

IN THE SUPREME COURT OF THE MUSCOGEE (CREEK) NATION

2014 FEB 14 AM 11 32

MUSCOGEE (CREEK) NATION)
NATIONAL COUNCIL,)
)
Defendant-Appellant,)
)
v.)
)
GEORGE TIGER, in his official capacity as)
Principal Chief of the Muscogee (Creek) Nation,)
)
Plaintiff-Respondent.¹)

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COURT CLERK

Case No. **SC 11-06**
(District Court Case No. CV 10-157)

Appeal from District Court, Okmulgee District, Muscogee (Creek) Nation.

Zeke Fletcher, Fletcher Law, PLLC; Lansing, Michigan; for Defendant-Appellant.

Principal Chief George Tiger, Muscogee (Creek) Nation, *pro se*.

**OPINION AND ORDER GRANTING THE PARTIES' JOINT STIPULATION TO
DISMISS AND REQUEST TO VACATE DISTRICT COURT ORDERS**

**MVSKOKVLKE FVTCECKV CUKO HVLWAT VKERRICKV HVYAKAT OKETV
YVNKE VHAKV HAKATEN ACAKKAYEN MOMEN ENTENFVTCETV, HVTVM
MVSKOKE ETVLWVKE ETEHVLVTKE VHAKV EMPVTAKV.²**

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

Joint request to vacate underlying District Court orders granted. Joint stipulation to
dismiss granted. Matter dismissed with prejudice as to the underlying cause of action only.

¹ The entire underlying trial court action occurred during the second term of Principal Chief A.D. Ellis. The instant appeal was also filed by the National Council during Chief Ellis' second term; however, Chief Ellis ceased to hold the office of Principal Chief while this appeal remained pending. As successor to the office, Principal Chief George Tiger was automatically substituted as a party because the appeal was filed against the Principal Chief in his official capacity.

² "The Muscogee (Creek) Nation Supreme Court, after due deliberation, makes known the following decision based on traditional and modern Mvskoke law."

PER CURIAM.

This consolidated appeal involves a dispute between the executive and legislative branches of Muscogee (Creek) government over their respective roles in the Nation's annual budget process. The instant final order appeal is taken from the first separation of powers dispute decided by the District Court under Muscogee (Creek) Nation Constitution Art. VII, § 6. Both parties to the instant appeal seek voluntary dismissal of this action with prejudice via joint stipulation and request this Court vacate the orders, decisions and opinions issued by the Muscogee (Creek) Nation District Court in the underlying case, CV 10-157. The parties assert the District Court erroneously denied Defendant-National Council's motion to dismiss the underlying petition. We agree that Defendant-National Council's motion to dismiss was denied in error; however, we deem the joint stipulation wholly insufficient to address the originally disputed issues and decline to adopt the conclusions of law provided by the parties.³ We also specifically reject the suggestion inherent to the parties' joint stipulation that the National Council's constitutional authority to ordain inferior courts under Article VII, § 1, also creates the ability for the National Council to avoid or quash legal or equitable actions by legislatively restructuring the court in which an adverse action against the Council is pending. Irrespective of the substance of the joint stipulation, the record clearly demonstrates the District Court erroneously denied Defendant-National Council's motion to dismiss. Pursuant to the trial court's failure to dismiss the underlying petition for lack of subject matter jurisdiction due to non-justiciability,⁴ we must grant the parties' joint request to vacate the underlying District Court orders and the parties' joint stipulation to dismiss.

³ This Court has previously rejected a similar settlement agreement filed jointly by the same parties in a previous separation of powers dispute between the legislative and executive branches of Muscogee (Creek) government. *Ellis v. Muscogee (Creek) Nation National Council (Ellis I)*, 4 Mvs. L. R. 265, 271 (February 20, 2006).

⁴ See n. 29 *infra*.

