concept to grasp: government can best be sustained by dividing the various powers and functions of government among separate and relatively independent governmental entities; no single branch of government is able to exercise complete authority and each is dependent on the other. This autonomy prevents pow-

ers from being concentrated in one branch of government, yet, the independence of each helps keep the others from exceeding their powers. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Muscogee (Creek) Nation has a long history of practicing separation of powers as is apparent in the teachings of some of the earliest declarations of this Court (going on to quote *Muscogee Nation v. Tiger*, 7 Mvs. L. Rep. 8, Volume 10, Page 65, Original Handwritten Volume (October 16, 1885)). *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Though the term ''separation of powers'' is not specifically delineated in the Muscogee (Creek) Constitution, this Court stated in *Beaver v. National Council*, 4 Mvs. L. Rep. 28 (Muscogee (Creek) 1986), ''the Constitution of the Muscogee (Creek) Nation is patterned after the United States Constitution with respect to separation of powers.'' We further expounded on this notion in *Cox v. Kamp*, 4 Mvs. L. Rep. 75 (Muscogee (Creek) 1991) saying that ''each branch of government has special limitations placed on it'' and ''there must be a balance of powers.'' Finally, we also articulated that ''the Muscogee (Creek) Nation Constitution intended to incorporate into it the basic parts of the separation of powers between the three branches of government.'' *Id. Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Often as members of a tribal governing body we must put aside personal agendas, prejudices and biases to work together for the best interest of the Nation. (emphasis in original). *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Also, under the doctrine of separation of powers, the legislative branch is charged with legislating; making laws by which the citizenry abide and the Nation runs. *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)

. . . is an Agreed Journal Entry sufficient enough a document to ''specify the roles'' of two of our three branches of government? As to the latter, this Court thinks not and believes the proposed Agreed Journal Entry sets a dangerous precedent for all future relations between the separate but equal branches of the Muscogee (Creek) Nation. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Muscogee (Creek) Nation Constitution cannot be infringed upon or expounded on simply by words in a superfluous document disguised as an ''agreed order.'' *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

There are defined procedures in place to amend our Constitution if there are deemed to be inadequacies with the delineated responsibilities of the differing branches. *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)

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 National Council shall continue to authorize, approve and fund contracts on behalf of the Muscogee (Creek) Nation except as limited by the Muscogee (Creek) Nation Constitution or by law. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

This Court agrees with and adopts the reasoning of the United States Supreme Court on this issue in *Quinn*,[*Quinn v. U.S.*, 349 U.S. 155, 75 S. Ct. 668, 99 L. Ed. 964, 51 A.L.R.2d 1157 (1955)] which is consistent with this Court's rulings. There is no doubt that the National Council, in order to properly legislate for the Nation, needs additional information from time to time. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

It is incumbent upon, and hereby ordered that the National Council craft rules that safeguard every Muscogee (Creek) Nation citizen or employee, regardless of position, from the contempt powers of the National Council unless a subpoena is specifically issued and due process

is implemented. *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)

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 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)

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).

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).

NCA 88–15 is merely a statutory rewording of NCA 81–15. Within this context, the National Council always has the right to repeal or amend those statutes it creates. *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).

Judicial power is not one of the powers to be exercised by the Muscogee (Creek) National Council. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

The power and authority of this Court will not be decreased nor will this Court be diminished by any other branch of the tribal government by its failure to perform its duties and obligations under the constitution of the Muscogee (Creek) Nation and this Court finds that the Justices of this Court should retain their position and continue to perform the duties of Justice of this Supreme Court until their successors shall be duly qualified. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

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).

Funds which belong to or are owed to the Creek Nation shall not be expended without the consent of a legally constituted Creek national legislature. *Harjo v. Kleppe*, 420 F.Supp. 1110 (1976).

2. —— Legislative powers

The Court further holds that the receipt of a waiver from sovereign immunity must be obtained from the National Council as a condition precedent to filing suit against the GOAB [Gaming Operations Authority Board]. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

The right of the National Council to provide by law the right to a jury trial in the cases coming before the District Court is not affected by this opinion, for it is an inferior court ordained the National Council. *Ellis v. Muscogee (Creek) National Council*, SC 06–07 (Muscogee (Creek) 2007)

It is the prerogative of the National Council to assign the judicial function of fact finding in the district court to trial by jury. The inherent powers of the District Court are also not addressed in this opinion. *Ellis v. Muscogee (Creek) National Council*, SC 06–07 (Muscogee (Creek) 2007)

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 sale 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)

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)

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)

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)

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)

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)

The type of infringement repeatedly exhibited by the National Council simply cannot continue. It is manipulative, disruptive, and in contradiction to the established law of the Muscogee (Creek) 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)

[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)

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)

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)

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)

In cases of original jurisdiction such as the instant case, the duty of this Court is to interpret the laws and determine what statutes are constitutional or unconstitutional-it is not the National Council's duty to make such determinations. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

The Court agrees that the Plaintiff was entitled to a reasonable notice to appear before and be heard by either a Committee of the National Council, the Planning Session, or the regularly

scheduled monthly meeting of the full National Council. *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)

[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)

[A] ''majority approval'' in its most basic interpretation means a simple majority vote of the quorum present as opposed to a super-majority. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

This Court hereby interprets the language of the Constitution to direct the National Counsel, 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 Principal Chief. *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)

[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) National Council*, SC 06–04 (Muscogee (Creek) 2006)

This Court recognizes that some limitation on the number of times a nominee is submitted may be appropriate, but refuses to encroach upon the legislative function of the National Council which must author and pass such laws into effect. However, until such legislation is in place, this Court notes that there is no limit on the number of times a nominee may be resubmitted. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

Also, under the doctrine of separation of powers, the legislative branch is charged with legislating; making laws by which the citizenry abide and the Nation runs. *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)

. . . is an Agreed Journal Entry sufficient enough a document to ''specify the roles'' of two of our three branches of government? As to the latter, this Court thinks not and believes the proposed Agreed Journal Entry sets a dangerous precedent for all future relations between the separate but equal branches of the Muscogee (Creek) Nation. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Muscogee (Creek) Nation Constitution cannot be infringed upon or expounded on simply by words in a superfluous document disguised as an ''agreed order.'' *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)

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)

The National Council shall continue to authorize, approve and fund contracts on behalf of the Muscogee (Creek) Nation except as limited

by the Muscogee (Creek) Nation Constitution or by law. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

This Court agrees with and adopts the reasoning of the United States Supreme Court on this issue in *Quinn*,[*Quinn v. U.S.*, 349 U.S. 155, 75 S. Ct. 668, 99 L. Ed. 964, 51 A.L.R.2d 1157 (1955)]

which is consistent with this Court's rulings. There is no doubt that the National Council, in order to properly legislate for the Nation, needs additional information from time to time. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

It is incumbent upon, and hereby ordered that the National Council craft rules that safeguard every Muscogee (Creek) Nation citizen or employee, regardless of position, from the contempt powers of the National Council unless a subpoena is specifically issued and due process is implemented. *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 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)

The power and authority of this Court will not be decreased nor will this Court be diminished by any other branch of the tribal government by its failure to perform its duties and obligations under the constitution of the Muscogee (Creek) Nation and this Court finds that the Justices of this Court should retain their position and continue to perform the duties of Justice of this Supreme Court until their successors shall be duly qualified. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

For nearly two centuries now, we have recognized Indian tribes as ''distinct, independent political communities,'' *Worcester v. Georgia*, 6 Pet. 515 (1832), qualified to exercise many of the powers and prerogatives of self-government.(internal cite omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As part of their residual sovereignty, tribes retain power to legislate and to tax activities on the reservation, including certain activities by nonmembers. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As we explained in *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978), the tribes have, by virtue of their incorporation into the American republic, lost ''the right of governing . . . person[s] within their limits except themselves.'' (emphasis and internal quotation marks omitted). This general rule restricts tribal authority over nonmember activities taking place on the reservation, and is particularly strong when the nonmember's activity occurs on land owned in fee simple by non-Indians—what we have called ''non-Indian fee land.'' (quoting *Strate v. A–1 Contractors*, 520 U.S. 438, 446 (1997)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[w]hen the tribe or tribal members convey a parcel of fee land *''to non-Indians*, [the tribe] loses any former right of absolute and exclusive use and occupation of the conveyed lands.'' (quoting *South Dakota v. Bourland*, 508 U.S. 679 (1993)) (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As a general rule, then, ''the tribe has no authority itself, by way of tribal ordinance or actions in the tribal courts, to regulate the use of fee land.'' (quoting *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U.S. 408 (1989)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have recognized two exceptions to this principle, circumstances in which tribes may exercise ''civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.'' First, ''[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other

arrangements.'' Second, a tribe may exercise ''civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) (internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

By their terms, the exceptions [announced in *Montana v. United States*, 450 U.S. 544 (1981)] concern regulation of ''the *activities* of nonmembers'' or ''the *conduct* of non-Indians on fee land.'' (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

The burden rests on the tribe to establish one of the exceptions to *Montana*'s [*Montana v. United States*, 450 U.S. 544 (1981)] general rule that would allow an extension of tribal authority to regulate nonmembers on non-Indian fee land. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Montana [*Montana v. United States*, 450 U.S. 544 (1981)] does not permit Indian tribes to regulate the sale of non-Indian fee land. *Montana* and its progeny permit tribal regulation of nonmember *conduct* inside the reservation that implicates the tribe's sovereign interests. *Montana* expressly limits its first exception to the ''activities of nonmembers,'' allowing these to be regulated to the extent necessary ''to protect tribal self-government [and] to control internal relations.'' *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

We have upheld as within the tribe's sovereign authority the imposition of a severance tax on natural resources removed by nonmembers from tribal land. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982). We have approved tribal taxes imposed on leasehold interests held in tribal lands, as well as sales taxes imposed on nonmember businesses within the reservation. *Kerr-McGee Corp*. v. *Navajo Tribe*, 471 U.S. 195 (1985). We have similarly approved licensing requirements for hunting and fishing on tribal land. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983)(internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Put another way, certain forms of nonmember behavior, even on non-Indian fee land, may sufficiently affect the tribe as to justify tribal oversight. While tribes generally have no interest in regulating the conduct of nonmembers, then, they may regulate nonmember behavior that implicates tribal governance and internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

The power to tax certain nonmember activity can also be justified as ''a necessary instrument of self-government and territorial management'' insofar as taxation ''enables a tribal government to raise revenues for its essential services,'' to pay its employees, to provide police protection, and in general to carry out the functions that keep peace and order (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982)) (internal quotes omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

By definition, fee land owned by nonmembers has already been removed from the tribe's immediate control. [quoting *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)] It has already been alienated from the tribal trust. The tribe cannot justify regulation of such land's sale by reference to its power to superintend tribal land, then, because non-Indian fee parcels have ceased to *be* tribal land. (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

[t]he key point is that any threat to the tribe's sovereign interests flows from changed uses or nonmember activities, rather than from the mere fact of resale. The tribe is able fully to vindicate its sovereign interests in protecting its members and preserving tribal self-government by regulating nonmember *activity* on the land, within the limits set forth in our cases. The tribe has no independent interest in restraining alienation of the land itself, and thus, no authority to do so. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Not only is regulation of fee land sale beyond the tribe's sovereign powers, it runs the risk of subjecting nonmembers to tribal regulatory authority without commensurate consent. Tribal sovereignty, it should be remembered, is ''a sovereignty outside the basic structure of the Constitution.'' (quoting *United States v. Lara*, 541 U.S. 193 (2004)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

[n]onmembers have no part in tribal government—they have no say in the laws and regulations that govern tribal territory. Consequently, those laws and regulations may be fairly imposed on nonmembers only if the nonmember has consented, either expressly or by his actions. Even then, the regulation must stem from the tribe's inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

[u]nder our Indian tax immunity cases, the ''who'' and the ''where'' of the challenged tax have significant consequences. We have determined that ''[t]he initial and frequently dispositive question in Indian tax cases . . . is *who* bears the legal incidence of [the] tax,'' and that the States are categorically barred from placing the legal incidence of an excise tax *''on a tribe or on tribal members* for sales made *inside Indian country''* without congressional authorization (emphasis in original)(quoting *Oklahoma*

Tax Comm'n v. Chickasaw Nation, 515 U.S. 450 (1995)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

We have applied the balancing test articulated in *Bracker* [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] only where ''the legal incidence of the tax fell on a nontribal entity engaged in a transaction with tribes or tribal members on the reservation.'' (internal citation omitted)(quoting *Arizona Dept. of Revenue v. Blaze Constr. Co.*, 526 U.S. 32 (1999)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

The *Bracker* interest-balancing test has never been applied where, as here, the State asserts its taxing authority over non-Indians off the reservation. And although we have never addressed this precise issue, our Indian tax immunity cases counsel against such an application. [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

Limiting the interest-balancing test exclusively to *on-reservation* transactions between a nontribal entity and a tribe or tribal member is consistent with our unique Indian tax immunity jurisprudence. We have explained that this jurisprudence relies ''heavily on the doctrine of tribal sovereignty . . . which historically gave state law 'no role to play' within a tribe's territorial boundaries.'' (emphasis in original, quoting *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

If a State may apply a nondiscriminatory tax to Indians who have gone beyond the boundaries of the reservation, then it follows that it may apply a nondiscriminatory tax where, as here, the tax is imposed on non-Indians as a result of an off-reservation transaction. *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

[i]n *Duro v. Reina*, [*Duro v. Reina*, 495 U.S. 676 (1990)], this Court had held that a tribe no longer possessed *inherent or sovereign authority* to prosecute a ''nonmember Indian.'' But it pointed out that, soon after this Court decided *Duro*, Congress enacted new legislation specifically authorizing a tribe to prosecute Indian members of a different tribe. [Act of Oct. 28, 1991, 105 Stat. 646]. That new statute, in permitting a tribe to bring certain tribal prosecutions against nonmember Indians, does not purport to delegate the Federal Government's own *federal* power. Rather, it enlarges the *tribes'* own ''powers of self-government'' to include ''the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over *all* Indians,'' including nonmembers. 25 U.S.C. § 1301(2) (emphasis added in original). *U.S. v. Lara*, 541 U.S. 193 (2004)

We assume, . . . that Lara's double jeopardy claim turns on the answer to the ''dual sovereignty'' question. What is ''the source of [the] power to punish'' nonmember Indian offenders, ''inherent *tribal* sovereignty'' or delegated *federal* authority? [quoting *United States v. Wheeler*, 435 U. S. 313 (1978)]. We also believe that Congress intended the former answer. The statute [Act of Oct. 28, 1991, 105 Stat. 646] says that it ''recognize[s] and affirm[s]'' in each tribe the *''inherent'' tribal* power (not delegated federal power) to prosecute nonmember Indians for misdemeanors. (emphasis added in original, internal cites omitted) *U.S. v. Lara*, 541 U.S. 193 (2004)

The ''central function of the Indian Commerce Clause,'' we have said, ''is to provide Congress with plenary power to legislate in the field of Indian affairs.'' (quoting *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989)) *U.S. v. Lara*, 541 U.S. 193 (2004)

We recognize that in 1871 Congress ended the practice of entering into treaties with the Indian tribes. 25 U.S.C. § 71. But the statute saved existing treaties from being ''invalidated or impaired,'' and this Court has explicitly stated that the statute ''in no way affected Congress' plenary powers to legislate on problems of Indians,''(quoting *Antoine v. Washington*, 420 U.S. 194 (1975)) *U.S. v. Lara*, 541 U.S. 193 (2004)

Congress, with this Court's approval, has interpreted the Constitution's ''plenary'' grants of power as authorizing it to enact legislation that both restricts and, in turn, relaxes those restrictions on tribal sovereign authority. *U.S. v. Lara*, 541 U.S. 193 (2004)

Congress has also granted tribes greater autonomy in their inherent law enforcement authority (in respect to tribal members) by increasing the maximum criminal penalties tribal courts may impose. § 4217, 100 Stat. 3207–146, codified at 25 U.S.C. § 1302(7) (raising the maximum from ''a term of six months and a fine of $500'' to ''a term of one year and a fine of $5,000''). *U.S. v. Lara*, 541 U.S. 193 (2004)

[o]ur conclusion that Congress has the power to relax the restrictions imposed by the political branches on the tribes' inherent prosecutorial authority is consistent with our earlier cases. *U.S. v. Lara*, 541 U.S. 193 (2004)

Wheeler, *Oliphant*, and *Duro*, [*United States v. Wheeler*, 435 U.S. 313 (1978); *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *Duro v. Reina*, 495 U.S. 676 (1990)] then, are not determinative because Congress has enacted a new statute, relaxing restrictions on the bounds of the inherent tribal authority that the United States recognizes. And that fact makes all the difference. *U.S. v. Lara*, 541 U.S. 193 (2004)

[t]he Constitution authorizes Congress to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians. We hold that Congress exercised that authority in writing this statute [Act of Oct. 28, 1991, 105 Stat. 646]. *U.S. v. Lara*, 541 U.S. 193 (2004)

The Court has often said that ''every clause and word of a statute'' should, ''if possible,'' be

given ''effect.'' (quoting *United States v. Menasche*, 348 U.S. 528 (1955)) *Chickasaw Nation v. United States*, 534 U.S. 84 (2001)

The Court has also said that ''statutes are to be construed liberally in favor of the Indians with ambiguous provisions interpreted to their benefit.'' (quoting *Montana v. Blackfeet Tribe*, 471 U.S. 759 (1985)) *Chickasaw Nation v. United States*, 534 U.S. 84 (2001)

[t]he canon that assumes Congress intends its statutes to benefit the tribes is offset by the canon that warns us against interpreting federal statutes as providing tax exemptions unless those exemptions are clearly expressed. See *United States v. Wells Fargo Bank*, 485 U.S. 351 (1988) *Chickasaw Nation v. United States*, 534 U.S. 84 (2001)

Nor can one say that the pro-Indian canon is inevitably stronger–particularly where the interpretation of a congressional statute rather than an Indian treaty is at issue. This Court's earlier cases are too individualized, involving too many different kinds of legal circumstances, to warrant any such assessment about the two canons' relative strength. (internal cite omitted) *Chickasaw Nation v. United States*, 534 U.S. 84 (2001)

Indian tribes' regulatory authority over nonmembers is governed by the principles set forth in *Montana v. United States*, 450 U.S. 544 (1981) *Nevada v. Hicks*, 533 U.S. 353 (2001)

Where nonmembers are concerned, the ''exercise of tribal power *beyond what is necessary to protect tribal self-government or to control internal relations* is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation.'' (emphasis in original, quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

[T]hat Indians have ''the right . . . to make their own laws and be ruled by them,'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

Tribal assertion of regulatory authority over nonmembers must be connected to that right of the Indians to make their own laws and be governed by them. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border. Though tribes are often referred to as ''sovereign'' entities, it was ''long ago'' that ''the Court departed from Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries.'' (quoting both *Worcester v. Georgia*, 6 Pet. 515, 561 (1832), *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 141 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

That is not to say that States may exert the same degree of regulatory authority within a reservation as they do without. To the contrary, the principle that Indians have the right to make their own laws and be governed by them requires ''an accommodation between the interests of the Tribes and the Federal Government, on the one hand, and those of the State, on the other.''(quoting *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134, 156 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 141 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

When, however, state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land. *Nevada v. Hicks*, 533 U.S. 353 (2001)

It is also well established in our precedent that States have criminal jurisdiction over reservation Indians for crimes committed (as was the alleged poaching in this case) off the reservation. (quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

We conclude . . ., that tribal authority to regulate state officers in executing process related to the violation, off reservation, of state laws is not essential to tribal self-government or internal relations–to ''the right to make laws and be ruled by them.'' *Nevada v. Hicks*, 533 U.S. 353 (2001)

An Indian tribe's sovereign power to tax–whatever its derivation–reaches no further than tribal land. *Atkinson Trading Company v. Shirley, Jr. et al..*, 532 U.S. 645 (2001)

. . . we think the generalized availability of tribal services patently insufficient to sustain the Tribe's civil authority over nonmembers on non-Indian fee land. The consensual relationship must stem from ''commercial dealing, contracts, leases, or other arrangements,'' *Montana* [450 U.S. 544 (1981)], and a nonmember's actual or potential receipt of tribal police, fire, and medical services does not create the requisite connection. *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Congress has authorized the Commissioner of Indian Affairs ''to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians.'' [25 U.S.C. § 261] *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Irrespective of the percentage of non-Indian fee land within a reservation, *Montana*'s [450 U.S. 544 (1981)], second exception grants Indian tribes nothing ''beyond what is necessary to protect tribal self-government or to control internal relations.'' (quoting from *Strate v. A–1*

Contractors, 530 US 438 (1997)) *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

the Court explained, ''the inherent sovereign powers of an Indian tribe''—those powers a tribe enjoys apart from express provision by treaty or statute—''do not extend to the activities of nonmembers of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non Indians on their reservations, even on non Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Respect for tribal self government made it appropriate ''to give the tribal court a full opportunity to determine its own jurisdiction.'' (quoting *Iowa Mutual. Insurance. Co. v. LaPlante*, 480 U.S. 9 (1987)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Tribal authority over the activities of non Indians on reservation lands is an important part of tribal sovereignty. Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute.... ''In the absence of any indication that Congress intended the diversity statute to limit the jurisdiction of the tribal courts, we decline petitioner's invitation to hold that tribal sovereignty can be impaired in this fashion.'' (quoting *Iowa Mutual. Insurance. Co. v. LaPlante,* 480 U.S. 9 (1987)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[t]hat state courts may not exercise jurisdiction over disputes arising out of on reservation conduct—even over matters involving non Indians—if doing so would ''infring[e] on the right of reservation Indians to make their own laws and be ruled by them.'' (quoting *Fisher v. District Court of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382 (1976)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Recognizing that our precedent has been variously interpreted, we reiterate that *National Farmers* and *Iowa Mutual* [*National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985), and *Iowa Mutual. Insurance. Co. v. LaPlante*, 480 U.S. 9 (1987)] enunciate only an exhaustion requirement, a ''prudential rule,'', based on comity. These decisions do not expand or stand apart from *Montana*'s instruction on ''the inherent sovereign powers of an Indian tribe.'' [*Montana v. United States*, 450 U.S. 544 (1981)] (internal citations omitted) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

While *Montana* immediately involved regulatory authority, the Court broadly addressed the concept of ''inherent sovereignty.'' Regarding activity on non Indian fee land within a reservation, *Montana* delineated—in a main rule and exceptions—the bounds of the power tribes retain to exercise ''forms of civil jurisdiction over non Indians.'' As to nonmembers, we hold, a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction. Absent congressional direction enlarging tribal court jurisdiction, we adhere to that understanding. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Subject to controlling provisions in treaties and statutes, and the two exceptions identified in *Montana*, *[Montana v. United States*, 450 U.S. 544 (1981)] the civil authority of Indian tribes and their courts with respect to non Indian fee lands generally ''do[es] not extend to the activities of nonmembers of the tribe.'' *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Read in isolation, the *Montana* [*Montana v. United States*, 450 U.S. 544 (1981)] rule's second exception can be misperceived. Key to its proper application, however, is the Court's preface: ''Indian tribes retain their inherent power [to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members.... But [a tribe's inherent power does not reach] beyond what is necessary to protect tribal self government or to control internal relations.'' (quoting *Montana*) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

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).

NCA 88–15 is merely a statutory rewording of NCA 81–15. Within this context, the National Council always has the right to repeal or amend those statutes it creates. *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).

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

Constitution of Muscogee (Creek) Nation authorizes National Council to retain counsel, and to do so without BIA approval pursuant to 25 U.S.C. section 81 where counsel's services will not be rendered relative to tribal land. *Childers v. Bryant*, 1 Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1989).

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).

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).

3. —— Elected Legislative or Legislative/Executive branch, 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 sale 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)

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)

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)

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)

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)

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)

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)

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)

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 ''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)

In a previous case, this Nation's District Court aptly stated, ''Th[e District] Court should be ever hesitant to interfere in the operations of the Executive and Legislative branches.'' *Burden v. Cox*,1 Mvs. L. Rep. 135 (1988). This Court agrees. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

The very essence of separation of powers is an easy enough concept to grasp: government can best be sustained by dividing the various powers and functions of government among separate and relatively independent governmental entities; no single branch of government is able to exercise complete authority and each is dependent on the other. This autonomy prevents powers from being concentrated in one branch of government, yet, the independence of each helps keep the others from exceeding their powers. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Muscogee (Creek) Nation has a long history of practicing separation of powers as is apparent in the teachings of some of the earliest declarations of this Court (going on to quote *Muscogee Nation v. Tiger*, 7 Mvs. L. Rep. 8, Volume 10, Page 65, Original Handwritten Volume (October 16, 1885)). *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Though the term ''separation of powers'' is not specifically delineated in the Muscogee (Creek) Constitution, this Court stated in *Beaver v. National Council*, 4 Mvs. L. Rep. 28 (Muscogee (Creek) 1986), ''the Constitution of the Muscogee (Creek) Nation is patterned after the United States Constitution with respect to separation of powers.'' We further expounded on this notion in *Cox v. Kamp*, 4 Mvs. L. Rep. 75 (Muscogee (Creek) 1991) saying that ''each branch of government has special limitations placed on it'' and ''there must be a balance of powers.'' Finally, we also articulated that ''the Muscogee (Creek) Nation Constitution intended to incorporate into it the basic parts of the separation of powers between the three branches of government.'' *Id. Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Often as members of a tribal governing body we must put aside personal agendas, prejudices and biases to work together for the best interest of the Nation. (emphasis in original). *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Also, under the doctrine of separation of powers, the legislative branch is charged with legislating; making laws by which the citizenry abide and the Nation runs. *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)

. . . is an Agreed Journal Entry sufficient enough a document to ''specify the roles'' of two of our three branches of government? As to the latter, this Court thinks not and believes the proposed Agreed Journal Entry sets a dangerous precedent for all future relations between the separate but equal branches of the Muscogee (Creek) Nation. *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)

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)

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)

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 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)

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).

