

**IN THE SUPREME COURT OF THE MUSCOGEE (CREEK) NATION**

MUSCOGEE (CREEK) NATION  
SUPREME COURT  
FILED

MUSCOGEE (CREEK) NATION )  
ELECTION BOARD, and NETTIE HARJO, )  
Individually and as manager of the )  
MUSCOGEE (CREEK) NATION ELECTION )  
BOARD and EUGENIA TIGER, individually and )  
as Chairman of the MUSCOGEE (CREEK )  
NATION ELECTION BOARD, )

2012 APR 9 AM 11 34

CONNIE DEARMAN *CD*  
DEPUTY COURT CLERK

Appellants, )

v. )

**Case No. SC 07-02**  
(District Court Case No. CV 2007-50)

ALLEN HARJO, ELI GRAYSON, JUNE )  
MUSTARI, )

Appellees. )

**ORDER AND OPINION**

Before: SUPERNAW, *C.J.*; DEER, *V.C.J.*; and CHAUDHURI, HARJO-WARE, ADAMS, and LERBLANCE, *JJ.*

Supernaw, *C.J.*, delivered the opinion of the Court, in which Harjo-Ware, Adams and Lerblance, *JJ.*, joined. Deer, *V.C.J.*, and Chaudhuri, *J.*, filed a concurring joint opinion.

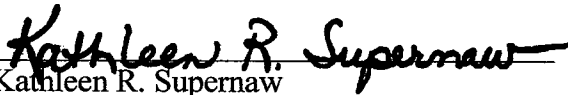
The parties were directed to file a status entry with this Court no later than March 15, 2012, for the purpose of stating a position on whether the instant matter is moot or still in contention. According to the status entries filed by Appellees and the Muscogee (Creek) Nation Attorney General, this appeal is moot and should be dismissed as such. No status entry was filed by Appellant, however, within the time specified. Indeed, the record indicates that over four years have passed since Appellant's last filing and Appellant's counsel of record seemingly no longer represents the non-responsive Appellant in this matter. An appellant has an affirmative

duty to actively pursue an appeal once filed. We find that Appellant has failed to do so in this instance. Therefore, we hold that Appellant has failed to prosecute the instant appeal.

**IT IS HEREBY ORDERED** that the above-captioned matter is **DISMISSED**.

**IT IS FURTHER ORDERED** that the District Court's July 13, 2007, Order is **VACATED**. This matter is **REMANDED** to the District Court with instructions to dismiss without prejudice.

**DELIVERED AND FILED:** April 9, 2012.

  
Kathleen R. Supernaw  
Chief Justice

Deer, *V.C.J.*, and Chaudhuri, *J.*, concurring in the result.

We concur in the result reached by the majority; however, in our view, mootness is the proper basis for dismissal. The primary question presented by this appeal is whether reapportionment of Muscogee (Creek) Nation's legislative districts is necessary in order to assure that each voter is afforded access to equal representation in each district. Appellants seek reversal of a District Court order issued by a three-judge panel on July 13, 2007. The order directs the Muscogee (Creek) Nation Election Board to: (1) reapportion the Nation's legislative districts prior to the November 2007 general election using a reapportionment formula adopted by the judicial panel; and (2) promulgate reapportionment procedures no later than January 31, 2008. At the time the instant appeal was filed, under Article VI, section 2 of the Nation's

Constitution, legislative districts were each apportioned one representative and one additional representative for each 1,500 citizens residing in the district. Additionally, under Article IV, section 8, eligibility to vote in an election for district representative was limited to legal residents of that district. While this appeal was pending, however, the citizens of the Muscogee (Creek) Nation affirmatively voted to approve eleven separate amendments to the Nation's Constitution during a general/constitutional referendum election conducted on November 7, 2009.<sup>1</sup>

Article VI, section 2 was amended to permit election of exactly two representatives per each legislative district by all the Nation's eligible voters. Under the 2009 amendment, every legislative district, regardless of population, fills two representative seats on the National Council. Article IV, section 8 was repealed entirely. Under the 2009 amendment, every eligible citizen-voter may vote in every race for every seat on the National Council, regardless of where the voter legally resides. By amending existing Article VI, section 2, and repealing Article IV, section 8, the amendment effectively removed reapportionment as a necessary component of the Nation's election laws.

The record indicates that this matter no longer presents a justiciable case or controversy. Although this Court is not restricted by jurisdictional limitations and doctrines of justiciability identical to those imposed on federal courts by Article III of the U.S. Constitution, we have previously held that justiciability may, in some instances, serve as appropriate grounds for dismissal of a pending appeal on the Court's own motion.<sup>2</sup> Although we concur in the result reached by the majority, dismissal is appropriate here because the instant appeal was rendered

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<sup>1</sup> Among the eleven of twelve proposed constitutional amendments approved by Muscogee (Creek) Nation voters on November 7, 2009, Proposed Amendment A67, which altered Article VI, § 2, and repealed Article IV, § 8, was approved by 53.39% of 2420 voters.

<sup>2</sup> SC 09-09, *Speir v. Creek Nation Casino* (Nov. 28, 2011) (holding appellant's workers compensation claim unripe for adjudication prior to arbitration under MCNCA Title 48, §9-101A), and SC 09-10, *Trepp v. MCN Election Board*, 4 Mvs. L. Rep. 385 (Dec. 21, 2009) (holding petitioner's application for temporary restraining order unripe for appellate review).

moot as a result of the constitutional amendments approved by the Nation's citizens on November 7, 2009. With these observations, we join the opinion of the Court.



Montie R. Deer  
Vice-Chief Justice



Jonodev O. Chaudhuri  
Associate Justice

**CERTIFICATE OF DELIVERY**

I, Connie Dearman, Supreme Court Administrator for the Muscogee (Creek) Nation, do hereby certify that on this 9<sup>th</sup> day of April, 2012, I faxed and mailed a true and correct copy of the foregoing Supreme Court's **Order and Opinion** with proper postage prepaid to the following:

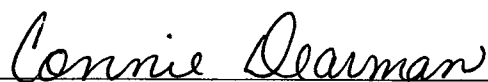
Brendan Ludwick  
Attorney at Law  
PO Box 896  
Hermosa Beach, CA 90254-0896

Roger Wiley, Attorney General  
Muscogee (Creek) Nation  
Post Office Box 580  
Okmulgee, Oklahoma 74447  
918-756-2445 (Fax)

Nettie Harjo, Manager  
& Eugenia Tiger, Chairman  
Muscogee (Creek) Nation Election Board  
P.O. Box 580  
Okmulgee, OK 74447  
918-756-2637 (Fax)

Yonne A. Tiger  
Campbell & Tiger  
320 South Boston Ave., Ste. 718  
Tulsa, OK 74103-4700  
918-582-3402 (Fax)

A true and correct copy of the foregoing Supreme Court's **Order and Opinion** was also hand-delivered on this 9<sup>th</sup> day of April, 2012 to Donna Beaver, Clerk of the Muscogee (Creek) Nation District Court.



Connie Dearman, Court Administrator