BACKGROUND

The instant Opinion and Order consolidates for disposition the following nine separate actions filed with this Court from December 2010 to April 2011: SC 10-07, *Alexander v. Moore*; SC 10-08, *Fife v. Moore*; SC 10-09, *Barnett v. Moore*; SC 10-10, *National Council v. Moore*; SC 11-02, *Barnett, Fife and Alexander v. Moore*; SC 11-03, *Tiger, Wiley and Leeds v. Moore*; SC 11-04, *Tiger v. Moore*; SC 11-05, *Barnett, Fife and Alexander v. Moore*; and SC 11-06, *National Council v. Tiger*. All nine separate actions arise from a single underlying District Court case, CV 10-157, which involved a separation of powers dispute between the Principal Chief and the National Council over proper division of authority to develop and enact the Muscogee (Creek) Nation's comprehensive annual budget (CAB) for FY 2011. The Principal Chief (Plaintiff-Principal Chief) submitted a proposed FY 2011 CAB to the National Council (Defendant-National Council) on August 24, 2010;⁵ however, the parties failed to reach an agreement on the FY 2011 CAB prior to September 30, 2010, the last day of the 2010 fiscal year.⁶ On September 30, 2010, Defendant-National Council convened an Emergency Session and approved a continuing budget ordinance proposal submitted two days earlier by Plaintiff-Principal Chief to fund the first three months of FY 2011.⁷ On the same day, Plaintiff-Principal Chief filed a petition and application for contempt citation in the District Court.⁸ Purporting to rely on this Court's previous decision in *Ellis v. Muscogee (Creek) Nation National Council (Ellis II)*,⁹ Plaintiff-Principal Chief sought, *inter alia*, (1) a writ of mandamus commanding Defendant-

⁵ *Order and Judgment 5* (February 25, 2011).

⁶ NCA 10-155 (September 8, 2010) (amending statutory limitation on the distribution of funds for a limited period of time to fund the FY 2011 comprehensive budget); and NCA 10-175 (approved by Defendant in Regular Session on September 25, 2010, by a vote of 19-3-0; vetoed by Plaintiff on September 28, 2010; veto override attempt by Defendant failed on October 1, 2010, by a vote of 12-9-0).

⁷ NCA 10-177 (October 1, 2010) (approving a continuing budget ordinance and providing for appropriations and authorization for expenditures for FY 2011 at twenty-five percent of FY 2010 budget requests).

⁸ Plaintiff's *Petition and Application for Contempt Citation 1* (September 30, 2010).

⁹ SC 06-07, *Ellis v. Muscogee (Creek) National Council* (August 30, 2007).

National Council to present Plaintiff-Principal Chief with a comprehensive FY 2011 budget ordinance for the Nation, reserving all decisions regarding the allocation of specific dollar amounts to the respective departments and Plaintiff-Principal Chief, (2) a writ of prohibition restricting Defendant-National Council from conducting budget hearings at the department or line-item level and directing that all annual budget negotiations occur directly with the Executive Branch Budget Committee for FY 2011 and all subsequent fiscal years, and (3) a citation of contempt against Defendant-National Council including public censure, monetary sanctions, and/or all orders necessary to enforce the Supreme Court's decision in *Ellis II*.¹⁰

Defendant-National Council moved to dismiss the cause of action as unripe and asserted the District Court lacked jurisdiction to hold parties in contempt for alleged violations of this Court's previous opinion and order in *Ellis II*.¹¹ Defendant-National Council also later filed a special and limited entry of appearance for the purpose of contesting jurisdiction,¹² and moved to have the District Court Judge disqualify and recuse.¹³ The District Court denied Defendant-National Council's motion to recuse,¹⁴ and denied Defendant-National Council's motion to dismiss after finding jurisdiction was proper under Article VII, § 6, and *Ellis II*.¹⁵ The District Court also scheduled an evidentiary hearing to determine whether a jury was required to resolve any remaining questions of fact,¹⁶ and issued subpoenas requiring three members of the National Council to appear as witnesses for Plaintiff-Principal Chief.¹⁷ None of the three subpoenaed

¹⁰ Plaintiff's *Petition and Application for Contempt Citation 5-10* (September 30, 2010).

¹¹ Defendant's *Motion to Dismiss 4-6* (October 29, 2010).

¹² Defendant's *Special and Limited Entry of Appearance for the Purpose of Contesting Jurisdiction* (November 1, 2010).

¹³ *Minutes Report* (November 19, 2010).

¹⁴ *Order on Defendant's Oral Request for Disqualification and Recusal of the District Judge* (November 24, 2010).

¹⁵ *Order Denying Defendant National Council's Motion to Dismiss* (December 15, 2010).

¹⁶ *Order Denying Defendant National Council's Motion to Dismiss* (December 15, 2010); and *Order Resetting Hearing* (January 5, 2011).