NCA 88–15 is merely a statutory rewording of NCA 81–15. Within this context, the National Council always has the right to repeal or amend those statutes it creates. *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).

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) 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).

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).

Muscogee (Creek) Const. Art. V, section 3 calls for involvement of legislative branch in expenditure of funds belonging to Nation. *Preferred Mgmt Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

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

Article IV, section 1 of Muscogee (Creek) Nation Constitution authorizes National Council to enact ordinances regulating conduct of tribal elections; tribal Election Board must abide by such ordinances. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Where members of Muscogee (Creek) Nation are notified by mail of upcoming elections and clearly instructed to request absentee ballot should they desire to vote, tribal ordinance requiring such a request by a member in order to cast absentee ballot imposes no unconstitutional burden of voters. *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).

While Article VI, section 4 of Constitution of Muscogee (Creek) Nation empowers National Council to judge qualifications of its members, or penalize or expel a member, and Article VIII, section 2 provides for recall petitions, courts of Muscogee (Creek) Nation lack jurisdiction to place member of National Council on involuntary ''absentee leave''. *O.C.M.A v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Muscogee (Creek) National Council may legislate concerning conflicts of interests. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

4. —— Tribal or National Council, powers

Where a statute states in plain language on a particular matter, the Court will not place a different meaning on the words. *Tiger v. Muscogee (Creek) Nation Election Board*, et al. . . SC 07–04 (Muscogee (Creek) 2008)

The Court further holds that the receipt of a waiver from sovereign immunity must be obtained from the National Council as a condition precedent to filing suit against the GOAB [Gaming Operations Authority Board]. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

[T]he Muscogee (Creek) Nation's Constitution takes precedence over all laws and ordinances passed by the National Council. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

The right of the National Council to provide by law the right to a jury trial in the cases coming before the District Court is not affected by this opinion, for it is an inferior court ordained the National Council. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

It is the prerogative of the National Council to assign the judicial function of fact finding in the district court to trial by jury. The inherent powers of the District Court are also not addressed in this opinion. *Ellis v. Muscogee (Creek) 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 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)

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)

[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)

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)

The National Council shall continue to authorize, approve and fund contracts on behalf of the Muscogee (Creek) Nation except as limited by the Muscogee (Creek) Nation Constitution or by law. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

This Court holds that Title 30, Sections 3–104, 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)

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)

This Court hereby interprets the language of the Constitution to direct the National Counsel, 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 Principal Chief. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

[A] ''majority approval'' in its most basic interpretation means a simple majority vote of

the quorum present as opposed to a supermajority. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

Title 21, Section 4–103.C.l.h (which limits the Gaming Authority Board's authority to sue or be sued in any tribal, state or federal court), states that a litigant wishing to sue the Gaming Authority Board must first obtain a resolution from the National Council waiving immunity to suit. This statute is of such direct relevance to the instant case, that no construction with other statutes is necessary. *Glass v. Muscogee (Creek) Nation Tulsa Casino*, SC 05–04 (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).

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).

NCA 88–15 is merely a statutory rewording of NCA 81–15. Within this context, the National Council always has the right to repeal or amend those statutes it creates. *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).

Courts inability to hear interlocutory appeal is bound by NC 82–30 § 270 (B) unless the legislature chooses to change its limitations. *Health Board v. Skaggs and Health Board v. Taylor*, 5 Okla. Trib. 442 (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) 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).

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

Although Muscogee (Creek) National Council has standing to bring actions before tribal courts, only in rare cases will such actions be entertained. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

Muscogee (Creek) Const. Art. V, section 3 calls for involvement of legislative branch in expenditure of funds belonging to Nation. *Preferred Mgmt Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

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

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

Muscogee (Creek) Nation Ordinance NCA 89–07, which directs Nation's executive branch to publish 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).

Constitution of Muscogee (Creek) Nation authorizes National Council to retain counsel, and to do so without BIA approval pursuant to 25 U.S.C. section 81 where counsel's services will not be rendered relative to tribal land. *Childers v. Bryant*, 1 Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1989).

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).

Article IV, section 1 of Muscogee (Creek) Nation Constitution authorizes National Council to

enact ordinances regulating conduct of tribal elections; tribal Election Board must abide by such ordinances. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Where members of Muscogee (Creek) Nation are notified by mail of upcoming elections and clearly instructed to request absentee ballot should they desire to vote, tribal ordinance requiring such a request by a member in order to cast absentee ballot imposes no unconstitutional burden of voters. *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).

While Article VI, section 4 of Constitution of Muscogee (Creek) Nation empowers National Council to judge qualifications of its members, or penalize or expel a member, and Article VIII, section 2 provides for recall petitions, courts of Muscogee (Creek) Nation lack jurisdiction to place member of National Council on involuntary ''absentee leave.'' *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Muscogee (Creek) National Council may legislate concerning conflicts of interests. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (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 (Muscogee (Cr.) D.Ct. 1988).

The power and authority of this Court will not be decreased nor will this Court be diminished by any other branch of the tribal government by its failure to perform its duties and obligations under the constitution of the Muscogee (Creek) Nation and this Court finds that the Justices of this Court should retain their position and continue to perform the duties of Justice of this Supreme Court until their successors shall be duly qualified. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

For nearly two centuries now, we have recognized Indian tribes as ''distinct, independent political communities,'' *Worcester v. Georgia*, 6 Pet. 515 (1832), qualified to exercise many of the powers and prerogatives of self-government.(internal cite omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As part of their residual sovereignty, tribes retain power to legislate and to tax activities on the reservation, including certain activities by nonmembers. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As we explained in *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978), the tribes have, by virtue of their incorporation into the American republic, lost ''the right of governing . . . person[s] within their limits except themselves.'' (emphasis and internal quotation marks omitted). This general rule restricts tribal authority over nonmember activities taking place on the reservation, and is particularly strong when the nonmember's activity occurs on land owned in fee simple by non-Indians—what we have called ''non-Indian fee land.'' (quoting *Strate v. A–1 Contractors*, 520 U.S. 438, 446 (1997)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As a general rule, then, ''the tribe has no authority itself, by way of tribal ordinance or actions in the tribal courts, to regulate the use of fee land.'' (quoting *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U.S. 408 (1989)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have recognized two exceptions to this principle, circumstances in which tribes may exercise ''civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.'' First, ''[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.'' Second, a tribe may exercise ''civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) (internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The burden rests on the tribe to establish one of the exceptions to *Montana*'s [*Montana v. United States*, 450 U.S. 544 (1981)] general rule that would allow an extension of tribal authority to regulate nonmembers on non-Indian fee land. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Montana [*Montana v. United States*, 450 U.S. 544 (1981)] does not permit Indian tribes to regulate the sale of non-Indian fee land. *Montana* and its progeny permit tribal regulation of nonmember *conduct* inside the reservation that implicates the tribe's sovereign interests. *Montana* expressly limits its first exception to the ''activities of nonmembers,'' allowing these to be regulated to the extent necessary ''to protect tribal self-government [and] to control internal

relations.'' *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have upheld as within the tribe's sovereign authority the imposition of a severance tax on natural resources removed by nonmembers from tribal land. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982). We have approved tribal taxes imposed on leasehold interests held in tribal lands, as well as sales taxes imposed on nonmember businesses within the reservation. *Kerr-McGee Corp*. v. *Navajo Tribe*, 471 U.S. 195 (1985). We have similarly approved licensing requirements for hunting and fishing on tribal land. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983)(internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Put another way, certain forms of nonmember behavior, even on non-Indian fee land, may sufficiently affect the tribe as to justify tribal oversight. While tribes generally have no interest in regulating the conduct of nonmembers, then, they may regulate nonmember behavior that implicates tribal governance and internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The power to tax certain nonmember activity can also be justified as ''a necessary instrument of self-government and territorial management'' insofar as taxation ''enables a tribal government to raise revenues for its essential services,'' to pay its employees, to provide police protection, and in general to carry out the functions that keep peace and order (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982)) (internal quotes omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[t]he key point is that any threat to the tribe's sovereign interests flows from changed uses or nonmember activities, rather than from the mere fact of resale. The tribe is able fully to vindicate its sovereign interests in protecting its members and preserving tribal self-government by regulating nonmember *activity* on the land, within the limits set forth in our cases. The tribe has no independent interest in restraining alienation of the land itself, and thus, no authority to do so. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Not only is regulation of fee land sale beyond the tribe's sovereign powers, it runs the risk of subjecting nonmembers to tribal regulatory authority without commensurate consent. Tribal sovereignty, it should be remembered, is ''a sovereignty outside the basic structure of the Constitution.'' (quoting *United States v. Lara*, 541 U.S. 193 (2004)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[n]onmembers have no part in tribal government—they have no say in the laws and regulations that govern tribal territory. Consequently, those laws and regulations may be fairly imposed on nonmembers only if the nonmember has consented, either expressly or by his actions. Even then, the regulation must stem from the tribe's inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[u]nder our Indian tax immunity cases, the ''who'' and the ''where'' of the challenged tax have significant consequences. We have determined that ''[t]he initial and frequently dispositive question in Indian tax cases . . . is *who* bears the legal incidence of [the] tax,'' and that the States are categorically barred from placing the legal incidence of an excise tax *''on a tribe or on tribal members* for sales made *inside Indian country''* without congressional authorization (emphasis in original)(quoting *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

The *Bracker* interest-balancing test has never been applied where, as here, the State asserts its taxing authority over non-Indians off the reservation. And although we have never addressed this precise issue, our Indian tax immunity cases counsel against such an application. [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

If a State may apply a nondiscriminatory tax to Indians who have gone beyond the boundaries of the reservation, then it follows that it may apply a nondiscriminatory tax where, as here, the tax is imposed on non-Indians as a result of an off-reservation transaction. *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

The ''central function of the Indian Commerce Clause,'' we have said, ''is to provide Congress with plenary power to legislate in the field of Indian affairs.'' (quoting *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989)) *U.S. v. Lara*, 541 U.S. 193 (2004)

We recognize that in 1871 Congress ended the practice of entering into treaties with the Indian tribes. 25 U.S.C. § 71. But the statute saved existing treaties from being ''invalidated or impaired,'' and this Court has explicitly stated that the statute ''in no way affected Congress' plenary powers to legislate on problems of Indians,''(quoting *Antoine v. Washington*, 420 U.S. 194 (1975)) *U.S. v. Lara*, 541 U.S. 193 (2004)

Congress, with this Court's approval, has interpreted the Constitution's ''plenary'' grants of power as authorizing it to enact legislation that both restricts and, in turn, relaxes those restrictions on tribal sovereign authority. *U.S. v. Lara*, 541 U.S. 193 (2004)

Congress has also granted tribes greater autonomy in their inherent law enforcement authority (in respect to tribal members) by in-

creasing the maximum criminal penalties tribal courts may impose. § 4217, 100 Stat. 3207–146, codified at 25 U.S.C. § 1302(7) (raising the maximum from ''a term of six months and a fine of $500'' to ''a term of one year and a fine of $5,000''). *U.S. v. Lara*, 541 U.S. 193 (2004)

[o]ur conclusion that Congress has the power to relax the restrictions imposed by the political branches on the tribes' inherent prosecutorial authority is consistent with our earlier cases. *U.S. v. Lara*, 541 U.S. 193 (2004)

Wheeler, Oliphant, and *Duro,* [*United States v. Wheeler,* 435 U.S. 313 (1978); *Oliphant v. Suquamish Tribe,* 435 U.S. 191 (1978); *Duro v. Reina,* 495 U.S. 676 (1990)] then, are not determinative because Congress has enacted a new statute, relaxing restrictions on the bounds of the inherent tribal authority that the United States recognizes. And that fact makes all the difference. *U.S. v. Lara*, 541 U.S. 193 (2004)

[t]he Constitution authorizes Congress to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians. We hold that Congress exercised that authority in writing this statute [Act of Oct. 28, 1991, 105 Stat. 646]. *U.S. v. Lara,* 541 U.S. 193 (2004)

The Court has often said that ''every clause and word of a statute'' should, ''if possible,'' be given ''effect.'' (quoting *United States v. Menasche,* 348 U.S. 528 (1955)) *Chickasaw Nation v. United States,* 534 U.S. 84 (2001)

The Court has also said that ''statutes are to be construed liberally in favor of the Indians with ambiguous provisions interpreted to their benefit.'' (quoting *Montana v. Blackfeet Tribe,* 471 U.S. 759 (1985)) *Chickasaw Nation v. United States,* 534 U.S. 84 (2001)

[t]he canon that assumes Congress intends its statutes to benefit the tribes is offset by the canon that warns us against interpreting federal statutes as providing tax exemptions unless those exemptions are clearly expressed. See *United States v. Wells Fargo Bank,* 485 U.S. 351 (1988) *Chickasaw Nation v. United States,* 534 U.S. 84 (2001)

Nor can one say that the pro-Indian canon is inevitably stronger–particularly where the interpretation of a congressional statute rather than an Indian treaty is at issue. This Court's earlier cases are too individualized, involving too many different kinds of legal circumstances, to warrant any such assessment about the two canons' relative strength. (internal cite omitted) *Chickasaw Nation v. United States,* 534 U.S. 84 (2001)

Indian tribes' regulatory authority over nonmembers is governed by the principles set forth in *Montana v. United States,* 450 U.S. 544 (1981) *Nevada v. Hicks,* 533 U.S. 353 (2001)

Where nonmembers are concerned, the ''exercise of tribal power *beyond what is necessary to protect tribal self-government or to control internal relations* is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation.'' (emphasis in original, quoting *Montana v. United States,* 450 U.S. 544 (1981)) *Nevada v. Hicks,* 533 U.S. 353 (2001)

[T]hat Indians have ''the right . . . to make their own laws and be ruled by them,'' (quoting *Montana v. United States,* 450 U.S. 544 (1981)) *Nevada v. Hicks,* 533 U.S. 353 (2001)

Tribal assertion of regulatory authority over nonmembers must be connected to that right of the Indians to make their own laws and be governed by them. *Nevada v. Hicks,* 533 U.S. 353 (2001)

Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border. Though tribes are often referred to as ''sovereign'' entities, it was ''long ago'' that ''the Court departed from Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries.'' (quoting both *Worcester v. Georgia,* 6 Pet. 515, 561 (1832), *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 141 (1980)) *Nevada v. Hicks,* 533 U.S. 353 (2001)

That is not to say that States may exert the same degree of regulatory authority within a reservation as they do without. To the contrary, the principle that Indians have the right to make their own laws and be governed by them requires ''an accommodation between the interests of the Tribes and the Federal Government, on the one hand, and those of the State, on the other.''(quoting *Washington v. Confederated Tribes of Colville Reservation,* 447 U.S. 134, 156 (1980)) *Nevada v. Hicks,* 533 U.S. 353 (2001)

When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest (quoting *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 141 (1980)) *Nevada v. Hicks,* 533 U.S. 353 (2001)

When, however, state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land. *Nevada v. Hicks,* 533 U.S. 353 (2001)

It is also well established in our precedent that States have criminal jurisdiction over reservation Indians for crimes committed (as was the alleged poaching in this case) off the reservation. (quoting *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973)) *Nevada v. Hicks,* 533 U.S. 353 (2001)

We conclude . . . , that tribal authority to regulate state officers in executing process related to the violation, off reservation, of state laws is not essential to tribal self-government or internal relations–to ''the right to make laws and be ruled by them.'' *Nevada v. Hicks,* 533 U.S. 353 (2001)

An Indian tribe's sovereign power to tax–whatever its derivation–reaches no further than tribal land. *Atkinson Trading Company v. Shirley, Jr. et al..*, 532 U.S. 645 (2001)

. . . we think the generalized availability of tribal services patently insufficient to sustain the Tribe's civil authority over nonmembers on non-Indian fee land. The consensual relationship must stem from ''commercial dealing, contracts, leases, or other arrangements,'' *Montana* [450 U.S. 544 (1981)], and a nonmember's actual or potential receipt of tribal police, fire, and medical services does not create the requisite connection. *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Congress has authorized the Commissioner of Indian Affairs ''to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians.'' [25 U.S.C. § 261] *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Irrespective of the percentage of non-Indian fee land within a reservation, *Montana*'s [450 U.S. 544 (1981)], second exception grants Indian tribes nothing ''beyond what is necessary to protect tribal self-government or to control internal relations.'' (quoting from *Strate v. A–1 Contractors*, 530 US 438 (1997)) *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

the Court explained, ''the inherent sovereign powers of an Indian tribe''—those powers a tribe enjoys apart from express provision by treaty or statute—''do not extend to the activities of nonmembers of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non Indians on their reservations, even on non Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Respect for tribal self government made it appropriate ''to give the tribal court a full opportunity to determine its own jurisdiction.'' (quoting *Iowa Mutual. Insurance. Co. v. LaPlante*, 480 U.S. 9 (1987)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Tribal authority over the activities of non Indians on reservation lands is an important part of tribal sovereignty. Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute. . . . ''In the absence of any indication that Congress intended the diversity statute to limit the jurisdiction of the tribal courts, we decline petitioner's invitation to hold that tribal sovereignty can be impaired in this fashion.'' (quoting *Iowa Mutual. Insurance. Co. v. LaPlante*, 480 U.S. 9 (1987)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[t]hat state courts may not exercise jurisdiction over disputes arising out of on reservation conduct—even over matters involving non Indians—if doing so would ''infring[e] on the right of reservation Indians to make their own laws and be ruled by them.'' (quoting *Fisher v. District Court of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382 (1976)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Recognizing that our precedent has been variously interpreted, we reiterate that *National Farmers* and *Iowa Mutual* [*National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985), and *Iowa Mutual. Insurance. Co. v. LaPlante*, 480 U.S. 9 (1987)] enunciate only an exhaustion requirement, a ''prudential rule,'', based on comity. These decisions do not expand or stand apart from *Montana*'s instruction on ''the inherent sovereign powers of an Indian tribe.'' [*Montana v. United States*, 450 U.S. 544 (1981)] (internal citations omitted) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

While *Montana* immediately involved regulatory authority, the Court broadly addressed the concept of ''inherent sovereignty.'' Regarding activity on non Indian fee land within a reservation, *Montana* delineated—in a main rule and exceptions—the bounds of the power tribes retain to exercise ''forms of civil jurisdiction over non Indians.'' As to nonmembers, we hold, a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction. Absent congressional direction enlarging tribal court jurisdiction, we adhere to that understanding. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Subject to controlling provisions in treaties and statutes, and the two exceptions identified in *Montana*,[*Montana v. United States*, 450 U.S. 544 (1981)] the civil authority of Indian tribes and their courts with respect to non Indian fee lands generally ''do[es] not extend to the activities of nonmembers of the tribe.'' *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Read in isolation, the *Montana* [*Montana v. United States*, 450 U.S. 544 (1981)] rule's second exception can be misperceived. Key to its proper application, however, is the Court's preface: ''Indian tribes retain their inherent power [to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. . . . But [a tribe's inherent power does not reach] beyond what is necessary to protect tribal self government or to

control internal relations.'' (quoting *Montana*) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

§ 3. [Term of office]

The term of office shall begin at the first meeting of the National Council following the first day of January and the oath of office shall be taken at the first meeting.

§ 4. [Quorum; procedural powers]

(a) A majority of the members of The Muscogee (Creek) National Council shall constitute a quorum to do business. A smaller number may adjourn or compel the attendance of absent members in a manner and under such penalties to be prescribed by ordinance.

(b) The Muscogee (Creek) National Council shall judge of the returns and qualifications of its members, determine the rules of its proceedings, penalize its members for disorderly behavior and, with the concurrence of two-thirds (2/3) of the National Council, expel a member from a meeting.

Cross References

Meetings of National Council, see Title 30, § 3–101 et seq.

Notes of Decisions

Interpretation, generally 1

1. Interpretation, generally

[A] ''majority approval'' in its most basic interpretation means a simple majority vote of the quorum present as opposed to a super-majority. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

This Court hereby interprets the language of the Constitution to direct the National Counsel, 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 Principal Chief. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

§ 5. [Compensation; secretary; outside office]

(a) The Muscogee (Creek) National Council member shall receive a compensation for his services, to be prescribed by ordinance and paid out of the Treasury of The Muscogee (Creek) Nation.

(b) The Muscogee (Creek) National Council, shall choose its own secretary whose compensation shall be provided by ordinance.

(c) No National Council member shall, during their term of office, be appointed to any civil office under the authority of The Muscogee (Creek) Nation or such office which shall have been created or the emoluments whereof shall have been increased during such time; and no person holding any elective, appointive, or any other office whether compensated or not under The Muscogee (Creek) Nation shall be a member of the National Council during their continuance in office.

Cross References

Compensation of National Council, see Title 30, §§ 4–101, 4–102.
Executive Office of the Principal Chief, appointment of officers, see Const. Art. V, § 2.
Secretary of National Council, see Title 30, §§ 6–101, 6–102.

§ 6. [Bills, ordinances, orders, resolutions or other acts]

(a) Every bill which shall have passed the Muscogee (Creek) National Council, before it becomes an ordinance, shall be presented to the Principal Chief of The Muscogee (Creek) Nation. If he approves, he shall sign it; but, if not, he shall return it with his objections to The Muscogee (Creek) National Council, who shall enter the objections at large on their journal and proceed to reconsider it. If, after such reconsiderations, two-thirds (2/3) of the full membership of The Muscogee (Creek) National Council shall pass the bill, it shall become an ordinance. In such cases, the votes shall be determined by yeas and nays, and the names of the persons voting for and against shall be entered on the journal of The Muscogee (Creek) National Council. If any bill shall not be returned by the Principal Chief within ten (10) days, Sundays and holidays excepted, after it shall have been presented to him the same shall be an ordinance as if he had signed it.

(b) Every order, resolution, or other act intended to reflect the policy of The Muscogee (Creek) Nation shall be submitted in accordance with the rules and limitations prescribed in case of a bill.

(c) Every ordinance, order, resolution, or other act intended to reflect the policy of The Muscogee (Creek) Nation shall be stamped with The Seal of The Muscogee (Creek) Nation and be signed by the Principal Chief of The Muscogee (Creek) Nation.

(d) If any National Council meeting is cancelled for ''lack of a quorum,'' each absent member of that committee shall be personally fined $175.00 for the cancelled meeting. The Speaker of the National Council shall be responsible for the collection of fines.

[Amended by 2009, [A60].]

Historical and Statutory Notes

2009 Amendments

The 2009 amendment was passed by referendum on Nov. 7, 2009, by a vote of 1,433 to 1,014.

A scrivener's error was made on the original Nov. 7, 2009 ballot. The original ballot read ''Amending Article IX, § 2.'' However, the Muscogee (Creek) Nation National Council authority and instructions are contained under Article VI of the Muscogee (Creek) Nation Constitution.

Cross References

Legislation and codification of laws, see Title 30, § 1–101 et seq.
Official seal, see Const. Art. I, § 3.

Library References

Indians ⇦214.

Westlaw Topic No. 209.

C.J.S. Indians § 59.