¹⁷ Certified Record on Appeal 19-21 (December 17, 2010), 22-24 (December 20, 2010), 26-28 (January 13, 2011), and 29-31 (January 24, 2011).

National Council members or their legal counsel appeared for the evidentiary hearing. The three subpoenaed legislators and two attorney-advocates later appeared for subsequent show cause hearings scheduled by the District Court to determine whether the failures to appear were contemptuous. While appearing at the show cause hearing, all five declined to testify and asserted the right against self-incrimination.¹⁸ Ultimately, the District Court held all three subpoenaed National Council members and two National Council attorney-advocates in contempt for failure to appear and assessed \$2,500 monetary sanctions against each contemnor.¹⁹

In its final *Order and Judgment* filed February 25, 2011, the District Court (1) granted a writ of mandamus that required Defendant-National Council to present to Plaintiff-Principal Chief an FY 2011 budget ordinance within fifteen days or the original budget as submitted by Plaintiff-Principal Chief would be deemed enacted; (2) granted a writ of prohibition preventing Defendant-National Council from conducting budget hearings or negotiations at the “department or line-item level”; (3) deemed that by failing to appear at the required evidentiary hearing, Defendant-National Council confessed to violations of the Supreme Court’s decision in *Ellis II*; (4) found Defendant-National Council in indirect contempt for conduct delaying the budget process, but “decline[d] to punish said past contemptuous acts since it is impossible to ascertain . . . precisely who among the membership of the National Council [was] individually culpable”; (5) ordered that any future conduct of Defendant- National Council deemed to be contrary to the *Ellis II* decision shall be subject to summary punishment for indirect contempt pursuant to the filing of a sworn affidavit establishing probable cause and a show cause proceeding; and (6)

¹⁸ *Transcript, Record of Proceedings on Show Cause 9* (February 21, 2011); and *Transcript, Record of Proceedings on Show Cause 8* (February 22, 2011).

¹⁹ *Order and Judgment of Indirect Civil Contempt as to Roger Wiley, Yonne Tiger, Attorneys and Muscogee (Creek) Citizens 1* (February 25, 2011); and *Order and Judgment of Indirect Contempt as to Subpoenaed Witnesses Roger Barnett, Samuel Alexander and Bill Fife, Muscogee (Creek) Citizens 1* (February 25, 2011).

ordered the case to remain open and retained jurisdictional authority to supervise enactment of the provisions of the *Order and Judgment*.²⁰

JURISDICTION, SCOPE AND STANDARD OF REVIEW

Jurisdiction is proper under Muscogee Creek Nation Code Title 27, § 1-101.C.²¹ On appeal, denial of a motion to dismiss is reviewed *de novo*, subject generally to the final order rule under Appellate Rule 2.A.²² Based on the procedural history of all nine separate actions consolidated here for disposition and the underlying District Court case from which the instant consolidated action originated, our review must be limited solely to the trial court errors asserted in the parties' joint stipulation.

ISSUES PRESENTED

Part I. Did the Plaintiff-Principal Chief's petition and application for contempt citation present a justiciable dispute proper for judicial resolution?

Part II. In litigation between tribal officers under Muscogee (Creek) Nation Constitution Article VII, § 6, what is the relationship between justiciability and subject matter jurisdiction?²³

DISCUSSION

The parties seek voluntary dismissal of this appeal with prejudice via joint stipulation and request this Court vacate the orders, decisions and opinions issued by the lower court in the underlying case. Although the parties are no longer adverse and correctly assert the District

²⁰ *Order and Judgment* 8-12 (February 25, 2011).

²¹ M(C)NCA Title 27, § 1-101.C, vests this Court with exclusive jurisdiction to review final orders of the Muscogee (Creek) Nation District Court.

²² *Muscogee (Creek) Nation Health Board, et al., v. Skaggs*, 4 Mvs. L. R. 161, 163 (July 1, 1998); *Brown & Williamson v. Muscogee (Creek) Nation*, 4 Mvs. L. R. 164, 170 (July 21, 1998); and SC 12-01, *Muscogee (Creek) Nation v. Tyner* (May 22, 2012).

²³ See n. 29 *infra*.