Notes of Decisions

Validity of tribal statutes and ordinances 4

1. Rights pursuant to tribal statute or ordinance

The plain language of Section 8–202 [Election Code, Title 19, § 8–202] clearly notified the Petitioner that his money would not be returned. It cannot get any plainer. *Tiger v. Muscogee (Creek) Nation Election Board, et al.*, SC 07–04 (Muscogee (Creek) 2008)

While Section 8–208 [Election Code, Title 19, § 8–208] erroneously refers to the filing fee as a deposit, this section merely outlines the purposes for which the filing fee can be used. The misnomer does not authorize a refund of the filing fee. Section 8–202 itself reefers to the fee as a non refundable filing fee. It is neither a deposit nor escrowed funds as Petitioner suggests. *Tiger v. Muscogee (Creek) Nation Election Board, et al.*, SC 07–04 (Muscogee (Creek) 2008)

Section 8–202 [Election Code, Title 19, § 8–202] describes the step which must be taken to ask for a recount. The petition was simply a request to start the recount process not a grant of a substantive right. *Tiger v. Muscogee (Creek) Nation Election Board, et al.*, SC 07–04 (Muscogee (Creek) 2008)

No provision of the Election Code provides a substantive right to a recount. *Tiger v. Muscogee (Creek) Nation Election Board, et al.*, SC 07–04 (Muscogee (Creek) 2008)

Section 8–202 [Election Code, Title 19, § 8–202] refers to Section 8–203 [Election Code, Title 19, § 8–203] where in notice is clearly given of the procedures to be followed and the circumstances which could prohibit a recount. *Tiger v. Muscogee (Creek) Nation Election Board, et al.*, SC 07–04 (Muscogee (Creek) 2008)

The simple fact is that the statute does not preclude an individual from ever being able to file suit, it merely requires the government or governmental agency grant a waiver of sovereign immunity first. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

This Court holds that the tribal law referred to as NCA 82–30 at '204 requiring the Supreme Court to grant a jury trial when requested by a party infringes on the inherent power of the Court to enforce its orders and maintain orderly administration of justice, and is therefore unconstitutional. *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)

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)

[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)

Title 21, Section 4–103.C.l.h (which limits the Gaming Authority Board's authority to sue or be sued in any tribal, state or federal court), states that a litigant wishing to sue the Gaming Authority Board must first obtain a resolution from the National Council waiving immunity to suit. This statute is of such direct relevance to the instant case, that no construction with other statutes is necessary. *Glass v. Muscogee (Creek) Nation Tulsa Casino*, SC 05–04 (Muscogee (Creek) 2006)

This Court holds that Title 30, Sections 3–104, 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)

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)

As stated in the Court's *Glass* decision, MCNCA Title 21, § 4–103 (c)(1)(h) is ''valid, clear and directly on point.'' *Glass v. Muscogee (Creek) Nation Tulsa Casino, et al.* SC 05–04 (Muscogee (Creek) 2006)

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*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993)

Any classification restricting 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 promoting 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 franchise rights of such citizens in denial of equal protection of the laws. *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).

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).

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).

For nearly two centuries now, we have recognized Indian tribes as ''distinct, independent political communities,'' *Worcester v. Georgia*, 6 Pet. 515 (1832), qualified to exercise many of the powers and prerogatives of self-government.(internal cite omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As part of their residual sovereignty, tribes retain power to legislate and to tax activities on the reservation, including certain activities by nonmembers. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As a general rule, then, ''the tribe has no authority itself, by way of tribal ordinance or actions in the tribal courts, to regulate the use of fee land.'' (quoting *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U.S. 408 (1989)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

By their terms, the exceptions [announced in *Montana v. United States*, 450 U.S. 544 (1981)] concern regulation of ''the *activities* of nonmembers'' or ''the *conduct* of non-Indians on fee land.'' (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Montana [*Montana v. United States*, 450 U.S. 544 (1981)] does not permit Indian tribes to regulate the sale of non-Indian fee land. *Montana* and its progeny permit tribal regulation of nonmember *conduct* inside the reservation that implicates the tribe's sovereign interests. *Montana* expressly limits its first exception to the ''activities of nonmembers,'' allowing these to be regulated to the extent necessary ''to protect tribal self-government [and] to control internal relations.'' *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have upheld as within the tribe's sovereign authority the imposition of a severance tax on natural resources removed by nonmembers from tribal land. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982). We have approved tribal taxes imposed on leasehold interests held in tribal lands, as well as sales taxes imposed on nonmember businesses within the reservation. *Kerr-McGee Corp*. v. *Navajo Tribe*, 471 U.S. 195 (1985). We have similarly approved licensing requirements for hunting and fishing on tribal land. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983)(internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Put another way, certain forms of nonmember behavior, even on non-Indian fee land, may sufficiently affect the tribe as to justify tribal oversight. While tribes generally have no interest in regulating the conduct of nonmembers, then, they may regulate nonmember behavior that implicates tribal governance and internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The power to tax certain nonmember activity can also be justified as ''a necessary instrument of self-government and territorial management'' insofar as taxation ''enables a tribal government to raise revenues for its essential services,'' to pay its employees, to provide police protection, and in general to carry out the functions that keep peace and order (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982)) (internal quotes omitted) *Plains Commercial Bank v. Long*

Family Land & Cattle Co. et al., 128 S.Ct. 2709 (2008)

By definition, fee land owned by nonmembers has already been removed from the tribe's immediate control. [quoting *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)] It has already been alienated from the tribal trust. The tribe cannot justify regulation of such land's sale by reference to its power to superintend tribal land, then, because non-Indian fee parcels have ceased to *be* tribal land. (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[t]he key point is that any threat to the tribe's sovereign interests flows from changed uses or nonmember activities, rather than from the mere fact of resale. The tribe is able fully to vindicate its sovereign interests in protecting its members and preserving tribal self-government by regulating nonmember *activity* on the land, within the limits set forth in our cases. The tribe has no independent interest in restraining alienation of the land itself, and thus, no authority to do so. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Not only is regulation of fee land sale beyond the tribe's sovereign powers, it runs the risk of subjecting nonmembers to tribal regulatory authority without commensurate consent. Tribal sovereignty, it should be remembered, is ''a sovereignty outside the basic structure of the Constitution.'' (quoting *United States v. Lara*, 541 U.S. 193 (2004)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[n]onmembers have no part in tribal government—they have no say in the laws and regulations that govern tribal territory. Consequently, those laws and regulations may be fairly imposed on nonmembers only if the nonmember has consented, either expressly or by his actions. Even then, the regulation must stem from the tribe's inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[u]nder our Indian tax immunity cases, the ''who'' and the ''where'' of the challenged tax have significant consequences. We have determined that ''[t]he initial and frequently dispositive question in Indian tax cases . . . is *who* bears the legal incidence of [the] tax,'' and that the States are categorically barred from placing the legal incidence of an excise tax ''*on a tribe or on tribal members* for sales made *inside Indian country*'' without congressional authorization (emphasis in original)(quoting *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

We have applied the balancing test articulated in *Bracker* [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] only where ''the legal incidence of the tax fell on a nontribal entity engaged in a transaction with tribes or tribal members on the reservation.'' (internal citation omitted)(quoting *Arizona Dept. of Revenue v. Blaze Constr. Co.*, 526 U.S. 32 (1999)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

Limiting the interest-balancing test exclusively to *on-reservation* transactions between a nontribal entity and a tribe or tribal member is consistent with our unique Indian tax immunity jurisprudence. We have explained that this jurisprudence relies ''heavily on the doctrine of tribal sovereignty . . . which historically gave state law 'no role to play' within a tribe's territorial boundaries.'' (emphasis in original, quoting *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

[i]n *Duro v. Reina*, [*Duro v. Reina*, 495 U.S. 676 (1990)], this Court had held that a tribe no longer possessed *inherent or sovereign authority* to prosecute a ''nonmember Indian.'' But it pointed out that, soon after this Court decided *Duro*, Congress enacted new legislation specifically authorizing a tribe to prosecute Indian members of a different tribe. [Act of Oct. 28, 1991, 105 Stat. 646]. That new statute, in permitting a tribe to bring certain tribal prosecutions against nonmember Indians, does not purport to delegate the Federal Government's own *federal* power. Rather, it enlarges the *tribes'* own ''powers of self-government'' to include ''the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over *all* Indians,'' including nonmembers. 25 U.S.C. § 1301(2) (emphasis added in original). *U.S. v. Lara*, 541 U.S. 193 (2004)

The ''central function of the Indian Commerce Clause,'' we have said, ''is to provide Congress with plenary power to legislate in the field of Indian affairs.'' (quoting *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989)) *U.S. v. Lara*, 541 U.S. 193 (2004)

We recognize that in 1871 Congress ended the practice of entering into treaties with the Indian tribes. 25 U.S.C. § 71. But the statute saved existing treaties from being ''invalidated or impaired,'' and this Court has explicitly stated that the statute ''in no way affected Congress' plenary powers to legislate on problems of Indians,''(quoting *Antoine v. Washington*, 420 U.S. 194 (1975)) *U.S. v. Lara*, 541 U.S. 193 (2004)

Congress, with this Court's approval, has interpreted the Constitution's ''plenary'' grants of power as authorizing it to enact legislation that both restricts and, in turn, relaxes those restrictions on tribal sovereign authority. *U.S. v. Lara*, 541 U.S. 193 (2004)

Congress has also granted tribes greater autonomy in their inherent law enforcement authority (in respect to tribal members) by increasing the maximum criminal penalties tribal courts may impose. § 4217, 100 Stat. 3207–146, codified at 25 U.S.C. § 1302(7) (raising the

maximum from ''a term of six months and a fine of $500'' to ''a term of one year and a fine of $5,000''). *U.S. v. Lara*, 541 U.S. 193 (2004)

Wheeler, Oliphant, and *Duro,* [*United States v. Wheeler,* 435 U.S. 313 (1978); *Oliphant v. Suquamish Tribe,* 435 U.S. 191 (1978); *Duro v. Reina,* 495 U.S. 676 (1990)] then, are not determinative because Congress has enacted a new statute, relaxing restrictions on the bounds of the inherent tribal authority that the United States recognizes. And that fact makes all the difference. *U.S. v. Lara*, 541 U.S. 193 (2004)

[t]he Constitution authorizes Congress to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians. We hold that Congress exercised that authority in writing this statute [Act of Oct. 28, 1991, 105 Stat. 646]. *U.S. v. Lara*, 541 U.S. 193 (2004)

The Court has often said that ''every clause and word of a statute'' should, ''if possible,'' be given ''effect.'' (quoting *United States v. Menasche,* 348 U.S. 528 (1955)) *Chickasaw Nation v. United States,* 534 U.S. 84 (2001)

The Court has also said that ''statutes are to be construed liberally in favor of the Indians with ambiguous provisions interpreted to their benefit.'' (quoting *Montana v. Blackfeet Tribe,* 471 U.S. 759 (1985)) *Chickasaw Nation v. United States,* 534 U.S. 84 (2001)

Indian tribes' regulatory authority over nonmembers is governed by the principles set forth in *Montana v. United States,* 450 U.S. 544 (1981) *Nevada v. Hicks*, 533 U.S. 353 (2001)

Where nonmembers are concerned, the ''exercise of tribal power *beyond what is necessary to protect tribal self-government or to control internal relations* is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation.'' (emphasis in original, quoting *Montana v. United States,* 450 U.S. 544 (1981)) *Nevada v. Hicks,* 533 U.S. 353 (2001)

[T]hat Indians have ''the right . . . to make their own laws and be ruled by them,'' (quoting *Montana v. United States,* 450 U.S. 544 (1981)) *Nevada v. Hicks,* 533 U.S. 353 (2001)

Tribal assertion of regulatory authority over nonmembers must be connected to that right of the Indians to make their own laws and be governed by them. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border. Though tribes are often referred to as ''sovereign'' entities, it was ''long ago'' that ''the Court departed from Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries.'' (quoting both *Worcester v. Georgia*, 6 Pet. 515, 561 (1832), *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 141 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

That is not to say that States may exert the same degree of regulatory authority within a reservation as they do without. To the contrary, the principle that Indians have the right to make their own laws and be governed by them requires ''an accommodation between the interests of the Tribes and the Federal Government, on the one hand, and those of the State, on the other.''(quoting *Washington v. Confederated Tribes of Colville Reservation,* 447 U.S. 134, 156 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest (quoting *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 141 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

When, however, state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land. *Nevada v. Hicks*, 533 U.S. 353 (2001)

It is also well established in our precedent that States have criminal jurisdiction over reservation Indians for crimes committed (as was the alleged poaching in this case) off the reservation. (quoting *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

We conclude . . . , that tribal authority to regulate state officers in executing process related to the violation, off reservation, of state laws is not essential to tribal self-government or internal relations–to ''the right to make laws and be ruled by them.'' *Nevada v. Hicks*, 533 U.S. 353 (2001)

An Indian tribe's sovereign power to tax–whatever its derivation–reaches no further than tribal land. *Atkinson Trading Company v. Shirley, Jr. et al..*, 532 U.S. 645 (2001)

Congress has authorized the Commissioner of Indian Affairs ''to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians.'' [25 U.S.C. § 261] *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Irrespective of the percentage of non-Indian fee land within a reservation, *Montana*'s [450 U.S. 544 (1981)], second exception grants Indian tribes nothing ''beyond what is necessary to protect tribal self-government or to control internal relations.'' (quoting from *Strate v. A–1 Contractors,* 530 US 438 (1997)) *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

the Court explained, ''the inherent sovereign powers of an Indian tribe''—those powers a tribe enjoys apart from express provision by treaty or statute—''do not extend to the activi-

ties of nonmembers of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non Indians on their reservations, even on non Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Tribal authority over the activities of non Indians on reservation lands is an important part of tribal sovereignty. Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute. . . . ''In the absence of any indication that Congress intended the diversity statute to limit the jurisdiction of the tribal courts, we decline petitioner's invitation to hold that tribal sovereignty can be impaired in this fashion.'' (quoting *Iowa Mutual. Insurance. Co. v. LaPlante*, 480 U.S. 9 (1987)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[t]hat state courts may not exercise jurisdiction over disputes arising out of on reservation conduct—even over matters involving non Indians—if doing so would ''infring[e] on the right of reservation Indians to make their own laws and be ruled by them.'' (quoting *Fisher v. District Court of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382 (1976)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

While *Montana* immediately involved regulatory authority, the Court broadly addressed the concept of ''inherent sovereignty.'' Regarding activity on non Indian fee land within a reservation, *Montana* delineated—in a main rule and exceptions—the bounds of the power tribes retain to exercise ''forms of civil jurisdiction over non Indians.'' As to nonmembers, we hold, a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction. Absent congressional direction enlarging tribal court jurisdiction, we adhere to that understanding. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Subject to controlling provisions in treaties and statutes, and the two exceptions identified in *Montana,[Montana v. United States*, 450 U.S. 544 (1981)] the civil authority of Indian tribes and their courts with respect to non Indian fee lands generally ''do[es] not extend to the activities of nonmembers of the tribe.'' *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Read in isolation, the *Montana* [*Montana v. United States*, 450 U.S. 544 (1981)] rule's second exception can be misperceived. Key to its proper application, however, is the Court's preface: ''Indian tribes retain their inherent power [to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. . . . But [a tribe's inherent power does not reach] beyond what is necessary to protect tribal self government or to control internal relations.'' (quoting *Montana) Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

2. Interpretation of tribal constitutions

[T]he Muscogee (Creek) Nation's Constitution takes precedence over all laws and ordinances passed by the National Council. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (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 Constitution of the Muscogee (Creek) Nation ''must be strictly construed and interpreted and where the Constitution speaks in plain language with reference to a particular matter, the Court must not place a different meaning on the words.'' (Citing *Cox v. Kamp*, 4 Mvs. L. Rep. 75 (Muscogee (Creek) 1991)) *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Though the term ''separation of powers'' is not specifically delineated in the Muscogee (Creek) Constitution, this Court stated in *Beaver v. National Council*, 4 Mvs. L. Rep. 28 (Muscogee (Creek) 1986), ''the Constitution of the Muscogee (Creek) Nation is patterned after the United States Constitution with respect to separation of powers.'' We further expounded on this notion in *Cox v. Kamp*, 4 Mvs. L. Rep. 75 (Muscogee (Creek) 1991) saying that ''each branch of government has special limitations placed on it'' and ''there must be a balance of powers.'' Finally, we also articulated that ''the Muscogee (Creek) Nation Constitution intended to incorporate into it the basic parts of the separation of powers between the three branches of government.'' *Id. Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Muscogee (Creek) Nation Constitution cannot be infringed upon or expounded on simply by words in a superfluous document disguised as an ''agreed order.'' *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

There are defined procedures in place to amend our Constitution if there are deemed to be inadequacies with the delineated responsibil-

ities of the differing branches. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Muscogee (Creek) Nation Constitution is the epitome of what makes the Muscogee Nation great; a document that has withstood the test of time, trials and tribulations, forced assimilation, statehood and eventual rebirth. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

To allow an Agreed Journal Entry to supersede the Constitution's powers appears to this Court a very unwise leap to make. *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)

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)

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)

Assuming jurisdiction over an appeal that we have no legislative or constitutional authority to hear would amount to judicial usurpation of power. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Although federal law may serve as an informative tool of guidance, procedural rules such as our final order rule are solely matters of tribal law. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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).

Per Capita payments are not unconstitutional. *Reynolds v. Skaggs*, 4 Okla. Trib. 116 (Muscogee (Creek) 1994).

A Muscogee (Creek) Nation Chartered Community is not a federally recognized tribe. *Reynolds v. Skaggs*, 4 Okla. Trib. 116 (Muscogee (Creek) 1994).

Once case or controversy concerning the meaning of a constitutional provision reaches tribal courts, such courts become final arbiter as to constitutionality to governmental actions. *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*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993)

Any classification restricting 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 promoting 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 franchise rights of such citizens in denial of equal protection of the laws. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

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).

The Constitution of the Muscogee (Creek) Nation must be strictly construed and interpreted and where the Constitution speaks in plain language with reference to a particular matter, the Court must not place a different meaning on the words. *Cox v. Kamp*, 5 Okla. Trib. 530 (Muscogee (Creek) 1991).

Language ''shall create & organize'' in Muscogee (Creek) Constitution can be left to be given so many different meanings that the Court finds it impossible to construe the words strictly. *Cox v. Kamp*, 5 Okla. Trib. 530 (Muscogee (Creek) 1991).

The duty of the Court is not to merely give definition to words within the law, but is as a group, to determine the intent and scope behind the words. *Cox v. Kamp*, 5 Okla. Trib. 530 (Muscogee (Creek) 1991).

Court must look to what intent the founders of the Constitution of the Creek Nation had when using the language they used in drafting the Constitution. *Cox v. Kamp*, 5 Okla. Trib. 530 (Muscogee (Creek) 1991).

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).

Judicial branch of Muscogee (Creek) Nation may retain legal counsel to assist in its responsibilities under the tribal Constitution, without approval of other branches, within confines of Muscogee (Creek) Const. Art. VI, section 6(a) requires vote of at least 2/3 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) Const. Art. VI, section 6(a) requires vote of at least 2/3 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).

Tribal constitution must be strictly interpreted, and where it speaks in plain language with reference to particular matter, courts must not place different meaning on the words. *Cox v. Childers*, 2 Okla. Trib. 276 (Muscogee (Creek) 1991).

Muscogee (Creek) Nation's Constitution vests tribal Supreme Court with power to assume original jurisdiction in case where constitutionality and meaning of National Council ordinance is involved, and where tribal Principal Chief maintains that Tribe lacks seated district court judge. *In re District Judge*, 2 Okla. Trib. 54 (Muscogee (Creek) 1990).

Muscogee (Creek) Const. Art. V, section 3 calls for involvement of legislative branch in expenditure of funds belonging to Nation. *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)

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

Judicial branch of Muscogee (Creek) Nation may retain legal counsel to assist in its responsibilities under the tribal Constitution, without approval of other branches, within confines of funds appropriated to judicial branch of government. *Bryant v. Childers*, 1 Okla. Trib. 316 (Muscogee (Creek) 1989)

While Article VI, section 2(b) of the Constitution of the Muscogee (Creek) Nation provides that ''each representative shall be a legal resident of his district,'' nothing in that Constitution or in tribal law either provides guidelines regarding the definition of residency, or precludes a candidate from establishing district residency on the day such person files as a candidate. *In re Burden*, 1 Okla. Trib. 309 (Muscogee (Creek) 1989).

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)

While Article VII of Constitution of Muscogee (Creek) Nation requires that persons elected to offices of Chief, Second Chief, and membership on National Council be full citizens of the Tribe (including blood quantum requirements), that Article does not impose a similar qualification on Justices of the Supreme Court or judges of the inferior courts of the Tribe. Article III, Section 4 of Tribe's constitution is of a general nature, and therefore subordinate to Article VII. *Bruner v. Tax Commission, 1 Okla. Trib. 102 (Muscogee (Creek) 1987).*

More specific provisions of tribal constitutions are controlling over more general ones. *Bruner v. Tax Commission*, 1 Okla. Trib. 102 (Muscogee (Creek) 1987).

Constitution of Muscogee (Creek) Nation establishes judicial branch as necessary and separate branch of tribal government, and instills in that branch judicial authority and power of Muscogee (Creek) Nation. *In re Supreme Court*, 1 Okla. Trib. 89 (Muscogee (Creek) 1986).

Power and authority of Muscogee (Creek) Nation's Supreme Court may not be decreased by, nor may Court be diminished by, any other branch of Muscogee (Creek) Nation's government. *In re Supreme Court*, 1 Okla. Trib. 89 (Muscogee (Creek) 1986).

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).

Muscogee (Creek) Nation Constitution is not a static document, but rather is drafted for perpetuation of government for long period of time; implication therefore plays an important part in constitutional construction. *In re Term of Office*, 2 Okla. Trib. 385 (Musc. (Cr.) D.Ct. 1992).

The use of the word ''shall'' in a constitutional provision is generally considered to be mandatory *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).

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 July 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).

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).

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).

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)

Constitution of Muscogee (Creek) Nation authorizes National Council to retain counsel, and to do so without BIA approval pursuant to 25 U.S.C. section 81 where counsel's services will not be rendered relative to tribal land. *Childers v. Bryant*, 1 Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1989).

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*, Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1989).

Judicial interpretation of Constitution and Ordinances of Muscogee (Creek) Nation is vested only in judicial branch of Nation. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

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).

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 IV, section 1 of Muscogee (Creek) Nation Constitution authorizes National Council to enact ordinances regulating conduct of tribal elections; tribal Election Board must abide by such ordinances. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

While Article VI, section 4 of Constitution of Muscogee (Creek) Nation empowers National Council to judge qualifications of its members, or penalize or expel a member, and Article VIII, section 2 provides for recall petitions, courts of Muscogee (Creek) Nation lack jurisdiction to place member of National Council on involuntary ''absentee leave.'' *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (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).

As used in Muscogee (Creek) Nation's Constitution, ''district citizen'' includes absentee citizens who have declared a home district in accord with Article IV, section 9 of that Constitution. *Thomas v. Election Board*, 1 Okla. Trib. 124 (Musc. (Cr.) D.Ct. 1987).

The continued operation of the Court is of extreme importance and necessary for the preservation of the rights of all of the citizens of the tribal government of the Muscogee (Creek) Nation. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

The power and authority of this Court will not be decreased nor will this Court be diminished by any other branch of the tribal government by its failure to perform its duties and obligations under the constitution of the Muscogee (Creek) Nation and this Court finds that the Justices of this Court should retain their position and continue to perform the duties of Justice of this Supreme Court until their successors shall be duly qualified. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

The Supreme Court is a necessary and separate branch of the Muscogee (Creek) Nation instilled with the Judicial Authority and power of the Muscogee (Creek) Nation. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

3. Interpretation of tribal statutes, ordinances, or resolutions

The plain language of Section 8–202 [Election Code, Title 19, § 8–202] clearly notified the Petitioner that his money would not be returned. It cannot get any plainer. *Tiger v. Muscogee (Creek) Nation Election Board, et al.* SC 07–04 (Muscogee (Creek) 2008)

Where a statute states in plain language on a particular matter, the Court will not place a different meaning on the words. *Tiger v. Muscogee (Creek) Nation Election Board, et al.* SC 07–04 (Muscogee (Creek) 2008)

While Section 8–208 [Election Code, Title 19, § 8–208] erroneously refers to the filing fee as a deposit, this section merely outlines the purposes for which the filing fee can be used. The misnomer does not authorize a refund of the filing fee. Section 8–202 itself reefers to the fee as a non refundable filing fee. It is neither a deposit nor escrowed funds as Petitioner suggests. *Tiger v. Muscogee (Creek) Nation Election Board, et al.* SC 07–04 (Muscogee (Creek) 2008)

Section 8–202 [Election Code, Title 19, § 8–202] describes the step which must be taken to ask for a recount. The petition was simply a request to start the recount process not a grant of a substantive right. *Tiger v. Muscogee (Creek) Nation Election Board, et al.* SC 07–04 (Muscogee (Creek) 2008)

No provision of the Election Code provides a substantive right to a recount. *Tiger v. Muscogee (Creek) Nation Election Board, et al.* SC 07–04 (Muscogee (Creek) 2008)

Section 8–202 [Election Code, Title 19, § 8–202] refers to Section 8–203 [Election Code, Title 19, § 8–203] where in notice is clearly given of the procedures to be followed and the circumstances which could prohibit a recount. *Tiger v. Muscogee (Creek) Nation Election Board, et al.* SC 07–04 (Muscogee (Creek) 2008)

The simple fact is that the statute does not preclude an individual from ever being able to file suit, it merely requires the government or governmental agency grant a waiver of sovereign immunity first. *Molle and Chalakee v. The*

Gaming Operations Authority Board, et al., SC 06–05 (Muscogee (Creek) 2008)

This Court holds that the tribal law referred to as NCA 82–30 at '204 requiring the Supreme Court to grant a jury trial when requested by a party infringes on the inherent power of the Court to enforce its orders and maintain orderly administration of justice, and is therefore unconstitutional. *Ellis v. Muscogee (Creek) National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

Plaintiffs request for a citation of civil contempt presents a case of first impression for this Court. We find that in any instance of blatant and obvious disregard for the orders of the Supreme Court or the District Court, the Courts of the Muscogee (Creek) Nation have inherent power to enforce compliance with such lawful orders through contempt proceedings. (MCN Code. Title 27. App.2, Rule 20 (C)(5) and (6)). *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

This Court hereby holds that the Nation's Code Title 26, Section 3–202 has the effect of being in direct conflict with the intent of the framers of the Constitution, and therefore it is unconstitutional. *Oliver v. Muscogee (Creek) National Council,* SC 06–04 (Muscogee (Creek) 2006)

Title 21 Section 4–103.C.l.h (which limits the Gaming Authority Board's authority to sue or be sued in any tribal, state or federal court), states that a litigant wishing to sue the Gaming Authority Board must first obtain a resolution from the National Council waiving immunity to suit. This statute is of such direct relevance to the instant case, that no construction with other statutes is necessary. *Glass v. Muscogee (Creek) Nation Tulsa Casino,* SC 05–04 (Muscogee (Creek) 2006)

As stated in the Court's *Glass* decision, MCNCA Title 21, § 4–103 (c)(1)(h) is ''valid, clear and directly on point.'' *Glass v. Muscogee (Creek) Nation Tulsa Casino, et al.* SC 05–04 (Muscogee (Creek) 2006)

Where, as here, there is a statute that is valid, clear, and directly on point, this Court must follow the Code of the Nation. *Glass v. Muscogee (Creek) Nation Tulsa Casino*, SC 05–04 (Muscogee (Creek) 2006)

This Court holds that Title 30, Sections 3–104, 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 Courts of this Nation exercise general civil jurisdiction over all civil actions arising under the Constitution, laws or treaties which arise within the Nation's Indian country, regardless of the Indian or non-Indian status of the parties. 27 Muscogee (Creek) Nation Code. Ann. § 1–102(B)(Civil Jurisdiction). *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

[T]he text of Canon 3 requires disqualification of a judge if the judge's *impartiality might reasonably be questioned* ***including*** *the situation where the judge is related to a lawyer in a proceeding within the third degree of relationship MCN Code,* Title 26 § 4–103 C.(1)(d)(i). The purpose of this law is to insure fairness for *any litigant or party* using Mvskoke courts. (emphasis in original). *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

Whether the Court chooses to adopt legal standards form other jurisdictions into tribal law and how those standards are interpreted is solely within the realm of the Muscogee (Creek) Nations Supreme Court's discretion. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

The language of both the Muscogee (Creek) Nation Juvenile and Family Code [NCA 92–119] and the Federal Indian Child Welfare [25 U.S.C.S. 1915 (b)] is mandatory regarding placement of a juvenile and the Court is not persuaded that a trial judge may deviate from the law. *In re J.S.,* 4 Okla. Trib. 187 (Muscogee (Creek) 1994).

Muscogee (Creek)Nation is like Oklahoma Supreme Court in finding that the trial judge is in the best position to weight all of the evidence and absent abuse, the Court will not overturn or disturb the trial court decision. *In re J.S.,* 4 Okla. Trib. 187 (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) Principal Chief. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

NCA 88–15 is merely a statutory rewording of NCA 81–15. Within this context, the National Council always has the right to repeal or amend those statutes it creates. *Cox v. Kamp*, 5 Okla. Trib. 530 (Muscogee (Creek) 1991).

Petitioners Motion to Stay does not fall under any of the categories of appealable cases which the Supreme Court has jurisdiction to hear pursuant to Muscogee (Creek) Nation civil ordinances. *Health Board v. Skaggs and Health Board v. Taylor,* 5 Okla. Trib. 442 (Muscogee (Creek) 1991).

NCA 82–30 § 270 (B)(1) provides the Supreme Court with appellate jurisdiction over all final orders. *Health Board v. Skaggs and Health Board v. Taylor,* 5 Okla. Trib. 442 (Muscogee (Creek) 1991).

We do not deny the possibility that in certain extreme and drastic circumstances this Court may retain the power to hear certain types of

interlocutory appeals which are not expressly stated by the Muscogee (Creek) Nation codes. *Health Board v. Skaggs and Health Board v. Taylor*, 5 Okla. Trib. 442 (Muscogee (Creek) 1991).

Courts inability to hear interlocutory appeal is bound by NCA 82–30 § 270 (B) unless the legislature chooses to change its limitations. *Health Board v. Skaggs and Health Board v. Taylor*, 5 Okla. Trib. 442 (Muscogee (Creek) 1991).

Supreme Court of Muscogee (Creek) Nation may assume original jurisdiction over challenge to residency of candidate for National Council after party protesting candidacy has sought and been denied relief by Muscogee (Creek) Nation Election Board. *Litsey v. Cox*, 2 Okla. Trib. 307 (Muscogee (Creek) 1991).

Party challenging decision of Muscogee (Creek) Nation Election Board, upholding residency of candidate in particular National Council district, bears burden of proof regarding residency of challenged candidate. *Litsey v. Cox*, 2 Okla. Trib. 307 (Muscogee (Creek) 1991).

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

While Article VI, section 2(b) of the Constitution of the Muscogee (Creek) Nation provides that ''each representative shall be a legal resident of his district,'' nothing in that Constitution or in tribal law either provides guidelines regarding the definition of residency, or precludes a candidate from establishing district residency on the day such person files as a candidate. *In re Burden*, 1 Okla. Trib. 309 (Muscogee (Creek) 1989).

All citizens of the Muscogee (Creek) Nation may look to decisions of federal courts as precedents to follow in determination of free and just tribal elections. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Sections 818 and 819 of NCA 81–82 (Muscogee (Creek) Nation) unlawfully vest judicial power in the National Council, the legislative branch of the Muscogee (Creek) Nation. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Sections 809 and 811 of NCA 81–82 (Muscogee (Creek) Nation) are valid, and provide legal and mandatory method of challenging results of disputed elections. *Beaver v. National Council*, 1. Okla. Trib. 57 (Muscogee (Creek) 1986).

Court may enjoin conduct of election where such would be pursuant to unconstitutional tribal statutes or ordinances. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Jurisdiction includes but is not limited to property held in trust by the United States of America and to such other property as held by the Muscogee (Creek) Nation. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Judicial Code in NCA 82–30 defines adjudicatory and jurisdiction of the Muscogee (Creek) Nation's District Court as exclusive original jurisdiction over all matters not otherwise limited by tribal ordinance. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Civil Jurisdiction over non-members comes from grant in NCA 92–205 which gives the Nation's Courts general civil jurisdiction over claims arising in the territorial jurisdiction. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Even if the language of the statutes required personal service, the Court has the discretion to waive the requirement of NCA 83–69 § 102 Rule C. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Candidate not alleging election fraud or irregularities may not be awarded judicial relief under NCA 81–82 § 818. *In re Petition for Irregularities*, 5 Okla. Trib. 345 (Musc. (Cr.) D.Ct. 1997).

Candidate seeking to challenge candidacy of an opponent must do so pursuant to procedure established in Muscogee (Creek) NCA 81–82 § 515–517. *In re Petition for Irregularities*, 5 Okla. Trib. 345 (Musc. (Cr.) D.Ct. 1997).

District Court has exclusive jurisdiction over elections disputes by virtue of the election laws of the Muscogee (Creek) Nation. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

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).

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).

Article IV, section 1 of Muscogee (Creek) Nation Constitution authorizes National Council to enact ordinances regulating conduct of tribal elections; tribal Election Board must abide by such ordinances. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Where members of Muscogee (Creek) Nation are notified by mail of upcoming elections and clearly instructed to request absentee ballot should they desire to vote, tribal ordinance requiring such a request by a member in order to cast absentee ballot imposes no unconstitutional burden of voters. *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 the authority to enter into any agreement or contract with corporation. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

As used in Muscogee (Creek) Nation's Constitution, ''district citizen'' includes absentee citizens who have declared a home district in accord with Article IV, section 9 of that Constitution. *Thomas v. Election Board*, 1 Okla. Trib. 124 (Musc. (Cr.) D.Ct. 1987).

For nearly two centuries now, we have recognized Indian tribes as ''distinct, independent political communities,'' *Worcester v. Georgia*, 6 Pet. 515 (1832), qualified to exercise many of the powers and prerogatives of self-government.(internal cite omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As part of their residual sovereignty, tribes retain power to legislate and to tax activities on the reservation, including certain activities by nonmembers. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As we explained in *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978), the tribes have, by virtue of their incorporation into the American republic, lost ''the right of governing . . . person[s] within their limits except themselves.'' (emphasis and internal quotation marks omitted). This general rule restricts tribal authority over nonmember activities taking place on the reservation, and is particularly strong when the nonmember's activity occurs on land owned in fee simple by non-Indians—what we have called ''non-Indian fee land.'' (quoting *Strate v. A–1 Contractors*, 520 U.S. 438, 446 (1997)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[w]hen the tribe or tribal members convey a parcel of fee land *''to non-Indians*, [the tribe] loses any former right of absolute and exclusive use and occupation of the conveyed lands.'' (quoting *South Dakota v. Bourland*, 508 U.S. 679 (1993)) (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As a general rule, then, ''the tribe has no authority itself, by way of tribal ordinance or actions in the tribal courts, to regulate the use of fee land.'' (quoting *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U.S. 408 (1989)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have recognized two exceptions to this principle, circumstances in which tribes may exercise ''civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.'' First, ''[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.'' Second, a tribe may exercise ''civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) (internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

By their terms, the exceptions [announced in *Montana v. United States*, 450 U.S. 544 (1981)] concern regulation of ''the *activities* of nonmembers'' or ''the *conduct* of non-Indians on fee land.'' (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The burden rests on the tribe to establish one of the exceptions to *Montana*'s [*Montana v. United States*, 450 U.S. 544 (1981)] general rule that would allow an extension of tribal authority to regulate nonmembers on non-Indian fee land. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Montana [*Montana v. United States*, 450 U.S. 544 (1981)] does not permit Indian tribes to regulate the sale of non-Indian fee land. *Montana* and its progeny permit tribal regulation of nonmember *conduct* inside the reservation that implicates the tribe's sovereign interests. *Montana* expressly limits its first exception to the ''activities of nonmembers,'' allowing these to be regulated to the extent necessary ''to protect tribal self-government [and] to control internal relations.'' *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have upheld as within the tribe's sovereign authority the imposition of a severance tax on natural resources removed by nonmembers from tribal land. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982). We have approved tribal taxes imposed on leasehold interests held in tribal lands, as well as sales taxes imposed on nonmember businesses within the reservation. *Kerr-McGee Corp*. v. *Navajo Tribe*, 471 U.S. 195 (1985). We have similarly approved licensing requirements for hunting and fishing on tribal land. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983)(internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Put another way, certain forms of nonmember behavior, even on non-Indian fee land, may sufficiently affect the tribe as to justify tribal oversight. While tribes generally have no interest in regulating the conduct of nonmembers, then, they may regulate nonmember behavior that implicates tribal governance and internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The power to tax certain nonmember activity can also be justified as ''a necessary instrument of self-government and territorial management'' insofar as taxation ''enables a tribal government to raise revenues for its essential services,'' to pay its employees, to provide police protection, and in general to carry out the functions that keep peace and order (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982)) (internal quotes omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

By definition, fee land owned by nonmembers has already been removed from the tribe's immediate control. [quoting *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)] It has already been alienated from the tribal trust. The tribe cannot justify regulation of such land's sale by reference to its power to superintend tribal land, then, because non-Indian fee parcels have ceased to *be* tribal land. (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

[t]he key point is that any threat to the tribe's sovereign interests flows from changed uses or nonmember activities, rather than from the mere fact of resale. The tribe is able fully to vindicate its sovereign interests in protecting its members and preserving tribal self-government by regulating nonmember *activity* on the land, within the limits set forth in our cases. The tribe has no independent interest in restraining alienation of the land itself, and thus, no authority to do so. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Not only is regulation of fee land sale beyond the tribe's sovereign powers, it runs the risk of subjecting nonmembers to tribal regulatory authority without commensurate consent. Tribal sovereignty, it should be remembered, is ''a sovereignty outside the basic structure of the Constitution.'' (quoting *United States v. Lara*, 541 U.S. 193 (2004)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

[n]onmembers have no part in tribal government—they have no say in the laws and regulations that govern tribal territory. Consequently, those laws and regulations may be fairly imposed on nonmembers only if the nonmember has consented, either expressly or by his actions. Even then, the regulation must stem from the tribe's inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

[u]nder our Indian tax immunity cases, the ''who'' and the ''where'' of the challenged tax have significant consequences. We have determined that ''[t]he initial and frequently dispositive question in Indian tax cases . . . is *who* bears the legal incidence of [the] tax,'' and that the States are categorically barred from placing the legal incidence of an excise tax ''*on a tribe or on tribal members* for sales made *inside Indian country*'' without congressional authorization (emphasis in original)(quoting *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

We have applied the balancing test articulated in *Bracker* [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] only where ''the legal incidence of the tax fell on a nontribal entity engaged in a transaction with tribes or tribal members on the reservation.'' (internal citation omitted)(quoting *Arizona Dept. of Revenue v. Blaze Constr. Co.*, 526 U.S. 32 (1999)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

The *Bracker* interest-balancing test has never been applied where, as here, the State asserts its taxing authority over non-Indians off the reservation. And although we have never addressed this precise issue, our Indian tax immunity cases counsel against such an application. [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

Limiting the interest-balancing test exclusively to *on-reservation* transactions between a nontribal entity and a tribe or tribal member is consistent with our unique Indian tax immunity jurisprudence. We have explained that this jurisprudence relies ''heavily on the doctrine of tribal sovereignty . . . which historically gave state law 'no role to play' within a tribe's territorial boundaries.'' (emphasis in original, quoting *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

If a State may apply a nondiscriminatory tax to Indians who have gone beyond the boundaries of the reservation, then it follows that it may apply a nondiscriminatory tax where, as here, the tax is imposed on non-Indians as a result of an off-reservation transaction. *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

[i]n *Duro v. Reina*, [*Duro v. Reina*, 495 U.S. 676 (1990)], this Court had held that a tribe no longer possessed *inherent or sovereign authority* to prosecute a ''nonmember Indian.'' But it pointed out that, soon after this Court decided *Duro,* Congress enacted new legislation specifically authorizing a tribe to prosecute Indian members of a different tribe. [Act of Oct. 28, 1991, 105 Stat. 646]. That new statute, in permitting a tribe to bring certain tribal prosecutions against nonmember Indians, does not purport to delegate the Federal Government's own *federal* power. Rather, it enlarges the *tribes'* own ''powers of self-government'' to include ''the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over *all* Indians,'' including nonmembers. 25 U.S.C. § 1301(2) (emphasis added in original). *U.S. v. Lara*, 541 U.S. 193 (2004)

We assume, . . . that Lara's double jeopardy claim turns on the answer to the ''dual sovereignty'' question. What is ''the source of [the] power to punish'' nonmember Indian offenders, ''inherent *tribal* sovereignty'' or delegated *federal* authority? [quoting *United States v. Wheeler*, 435 U.S. 313 (1978)]. We also believe that Congress intended the former answer. The statute [Act of Oct. 28, 1991, 105 Stat. 646] says that it ''recognize[s] and affirm[s]'' in each tribe the *''inherent'' tribal* power (not delegated federal power) to prosecute nonmember Indians for misdemeanors. (emphasis added in original, internal cites omitted) *U.S. v. Lara*, 541 U.S. 193 (2004)

The ''central function of the Indian Commerce Clause,'' we have said, ''is to provide Congress with plenary power to legislate in the field of Indian affairs.'' (quoting *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989)) *U.S. v. Lara*, 541 U.S. 193 (2004)

We recognize that in 1871 Congress ended the practice of entering into treaties with the Indian tribes. 25 U.S.C. § 71. But the statute saved existing treaties from being ''invalidated or impaired,'' and this Court has explicitly stated that the statute ''in no way affected Congress' plenary powers to legislate on problems of Indians,''(quoting *Antoine v. Washington*, 420 U.S. 194 (1975)) *U.S. v. Lara*, 541 U.S. 193 (2004)

Congress, with this Court's approval, has interpreted the Constitution's ''plenary'' grants of power as authorizing it to enact legislation that both restricts and, in turn, relaxes those restrictions on tribal sovereign authority. *U.S. v. Lara*, 541 U.S. 193 (2004)

Congress has also granted tribes greater autonomy in their inherent law enforcement authority (in respect to tribal members) by increasing the maximum criminal penalties tribal courts may impose. § 4217, 100 Stat. 3207–146, codified at 25 U.S.C. § 1302(7) (raising the maximum from ''a term of six months and a fine of $500'' to ''a term of one year and a fine of $5,000''). *U.S. v. Lara*, 541 U.S. 193 (2004)

[o]ur conclusion that Congress has the power to relax the restrictions imposed by the political branches on the tribes' inherent prosecutorial authority is consistent with our earlier cases. *U.S. v. Lara*, 541 U.S. 193 (2004)

Wheeler, *Oliphant*, and *Duro*, [*United States v. Wheeler*, 435 U.S. 313 (1978); *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *Duro v. Reina*, 495 U.S. 676 (1990)] then, are not determinative because Congress has enacted a new statute, relaxing restrictions on the bounds of the inherent tribal authority that the United States recognizes. And that fact makes all the difference. *U.S. v. Lara*, 541 U.S. 193 (2004)

[t]he Constitution authorizes Congress to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians. We hold that Congress exercised that authority in writing this statute [Act of Oct. 28, 1991, 105 Stat. 646]. *U.S. v. Lara*, 541 U.S. 193 (2004)

The Court has often said that ''every clause and word of a statute'' should, ''if possible,'' be given ''effect.'' (quoting *United States v. Menasche*, 348 U.S. 528 (1955)) *Chickasaw Nation v. United States*, 534 U.S. 84 (2001)

The Court has also said that ''statutes are to be construed liberally in favor of the Indians with ambiguous provisions interpreted to their benefit.'' (quoting *Montana v. Blackfeet Tribe*, 471 U.S. 759 (1985)) *Chickasaw Nation v. United States*, 534 U.S. 84 (2001)

[t]he canon that assumes Congress intends its statutes to benefit the tribes is offset by the canon that warns us against interpreting federal statutes as providing tax exemptions unless those exemptions are clearly expressed. See *United States v. Wells Fargo Bank*, 485 U.S. 351 (1988) *Chickasaw Nation v. United States*, 534 U.S. 84 (2001)

Nor can one say that the pro-Indian canon is inevitably stronger–particularly where the interpretation of a congressional statute rather than an Indian treaty is at issue. This Court's earlier cases are too individualized, involving too many different kinds of legal circumstances, to warrant any such assessment about the two canons' relative strength. (internal cite omitted) *Chickasaw Nation v. United States*, 534 U.S. 84 (2001)

Indian tribes' regulatory authority over nonmembers is governed by the principles set forth in *Montana v. United States*, 450 U.S. 544 (1981) *Nevada v. Hicks*, 533 U.S. 353 (2001)

Where nonmembers are concerned, the ''exercise of tribal power *beyond what is necessary to protect tribal self-government or to control internal relations* is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation.'' (emphasis in original, quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

[T]hat Indians have ''the right . . . to make their own laws and be ruled by them,'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

Tribal assertion of regulatory authority over nonmembers must be connected to that right of the Indians to make their own laws and be governed by them. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border. Though tribes are often referred to as ''sovereign'' entities, it was ''long ago'' that ''the Court departed from Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries.'' (quoting both *Worcester v. Georgia*, 6 Pet. 515, 561 (1832), *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136,

141 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

That is not to say that States may exert the same degree of regulatory authority within a reservation as they do without. To the contrary, the principle that Indians have the right to make their own laws and be governed by them requires ''an accommodation between the interests of the Tribes and the Federal Government, on the one hand, and those of the State, on the other.'' (quoting *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134, 156 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strongest (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 141 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

When, however, state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land. *Nevada v. Hicks*, 533 U.S. 353 (2001)

It is also well established in our precedent that States have criminal jurisdiction over reservation Indians for crimes committed (as was the alleged poaching in this case) off the reservation. (quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

We conclude . . . , that tribal authority to regulate state officers in executing process related to the violation, off reservation, of state laws is not essential to tribal self-government or internal relations–to ''the right to make laws and be ruled by them.'' *Nevada v. Hicks*, 533 U.S. 353 (2001)

An Indian tribe's sovereign power to tax–whatever its derivation–reaches no further than tribal land. *Atkinson Trading Company v. Shirley, Jr. et al..*, 532 U.S. 645 (2001)

. . . we think the generalized availability of tribal services patently insufficient to sustain the Tribe's civil authority over nonmembers on non-Indian fee land. The consensual relationship must stem from ''commercial dealing, contracts, leases, or other arrangements,'' *Montana* [450 U.S. 544 (1981)], and a nonmember's actual or potential receipt of tribal police, fire, and medical services does not create the requisite connection. *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Congress has authorized the Commissioner of Indian Affairs ''to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians.'' [25 U.S.C. § 261] *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Irrespective of the percentage of non-Indian fee land within a reservation, *Montana*'s [450 U.S. 544 (1981)], second exception grants Indian tribes nothing ''beyond what is necessary to protect tribal self-government or to control internal relations.'' (quoting from *Strate v. A–1 Contractors*, 530 US 438 (1997)) *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

the Court explained, ''the inherent sovereign powers of an Indian tribe''—those powers a tribe enjoys apart from express provision by treaty or statute—''do not extend to the activities of nonmembers of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non Indians on their reservations, even on non Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Respect for tribal self government made it appropriate ''to give the tribal court a full opportunity to determine its own jurisdiction.'' (quoting *Iowa Mutual. Insurance. Co. v. LaPlante*, 480 U.S. 9 (1987)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Tribal authority over the activities of non Indians on reservation lands is an important part of tribal sovereignty. Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute. . . . ''In the absence of any indication that Congress intended the diversity statute to limit the jurisdiction of the tribal courts, we decline petitioner's invitation to hold that tribal sovereignty can be impaired in this fashion.'' (quoting *Iowa Mutual. Insurance. Co. v. LaPlante,* 480 U.S. 9 (1987)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[t]hat state courts may not exercise jurisdiction over disputes arising out of on reservation conduct—even over matters involving non Indians—if doing so would ''infring[e] on the right of reservation Indians to make their own laws and be ruled by them.'' (quoting *Fisher v. District Court of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382 (1976)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Recognizing that our precedent has been variously interpreted, we reiterate that *National Farmers* and *Iowa Mutual* [*National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985), and *Iowa Mutual. Insurance. Co. v. LaPlante*, 480 U.S. 9 (1987)] enunciate only an

exhaustion requirement, a ''prudential rule,'', based on comity. These decisions do not expand or stand apart from *Montana*'s instruction on ''the inherent sovereign powers of an Indian tribe.'' [*Montana v. United States*, 450 U.S. 544 (1981)] (internal citations omitted) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

While *Montana* immediately involved regulatory authority, the Court broadly addressed the concept of ''inherent sovereignty.'' Regarding activity on non Indian fee land within a reservation, *Montana* delineated—in a main rule and exceptions—the bounds of the power tribes retain to exercise ''forms of civil jurisdiction over non Indians.'' As to nonmembers, we hold, a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction. Absent congressional direction enlarging tribal court jurisdiction, we adhere to that understanding. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Subject to controlling provisions in treaties and statutes, and the two exceptions identified in *Montana,[Montana v. United States*, 450 U.S. 544 (1981)] the civil authority of Indian tribes and their courts with respect to non Indian fee lands generally ''do[es] not extend to the activities of nonmembers of the tribe.'' *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Read in isolation, the *Montana* [*Montana v. United States*, 450 U.S. 544 (1981)] rule's second exception can be misperceived. Key to its proper application, however, is the Court's preface: ''Indian tribes retain their inherent power [to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. . . . But [a tribe's inherent power does not reach] beyond what is necessary to protect tribal self government or to control internal relations.'' (quoting Montana) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

4. Validity of tribal statutes and ordinances

Sections 809 and 811 of NCA 81–82 (Muscogee (Creek) Nation) are valid, and provide legal and mandatory method of challenging results of disputed elections. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Even if the language of the statutes required personal service, the Court has the discretion to waive the requirement of NCA 83–69 § 102 Rule C. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Muscogee (Creek) Nation NCA 92–71 validly requires smokeshops within Nation's jurisdiction to obtain retail license; absent such license, unstamped cigarettes are contraband, and subject to valid seizure by Nation's Lighthorse Administration and forfeiture to Nation. *Tax Commission v. Nave*, 3 Okla. Trib. 1 (Musc. (Cr.) D.Ct. 1993).