Court erroneously denied Defendant-National Council's motion to dismiss the underlying petition; we decline to adopt the conclusions of law provided in the parties' joint stipulation. We deem the joint stipulation wholly insufficient to address the originally disputed issues.²⁴ Additionally, we specifically reject the suggestion inherent to the parties' joint stipulation that the National Council's constitutional authority to ordain inferior courts under Article VII, § 1, also creates the ability for the National Council to avoid or quash legal or equitable actions by legislatively restructuring the court in which an adverse action against the Council is pending. Irrespective of the substance of the joint stipulation, the record clearly demonstrates the District Court erroneously denied Defendant-National Council's motion to dismiss for the reasons discussed below.

A. Article VII Jurisdiction to Resolve Separation of Powers Disputes

Since the modern Muscogee (Creek) Constitution was ratified by the Nation's electorate in October 1979, justiciable separation of powers disputes between Muscogee (Creek) Nation government officers were generally resolved by the Supreme Court under its original jurisdiction. In November 2009, however, our Nation's citizens amended Article VII of the Constitution by adding a new, sixth section that requires "[a]ll litigation between tribal officers [to] originate in the District Court of the Muscogee (Creek) Nation . . . [with] [a]ll questions of fact . . . determined by jury trial . . . [and] right of appeal to the Supreme Court."²⁵ The instant consolidated action presents a final order appeal taken from the first separation of powers dispute decided by the District Court under Art. VII, § 6.

²⁴ *Supra* n. 3.

²⁵ M(C)NCA Const. Art. VII, § 6.

B. Separation of Powers Disputes and Justiciability Limitations

It is well settled in modern Mvskoke jurisprudence that our Nation's Constitution divides authority between the three co-equal branches of Muscogee (Creek) government.²⁶ Our modern Constitution adopted a tripartite governmental structure designed not to avoid conflict between the two political branches, but rather, designed based on the expectation that most governmental powers would be exercised only after some degree of political disagreement, bargaining and compromise.²⁷ Article VII vests this Court with the Nation's judicial power, but that authority is not limitless.²⁸ Only "justiciable" matters may be properly adjudicated by our Nation's courts.²⁹ As the sole non-political arm of Muscogee (Creek) government, the courts' concern over subject matter jurisdiction and justiciability must be particularly acute when asked to referee a dispute between the two political branches. For such a dispute to be justiciable, it must present matters that may be properly resolved by the judicial branch without intruding on the constitutionally vested domains of the executive and legislative branches. Absent a justiciable dispute, the Nation's courts must decline to adjudicate mere non-justiciable political disagreements. Although this Court is not restricted by jurisdictional limitations and doctrines of justiciability

²⁶ *Beaver v. National Council*, 4 Mvs. L. R. 19, 23 (January 18, 1985); *Cox v. Childers*, 4 Mvs. L. R. 71, 74 (June 19, 1991); *Cox v. Kamp*, 4 Mvs. L. R. 75, 79 (June 27, 1991); *Oliver v. National Council*, 4 Mvs. L. R. 281, 291 (September 22, 2006).

²⁷ Compare M(C)NCA Const. Art. V (describing the executive power of the Principal Chief) with M(C)NCA Const. Art. V, §§ 2(b), 3(b), and 3(c) (requiring the "advise and consent" of the National Council for exercise of certain executive authority). Compare also M(C)NCA Const. Art. VI (describing the legislative power of the National Council) with M(C)NCA Const. Art. VI, §§ 6(a) and 6(c) (requiring executive approval of legislation passed by the National Council).

²⁸ M(C)NCA Const. Art. VII, § 1 ("The judicial power of the Muscogee (Creek) Nation shall be vested in one Supreme Court limited to matters of the Muscogee (Creek) Nation's jurisdiction and in such inferior courts as the National Council may from time to time ordain."). Article III, Sect. 1, of the 1867 Muscogee (Creek) Nation Constitution referred to this authority as the "supreme law defining power." *Constitution and Laws of the Muscogee (Creek) Nation* 5 (Scholarly Resources, Inc. 1975). See also *Beaver v. National Council*, 4 Mvs. L. R. 19, 23 (January 18, 1985); *Cox v. Childers*, 4 Mvs. L. R. 71, 74 (June 19, 1991); *Cox v. Kamp*, 4 Mvs. L. R. 75, 79 (June 27, 1991); *Oliver v. National Council*, 4 Mvs. L. R. 281, 291 (September 22, 2006).