5. Constitutionality of tribal statutes or ordinances

The plain language of Section 8–202 [Election Code, Title 19 § 8–202] clearly notified the Petitioner that his money would not be returned. It cannot get any plainer. *Tiger v. Muscogee (Creek) Nation Election Board,* et al. . . SC 07–04 (Muscogee (Creek) 2008)

Where a statute states in plain language on a particular matter, the Court will not place a different meaning on the words. *Tiger v. Muscogee (Creek) Nation Election Board,* et al. . . SC 07–04 (Muscogee (Creek) 2008)

While Section 8–208 [Election Code, Title 19 § 8–208] erroneously refers to the filing fee as a deposit, this section merely outlines the purposes for which the filing fee can be used. The misnomer does not authorize a refund of the filing fee. Section 8–202 itself reefers to the fee as a non refundable filing fee. It is neither a deposit nor escrowed funds as Petitioner suggests. *Tiger v. Muscogee (Creek) Nation Election Board,* et al. . . SC 07–04 (Muscogee (Creek) 2008)

Section 8–202 [Election Code, Title 19 § 8–202] describes the step which must be taken to ask for a recount. The petition was simply a request to start the recount process not a grant of a substantive right. *Tiger v. Muscogee (Creek) Nation Election Board,* et al. . . SC 07–04 (Muscogee (Creek) 2008)

No provision of the Election Code provides a substantive right to a recount. *Tiger v. Muscogee (Creek) Nation Election Board,* et al. . . SC 07–04 (Muscogee (Creek) 2008)

The simple fact is that the statute does not preclude an individual from ever being able to file suit, it merely requires the government or governmental agency grant a waiver of sovereign immunity first. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.,* SC 06–05 (Muscogee (Creek) 2008)

This Court holds that the tribal law referred to as NCA 82–30 at '204 requiring the Supreme Court to grant a jury trial when requested by a party infringes on the inherent power of the Court to enforce its orders and maintain orderly administration of justice, and is therefore unconstitutional. *Ellis v. Muscogee (Creek) National Council,* SC 06–07 (Muscogee (Creek) 2007)

This Court hereby holds that the Nation's Code Title 26, Section 3–202 has the effect of being in direct conflict with the intent of the framers of the Constitution, and therefore it is unconstitutional. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

Title 21 Section 4–103.C.l.h (which limits the Gaming Authority Board's authority to sue or be sued in any tribal, state or federal court), states that a litigant wishing to sue the Gaming Authority Board must first obtain a resolution from the National Council waiving immunity to suit. This statute is of such direct relevance to

the instant case, that no construction with other statutes is necessary. *Glass v. Muscogee (Creek) Nation Tulsa Casino*, SC 05–04 (Muscogee (Creek) 2006)

As stated in the Court's *Glass* decision, MCNCA Title 21, § 4–103 (c)(1)(h) is ''valid, clear and directly on point.'' *Glass v. Muscogee (Creek) Nation Tulsa Casino, et al.* SC 05–04 (Muscogee (Creek) 2006)

This Court holds that Title 30, Sections 3–104, 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 Courts of this Nation exercise general civil jurisdiction over all civil actions arising under the Constitution, laws or treaties which arise within the Nation's Indian country, regardless of the Indian or non-Indian status of the parties. 27 Muscogee (Creek) Nation Code. Ann. § 1–102(B)(Civil Jurisdiction). *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2*, SC 05–01 (Muscogee (Creek) 2005)

Assuming jurisdiction over an appeal that we have no legislative or constitutional aurhotity to hear would amount to judicial usurpation of power. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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).

Sections 818 and 819 of NCA 81–82 (Muscogee (Creek) Nation) unlawfully vest judicial power in the National Council, the legislative branch of the Muscogee (Creek) Nation. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

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).

Where members of Muscogee (Creek) Nation are notified by mail of upcoming elections and clearly instructed to request absentee ballot should they desire to vote, tribal ordinance requiring such a request by a member in order to cast absentee ballot imposes no unconstitutional burden of voters. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Muscogee (Creek) Nation NCA 88–47 was not validly adopted. *Burden v. Cox*, 1 Okla. Trib. 247 (Musc. & (Cr.) D.Ct. 1988).

§ 7. [Legislative powers]

The National Council shall have the power (subject to any restrictions contained in the Constitution and laws of the United States of America) to legislate on matters subject to limitations imposed by this Constitution as follows:

(a) 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.

(b) To negotiate with Federal, State, and local government and others.

(c) To manage, lease, prevent the sale of, dispose or otherwise deal with tribal lands, communal resources or other interest belonging to The Muscogee (Creek) Nation or reserved for the benefit of such Nation.

(d) To authorize and make appropriations from available funds for tribal purposes. All expenditures of tribal funds shall be a matter of public record open to all the citizens of The Muscogee (Creek) Nation at all reasonable times.

(e) To enter contracts in behalf of The Nation with any legal activity that will further the well-being of the members of The Muscogee (Creek) Nation.

(f) To employ legal counsel.

(g) To borrow money on the Credit of The Muscogee (Creek) Nation and pledge or assign chattels of future tribal income as security therefore.

(h) To lay and collect taxes within the boundary of The Muscogee (Creek) Nation's jurisdiction from whatever source derived.

(i) To create authorities with attendant powers to achieve objectives allowed within the scope of this Constitution.

(j) To exercise any power not specifically set forth in this Article which may at some future date be exercised by The Muscogee (Creek) Nation.

Cross References

Budget requests and administration of funds, see Const. Art. V, § 3.
Recommendations of the Principal Chief, see Const. Art. V, § 4.

Library References

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

Notes of Decisions

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1. Property—In general

District Court of the Muscogee (Creek) Nation has jurisdiction to quiet title and ejectment claims of tribal members against non-members where the land in question lies within Muscogee (Creek) Indian Country. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

Indian Tribes may exercise a broad range of civil jurisdiction over the activities of non-member Indians on Indian reservation and in which tribes have a significant interest. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

If one party in a lawsuit is tribal member, interest of tribe in regulating activities of tribal members and resolving disputes over Indian property are sufficient to confer jurisdiction to the court. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

Jurisdiction includes but is not limited to property held in trust by the United States of America and to such other property as held by the Muscogee (Creek) Nation. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

District Court of Muscogee (Creek) Nation has power to quiet title to real property. *Muscogee (Creek) Nation v. Checotah Community*, 3 Okla. Trib. 239 (Musc. (Cr.) D.Ct. 1993).

Muscogee (Creek) Nation Constitution provides for tribal jurisdiction based on land status as it existed in 1900 pursuant to Muscogee (Creek) Nation–United States treaties; this jurisdiction is not limited to trust lands, but extends to other properties held by the Nation. *National Council v. Preferred Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

As a general rule, then, ''the tribe has no authority itself, by way of tribal ordinance or actions in the tribal courts, to regulate the use of fee land.'' (quoting *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U.S. 408 (1989)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

2. —— Personal property

Where the trial court in an action for an accounting and for determination of the interest in real and personal property ordered an accounting, the defendants could not, prior to final judgment, appeal from the order. *Kelly v. Wilde*, 5 Okla. Trib. 209 (Muscogee (Creek) 1996).

Muscogee (Creek) Nation NCA 92–71 validly requires smokeshops within Nation's jurisdiction to obtain retail license; absent such license, unstamped cigarettes are contraband, and subject to valid seizure by Nation's Lighthorse Administration and forfeiture to Nation. *Tax Commission v. Nave*, 3 Okla. Trib. 1 (Musc. (Cr.) D.Ct. 1993).

District Court of Muscogee (Creek) Nation has power to grant writ of replevin for possession of personal property by creditor for nonpayment of amounts due. *Stedman v. Local American Bank of Tulsa*, 5 Okla. Trib. 548 (Muscogee (Creek) 1992).

3. —— Real property

Where the trial court in an action for an accounting and for determination of the interest in real and personal property ordered an accounting, the defendants could not, prior to final judgment, appeal from the order. *Kelly v. Wilde*, 5 Okla. Trib. 209 (Muscogee (Creek) 1996).

District Court of the Muscogee (Creek) Nation has jurisdiction to quiet title and ejectment claims of tribal members against non-members where the land in question lies within Muscogee (Creek) Indian Country. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

If one party in a lawsuit is tribal member, interest of tribe in regulating activities of tribal members and resolving disputes over Indian property are sufficient to confer jurisdiction to the court. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

Jurisdiction includes but is not limited to property held in trust by the United States of America and to such other property as held by the Muscogee (Creek) Nation. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Muscogee (Creek) Nation Constitution provides for tribal jurisdiction based on land status as it existed in 1900 pursuant to Muscogee (Creek) Nation–United States treaties; this jurisdiction is not limited to trust lands, but extends to other properties held by the Nation. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

It [sovereignty] centers on the land held by the tribe and on tribal members within the reservation. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As part of their residual sovereignty, tribes retain power to legislate and to tax activities on the reservation, including certain activities by nonmembers. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

They [tribes] may also exclude outsiders from entering tribal land. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

But tribes do not, as a general matter, possess authority over non-Indians who come within their borders: ''[T]he inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.'' (citing *Montana v. United States*, 450 U.S. 544 (1981)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As we explained in *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978), the tribes have, by virtue of their incorporation into the American republic, lost ''the right of governing . . . person[s] within their limits except themselves.'' (emphasis and internal quotation marks omitted). This general rule restricts tribal authority over nonmember activities taking place on the reservation, and is particularly strong when the nonmember's activity occurs on land owned in fee simple by non-Indians—what we have called ''non-Indian fee land.'' (quoting *Strate v. A–1 Contractors*, 520 U.S. 438, 446 (1997)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Our cases have made clear that once tribal land is converted into fee simple, the tribe loses plenary jurisdiction over it. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[w]hen the tribe or tribal members convey a parcel of fee land ''*to non-Indians*, [the tribe] loses any former right of absolute and exclusive use and occupation of the conveyed lands.'' (quoting *South Dakota v. Bourland*, 508 U.S. 679 (1993)) (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As a general rule, then, ''the tribe has no authority itself, by way of tribal ordinance or actions in the tribal courts, to regulate the use of fee land.'' (quoting *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U.S. 408 (1989)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have recognized two exceptions to this principle, circumstances in which tribes may exercise ''civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.'' First, ''[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.'' Second, a tribe may exercise ''civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or

the health or welfare of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) (internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

By their terms, the exceptions [announced in *Montana v. United States*, 450 U.S. 544 (1981)] concern regulation of ''the *activities* of nonmembers'' or ''the *conduct* of non-Indians on fee land.'' (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Given *Montana*'s ''general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe, efforts by a tribe to regulate nonmembers, especially on non-Indian fee land, are presumptively invalid,'' [quoting *Montana v. United States*, 450 U.S. 544 (1981) and *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001)] *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

The burden rests on the tribe to establish one of the exceptions to *Montana*'s [*Montana v. United States*, 450 U.S. 544 (1981)] general rule that would allow an extension of tribal authority to regulate nonmembers on non-Indian fee land. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

The status of the land is relevant ''insofar as it bears on the application of . . . *Montana*'s exceptions to [this] case.'' (quoting *Nevada v. Hicks*, 533 U.S. 353 (2001)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Montana [*Montana v. United States*, 450 U.S. 544 (1981)] does not permit Indian tribes to regulate the sale of non-Indian fee land. *Montana* and its progeny permit tribal regulation of nonmember *conduct* inside the reservation that implicates the tribe's sovereign interests. *Montana* expressly limits its first exception to the ''activities of nonmembers,'' allowing these to be regulated to the extent necessary ''to protect tribal self-government [and] to control internal relations.'' *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

We have upheld as within the tribe's sovereign authority the imposition of a severance tax on natural resources removed by nonmembers from tribal land. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982). We have approved tribal taxes imposed on leasehold interests held in tribal lands, as well as sales taxes imposed on nonmember businesses within the reservation. *Kerr-McGee Corp*. v. *Navajo Tribe*, 471 U.S. 195 (1985). We have similarly approved licensing requirements for hunting and fishing on tribal land. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983)(internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

The logic of *Montana* [*Montana v. United States*, 450 U.S. 544 (1981)] is that certain activities on non-Indian fee land (say, a business enterprise employing tribal members) or certain uses (say, commercial development) may intrude on the internal relations of the tribe or threaten tribal self-rule. To the extent they do, such activities or land uses may be regulated. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Put another way, certain forms of nonmember behavior, even on non-Indian fee land, may sufficiently affect the tribe as to justify tribal oversight. While tribes generally have no interest in regulating the conduct of nonmembers, then, they may regulate nonmember behavior that implicates tribal governance and internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

The tribe's ''traditional and undisputed power to exclude persons'' from tribal land, for example, gives it the power to set conditions on entry to that land via licensing requirements and hunting regulations (quoting *Duro v. Reina*, 495 U.S. 676 (1990)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

By definition, fee land owned by nonmembers has already been removed from the tribe's immediate control. [quoting *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)] It has already been alienated from the tribal trust. The tribe cannot justify regulation of such land's sale by reference to its power to superintend tribal land, then, because non-Indian fee parcels have ceased to *be* tribal land. (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Any direct harm to its political integrity that the tribe sustains as a result of fee land sale is sustained at the point the land passes from Indian to non-Indian hands. It is at that point the tribe and its members lose the ability to use the land for their purposes. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Once the land has been sold in fee simple to non-Indians and passed beyond the tribe's immediate control, the mere resale of that land works no additional intrusion on tribal relations or self-government. Resale, by itself, causes no additional damage. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

The *uses* to which the land is put may very well change from owner to owner, and those uses may well affect the tribe and its members. As our cases bear out, the tribe may quite legitimately seek to protect its members from noxious uses that threaten tribal welfare or security, or from nonmember conduct on the land that does the same.(internal cite omitted, emphasis in original). *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

[t]he key point is that any threat to the tribe's sovereign interests flows from changed uses or nonmember activities, rather than from the mere fact of resale. The tribe is able fully to vindicate its sovereign interests in protecting its members and preserving tribal self-government by regulating nonmember *activity* on the land, within the limits set forth in our cases. The tribe has no independent interest in restraining alienation of the land itself, and thus, no authority to do so. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Not only is regulation of fee land sale beyond the tribe's sovereign powers, it runs the risk of subjecting nonmembers to tribal regulatory authority without commensurate consent. Tribal sovereignty, it should be remembered, is ''a sovereignty outside the basic structure of the Constitution.'' (quoting *United States v. Lara*, 541 U.S. 193 (2004)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[w]e said it ''defies common sense to suppose'' that Congress meant to subject non-Indians to tribal jurisdiction simply by virtue of the nonmember's purchase of land in fee simple. If Congress did not anticipate tribal jurisdiction would run with the land, we see no reason why a nonmember would think so either. (internal cite omitted, quoting from *Montana v. United States*, 450 U.S. 544 (1981)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Montana [*Montana v. United States*, 450 U.S. 544 (1981)] provides that, in certain circumstances, tribes may exercise authority over the conduct of nonmembers, even if that conduct takes place on non-Indian fee land. But conduct taking place on the land and the sale of the land are two very different things. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The sale of formerly Indian-owned fee land to a third party is quite possibly disappointing to the tribe, but cannot fairly be called ''catastrophic'' for tribal self-government. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[t]he *Bracker* [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] interest-balancing test applies only where ''a State asserts authority over the conduct of non-Indians engaging in activity on the reservation.'' It does not apply where, as here, a state tax is imposed on a non-Indian and arises as a result of a transaction that occurs off the reservation. (internal citation omitted) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

[u]nder our Indian tax immunity cases, the ''who'' and the ''where'' of the challenged tax have significant consequences. We have determined that ''[t]he initial and frequently dispositive question in Indian tax cases . . . is *who* bears the legal incidence of [the] tax,'' and that the States are categorically barred from placing the legal incidence of an excise tax ''*on a tribe or on tribal members* for sales made *inside Indian country*'' without congressional authorization (emphasis in original)(quoting *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

We have further determined that, even when a State imposes the legal incidence of its tax on a non-Indian seller, the tax may nonetheless be pre-empted if the transaction giving rise to tax liability occurs on the reservation and the imposition of the tax fails to satisfy the *Bracker* interest-balancing test. *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

We have applied the balancing test articulated in *Bracker* [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] only where ''the legal incidence of the tax fell on a nontribal entity engaged in a transaction with tribes or tribal members on the reservation.'' (internal citation omitted)(quoting *Arizona Dept. of Revenue v. Blaze Constr. Co.*, 526 U.S. 32 (1999)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

The *Bracker* interest-balancing test has never been applied where, as here, the State asserts its taxing authority over non-Indians off the reservation. And although we have never addressed this precise issue, our Indian tax immunity cases counsel against such an application. [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

Limiting the interest-balancing test exclusively to *on-reservation* transactions between a nontribal entity and a tribe or tribal member is consistent with our unique Indian tax immunity jurisprudence. We have explained that this jurisprudence relies ''heavily on the doctrine of tribal sovereignty . . . which historically gave state law 'no role to play' within a tribe's territorial boundaries.'' (emphasis in original, quoting *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

The ownership status of land, in other words, is only one factor to consider in determining whether regulation of the activities of nonmembers is ''necessary to protect tribal self-government or to control internal relations.'' It may sometimes be a dispositive factor. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Ordinarily, it is now clear, ''an Indian reservation is considered part of the territory of the State'' (quoting U.S. Dept. of Interior, Federal Indian Law 510, Note 1 (1958)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

When, however, state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land. *Nevada v. Hicks*, 533 U.S. 353 (2001)

The State's interest in execution of process is considerable, and even when it relates to Indi-

an-fee lands it no more impairs the tribe's self-government than federal enforcement of federal law impairs state government. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Sections 1152 and 1153 of Title 18, which give United States and tribal criminal law generally exclusive application, apply only to crimes committed *in Indian Country;* Public Law 280, codified at 18 U.S.C. § 1162 which permits some state jurisdiction as an exception to this rule, is similarly limited. *Nevada v. Hicks*, 533 U.S. 353 (2001)

25 U.S.C. § 2804 which permits federal-state agreements enabling state law-enforcement agents to act on reservations, applies only to deputizing them for the enforcement of federal or tribal criminal law. Nothing in the federal statutory scheme prescribes, or even remotely suggests, that state officers cannot enter a reservation (including Indian-fee land) to investigate or prosecute violations of state law occurring off the reservation. *Nevada v. Hicks*, 533 U.S. 353 (2001)

An Indian tribe's sovereign power to tax–whatever its derivation–reaches no further than tribal land. *Atkinson Trading Company v. Shirley, Jr. et al..*, 532 U.S. 645 (2001)

. . . we think the generalized availability of tribal services patently insufficient to sustain the Tribe's civil authority over nonmembers on non-Indian fee land. The consensual relationship must stem from ''commercial dealing, contracts, leases, or other arrangements,'' *Montana* [450 U.S. 544 (1981)], and a nonmember's actual or potential receipt of tribal police, fire, and medical services does not create the requisite connection. *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Irrespective of the percentage of non-Indian fee land within a reservation, *Montana*'s [450 U.S. 544 (1981)], second exception grants Indian tribes nothing ''beyond what is necessary to protect tribal self-government or to control internal relations.'' (quoting from *Strate v. A–1 Contractors*, 530 US 438 (1997)) *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Indian tribes are ''unique aggregations possessing attributes of sovereignty over both their members and their territory,'' but their dependent status generally precludes extension of tribal civil authority beyond these limits. (quoting *United States v. Mazurie*, 419 U.S. 544 (1975)) *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non Indians on their reservations, even on non Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[t]hat state courts may not exercise jurisdiction over disputes arising out of on reservation conduct—even over matters involving non Indians—if doing so would ''infring[e] on the right of reservation Indians to make their own laws and be ruled by them.'' (quoting *Fisher v. District Court of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382 (1976)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Subject to controlling provisions in treaties and statutes, and the two exceptions identified in *Montana,[Montana v. United States*, 450 U.S. 544 (1981)] the civil authority of Indian tribes and their courts with respect to non Indian fee lands generally ''do[es] not extend to the activities of nonmembers of the tribe.'' *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

4. Contracts—In general

Tribal courts do not necessarily have jurisdiction over any dispute between tribal members and non-Indians arising out of contracts; rather, tribal courts' jurisdiction in such cases is limited by notions of ''minimum contracts'' and ''traditional notions of fair play and substantial justice.'' *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

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)

The Compact [Gaming 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)

5. —— Power to enter, contracts

Muscogee (Creek) Const. Art. V, section 3 calls for involvement of legislative branch in expenditure of funds belonging to Nation. *Preferred Mgmt. Corp. v. National Council,* 2 Okla. Trib. 37 (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).

Constitution of Muscogee (Creek) Nation authorizes National Council to retain counsel, and to do so without BIA approval pursuant to 25 U.S.C. section 81 where counsel's services will not be rendered relative to tribal land. *Childers v. Bryant,* 1 Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1989).

Contract not approved by National Council as required by Constitution and ordinances of Muscogee (Creek) Nation is void *ab initio. National Council v. Preferred Mgmt. Corp.,* 1 Okla. Trib. 278 (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 the authority to enter into any agreement or contract with corporation. *National Council v. Preferred Mgmt. Corp.,* 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

Dealings between public officer of Tribe and himself or herself as a private citizen are contrary to Muscogee (Creek) Nation public policy. *National Council v. Preferred Mgmt. Corp.,* 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

Where a public officer has a pecuniary interest, direct or indirect, in a contract for public work, the contract is generally regarded as void or voidable. *National Council v. Preferred Mgmt. Corp.,* 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

6. —— Interpretation, contracts

Where gaming management agreement is silent concerning ability of managing corporation to hire a general manager and deduct that person's salary from 'profits,' general interpretive principles preclude such ability, such a position being deemed to be a normal incident of 'management' for which the managing corporation is already compensated by its percentage share of profits. *Gaming Commissioner v. Indian Country USA, Inc.,* 1 Okla. Trib. 109 (Muscogee (Creek) 1987).

Contracts must be construed as a whole. *Gaming Commissioner v. Indian Country USA, Inc.,* 1 Okla. Trib. 109 (Muscogee (Creek) 1987).

Contract may provide for construction in accordance with tribal law. *National Council v. Preferred Mgmt. Corp.,* 1 Okla. Trib. 278 (Muscogee (Cr.) D.Ct. 1989).

District Court of Muscogee (Creek) Nation has power to interpret gaming contract between Nation and gaming contractor, to determine whether breach thereof has occurred, and to issue preliminary injunction where warranted by legal circumstances. *Muscogee (Creek) Nation v. Indian Country U.S.A., Inc.,* 1 Okla. Trib. 267 (Musc. (Cr.) D.Ct. 1989).

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7. —— Void or voidable contracts

Contract not approved by National Council as required by Constitution and ordinances of Muscogee (Creek) Nation is void *ab initio. National Council v. Preferred Mgmt. Corp.,* 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

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Where a public officer has a pecuniary interest, direct or indirect, in a contract for public work, the contract is generally regarded as void or voidable. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

8. Corporations and enterprises of tribe

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

9. Employment

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)

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 injunction regarding former occupants of such positions and their current status. *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 continue employment of individuals in violation of earlier Order from that Court. *Cox v. Kamp*, 2 Okla. Trib. 303 (Muscogee (Creek) 1991).

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 (Muscogee (Cr.) D.Ct. 1990).

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)

10. Counsel

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)

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

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)

Judicial branch of Muscogee (Creek) Nation may retain legal counsel to assist in its responsibilities under the tribal Constitution, without approval of other branches, within confines of funds appropriated to judicial branch of government. *Bryant v. Childers*, 1 Okla. Trib. 316 (Muscogee (Creek) 1989)

Constitution of Muscogee (Creek) Nation authorizes National Council to retain counsel, and to do so without BIA approval pursuant to 25 U.S.C. section 81 where counsel's services will not be rendered relative to tribal land. *Childers v. Bryant*, 1 Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1989).

Tribal court may issue mandamus to tribal Director of Treasury and Comptroller of Treasury to issue payment of moneys owed to counsel validly retained by tribal legislative branch. *Childers v. Bryant*, 1 Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1989).

11. Tax jurisdiction

As part of their residual sovereignty, tribes retain power to legislate and to tax activities on the reservation, including certain activities by nonmembers. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have recognized two exceptions to this principle, circumstances in which tribes may exercise ''civil jurisdiction over non-Indians on

their reservations, even on non-Indian fee lands.'' First, ''[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.'' Second, a tribe may exercise ''civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) (internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

We have upheld as within the tribe's sovereign authority the imposition of a severance tax on natural resources removed by nonmembers from tribal land. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982). We have approved tribal taxes imposed on leasehold interests held in tribal lands, as well as sales taxes imposed on nonmember businesses within the reservation. *Kerr-McGee Corp*. v. *Navajo Tribe*, 471 U.S. 195 (1985). We have similarly approved licensing requirements for hunting and fishing on tribal land. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983)(internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

The power to tax certain nonmember activity can also be justified as ''a necessary instrument of self-government and territorial management'' insofar as taxation ''enables a tribal government to raise revenues for its essential services,'' to pay its employees, to provide police protection, and in general to carry out the functions that keep peace and order (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982)) (internal quotes omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

[t]he *Bracker* [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] interest-balancing test applies only where ''a State asserts authority over the conduct of non-Indians engaging in activity on the reservation.'' It does not apply where, as here, a state tax is imposed on a non-Indian and arises as a result of a transaction that occurs off the reservation. (internal citation omitted) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

[u]nder our Indian tax immunity cases, the ''who'' and the ''where'' of the challenged tax have significant consequences. We have determined that ''[t]he initial and frequently dispositive question in Indian tax cases . . . is *who* bears the legal incidence of [the] tax,'' and that the States are categorically barred from placing the legal incidence of an excise tax ''*on a tribe or on tribal members* for sales made *inside Indian country*'' without congressional authorization (emphasis in original)(quoting *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

We have further determined that, even when a State imposes the legal incidence of its tax on a non-Indian seller, the tax may nonetheless be pre-empted if the transaction giving rise to tax liability occurs on the reservation and the imposition of the tax fails to satisfy the *Bracker* interest-balancing test. *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

We have applied the balancing test articulated in *Bracker* [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] only where ''the legal incidence of the tax fell on a nontribal entity engaged in a transaction with tribes or tribal members on the reservation.'' (internal citation omitted)(quoting *Arizona Dept. of Revenue v. Blaze Constr. Co.,* 526 U.S. 32 (1999)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

The *Bracker* interest-balancing test has never been applied where, as here, the State asserts its taxing authority over non-Indians off the reservation. And although we have never addressed this precise issue, our Indian tax immunity cases counsel against such an application. [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

Limiting the interest-balancing test exclusively to *on-reservation* transactions between a nontribal entity and a tribe or tribal member is consistent with our unique Indian tax immunity jurisprudence. We have explained that this jurisprudence relies ''heavily on the doctrine of tribal sovereignty . . . which historically gave state law 'no role to play' within a tribe's territorial boundaries.'' (emphasis in original, quoting *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

We have further explained that the doctrine of tribal sovereignty, which has a ''significant geographical component,'' requires us to ''revers[e]'' the ''general rule'' that ''exemptions from tax laws should . . . be clearly expressed.'' And we have determined that the geographical component of tribal sovereignty ''provide[s] a backdrop against which the applicable treaties and federal statutes must be read.'' (internal cites omitted, quoting from *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993) and *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

If a State may apply a nondiscriminatory tax to Indians who have gone beyond the boundaries of the reservation, then it follows that it may apply a nondiscriminatory tax where, as here, the tax is imposed on non-Indians as a result of an off-reservation transaction. *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

When Congress enacts a tax exemption, it ordinarily does so explicitly. *Chickasaw Nation v. United States,* 534 U.S. 84 (2001)

The Court has often said that ''every clause and word of a statute'' should, ''if possible,'' be given ''effect.'' (quoting *United States v. Menasche,* 348 U.S. 528 (1955)) *Chickasaw Nation v. United States,* 534 U.S. 84 (2001)

The Court has also said that ''statutes are to be construed liberally in favor of the Indians with ambiguous provisions interpreted to their benefit.'' (quoting *Montana v. Blackfeet Tribe,* 471 U.S. 759 (1985)) *Chickasaw Nation v. United States,* 534 U.S. 84 (2001)

[t]he canon that assumes Congress intends its statutes to benefit the tribes is offset by the canon that warns us against interpreting federal statutes as providing tax exemptions unless those exemptions are clearly expressed. See *United States v. Wells Fargo Bank,* 485 U.S. 351 (1988) *Chickasaw Nation v. United States,* 534 U.S. 84 (2001)

An Indian tribe's sovereign power to tax–whatever its derivation–reaches no further than tribal land. *Atkinson Trading Company v. Shirley, Jr. et al..,* 532 U.S. 645 (2001)

The Navajo Nation's imposition of a tax upon nonmembers on non-Indian fee land within the reservation is, therefore, presumptively invalid. Because respondents have failed to establish that the hotel occupancy tax is commensurately related to any consensual relationship with petitioner or is necessary to vindicate the Navajo Nation's political integrity, the presumption ripens into a holding. *Atkinson Trading Company v. Shirley, Jr. et al.,* 532 U.S. 645 (2001)

Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non Indians on their reservations, even on non Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. (quoting *Montana v. United States,* 450 U.S. 544 (1981)) *Strate v. A–1 Contractors,* 520 U.S. 438 (1997)

Where smokeshops 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).

Muscogee (Creek) Nation NCA 92–71 validly requires smokeshops within Nation's jurisdiction to obtain a retail license; absent such license, unstamped cigarettes are contraband, and subject to valid seizure by Nation's Lighthorse Administration and forfeiture to Nation. *Tax Commission v. Nave,* 3 Okla. Trib. 118 (Musc. (Cr.) D.Ct. 1993).

12. Regulatory jurisdiction—In general

The Court further holds that the receipt of a waiver from sovereign immunity must be obtained from the National Council as a condition precedent to filing suit against the GOAB [Gaming Operations Authority Board]. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.,* SC 06–05 (Muscogee (Creek) 2008)

[T]he Muscogee (Creek) Nation's Constitution takes precedence over all laws and ordinances passed by the National Council. *Harjo v. Muscogee (Creek) Nation Election Board,* SC 07–50 (Muscogee (Creek) 2007)

The right of the National Council to provide by law the right to a jury trial in the cases coming before the District Court is not affected by this opinion, for it is an inferior court ordained the National Council. *Ellis v. Muscogee (Creek) National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

It is the prerogative of the National Council to assign the judicial function of fact finding in the district court to trial by jury. The inherent powers of the District Court are also not addressed in this opinion. *Ellis v. Muscogee (Creek) 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 Manger, 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)

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)

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)

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)

This Court hereby interprets the language of the Constitution to direct the National Counsel, 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 Principal Chief. *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)

Also, under the doctrine of separation of powers, the legislative branch is charged with legislating; making laws by which the citizenry abide and the Nation runs. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The Office of the Principal Chief is vested with executive powers and the National Council is vested with legislative powers. *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)

The Muscogee (Creek) Nation Constitution cannot be infringed upon or expounded on simply by words in a superfluous document disguised as an ''agreed order.'' *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

The National Council shall continue to authorize, approve and fund contracts on behalf of the Muscogee (Creek) Nation except as limited by the Muscogee (Creek) Nation Constitution or by law. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

It is incumbent upon, and hereby ordered that the National Council craft rules that safeguard every Muscogee (Creek) Nation citizen or employee, regardless of position, from the contempt powers of the National Council unless a subpoena is specifically issued and due process is implemented. *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)

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)

As a matter of tribal law, all conduct occurring on the Mackey site is subject to the laws of the Nation regardless of the status of the parties. The Mackey site is under the jurisdiction of the Nation because; (1) the land is located within the political and territorial boundaries of the Nation; and (32) the land is owned by the Nation. 27 Muscogee (Creek) Nation Code. Ann. § 1–102(A)(Territorial Jurisdiction). *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2*, SC 05–01 (Muscogee (Creek) 2005)

The Courts of this Nation exercise general civil jurisdiction over all civil actions arising under the Constitution, laws or treaties which arise within the Nation's Indian country, regardless of the Indian or non-Indian status of the parties. 27 Muscogee (Creek) Nation Code. Ann. § 1–102(B)(Civil Jurisdiction). *Muscogee*

(Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2, SC 05–01 (Muscogee (Creek) 2005)

Personal jurisdiction exists over all persons, regardless of their status as Indian or non-Indian, in ''cases arising from any action or event'' occurring on the Nation's Indian Country and in other cases in which the defendant has established sufficient contacts. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

As a matter of Federal law, the Tenth Circuit United States Court of Appeals has already determined that this same tract of land and this exact gaming facility are subject to the civil authority of the Muscogee (Creek) Nation and not the state of Oklahoma. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

In that case [Indian Country, USA v. State of Oklahoma, 829 f.2d 967 (10th Cir. 1987)] the Tenth Circuit noted the Mackey Site is part of the original treaty land still held by the Creek Nation. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

. . . the Tenth Circuit classified the Mackey Site as ''the purest form of Indian Country,'' considering it equal to or great in magnitude, for purposes of tribal jurisdiction, than lands that are held by the federal government in trust for the various tribes. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

We hold that as a matter of tribal law and consistent with federal law, the Nation has exclusive regulatory jurisdiction over the land where Appellant's conduct occurred. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

Because the citation issued to Russell Miner was civil in nature, *Oliphant* does not apply. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

Non–Indians will be subject to tribal regulatory authority when they voluntarily choose to go onto tribal land and do business with the tribe. Non–Indians who chose to purchase products, engage in commercial activities, or pay for entertainment inside Indian country place themselves with the regulatory reach of the Nation. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

The Nation has exclusive jurisdiction to regulate the conduct of all persons on tribal land, particularly those that voluntarily come on to tribal land for the purpose of patronizing tribal businesses. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

The act of coming on to tribal property and entering the casino for commercial purposes constitutes a consensual relationship. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

There should be no question that the presence of illegal drugs on a tribe's reservation is a threat to the health and welfare of the tribe. Illegal drugs are a threat to the health and welfare of all persons. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

The state also lacks jurisdiction [for] the criminal conduct inside the Nation's Indian Country. Because the Nation does not have a cross-deputization agreement with Tulsa County, Oklahoma, the Nation would have no means of addressing Appellant's conduct through the assistance of another jurisdiction. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

There is simply no jurisdiction besides the Nation's that can adequately deal with drug traffic on tribal lands. The only mans in which the Nation may reduce the amount of drugs brought onto tribal lands by non-Indians is through the limited provisions of the Nation's civil code. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

The Court may at various times, adopt certain federal or state laws or legal concepts into Muscogee Nation case law. When this occurs, we must note that the Muscogee Nation Supreme Court is only using federal or state principles for the purposes of guidance and is merely incorporating those laws into our common law. *Brown and Williamson Tobacco Corp. v. District Court,* 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

District Court of the Muscogee (Creek) Nation has jurisdiction to quiet title and ejectment claims of tribal members against non-members where the land in question lies within Muscogee

(Creek) Indian Country. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

Indian Tribes may exercise a broad range of civil jurisdiction over the activities of non-member Indians on Indian reservation and in which tribes have a significant interest. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

When non-Indian conduct does not affect tribal interests, tribal jurisdiction lacks. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

If one party in a lawsuit is tribal member, interest of tribe in regulating activities of tribal members and resolving disputes over Indian property are sufficient to confer jurisdiction to the court. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

The District Court of the Muscogee (Creek) Nation has exclusive original jurisdiction over all matters not otherwise limited by tribal ordinance. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

The District Court of the Muscogee (Creek) Nation has personal jurisdiction and subject matter jurisdiction over suits by the Nation against Tobacco companies with respect to their manufacture, marketing, and sale of tobacco products where some of such activities by defendant and/or their agents are alleged to have occurred within the Nation's Indian Country and/or where products have entered the stream of commerce within the Nation's territorial and political jurisdiction thus creating minimum contacts for jurisdictional purposes. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Indian Tribes have adjudicatory jurisdiction where party's actions have substantial effect on political integrity, economic security, or health and safety and welfare of the tribe. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Treaty of 1856 did not divest the Muscogee (Creek) Nation of otherwise extant adjudicatory jurisdiction over non-Indians and/or corporations. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Muscogee (Creek) Nation Constitution and statutes dictate manner in which question of law are to be addressed by the Court. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Defendant's act of entry into the Muscogee (Creek) Nation by placing their products into the stream of commerce within the political and territorial jurisdiction of the Nation thus consenting to civil jurisdiction of the Muscogee (Creek) Nation. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Mandate of *Montana* [*Montana v. U.S.*, 450 U.S. 544 (1981)] recognizes a tribes regulatory authority if the conduct to be has or *threatens* to have a substantial effect on the tribes political integrity, economic security or health and welfare. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

If tribal regulatory jurisdiction exists then tribal adjudicatory jurisdiction must follow. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Where smokeshops 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. 11 S (Musc. (Cr.) D.Ct. 1993).

Muscogee (Creek) Nation has regulatory authority over all matters within its jurisdiction over which it has a substantial interest. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

We begin by noting that whether a tribal court has adjudicative authority over nonmembers is a federal question. If the tribal court is found to lack such jurisdiction, any judgment as to the nonmember is necessarily null and void. (internal cites to *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987); *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985) omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

For nearly two centuries now, we have recognized Indian tribes as ''distinct, independent political communities,'' *Worcester v. Georgia*, 6 Pet. 515 (1832), qualified to exercise many of the powers and prerogatives of self-government.(internal cite omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have frequently noted, however, that the ''sovereignty that the Indian tribes retain is of a unique and limited character.'' (citing *United States v. Wheeler*, 435 U.S. 313 (1978)). *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

It [sovereignty] centers on the land held by the tribe and on tribal members within the reservation. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As part of their residual sovereignty, tribes retain power to legislate and to tax activities on the reservation, including certain activities by nonmembers. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

They [tribes] may also exclude outsiders from entering tribal land. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

But tribes do not, as a general matter, possess authority over non-Indians who come within their borders: ''[T]he inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.'' (citing *Montana v. United States*, 450 U.S. 544 (1981)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As we explained in *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978), the tribes have, by virtue of their incorporation into the American republic, lost ''the right of governing . . . person[s] within their limits except themselves.'' (emphasis and internal quotation marks omitted). This general rule restricts tribal authority over nonmember activities taking place on the reservation, and is particularly strong when the nonmember's activity occurs on land owned in fee simple by non-Indians—what we have called ''non-Indian fee land.'' (quoting *Strate v. A–1 Contractors*, 520 U.S. 438, 446 (1997)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As a general rule, then, ''the tribe has no authority itself, by way of tribal ordinance or actions in the tribal courts, to regulate the use of fee land.'' (quoting *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U.S. 408 (1989)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have recognized two exceptions to this principle, circumstances in which tribes may exercise ''civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.'' First, ''[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.'' Second, a tribe may exercise ''civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) (internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

By their terms, the exceptions [announced in *Montana v. United States*, 450 U.S. 544 (1981)] concern regulation of ''the *activities* of nonmembers'' or ''the *conduct* of non-Indians on fee land.'' (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Given *Montana*'s ''general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe, efforts by a tribe to regulate nonmembers, especially on non-Indian fee land, are presumptively invalid,'' [quoting *Montana v. United States*, 450 U.S. 544 (1981) and *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001)] *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The burden rests on the tribe to establish one of the exceptions to *Montana*'s [*Montana v. United States*, 450 U.S. 544 (1981)] general rule that would allow an extension of tribal authority to regulate nonmembers on non-Indian fee land. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

According to our precedents, ''a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction.'' We reaffirm that principle today . . . (quoting *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)) (internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Montana [*Montana v. United States*, 450 U.S. 544 (1981)] does not permit Indian tribes to regulate the sale of non-Indian fee land. *Montana* and its progeny permit tribal regulation of nonmember *conduct* inside the reservation that implicates the tribe's sovereign interests. *Montana* expressly limits its first exception to the ''activities of nonmembers,'' allowing these to be regulated to the extent necessary ''to protect tribal self-government [and] to control internal relations.'' *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have upheld as within the tribe's sovereign authority the imposition of a severance tax on natural resources removed by nonmembers from tribal land. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982). We have approved tribal taxes imposed on leasehold interests held in tribal lands, as well as sales taxes imposed on nonmember businesses within the reservation. *Kerr-McGee Corp*. v. *Navajo Tribe*, 471 U.S. 195 (1985). We have similarly approved licensing requirements for hunting and fishing on tribal land. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983)(internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The logic of *Montana* [*Montana v. United States*, 450 U.S. 544 (1981)] is that certain activities on non-Indian fee land (say, a business enterprise employing tribal members) or certain uses (say, commercial development) may intrude on the internal relations of the tribe or threaten tribal self-rule. To the extent they do, such activities or land uses may be regulated. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Put another way, certain forms of nonmember behavior, even on non-Indian fee land, may sufficiently affect the tribe as to justify tribal oversight. While tribes generally have no interest in regulating the conduct of nonmembers, then, they may regulate nonmember behavior that implicates tribal governance and internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The tribe's ''traditional and undisputed power to exclude persons'' from tribal land, for example, gives it the power to set conditions on entry to that land via licensing requirements and hunting regulations (quoting *Duro v. Reina*, 495 U.S. 676 (1990)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The power to tax certain nonmember activity can also be justified as ''a necessary instrument of self-government and territorial management'' insofar as taxation ''enables a tribal government to raise revenues for its essential services,'' to pay its employees, to provide police protection, and in general to carry out the functions that keep peace and order (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982)) (internal quotes omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Once the land has been sold in fee simple to non-Indians and passed beyond the tribe's immediate control, the mere resale of that land works no additional intrusion on tribal relations or self-government. Resale, by itself, causes no additional damage. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The *uses* to which the land is put may very well change from owner to owner, and those uses may well affect the tribe and its members. As our cases bear out, the tribe may quite legitimately seek to protect its members from noxious uses that threaten tribal welfare or security, or from nonmember conduct on the land that does the same.(internal cite omitted, emphasis in original). *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[t]he key point is that any threat to the tribe's sovereign interests flows from changed uses or nonmember activities, rather than from the mere fact of resale. The tribe is able fully to vindicate its sovereign interests in protecting its members and preserving tribal self-government by regulating nonmember *activity* on the land, within the limits set forth in our cases. The tribe has no independent interest in restraining alienation of the land itself, and thus, no authority to do so. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Not only is regulation of fee land sale beyond the tribe's sovereign powers, it runs the risk of subjecting nonmembers to tribal regulatory authority without commensurate consent. Tribal sovereignty, it should be remembered, is ''a sovereignty outside the basic structure of the Constitution.'' (quoting *United States v. Lara*, 541 U.S. 193 (2004)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[n]onmembers have no part in tribal government—they have no say in the laws and regulations that govern tribal territory. Consequently, those laws and regulations may be fairly imposed on nonmembers only if the nonmember has consented, either expressly or by his actions. Even then, the regulation must stem from the tribe's inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Montana [*Montana v. United States*, 450 U.S. 544 (1981)] provides that, in certain circumstances, tribes may exercise authority over the conduct of nonmembers, even if that conduct takes place on non-Indian fee land. But conduct taking place on the land and the sale of the land are two very different things. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The second exception authorizes the tribe to exercise civil jurisdiction when non-Indians' ''conduct'' menaces the ''political integrity, the economic security, or the health or welfare of the tribe.'' The conduct must do more than injure the tribe, it must ''imperil the subsistence'' of the tribal community. (quoting *Montana v. United States*, 450 U.S. 544 (1981))(internal citation omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We must decide whether Congress has the constitutional power to relax restrictions that the political branches have, over time, placed on the exercise of a tribe's inherent legal authority. We conclude that Congress does possess this power. *U.S. v. Lara*, 541 U.S. 193 (2004)

[i]n *Duro v. Reina*, [*Duro v. Reina*, 495 U.S. 676 (1990)], this Court had held that a tribe no longer possessed *inherent or sovereign authority* to prosecute a ''nonmember Indian.'' But it pointed out that, soon after this Court decided *Duro*, Congress enacted new legislation specifically authorizing a tribe to prosecute Indian members of a different tribe. [Act of Oct. 28, 1991, 105 Stat. 646]. That new statute, in permitting a tribe to bring certain tribal prosecutions against nonmember Indians, does not purport to delegate the Federal Government's own *federal* power. Rather, it enlarges the *tribes'* own ''powers of self-government'' to include ''the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over *all* Indians,'' including nonmembers. 25 U.S.C. § 1301(2) (emphasis added in original). *U.S. v. Lara*, 541 U.S. 193 (2004)

We assume, . . . that Lara's double jeopardy claim turns on the answer to the ''dual sovereignty'' question. What is ''the source of [the] power to punish'' nonmember Indian offenders, ''inherent *tribal* sovereignty'' or delegated *federal* authority? [quoting *United States v. Wheeler*, 435 U.S. 313 (1978)]. We also believe that Congress intended the former answer. The statute [Act of Oct. 28, 1991, 105 Stat. 646] says that it ''recognize[s] and affirm[s]'' in each tribe the *''inherent'' tribal* power (not delegated federal power) to prosecute nonmember Indians for

misdemeanors. (emphasis added in original, internal cites omitted) *U.S. v. Lara*, 541 U.S. 193 (2004)

Thus the statute [Act of Oct. 28, 1991, 105 Stat. 646] seeks to adjust the tribes' status. It relaxes the restrictions, recognized in *Duro*, [*Duro v. Reina*, 495 U.S. 676 (1990)], that the political branches had imposed on the tribes' exercise of inherent prosecutorial power. *U.S. v. Lara*, 541 U.S. 193 (2004)

The ''central function of the Indian Commerce Clause,'' we have said, ''is to provide Congress with plenary power to legislate in the field of Indian affairs.'' (quoting *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989)) *U.S. v. Lara*, 541 U.S. 193 (2004)

We recognize that in 1871 Congress ended the practice of entering into treaties with the Indian tribes. 25 U.S.C. § 71. But the statute saved existing treaties from being ''invalidated or impaired,'' and this Court has explicitly stated that the statute ''in no way affected Congress' plenary powers to legislate on problems of Indians,''(quoting *Antoine v. Washington*, 420 U.S. 194 (1975)) *U.S. v. Lara*, 541 U.S. 193 (2004)

Congress, with this Court's approval, has interpreted the Constitution's ''plenary'' grants of power as authorizing it to enact legislation that both restricts and, in turn, relaxes those restrictions on tribal sovereign authority. *U.S. v. Lara*, 541 U.S. 193 (2004)

Congress has also granted tribes greater autonomy in their inherent law enforcement authority (in respect to tribal members) by increasing the maximum criminal penalties tribal courts may impose. § 4217, 100 Stat. 3207–146, codified at 25 U.S.C. § 1302(7) (raising the maximum from ''a term of six months and a fine of $500'' to ''a term of one year and a fine of $5,000''). *U.S. v. Lara*, 541 U.S. 193 (2004)

[o]ur conclusion that Congress has the power to relax the restrictions imposed by the political branches on the tribes' inherent prosecutorial authority is consistent with our earlier cases. *U.S. v. Lara*, 541 U.S. 193 (2004)

[t]hese holdings [referring to *United States v. Wheeler*, 435 U.S. 313 (1978); *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *Duro v. Reina*, 495 U.S. 676 (1990)] reflect the Court's view of the tribes' retained sovereign status *as of the time* the Court made them. They did not set forth constitutional limits that prohibit Congress from changing the relevant legal circumstances, *i.e.*, from taking actions that modify or adjust the tribes' status. *U.S. v. Lara*, 541 U.S. 193 (2004)

Wheeler, *Oliphant*, and *Duro*, [*United States v. Wheeler*, 435 U.S. 313 (1978); *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *Duro v. Reina*, 495 U.S. 676 (1990)] then, are not determinative because Congress has enacted a new statute, relaxing restrictions on the bounds of the inherent tribal authority that the United States recognizes. And that fact makes all the difference. *U.S. v. Lara*, 541 U.S. 193 (2004)

[t]he Constitution authorizes Congress to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians. We hold that Congress exercised that authority in writing this statute [Act of Oct. 28, 1991, 105 Stat. 646]. *U.S. v. Lara*, 541 U.S. 193 (2004)

Indian tribes' regulatory authority over nonmembers is governed by the principles set forth in *Montana v. United States*, 450 U.S. 544 (1981) *Nevada v. Hicks*, 533 U.S. 353 (2001)

Where nonmembers are concerned, the ''exercise of tribal power *beyond what is necessary to protect tribal self-government or to control internal relations* is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation.'' (emphasis in original, quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he existence of tribal ownership is not alone enough to support regulatory jurisdiction over nonmembers. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[T]hat Indians have ''the right ... to make their own laws and be ruled by them,'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

Tribal assertion of regulatory authority over nonmembers must be connected to that right of the Indians to make their own laws and be governed by them. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation's border. Though tribes are often referred to as ''sovereign'' entities, it was ''long ago'' that ''the Court departed from Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries.'' (quoting both *Worcester v. Georgia*, 6 Pet. 515, 561 (1832), *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 141 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

That is not to say that States may exert the same degree of regulatory authority within a reservation as they do without. To the contrary, the principle that Indians have the right to make their own laws and be governed by them requires ''an accommodation between the interests of the Tribes and the Federal Government, on the one hand, and those of the State, on the other.''(quoting *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134, 156 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

When on-reservation conduct involving only Indians is at issue, state law is generally inapplicable, for the State's regulatory interest is likely to be minimal and the federal interest in encouraging tribal self-government is at its strong-

est (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 141 (1980)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

When, however, state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land. *Nevada v. Hicks*, 533 U.S. 353 (2001)

It is also well established in our precedent that States have criminal jurisdiction over reservation Indians for crimes committed (as was the alleged poaching in this case) off the reservation. (quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

We conclude . . . , that tribal authority to regulate state officers in executing process related to the violation, off reservation, of state laws is not essential to tribal self-government or internal relations–to ''the right to make laws and be ruled by them.'' *Nevada v. Hicks*, 533 U.S. 353 (2001)

The State's interest in execution of process is considerable, and even when it relates to Indian-fee lands it no more impairs the tribe's self-government than federal enforcement of federal law impairs state government. *Nevada v. Hicks*, 533 U.S. 353 (2001)