²⁹ "Justiciability" refers to a group of legal concepts used as criteria to assess whether adjudication may adequately resolve any given cause of action. These judicially-imposed criteria include ripeness, mootness, standing, and a general restriction against judicial intervention in purely political questions or requests for advisory opinions.

identical to those imposed on federal courts by Article III of the U.S. Constitution, we have previously recognized certain justiciability concepts, such as ripeness, as threshold requirements necessary to warrant the exercise of judicial authority.³⁰

“Ripeness” requires our Nation’s courts to limit adjudication to actual, existing cases or controversies, rather than permitting claims based on hypothetical, uncertain or contingent future possibilities. Ripeness relates to the timing of judicial review. A claim becomes “ripe” for adjudication once the underlying facts of the claim have matured into an imminent, substantial controversy from which a party may properly seek judicial intervention. When considering a ripeness issue, two factors must generally be addressed: first, whether the relevant issues are sufficiently focused to permit judicial resolution without further factual development; and second, whether the parties would suffer any hardship by postponement of judicial intervention. In addition to subject matter jurisdiction, when presented with an Article VII, § 6, dispute, our Nation’s courts are obligated to *sua sponte* review justiciability as a threshold issue and dismiss claims determined to be non-justiciable.

C. Analysis

Part I

Plaintiff-Principal Chief’s underlying *Petition and Application for Contempt Citation* purported to rely on this Court’s previous decision in *Ellis v. Muscogee (Creek) Nation National Council (Ellis II)*.³¹ In *Ellis II*, the Principal Chief sought and obtained from this Court a writ of

³⁰ 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).

³¹ SC 06-07, *Ellis v. Muscogee (Creek) Nation National Council* (August 30, 2007).

prohibition and citation for contempt against the National Council after the National Council passed a comprehensive annual budget by veto override that included line-item adjustments to executive branch personnel salaries.³² This Court held, *inter alia*, that it was an unconstitutional infringement on the Principal Chief’s constitutionally vested executive authority for the National Council to pass a comprehensive annual budget by veto override.³³ “[T]he National Council has authority to approve or disapprove the [b]udget submitted by the Principal Chief [; however,] the National Council does not have line-item veto power over the [b]udget.”³⁴

The opinion interpreted Article V, § 3, of the Muscogee (Creek) Nation Constitution,³⁵ and described the boundaries of legislative advice and consent during development of the Nation’s comprehensive annual budget.

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 is proper. This oversight power, however, is subject to the National Council’s constitutional responsibility to fund positions authorized by law . . . and those areas that help the Principal Chief . . . perform his constitutional duties as Chief. As part of the advice and consent process, the National Council can ask the Principal Chief, or a Department Man[a]ger, 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 [its] whim.³⁶

³² *Id.*

³³ *See Id.* at 4.

³⁴ *Id.* at 7.

³⁵ When *Ellis II* was decided, Article V, § 3, stated “[t]he Principal Chief shall prepare the annual budget request and supplements thereto and with the advice and consent of the National Council administer funds within the control of the Muscogee (Creek) Nation.” In November 2009, ten months prior to Plaintiff-Principal Chief filing the action underlying the instant appeal, the Nation’s electorate voted to amend Article V, § 3, to further clarify the National Council’s “advise and consent” authority in budget development. Article V, § 3, was amended to provide “(a) [t]he Principal Chief shall prepare the annual budget request and supplements thereto[;] (b) [b]udget requests, other appropriations, and amendments thereto shall be considered by the National Council with the same limitations and rules as any other bill[;] [and] (c) [t]he Principal Chief shall administer appropriated funds with the advice and consent of the National Council.”

³⁶ SC 06-07, *Ellis v. Muscogee (Creek) National Council* at 6.

The Court also described what Article V, § 3, requires when disagreements arise between the Principal Chief and National Council regarding the budget and appropriations process.

Negotiations **must** occur in the form of the Principal Chief sending the [b]udget to the National Council after which the Council can then approve the [b]udget as a whole or not. If the [b]udget is not approved by the National Council, then the Principal Chief should make adjustments and resend the [b]udget to the National Council. 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 [b]udget for the Nation for the year. The Court does not envision this process taking months to complete. 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. These negotiations should be two equal branches of government working in concert to bring about an annual operating [b]udget that is in the best interests of the Muscogee (Creek) Nation - - not one branch of government controlling, contradicting or interfering in the business decisions of another branch.³⁷