The States' inherent jurisdiction on reservations can of course be stripped by Congress. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Respondents' contention that tribal courts are courts of ''general jurisdiction'' is also quite wrong. A state court's jurisdiction is general, in that it ''lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe.'' [quoting from *Tafflin v. Levitt*, 493 U.S. 455 (1990)] Tribal courts, it should be clear, cannot be courts of general jurisdiction in this sense, for a tribe's inherent adjudicative jurisdiction over nonmembers is at most only as broad as its legislative jurisdiction.(internal cites omitted) *Nevada v. Hicks*, 533 U.S. 353 (2001)

Tribal jurisdiction is limited: For powers not expressly conferred them by federal statute or treaty, Indian tribes must rely upon their retained or inherent sovereignty. *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

An Indian tribe's sovereign power to tax–whatever its derivation–reaches no further than tribal land. *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

. . . we think the generalized availability of tribal services patently insufficient to sustain the Tribe's civil authority over nonmembers on non-Indian fee land. The consensual relationship must stem from ''commercial dealing, contracts, leases, or other arrangements,'' *Montana* [450 U.S. 544 (1981)], and a nonmember's actual or potential receipt of tribal police, fire, and medical services does not create the requisite connection. *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Irrespective of the percentage of non-Indian fee land within a reservation, *Montana*'s [450 U.S. 544 (1981)], second exception grants Indian tribes nothing ''beyond what is necessary to protect tribal self-government or to control internal relations.'' (quoting from *Strate v. A–1 Contractors*, 530 U.S. 438 (1997)) *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Indian tribes are ''unique aggregations possessing attributes of sovereignty over both their members and their territory,'' but their dependent status generally precludes extension of tribal civil authority beyond these limits. (quoting *United States v. Mazurie*, 419 U.S. 544 (1975)) *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

the Court explained, ''the inherent sovereign powers of an Indian tribe''—those powers a tribe enjoys apart from express provision by treaty or statute—''do not extend to the activities of nonmembers of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non Indians on their reservations, even on non Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Montana thus described a general rule that, absent a different congressional direction, Indian tribes lack civil authority over the conduct of nonmembers on non Indian land within a reservation, subject to two exceptions: The first exception relates to nonmembers who enter consensual relationships with the tribe or its members; the second concerns activity that directly affects the tribe's political integrity, economic security, health, or welfare . . (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Tribal authority over the activities of non Indians on reservation lands is an important part of tribal sovereignty. Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute. . . . ''In the absence of any indication that Congress intended the diversity statute to limit the jurisdiction of the tribal courts, we decline petitioner's invitation to hold that tribal sovereignty can be impaired

in this fashion.'' (quoting *Iowa Mutual. Insurance. Co. v. LaPlante,* 480 U.S. 9 (1987)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

While *Montana* immediately involved regulatory authority, the Court broadly addressed the concept of ''inherent sovereignty.'' Regarding activity on non Indian fee land within a reservation, *Montana* delineated—in a main rule and exceptions—the bounds of the power tribes retain to exercise ''forms of civil jurisdiction over non Indians.'' As to nonmembers, we hold, a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction. Absent congressional direction enlarging tribal court jurisdiction, we adhere to that understanding. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Subject to controlling provisions in treaties and statutes, and the two exceptions identified in *Montana,[Montana v. United States*, 450 U.S. 544 (1981)] the civil authority of Indian tribes and their courts with respect to non Indian fee lands generally ''do[es] not extend to the activities of nonmembers of the tribe.'' *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Read in isolation, the *Montana* [*Montana v. United States*, 450 U.S. 544 (1981)] rule's second exception can be misperceived. Key to its proper application, however, is the Court's preface: ''Indian tribes retain their inherent power [to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. . . . But [a tribe's inherent power does not reach] beyond what is necessary to protect tribal self government or to control internal relations.'' (quoting *Montana) Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

The language contained in the title for identifying a first and second lienholder cannot substitute for some Nation law concerning the legal effect of such identification. The Nation statute allowing for lien notation at the request of a lending institution, Muscogee (Creek) Nation Stat. tit. 36, § 3–104(B), never mentions the word ''perfection'' let alone indicates that lien notation is required to perfect a security interest in a vehicle. Nor is there any indication of whether perfection occurs upon application for a title or when the application is issued noting the lien. *Malloy v. Wilserv Credit Union*, 516 F.3d 1180 (10th Cir. 2008)

The statute concerning repossession deals with a remedy, Muscogee (Creek) Nation Stat. tit. 27, § 4–101, not the legal effect of lien notation and the consequences of perfection, i.e., priority. Finally, the first-in time, first-in-right rule appearing in Muscogee (Creek) Nation Stat. tit. 24, § 7–405(C), is part of lien procedures applicable to housing and mortgage foreclosure and eviction. We agree with the other courts that it does not apply. *Malloy v. Wilserv Credit Union*, 516 F.3d 1180 (10th Cir. 2008)

[T]he Nation has no applicable law concerning the creation and perfection of security interests in vehicles. *Malloy v. Wilserv Credit Union*, 516 F.3d 1180 (10th Cir. 2008)

[W]e reject the arguments that (a) tribal statutory authority merely allowing for notation of a lien, (b) the title form itself or (c) a general right to go to tribal court would substitute for tribal law concerning perfection. *Malloy v. Wilserv Credit Union*, 516 F.3d 1180 (10th Cir. 2008)

Muscogee (Creek) Nation Stat. tit. 36, § 3–104(B) concerning the issuance of titles: ''Notice of liens against said vehicle shall be placed upon said title upon request of the lending institution.'' Muscogee (Creek) Nation Stat. tit. 27, § 4–101 providing that a creditor who desires ''to repossess any personal property . . . from a person within the jurisdiction of the Muscogee Nation, unless such repossession is with the written consent of the resident-debtor, must file a complaint in District Court.'' Muscogee (Creek) Nation Stat. tit. 24, § 7–405(C) providing that ''[l]iens have priority according to the time of their creation, so long as the instruments creating the liens are duly recorded, and unless otherwise accorded a different status under the Nation's law. The cited provisions either do or do not bring the tribal title within the UCC definition of a certificate of title. We hold that they do not.'' *Malloy v. Wilserv Credit Union*, 516 F.3d 1180 (10th Cir. 2008)

Moreover, ''[a] tribal court's dismissal of a suit as barred by sovereign immunity is simply not the same thing as having no tribal forum to hear the dispute.''[quoting *Walton v. Tesuque Pueblo*, 443 F.3d 1274 (10th Cir.) (reversing district court's denial of motion to dismiss where tribal defendants did not waive immunity and no statute authorized the suit), (internal cites omitted)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

We conclude that, in the absence of congressional abrogation of tribal sovereign immunity from suit in this action, or an express waiver of its sovereign immunity by the Nation, the district court erred in failing to grant the Nation's motion to dismiss. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

This court later expressly limited the holding in *Dry Creek [*non-Indian denied any remedy in a tribal court forum, *Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] to apply only where the tribal remedy is ''shown to be nonexistent by an actual attempt'' and not merely by an allegation that resort to a tribal remedy would be futile. [quoting *White v. Pueblo of San Juan*, 728 F.2d 1307 (10th Cir. 1984)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

We noted that Indian tribes' ''limited sovereign immunity from suit is well-established'' and that the tribe in that case ''ha[d] not chosen

to waive that immunity.'' We then proceeded to consider whether the tribe's sovereign immunity extended to the tribal-officer defendants, holding: When the complaint alleges that the named officer defendants have acted outside the amount of authority that the sovereign is capable of bestowing, an exception to the doctrine of sovereign immunity is invoked. If the sovereign did not have the power to make a law, then the official by necessity acted outside the scope of his authority in enforcing it, making him liable to suit. Any other rule would mean that a claim of sovereign immunity would protect a sovereign in the exercise of power it does not possess. [internal cites omitted by author. Quoting from *Tenneco Oil Co. v. Sac & Fox Tribe of Indians of Oklahoma*, 725 F.2d 572 (10th Cir. 1984)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

The Court held specifically that Title I of the ICRA–the same statute upon which the Miner parties base some of their claims for relief–did not abrogate tribal sovereign immunity, and therefore suits against a tribe under the ICRA are barred. [quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

In *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S.751, 754 (1998), the Supreme Court affirmed that, ''[a]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.'' While noting that ''[t]here are reasons to doubt the wisdom of perpetuating the doctrine,'' it nonetheless rejected the defendant's invitation to narrow the scope of tribal sovereign immunity. The Court recognized that it had ''taken the lead in drawing the bounds of tribal immunity,'' but it deferred to Congress to limit or abrogate the doctrine through legislation, as it has done with respect to limited classes of suits.(internal quotes omitted) *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

[f]ederal courts do have jurisdiction under the ICRA [Indian Civil Rights Act, 25 U.S.C. §§ 1301–1303] to entertain habeas proceedings. Specifically, 25 U.S.C. § 1303 makes available to any person ''[t]he privilege of the writ of habeas corpus . . ., in a court of the United States, to test the legality of his detention by order of an Indian tribe.'' *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

In *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)] the Supreme Court held that the ICRA [Indian Civil Rights Act, 25 U.S.C. §§ 1301–1303] does not authorize the maintenance of suits against a tribe nor does it constitute a waiver of sovereignty. Further, the ICRA does not create a private cause of action against a tribal official. The only exception is that federal courts do have jurisdiction under the ICRA over habeas proceedings. (internal cites omitted) *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

Restricted Indian land is ''land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance.'' 25 C.F.R. § 152.1(c). Such land is generally entitled to advantageous tax treatment. [quoting *Oklahoma Turnpike Authority v. Bruner*, 259 F.3d 1236 (10th Cir.2001) (''Income derived by individual Indians from restricted allotted land, held in trust by the United States, is subject to numerous exemptions from taxation based on statute or treaty.'')] *Estate of Bruner v. Bruner*, 338 F.3d 1172 (10th Cir. 2003)

Oklahoma recognizes the clean-hands doctrine: Under the maxim, [h]e who comes into equity must come with clean hands, a court of equity will not lend its aid in any manner to one who has been guilty of unlawful or inequitable conduct in a transaction from which he seeks relief, nor to one who has been a participant in a transaction the purpose of which was to defraud a third person, to defraud creditors, or to defraud the government. . . . [quoting *Camp v. Camp*, 196 Okla. 199 (1945) (internal quotation marks omitted)]. A related doctrine states, ''Equity will not relieve one party against another when both are in pari delicto.'' *Estate of Bruner v. Bruner*, 338 F.3d 1172 (10th Cir. 2003)

[t]he clean-hands doctrine ''applie[s] not only to the participants in the transaction, but to their heirs, and to all parties claiming under or through either of them.'' [quoting *Rust v. Gillespie*, 90 Okla. 59 (1923)]. Although there is an exception to this rule for heirs who did not participate in the fraudulent conduct and can prove their claims without establishing the underlying fraud, [quoting *Becker v. State*, 312 P.2d 935 (Okla.1957)], that exception does not apply. Here, proof of the fraudulent scheme is essential to Plaintiff's claims (internal cites omitted) *Estates of Bruner v. Bruner V*, 338 F.3d 1172 (10th Cir. 2003)

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)

Tribal criminal jurisdiction may extend to both member and non-member Indians. 25 U.S.C. § 1301(2); *United States v. Lara*, 541 U.S. 193 (2004). It does not extend to non-Indians. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). That said, tribal officers do have the authority to investigate violations of law on tribal land, and detain persons, including non-Indians, suspected of violating the law. *Duro v. Reina*, 495 U.S. 676 (1990) (internal cites omitted) *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

13. —— Non-members, regulatory jurisdiction

As a matter of tribal law, all conduct occurring on the Mackey site is subject to the laws of the Nation regardless of the status of the parties. The Mackey site is under the jurisdiction of the Nation because; (1) the land is located within the political and territorial boundaries of the Nation; and (32) the land is owned by the Nation. 27 Muscogee (Creek) Nation Code. Ann. § 1–102(A)(Territorial Jurisdiction). *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2*, SC 05–01 (Muscogee (Creek) 2005)

The Courts of this Nation exercise general civil jurisdiction over all civil actions arising under the Constitution, laws or treaties which arise within the Nation's Indian country, regardless of the Indian or non-Indian status of the parties. 27 Muscogee (Creek) Nation Code. Ann. § 1–102(B)(Civil Jurisdiction). *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2*, SC 05–01 (Muscogee (Creek) 2005)

Personal jurisdiction exists over all persons, regardless of their status as Indian or non-Indian, in ''cases arising from any action or event'' occurring on the Nation's Indian Country and in other cases in which the defendant has established sufficient contacts. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2*, SC 05–01 (Muscogee (Creek) 2005)

We hold that as a matter of tribal law and consistent with federal law, the Nation has exclusive regulatory jurisdiction over the land where Appellant's conduct occurred. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2*, SC 05–01 (Muscogee (Creek) 2005)

Because the citation issued to Russell Miner was civil in nature, *Oliphant* does not apply. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2*, SC 05–01 (Muscogee (Creek) 2005)

Non–Indians will be subject to tribal regulatory authority when they voluntarily choose to go onto tribal land and do business with the tribe.

Non–Indians who chose to purchase products, engage in commercial activities, or pay for entertainment inside Indian country place themselves with the regulatory reach of the Nation. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

The Nation has exclusive jurisdiction to regulate the conduct of all persons on tribal land, particularly those that voluntarily come on to tribal land for the purpose of patronizing tribal businesses. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

The act of coming on to tribal property and entering the casino for commercial purposes constitutes a consensual relationship. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

There should be no question that the presence of illegal drugs on a tribe's reservation is a threat to the health and welfare of the tribe. Illegal drugs are a threat to the health and welfare of all persons. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

The state also lacks jurisdiction [for] the criminal conduct inside the Nation's Indian Country. Because the Nation does not have a cross-deputization agreement with Tulsa County, Oklahoma, the Nation would have no means of addressing Appellant's conduct through the assistance of another jurisdiction. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

There is simply no jurisdiction besides the Nation's that can adequately deal with drug traffic on tribal lands. The only mans in which the Nation may reduce the amount of drugs brought onto tribal lands by non-Indians is through the limited provisions of the Nation's civil code. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

The forfeiture taking place is an *in rem* civil action against property used to transport or store drugs on tribal property. The forfeiture proceedings are not individual criminal penalties. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

Individuals who have cars of lesser worth are routinely subject to the forfeiture of their vehicles when such vehicles are used to possess or transport drugs and this Court fails to see how vehicles are more or less expensive should escape forfeiture proceedings for the same conduct. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

This Court will not be swayed by arguments that suggest the value of a vehicle should create and exception to the civil authority of the Nation. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

As sole owner of his business, he had full authority to use the vehicle for his personal use and in doing so, chose to transport illegal drugs in the vehicle. The forfeiture statute provides for property to be forfeited. This Court holds that forfeiture was appropriate. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

[T]he Nation possess authority to regulate public safety through civil laws that restrict the possession, use or distribution of illegal drugs. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

[T]he Nation's courts possess civil adjudicatory jurisdiction over forfeiture proceedings including the forfeiture of (1) controlled dangerous substances; (2) vehicles used to transport or conceal controlled dangerous substances; and (3) monies and currency found in close proximity of a forfeitable substance. *Muscogee (Creek) Nation v. One Thousand Four Hundred Sixty Three and 14/100; Methamphetamine; and a 2004 General Motors Hummer H2,* SC 05–01 (Muscogee (Creek) 2005)

The Court may at various times, adopt certain federal or state laws or legal concepts into Muscogee Nation case law. When this occurs, we must note that the Muscogee Nation Supreme Court is only using federal or state principles for the purposes of guidance and is merely incorporating those laws into our common law. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

District Court of the Muscogee (Creek) Nation has jurisdiction to quiet title and ejectment claims of tribal members against non-members where the land in question lies within Muscogee (Creek) Indian Country. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

Indian Tribes may exercise a broad range of civil jurisdiction over the activities of non-member Indians on Indian reservation and in which tribes have a significant interest. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

When non-Indian conduct does not affect tribal interests, tribal jurisdiction lacks. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

If one party in a lawsuit is tribal member, interest of tribe in regulating activities of tribal members and resolving disputes over Indian property are sufficient to confer jurisdiction to the court. *Enlow v. Bevenue*, 4 Okla Trib. 175 (Muscogee (Creek) 1994).

The District Court of the Muscogee (Creek) Nation has exclusive original jurisdiction over all matters not otherwise limited by tribal ordinance. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

The District Court of the Muscogee (Creek) Nation has personal jurisdiction and subject matter jurisdiction over suits by the Nation against Tobacco companies with respect to their manufacture, marketing, and sale of tobacco products where some of such activities by defendant and/or their agents are alleged to have occurred within the Nation's Indian Country and/or where products have entered the stream of commerce within the Nation's territorial and political jurisdiction thus creating minimum contacts for jurisdictional purposes. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Indian Tribes have adjudicatory jurisdiction where party's actions have substantial effect on political integrity, economic security, or health and safety and welfare of the tribe. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Treaty of 1856 did not divest the Muscogee (Creek) Nation of otherwise extant adjudicatory jurisdiction over non-Indians and/or corporations. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Muscogee (Creek) Nation Constitution and statutes dictate manner in which question of law are to be addressed by the Court. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Judicial Code in NCA 82–30 defines adjudicatory and jurisdiction of the Muscogee (Creek) Nation's District Court as exclusive original jurisdiction over all matters not otherwise limited by tribal ordinance. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Civil jurisdiction over non-members comes from grant in NCA 92–205 which gives the Nation's Courts general civil jurisdiction over claims arising in the territorial jurisdiction. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Defendant's act of entry into the Muscogee (Creek) Nation by placing their products into the stream of commerce within the political and territorial jurisdiction of the Nation thus consenting to civil jurisdiction of the Muscogee (Creek) Nation. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Muscogee (Creek) Nation does not exceed its powers as a matter of tribal law or under notions of federal due process if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the foreseeability and expectation that its product would be consumed by the Muscogee (Creek) Nation. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Defendant's contacts are sufficient both under statutory mandates of the Muscogee (Creek) Nation's statutes and under well established minimum contacts jurisprudence developed in the federal system. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Congress drafted Indian Country statute [18 U.S.C.S. § 1151 (1997)] as a criminal statute but the tribal and federal courts have applied the statutory definition to civil matters. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Mandate of *Montana* [*Montana v. U.S.*, 450 U.S. 544 (1981)] recognizes a tribes regulatory authority if the conduct to be has or *threatens* to have a substantial effect on the tribes political integrity, economic security or health and welfare. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

If tribal regulatory jurisdiction exists then tribal adjudicatory jurisdiction must follow. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Canons of Treaty construction developed by the United States Supreme Court resolve ambiguities in favor of Indians and that language of an Indian Treaty is to be understood today as that same language was understood by tribal representatives when the treaty was negotiated. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

No indication in the 1867 Treaty that the men gave up any right to full adjudicatory authority. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

No provision nor implication in the 1867 Constitution of the Muscogee (Creek) Nation that prohibited jurisdiction over corporations doing business in the Muscogee (Creek) Nation. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Muscogee (Creek) Nation NCA 92–71 validly requires smokeshops within Nation's jurisdiction to obtain a retail license; absent such license, unstamped cigarettes are contraband, and subject to valid seizure by Nation's Lighthorse Administration and forfeiture to Nation.

Tax Commission v. Nave, 3 Okla. Trib. 118 (Musc. (Cr.) D.Ct. 1993).

Even where Tribe has validly seized a vehicle used as an instrumentality to store contraband unstamped cigarettes of a smokeshops operating without a requisite tribal retailer's license, Muscogee (Creek) Nation's courts may recognize perfected security interest on truck, and release that vehicle to interest holder or owner. *Tax Commission v. Nave*, 2 Okla. Trib. 435 (Muscogee (Cr.) D.Ct. 1992).

Muscogee (Creek) Nation has regulatory authority over all matters within its jurisdiction over which it has a substantial interest. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

Tribe may retain power to regulate conduct of non-Indians on fee lands when that conduct threatens or has direct effect on political integrity, economic security, or health or welfare of tribe. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

Tribal authority over non-Indians on fee lands extends to those who enter into consensual relationships with tribe. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

Muscogee (Creek) Nation has power to exercise civil authority over conduct of non-Indians, especially when their conduct has direct impact on political integrity, economic security, or health and welfare of Tribe. *Muscogee (Creek) Nation v. Indian Country USA., Inc.*, 1 Okla. Trib. 267 (Muscogee (Cr.) D.Ct. 1989).

We begin by noting that whether a tribal court has adjudicative authority over nonmembers is a federal question. If the tribal court is found to lack such jurisdiction, any judgment as to the nonmember is necessarily null and void. (internal cites to *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987); *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985) omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As part of their residual sovereignty, tribes retain power to legislate and to tax activities on the reservation, including certain activities by nonmembers. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

They [tribes] may also exclude outsiders from entering tribal land. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

But tribes do not, as a general matter, possess authority over non-Indians who come within their borders: ''[T]he inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.'' (citing *Montana v. United States*, 450 U.S. 544 (1981)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

As we explained in *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978), the tribes have, by virtue of their incorporation into the American republic, lost ''the right of governing . . . person[s] within their limits except themselves.'' (emphasis and internal quotation marks omitted). This general rule restricts tribal authority over nonmember activities taking place on the reservation, and is particularly strong when the nonmember's activity occurs on land owned in fee simple by non-Indians—what we have called ''non-Indian fee land.'' (quoting *Strate v. A–1 Contractors*, 520 U.S. 438, 446 (1997)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[w]hen the tribe or tribal members convey a parcel of fee land *''to non-Indians*, [the tribe] loses any former right of absolute and exclusive use and occupation of the conveyed lands.'' (quoting *South Dakota v. Bourland*, 508 U.S. 679 (1993)) (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have recognized two exceptions to this principle, circumstances in which tribes may exercise ''civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.'' First, ''[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.'' Second, a tribe may exercise ''civil authority over the conduct of non-Indians on fee lands within the reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) (internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

By their terms, the exceptions [announced in *Montana v. United States*, 450 U.S. 544 (1981)] concern regulation of ''the *activities* of nonmembers'' or ''the *conduct* of non-Indians on fee land.'' (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Given *Montana*'s ''general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe, efforts by a tribe to regulate nonmembers, especially on non-Indian fee land, are presumptively invalid,'' [quoting *Montana v. United States*, 450 U.S. 544 (1981) and *Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001)] *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The burden rests on the tribe to establish one of the exceptions to *Montana*'s [*Montana v. United States*, 450 U.S. 544 (1981)] general rule that would allow an extension of tribal authority to regulate nonmembers on non-Indian fee land. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Montana [*Montana v. United States*, 450 U.S. 544 (1981)] does not permit Indian tribes to regulate the sale of non-Indian fee land. *Montana* and its progeny permit tribal regulation of nonmember *conduct* inside the reservation that implicates the tribe's sovereign interests. *Montana* expressly limits its first exception to the ''activities of nonmembers,'' allowing these to be regulated to the extent necessary ''to protect tribal self-government [and] to control internal relations.'' *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

We have upheld as within the tribe's sovereign authority the imposition of a severance tax on natural resources removed by nonmembers from tribal land. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982). We have approved tribal taxes imposed on leasehold interests held in tribal lands, as well as sales taxes imposed on nonmember businesses within the reservation. *Kerr-McGee Corp*. v. *Navajo Tribe*, 471 U.S. 195 (1985). We have similarly approved licensing requirements for hunting and fishing on tribal land. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983)(internal cites omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The logic of *Montana* [*Montana v. United States*, 450 U.S. 544 (1981)] is that certain activities on non-Indian fee land (say, a business enterprise employing tribal members) or certain uses (say, commercial development) may intrude on the internal relations of the tribe or threaten tribal self-rule. To the extent they do, such activities or land uses may be regulated. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Put another way, certain forms of nonmember behavior, even on non-Indian fee land, may sufficiently affect the tribe as to justify tribal oversight. While tribes generally have no interest in regulating the conduct of nonmembers, then, they may regulate nonmember behavior that implicates tribal governance and internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The tribe's ''traditional and undisputed power to exclude persons'' from tribal land, for example, gives it the power to set conditions on entry to that land via licensing requirements and hunting regulations (quoting *Duro v. Reina*, 495 U.S. 676 (1990)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The power to tax certain nonmember activity can also be justified as ''a necessary instrument of self-government and territorial management'' insofar as taxation ''enables a tribal government to raise revenues for its essential services,'' to pay its employees, to provide police protection, and in general to carry out the functions that keep peace and order (quoting *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982)) (internal quotes omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