In evaluating Defendant-National Council's underlying motion to dismiss, we find that as a matter of law, the allegations presented by Plaintiff-Principal Chief's underlying petition, presumed as true, were insufficient to create a justiciable dispute under Article VII, § 6. Plaintiff-Principal Chief sought extraordinary writs and a contempt citation pursuant essentially to two allegations purportedly volitional of the *Ellis II* holding: (1) Defendant-National Council sought to conduct budget hearings with executive Department Managers, rather than with the Executive Budget Committee; and (2) as of September 30, 2010, the last day of FY 2010, Defendant-National Council failed to pass the proposed comprehensive annual budget submitted by Plaintiff-Principal Chief on August 24, 2010. We find neither allegation to be remotely volitional of the *Ellis II* holding.

³⁷ *Id.* at 8 (emphasis in original).

Regarding the first factor in the ripeness test, we find the allegations presented by the underlying petition should have precluded intervention by the lower court. Rather than restrict legislative inquiry to an ad hoc committee formed by the Principal Chief to develop a proposed annual budget, *Ellis II* expressly permits the National Council to request that executive Department Heads “identify and explain the funds budgeted to determine if the monies are prudently needed.”³⁸ Inherently recognizing necessary separation of powers limitations, *Ellis II* also appropriately declined to specify a timeframe in which the two political branches must agree on and enact a comprehensive annual budget each year. Any such prospective requirement delivered via judicial decree would unmistakably encroach on a domain constitutionally vested in the two political branches. The mere fact that FY 2011 began without an approved comprehensive annual budget for the entire fiscal year does not, by itself, create a justiciable cause of action.

Regarding the second ripeness test factor, we find that neither party would have suffered a hardship by postponement of judicial intervention. As noted *supra*, our modern Constitution adopted a tripartite governmental structure designed not to avoid conflict between the two political branches, but rather, designed based on the expectation that most governmental powers would be exercised only after some degree of political disagreement, bargaining and compromise.³⁹ The executive and legislative branches have a constitutional obligation to reach an agreement regarding the Nation’s comprehensive annual budget each year. Here, postponing or denying judicial intervention would not have created a hardship. On the contrary, both the underlying petition and motion to dismiss indicate that budget negotiations between the two political branches were ongoing. The record clearly demonstrates the issues presented by

³⁸ *Id.* at 6.

³⁹ *Supra* n. 27.

Plaintiff-Principal Chief's petition were unripe. We do not rule out the possibility that justiciable Article VII, § 6, disputes over development of the Nation's comprehensive annual budget may arise in the future; however, generally, the two political branches' cooperative success or failure during development of the Nation's annual budget is a matter best left to the Nation's electorate to evaluate and correct when necessary.

Part II

In addition to subject matter jurisdiction, when presented with a dispute between Muscogee (Creek) government officers under Article VII, § 6, our Nation's courts are obligated to *sua sponte* review justiciability as a threshold issue and dismiss claims determined to be non-justiciable. Our Nation's Constitution limits the exercise of judicial power to "matters of the Muscogee (Creek) Nation's jurisdiction[.]"⁴⁰ Although Muscogee (Creek) Nation courts are courts of general jurisdiction, our courts lack subject matter jurisdiction over non-justiciable political disputes cloaked as Article VII, § 6, claims. Plaintiff-Principal Chief's underlying petition sought to adjudicate a political dispute that was unripe as of the date filed and never subsequently ripened into a justiciable case or controversy based on the allegations originally presented regarding the FY 2011 budget. The District Court lacked subject matter jurisdiction to hear the underlying political disagreement and possessed authority only to dismiss the matter as unripe. Without subject matter jurisdiction, the District Court lacked authority to enter orders and a valid judgment in the underlying matter. Accordingly, the various orders, decisions and opinions issued by the lower court in CV 10-157 must be deemed void.

To be clear, this opinion is inapplicable to non-Article VII, § 6, disputes and in no way diminishes or qualifies the District Court's contempt authority. Although a District Court order

⁴⁰ M(C)NCA Const. Art. VII, § 1.

may be declared void on appeal if entered without subject matter jurisdiction over an Article VII, § 6, dispute, such an outcome is of the rarest species. As a general rule, parties must follow the District Court's orders until such time as those orders are reversed on appeal. An order entered with jurisdiction is not rendered void by subsequent reversal on appeal and failure to comply with such an order unquestionably provides a proper basis for contempt.