By definition, fee land owned by nonmembers has already been removed from the tribe's immediate control. [quoting *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)] It has already been alienated from the tribal trust. The tribe cannot justify regulation of such land's sale by reference to its power to superintend tribal land, then, because non-Indian fee parcels have ceased to *be* tribal land. (emphasis in original) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Any direct harm to its political integrity that the tribe sustains as a result of fee land sale is sustained at the point the land passes from Indian to non-Indian hands. It is at that point the tribe and its members lose the ability to use the land for their purposes. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Once the land has been sold in fee simple to non-Indians and passed beyond the tribe's immediate control, the mere resale of that land works no additional intrusion on tribal relations or self-government. Resale, by itself, causes no additional damage. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The *uses* to which the land is put may very well change from owner to owner, and those uses may well affect the tribe and its members. As our cases bear out, the tribe may quite legitimately seek to protect its members from noxious uses that threaten tribal welfare or security, or from nonmember conduct on the land that does the same.(internal cite omitted, emphasis in original). *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[t]he key point is that any threat to the tribe's sovereign interests flows from changed uses or nonmember activities, rather than from the mere fact of resale. The tribe is able fully to vindicate its sovereign interests in protecting its members and preserving tribal self-government by regulating nonmember *activity* on the land, within the limits set forth in our cases. The tribe has no independent interest in restraining alienation of the land itself, and thus, no authority to do so. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[n]onmembers have no part in tribal government—they have no say in the laws and regulations that govern tribal territory. Consequently, those laws and regulations may be fairly imposed on nonmembers only if the nonmember has consented, either expressly or by his actions. Even then, the regulation must stem from the tribe's inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[w]e said it ''defies common sense to suppose'' that Congress meant to subject non-Indians to tribal jurisdiction simply by virtue of the nonmember's purchase of land in fee simple. If Congress did not anticipate tribal jurisdiction would run with the land, we see no reason why a nonmember would think so either. (internal cite omitted, quoting from *Montana v. United States*, 450 U.S. 544 (1981)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Montana [*Montana v. United States*, 450 U.S. 544 (1981)] provides that, in certain circumstances, tribes may exercise authority over the conduct of nonmembers, even if that conduct takes place on non-Indian fee land. But conduct taking place on the land and the sale of the land are two very different things. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

The second exception authorizes the tribe to exercise civil jurisdiction when non-Indians' ''conduct'' menaces the ''political integrity, the economic security, or the health or welfare of the tribe.'' The conduct must do more than injure the tribe, it must ''imperil the subsistence'' of the tribal community. (quoting *Montana v. United States*, 450 U.S. 544 (1981))(internal citation omitted) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

[t]he *Bracker* [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] interest-balancing test applies only where ''a State asserts authority over the conduct of non-Indians engaging in activity on the reservation.'' It does not apply where, as here, a state tax is imposed on a non-Indian and arises as a result of a transaction that occurs off the reservation. (internal citation omitted) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

We have further determined that, even when a State imposes the legal incidence of its tax on a non-Indian seller, the tax may nonetheless be pre-empted if the transaction giving rise to tax liability occurs on the reservation and the imposition of the tax fails to satisfy the *Bracker* interest-balancing test. *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

We have applied the balancing test articulated in *Bracker* [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] only where ''the legal incidence of the tax fell on a nontribal entity engaged in a transaction with tribes or tribal members on the reservation.'' (internal citation omitted)(quoting *Arizona Dept. of Revenue v. Blaze Constr. Co.*, 526 U.S. 32 (1999)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

The *Bracker* interest-balancing test has never been applied where, as here, the State asserts its taxing authority over non-Indians off the reservation. And although we have never addressed this precise issue, our Indian tax immunity cases counsel against such an application. [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

Limiting the interest-balancing test exclusively to *on-reservation* transactions between a nontribal entity and a tribe or tribal member is consistent with our unique Indian tax immunity jurisprudence. We have explained that this jurisprudence relies ''heavily on the doctrine of tribal sovereignty . . . which historically gave state law 'no role to play' within a tribe's territorial boundaries.'' (emphasis in original, quoting *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

If a State may apply a nondiscriminatory tax to Indians who have gone beyond the boundaries of the reservation, then it follows that it may apply a nondiscriminatory tax where, as here, the tax is imposed on non-Indians as a result of an off-reservation transaction. *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

[i]n *Duro v. Reina*, [*Duro v. Reina*, 495 U.S. 676 (1990)], this Court had held that a tribe no longer possessed *inherent or sovereign authority* to prosecute a ''nonmember Indian.'' But it pointed out that, soon after this Court decided *Duro*, Congress enacted new legislation specifically authorizing a tribe to prosecute Indian members of a different tribe. [Act of Oct. 28, 1991, 105 Stat. 646]. That new statute, in permitting a tribe to bring certain tribal prosecutions against nonmember Indians, does not purport to delegate the Federal Government's own *federal* power. Rather, it enlarges the *tribes'* own ''powers of self-government'' to include ''the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over *all* Indians,'' including nonmembers. 25 U.S.C. § 1301(2) (emphasis added in original). *U.S. v. Lara*, 541 U.S. 193 (2004)

We assume, . . . that Lara's double jeopardy claim turns on the answer to the ''dual sovereignty'' question. What is ''the source of [the] power to punish'' nonmember Indian offenders, ''inherent *tribal* sovereignty'' or delegated *federal* authority? [quoting *United States v. Wheeler*, 435 U.S. 313 (1978)]. We also believe that Congress intended the former answer. The statute [Act of Oct. 28, 1991, 105 Stat. 646] says that it ''recognize[s] and affirm[s]'' in each tribe the *''inherent'' tribal* power (not delegated federal power) to prosecute nonmember Indians for misdemeanors. (emphasis added in original, internal cites omitted) *U.S. v. Lara*, 541 U.S. 193 (2004)

[t]he Constitution authorizes Congress to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians. We hold that Congress exercised that authority in writing this statute [Act of Oct. 28, 1991, 105 Stat. 646]. *U.S. v. Lara*, 541 U.S. 193 (2004)

Indian tribes' regulatory authority over nonmembers is governed by the principles set forth

in *Montana v. United States*, 450 U.S. 544 (1981) *Nevada v. Hicks*, 533 U.S. 353 (2001)

Where nonmembers are concerned, the ''exercise of tribal power *beyond what is necessary to protect tribal self-government or to control internal relations* is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation.'' (emphasis in original, quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Nevada v. Hicks*, 533 U.S. 353 (2001)

The ownership status of land, in other words, is only one factor to consider in determining whether regulation of the activities of nonmembers is ''necessary to protect tribal self-government or to control internal relations.'' It may sometimes be a dispositive factor. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he absence of tribal ownership has been virtually conclusive of the absence of tribal civil jurisdiction; with one minor exception, we have never upheld under *Montana* [*Montana v. United States*, 450 U.S. 544 (1981)] the extension of tribal civil authority over nonmembers on non-Indian land. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he existence of tribal ownership is not alone enough to support regulatory jurisdiction over nonmembers. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Tribal assertion of regulatory authority over nonmembers must be connected to that right of the Indians to make their own laws and be governed by them. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Respondents' contention that tribal courts are courts of ''general jurisdiction'' is also quite wrong. A state court's jurisdiction is general, in that it ''lays hold of all subjects of litigation between parties within its jurisdiction, though the causes of dispute are relative to the laws of the most distant part of the globe.'' [quoting from *Tafflin v. Levitt*, 493 U.S. 455 (1990)] Tribal courts, it should be clear, cannot be courts of general jurisdiction in this sense, for a tribe's inherent adjudicative jurisdiction over nonmembers is at most only as broad as its legislative jurisdiction.(internal cites omitted) *Nevada v. Hicks*, 533 U.S. 353 (2001)

Nor can one say that the pro-Indian canon is inevitably stronger–particularly where the interpretation of a congressional statute rather than an Indian treaty is at issue. This Court's earlier cases are too individualized, involving too many different kinds of legal circumstances, to warrant any such assessment about the two canons' relative strength. (internal cite omitted) *Chickasaw Nation v. United States*, 534 U.S. 84 (2001)

. . . we think the generalized availability of tribal services patently insufficient to sustain the Tribe's civil authority over nonmembers on non-Indian fee land. The consensual relationship must stem from ''commercial dealing, contracts, leases, or other arrangements,'' *Montana* [450 U.S. 544 (1981)], and a nonmember's actual or potential receipt of tribal police, fire, and medical services does not create the requisite connection. *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Irrespective of the percentage of non-Indian fee land within a reservation, *Montana*'s [450 U.S. 544 (1981)], second exception grants Indian tribes nothing ''beyond what is necessary to protect tribal self-government or to control internal relations.'' (quoting from *Strate v. A–1 Contractors*, 530 US 438 (1997)) *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

Indian tribes are ''unique aggregations possessing attributes of sovereignty over both their members and their territory,'' but their dependent status generally precludes extension of tribal civil authority beyond these limits. (quoting *United States v. Mazurie*, 419 U.S. 544 (1975)) *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

The Navajo Nation's imposition of a tax upon nonmembers on non-Indian fee land within the reservation is, therefore, presumptively invalid. Because respondents have failed to establish that the hotel occupancy tax is commensurately related to any consensual relationship with petitioner or is necessary to vindicate the Navajo Nation's political integrity, the presumption ripens into a holding. *Atkinson Trading Company v. Shirley, Jr. et al.*, 532 U.S. 645 (2001)

the Court explained, ''the inherent sovereign powers of an Indian tribe''—those powers a tribe enjoys apart from express provision by treaty or statute—''do not extend to the activities of nonmembers of the tribe.'' (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non Indians on their reservations, even on non Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Montana thus described a general rule that, absent a different congressional direction, Indian tribes lack civil authority over the conduct of nonmembers on non Indian land within a reservation, subject to two exceptions: The first exception relates to nonmembers who enter consensual relationships with the tribe or its members; the second concerns activity that directly affects the tribe's political integrity, eco-

nomic security, health, or welfare . . (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Tribal authority over the activities of non Indians on reservation lands is an important part of tribal sovereignty. Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute. . . . ''In the absence of any indication that Congress intended the diversity statute to limit the jurisdiction of the tribal courts, we decline petitioner's invitation to hold that tribal sovereignty can be impaired in this fashion.'' (quoting *Iowa Mutual. Insurance. Co. v. LaPlante*, 480 U.S. 9 (1987)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[t]hat state courts may not exercise jurisdiction over disputes arising out of on reservation conduct—even over matters involving non Indians—if doing so would ''infring[e] on the right of reservation Indians to make their own laws and be ruled by them.'' (quoting *Fisher v. District Court of Sixteenth Judicial Dist. of Mont.*, 424 U.S. 382 (1976)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

While *Montana* immediately involved regulatory authority, the Court broadly addressed the concept of ''inherent sovereignty.'' Regarding activity on non Indian fee land within a reservation, *Montana* delineated—in a main rule and exceptions—the bounds of the power tribes retain to exercise ''forms of civil jurisdiction over non Indians.'' As to nonmembers, we hold, a tribe's adjudicative jurisdiction does not exceed its legislative jurisdiction. Absent congressional direction enlarging tribal court jurisdiction, we adhere to that understanding. (quoting *Montana v. United States*, 450 U.S. 544 (1981)) *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Subject to controlling provisions in treaties and statutes, and the two exceptions identified in *Montana,[Montana v. United States*, 450 U.S. 544 (1981)] the civil authority of Indian tribes and their courts with respect to non Indian fee lands generally ''do[es] not extend to the activities of nonmembers of the tribe.'' *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

Read in isolation, the *Montana* [*Montana v. United States*, 450 U.S. 544 (1981)] rule's second exception can be misperceived. Key to its proper application, however, is the Court's preface: ''Indian tribes retain their inherent power [to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. . . . But [a tribe's inherent power does not reach] beyond what is necessary to protect tribal self government or to control internal relations.'' (quoting *Montana) Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

The language contained in the title for identifying a first and second lienholder cannot substitute for some Nation law concerning the legal effect of such identification. The Nation statute allowing for lien notation at the request of a lending institution, Muscogee (Creek) Nation Stat. tit. 36, § 3–104(B), never mentions the word ''perfection'' let alone indicates that lien notation is required to perfect a security interest in a vehicle. Nor is there any indication of whether perfection occurs upon application for a title or when the application is issued noting the lien. *Malloy v. Wilserv Credit Union*, 516 F.3d 1180 (10th Cir. 2008)

[T]he Nation has no applicable law concerning the creation and perfection of security interests in vehicles. *Malloy v. Wilserv Credit Union*, 516 F.3d 1180 (10th Cir. 2008)

[W]e reject the arguments that (a) tribal statutory authority merely allowing for notation of a lien, (b) the title form itself or (c) a general right to go to tribal court would substitute for tribal law concerning perfection. *Malloy v. Wilserv Credit Union*, 516 F.3d 1180 (10th Cir. 2008)

Moreover, ''[a] tribal court's dismissal of a suit as barred by sovereign immunity is simply not the same thing as having no tribal forum to hear the dispute.''[quoting *Walton v. Tesuque Pueblo*, 443 F.3d 1274 (10th Cir.) (reversing district court's denial of motion to dismiss where tribal defendants did not waive immunity and no statute authorized the suit), (internal cites omitted)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

We conclude that, in the absence of congressional abrogation of tribal sovereign immunity from suit in this action, or an express waiver of its sovereign immunity by the Nation, the district court erred in failing to grant the Nation's motion to dismiss. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

We noted that Indian tribes' ''limited sovereign immunity from suit is well-established'' and that the tribe in that case ''ha[d] not chosen to waive that immunity.'' We then proceeded to consider whether the tribe's sovereign immunity extended to the tribal-officer defendants, holding: When the complaint alleges that the named officer defendants have acted outside the amount of authority that the sovereign is capable of bestowing, an exception to the doctrine of sovereign immunity is invoked. If the sovereign did not have the power to make a law, then the official by necessity acted outside the scope of his authority in enforcing it, making him liable to suit. Any other rule would mean that a claim of sovereign immunity would protect a sovereign in the exercise of power it does not possess. [internal cites omitted by author. Quoting from *Tenneco Oil Co. v. Sac & Fox Tribe of Indians of Oklahoma*, 725 F.2d 572 (10th Cir. 1984)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

The Court held specifically that Title I of the ICRA–the same statute upon which the Miner parties base some of their claims for relief–did not abrogate tribal sovereign immunity, and therefore suits against a tribe under the ICRA

are barred. [quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

In *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S.751, 754 (1998), the Supreme Court affirmed that, ''[a]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.'' While noting that ''[t]here are reasons to doubt the wisdom of perpetuating the doctrine,'' it nonetheless rejected the defendant's invitation to narrow the scope of tribal sovereign immunity. The Court recognized that it had ''taken the lead in drawing the bounds of tribal immunity,'' but it deferred to Congress to limit or abrogate the doctrine through legislation, as it has done with respect to limited classes of suits.(internal quotes omitted) *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

[f]ederal courts do have jurisdiction under the ICRA [Indian Civil Rights Act, 25 U.S.C. §§ 1301–1303] to entertain habeas proceedings. Specifically, 25 U.S.C. § 1303 makes available to any person ''[t]he privilege of the writ of habeas corpus . . ., in a court of the United States, to test the legality of his detention by order of an Indian tribe.'' *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

In *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)] the Supreme Court held that the ICRA [Indian Civil Rights Act, 25 U.S.C. §§ 1301–1303] does not authorize the maintenance of suits against a tribe nor does it constitute a waiver of sovereignty. Further, the ICRA does not create a private cause of action against a tribal official. The only exception is that federal courts do have jurisdiction under the ICRA over habeas proceedings. (internal cites omitted) *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

Restricted Indian land is ''land or any interest therein, the title to which is held by an individual Indian, subject to Federal restrictions against alienation or encumbrance.'' 25 C.F.R. § 152.1(c). Such land is generally entitled to advantageous tax treatment. [quoting *Oklahoma Turnpike Authority v. Bruner*, 259 F.3d 1236 (10th Cir.2001) (''Income derived by individual Indians from restricted allotted land, held in trust by the United States, is subject to numerous exemptions from taxation based on statute or treaty.'')] *Estate of Bruner v. Bruner*, 338 F.3d 1172 (10th Cir. 2003)

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)

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)

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)

Tribal criminal jurisdiction may extend to both member and non-member Indians. 25 U.S.C. § 1301(2); *United States v. Lara*, 541 U.S. 193 (2004). It does not extend to non-Indians. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). That said, tribal officers do have the authority to investigate violations of law on tribal land, and detain persons, including non-Indians, suspected of violating the law. *Duro v. Reina*, 495 U.S. 676 (1990) (internal cites omitted) *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

14. Other tribal officers

The Election Board is also responsible for the apportionment of National Council seats. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (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)

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)

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)

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)

[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) National Council*, SC 06–04 (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)

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)

It is incumbent upon, and hereby ordered that the National Council craft rules that safeguard every Muscogee (Creek) Nation citizen or employee, regardless of position, from the contempt powers of the National Council unless a subpoena is specifically issued and due process is implemented. *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)

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)

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's 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).

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).

The Supreme Court is a necessary and separate branch of the Muscogee (Creek) Nation

instilled with the Judicial Authority and power of the Muscogee (Creek) Nation. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

The continued operation of the Court is of extreme importance and necessary for the preservation of the rights of all of the citizens of the tribal government of the Muscogee (Creek) Nation. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

The power and authority of this Court will not be decreased nor will this Court be diminished by any other branch of the tribal government by its failure to perform its duties and obligations under the constitution of the Muscogee (Creek) Nation and this Court finds that the Justices of this Court should retain their position and continue to perform the duties of Justice of this Supreme Court until their successors shall be duly qualified. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

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).

15. Boards and commissions

[T]he Court finds Petitioner's Application is not ripe for appellate review and that the Court will not exercise original jurisdiction in this case. The Court notes that this action would have been more properly brought before the District Court, where a Special Judge would be appointed to hear it. *Muscogee (Creek) Nation National Council and Trepp v. Muscogee (Creek) Election Board, A.D. Ellis and Muscogee (Creek) Constitutional Convention Commission*, SC 09–10 (Muscogee (Creek) 2009)

The Supreme Court finds that the Appellants failed to establish a right to intervene in the proceeding below. The District Court's dismissal of Appellant's oral Motion to Intervene is therefore affirmed. *Johnson and Johnson v. Muscogee Creek Nation and Muscogee (Creek) Administration Review Board, et al.*, SC 07–03 (Muscogee (Creek) 2009)

The recent decision by this Court in *Glass v. Muscogee (Creek) Nation Tulsa Casino, et al.* decided in April 2006 (affirming dismissal because no waiver from sovereign immunity was obtained by Plaintiff) is controlling as to the GOAB [Gaming Operations Authority Board]. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

The Court further holds that the receipt of a waiver from sovereign immunity must be obtained from the National Council as a condition precedent to filing suit against the GOAB [Gaming Operations Authority Board]. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

The District Court properly applied this Court's decision in *Glass,*[*Glass v. Muscogee (Creek) Nation Tulsa Casino, et al.*, SC 05–04*(* 2006)] and therefore, the dismissal of Respondent/Defendant GOAB as being protected from civil suit by sovereign immunity was also proper. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

The Election Board of the Muscogee (Creek) Nation is constitutionally responsible for elections in accordance with the Muscogee (Creek) Nation Constitution Article 4 Section 1. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

The Election Board is also responsible for the apportionment of National Council seats. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

This Court finds that Election Board should have promulgated rules and regulations for reapportionment after the 1995 amendments to the Muscogee (Creek) Nation Constitution capping the number of National Council seats available to twenty-six (26). *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, Tukvpvtce 2, Tulsa 7, Wagoner 1, Total 26. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

[A]s members of the Constitutional Convention Commission the four unchallenged commissioners are integral parts of the whole Commission, which is also a party to this action. Importantly, it is clear to this Court that the four unchallenged members of the Commission, if allowed by this Court to go forward, would not constitute a quorum to carry out the business of the Commission. Moreover, the language of the enabling amendment does not specify a date certain for completion, and the Court therefore finds there is not a constitutional mandate to complete the work of the Commission by the end of February, 2007, and that the Agreed Temporary Restraining Order in this case protects the parties. *Begley v. The Constitutional Commission*, SC 06–06 (Muscogee (Creek) 2006)

Title 21 Section 4–103.C.l.h (which limits the Gaming Authority Board's authority to sue or be sued in any tribal, state or federal court), states that a litigant wishing to sue the Gaming Authority Board must first obtain a resolution from the National Council waiving immunity to suit. This statute is of such direct relevance to the instant case, that no construction with other statutes is necessary. *Glass v. Muscogee (Creek) Nation Tulsa Casino*, SC 05–04 (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)

Where election for office of Muscogee (Creek) National Council Representatives ends in a tie, tribal law provides that Election Board is to notify National Council of that result; at Election Board's request, National Council shall then set new election date. *In re Roberts*, 3 Okla. Trib. 308 (Muscogee (Cr.) D.Ct. 1993).

Party challenging decision of Muscogee (Creek) Nation Election Board, upholding residence of candidate in particular National Council district, bears the burden of proof regarding residency of challenged candidate. *Litsey v. Cox*, 2 Okla. Trib. 307 (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).

Muscogee (Creek) Nation's Hospital and Clinics Board is not purely executive in nature. *Cox v. Moore*, 1 Okla. Trib. 263 (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).

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)

Article IV, section 1 of Muscogee (Creek) Nation Constitution authorizes National Council to enact ordinances regulating conduct of tribal elections; tribal Election Board must abide by such ordinances. *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).

16. Secured transactions

Even where tribe has validly seized vehicle used as instrumentality to store contraband unstamped cigarettes of smokeshops operating without requisite tribal retailer's license, Muscogee (Creek) Nation's courts may recognize perfected security interest in truck, and release that vehicle to interest holder or to owner. *Tax Commission v. Nave*, 2 Okla. Trib. 435 (Muscogee (Cr.) D.Ct. 1992).

17. Liens

Where smokeshops 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 Nation

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).

Even where tribe has validly seized vehicle used as instrumentality to store contraband unstamped cigarettes of smokeshops operating without requisite tribal retailer's license, Muscogee (Creek) Nation's courts may recognize perfected security interest in truck, and release that vehicle to interest holder or to owner. *Tax Commission v. Nave*, 2 Okla. Trib. 435 (Muscogee (Cr.) D.Ct. 1992).

18. Gaming

The Supreme Court finds that the Appellants failed to establish a right to intervene in the proceeding below. The District Court's dismissal of Appellant's oral Motion to Intervene is therefore affirmed. *Johnson and Johnson v. Muscogee Creek Nation and Muscogee (Creek) Administration Review Board, et al.*, SC 07–03 (Muscogee (Creek) 2009)

The Court further holds that the receipt of a waiver from sovereign immunity must be obtained from the National Council as a condition precedent to filing suit against the GOAB [Gaming Operations Authority Board]. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

The recent decision by this Court in *Glass v. Muscogee (Creek) Nation Tulsa Casino, et al.* decided in April 2006 (affirming dismissal because no waiver from sovereign immunity was obtained by Plaintiff) is controlling as to the GOAB [Gaming Operations Authority Board]. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

Title 21, Section 4–103.C.l.h (which limits the Gaming Authority Board's authority to sue or be sued in any tribal, state or federal court), states that a litigant wishing to sue the Gaming Authority Board must first obtain a resolution from the National Council waiving immunity to suit. This statute is of such direct relevance to the instant case, that no construction with other statutes is necessary. *Glass v. Muscogee (Creek) Nation Tulsa Casino*, SC 05–04 (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)

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).

Per Capita payments are not unconstitutional. *Reynolds v. Skaggs*, 4 Okla. Trib. 116 (Muscogee (Creek) 1994).

Where gaming management agreement is silent concerning ability of managing corporation to hire a general manager and deduct that person's salary from 'profits,' general interpretive principles preclude such ability, such a position being deemed to be a normal incident of 'management' for which the managing corporation is already compensated by its percentage share of profits. *Gaming Commissioner v. Indian Country USA, Inc.*, 1 Okla. Trib. 109 (Muscogee (Creek) 1987).

District Court of Muscogee (Creek) Nation has power to interpret gaming contract between Nation and gaming contractor, to determine whether breach thereof has occurred, and to issue preliminary injunction where warranted by legal circumstances. *Muscogee (Creek) Nation v. Indian Country U.S.A., Inc.*, 1 Okla. Trib. 267 (Musc. (Cr.) D.Ct. 1989).

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)

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)

§ 8. [Power of citizen initiative and referendum]

The citizens of the Muscogee (Creek) Nation reserve to themselves the power to propose laws, and to enact or reject the same at the polls independent of the National Council, and also reserve power at their own option to approve or reject at the polls any act of the National Council. The First Power reserved by the citizens of the Muscogee (Creek) Nation is the initiative, and eight (8) percent of voters who voted in the last General Election for the office of the Principal Chief shall have the right to propose any legislative measure, and every such Initiative Petition shall include the full text of the measure so proposed. Initiative Petitions shall be filed with the Secretary of the Nation, addressed to the Principal Chief, who shall submit the same to the citizen voters at a Special Election unless there is a General Election within 90 days. The National Council shall make suitable provisions for carrying into effect the provisions of this Amendment. The veto power of the Principal Chief shall not extend to measures voted on by the People. Measures referred to the People by initiative shall take effect and be in force when approved by a majority of the votes cast and not otherwise.

[Added by 2009, [A59].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7, 2009, by a vote of 1,468 to 963.