IT IS HEREBY ORDERED that, pursuant only to lack of subject matter jurisdiction due to non-justiciability discussed in the foregoing Opinion and Order, the parties' joint request to vacate the underlying District Court orders filed in Case No. CV 2010-157 is **GRANTED**.

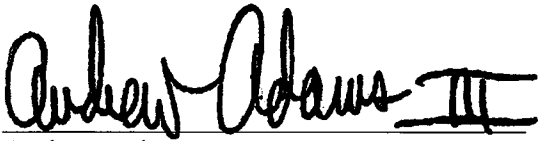
IT IS FURTHER ORDERED that the *Order Denying Defendant National Council's Motion to Dismiss* filed in Case No. CV 2010-157 by the District Court on December 15, 2010, is **VACATED**.

IT IS FURTHER ORDERED that the *Order on Defendant's Oral Request for Disqualification and Recusal of the District Judge* filed in Case No. CV 2010-157 by the District Court on November 24, 2010, is **VACATED**.

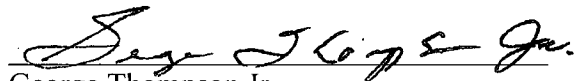
IT IS FURTHER ORDERED that the *Order and Judgment of Indirect Contempt as to Subpoenaed Witnesses Roger Barnett, Samuel Alexander and Bill Fife, Muscogee (Creek) Citizens* filed in Case No. CV 2010-157 by the District Court on February 25, 2011; the *Order and Judgment of Indirect Civil Contempt as to Roger Wiley, Yonne Tiger, Attorneys and Muscogee (Creek) Citizens* filed in Case No. CV 2010-157 by the District Court on February 25, 2011; and the final *Order and Judgment* filed in Case No. CV 2010-157 by the District Court on February 25, 2011, are **VACATED**.

IT IS FURTHER ORDERED that, pursuant to this Court's lack of subject matter jurisdiction to reach the merits of the instant appeal due to non-justiciability, the parties' joint stipulation to dismiss this cause of action with prejudice is **GRANTED** and any further claims regarding the instant underlying cause of action are precluded. As to *res judicata*, our judgment of dismissal in this instance should not be interpreted as a final determination on the merits for the purpose of issue preclusion in any future actions filed under Article VII, § 6.

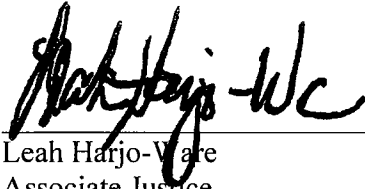
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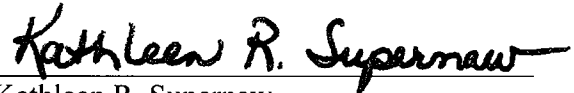
Andrew Adams III
Chief Justice



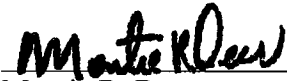
George Thompson Jr.
Vice-Chief Justice



Leah Harjo-Ware
Associate Justice



Kathleen R. Supernaw
Associate Justice



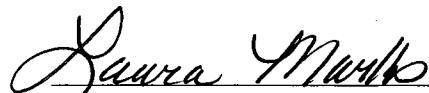
Montie R. Deer
Associate Justice



Richard C. Leblance
Associate Justice

CERTIFICATE OF MAILING

I hereby certify that on February 14, 2014, a true and correct copy of the foregoing Opinion and Order was served on the parties listed below by placing it in the United States mail, proper postage prepaid, addressed to the following: Samuel Alexander, 117 W. Miami Street, Broken Arrow, OK 74011; Bill Fife, Secretary of the Nation, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447; Roger Barnett, Second Chief, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447; Geoffrey M. Standing Bear, 425 E. 5th Street, Bartlesville, OK 74003; John Campbell, Campbell & Tiger, PLLC, 2021 S. Lewis Ave, Ste. 630, Tulsa, OK 74104; Patrick Moore, 206 W. 7th Street, Okmulgee, OK 74447; George Tiger, Principal Chief, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447; Zeke Fletcher, Fletcher Law, PLLC, Boji Tower, 124 West Allegan Street, Suite 1400, Lansing MI 48933; and Roger Wiley, Attorney General, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447. A true and correct copy was also hand-delivered to: Donna Beaver, Clerk of the Muscogee (Creek) Nation District Court.



Laura Marks, Deputy Court Clerk