

IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

MUSCOGEE (CREEK) NATION)
NATIONAL COUNCIL,)
)
Appellant,)
)
v.)
)
TRAVIS SCOTT, INDIVIDUALLY)
AND IN HIS OFFICIAL CAPACITY)
AS ELECTED REPRESENTATIVE)
OF THE NATIONAL COUNCIL)
OKFUSKEE DISTRICT,)
)
Respondent.)

Case No.: SC-2021-10
(District Court Case No.: CV-2021-89)

SUPREME COURT
FILED

JUL 20 2022


COURT CLERK
MUSCOGEE (CREEK) NATION

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

Jeffery J. Davis, Grand Rapids, Michigan; Kyle B. Haskins, Okmulgee, Oklahoma, for the Appellant, the Muscogee (Creek) Nation National Council.

Jeremy T. Pittman, Okmulgee, Oklahoma, for the Respondent, Travis Scott.

ORDER AND OPINION

MVSKOKVLKE FVTCECKV CUKO HVLWAT VKERRICKV HVYAKAT OKETV
YVNKE VHAKV HAKATEN ACAKKAYEN MOMEN ENTENFVTCETV, HVTVM
MVSKOKE ETVLWVKE ETEHVLVTKE VHAKV EMPVTAKV.¹

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

PER CURIAM

Order of the District Court affirmed.

¹ “The Muscogee (Creek) Nation Supreme Court, after due deliberation, makes known the following decision based on traditional and modern Mvskoke law.”

Per Curiam.

On January 6, 2018, Travis Scott (Hereinafter, the “Respondent”), was sworn into office as a Muscogee (Creek) Nation, National Council Representative for the Okfuskee District. The Respondent served in this position until January 10, 2022, when he was succeeded in office by Sandra Golden following the November 2021 General Elections. The Muscogee (Creek) Nation National Council (Hereinafter, the “Appellant”) alleges that in August of 2020, it received a citizen inquiry requesting information on whether any National Council Representatives were “doing business with the Nation” in violation of M(C)NCA Title 37, § 4-101, which provides that:

No officer or employee of the Muscogee (Creek) Nation or officer or employee of any entity under the jurisdiction of the Muscogee (Creek) Nation shall be permitted to enter into business contracts or do business with the Muscogee (Creek) Nation.

In response, the Appellant created a Fact Finding & Investigation Committee tasked with examining the citizen inquiry and an Internal Affairs Committee tasked with reviewing any findings and, if necessary, recommending appropriate discipline.

It is alleged that the investigation revealed the Respondent “had engaged in business with the Nation while an officer of the Nation. Specifically, the investigation revealed that [the Respondent] sold goods, through a business he owned (Scott Native Products, also known as Parks Ace Hardware), to the following: the Nation’s Head Start Program, its Conservation District Office, its Natural Resources Conservation District, its Low Rent Housing Program, its Child Care Program, its Housing Force Program, its Department of Health, its Housing Program, its Vocational Rehab Program, its Fleet Management and General Services Administration, and its

casinos.”² Further, it is alleged that this conduct spanned a time period from July 2018 to September 2020, and generated payments in the amount of \$107,584.33 to the Respondent.

Based on the recommendation of the Internal Affairs Committee, the Appellant elected to discipline the Respondent under the its internal Rules of Procedure by issuing “a letter of reprimand from the Speaker, a resolution of public censure, termination of [the Respondent’s] salary and benefits as a National Council member, a \$50,000 fine, and expulsion from future National Council meetings[.]”³ The Appellant also began “removal procedures.”⁴

The Respondent subsequently filed a *Writ of Mandamus* in the Muscogee (Creek) Nation District Court seeking reinstatement to his “duties as an elected representative of the National Council including salary and benefits[.]”⁵ and a *Writ of Mandamus* seeking to set aside “the \$50,000 fine as unenforceable[.]”⁶ Both *Writs* were granted by the District Court in a September 2, 2021, *Decision and Order*, in which the Court found that “[t]he National Council lacks authority to impose § 114(H)(14) disciplinary penalties [under the Appellant’s internal Rules of Procedure] for violations of M(C)NCA Title 37, § 4-101.”⁷ The Respondent also filed a *Writ of Prohibition* requesting the Court “order the National Council not to interfere with [the Respondent’s] duties as an elected official in the future[.]”⁸ The District Court denied this request, finding that “[s]eparation of powers dictates that this Court decline such a remedy because it would unduly

² See, SC-2021-10, *Muscogee (Creek) Nation v. Travis Scott*, *Opening Brief of Appellant National Council*, at 2-3. (December 27, 2021).

³ *Id.* at 3.

⁴ *Id.*

⁵ See, Muscogee (Creek) Nation District Court Case No. CV-2021-66, *Decision and Order*, at 11. (September 2, 2021).

⁶ *Id.*

⁷ *Id.* at 9.

⁸ *Id.* at 11.

interfere with the National Council’s legislative actions in the future, which may impact [the Respondent’s] ability to serve.”⁹

On September 30, 2021, a *Notice to Convene – Court of Impeachment* was issued to all necessary parties, directing the Respondent to appear and answer charges before the National Council and the Presiding Judge on the Appellant’s Articles of Impeachment. *Rules of Conduct and Practice in the Court of Impeachment for the Muscogee (Creek) Nation* were subsequently published by the Presiding Judge, Richard Lerblance, on October 8, 2021, wherein a *Motion Hearing* was set for October 21, 2021, prior to the scheduled *Court of Impeachment*, which was set to begin on October 25, 2021. Following the *Motion Hearing*, the Presiding Judge issued an *Order on Pre-Trial Motions*, staying the Impeachment proceedings “until such time as the Muscogee (Creek) Nation Courts can address the Constitutional challenges raised [by the Respondent].”¹⁰

On October 13, 2021, the Respondent filed a *Petition* with the Muscogee (Creek) Nation District Court requesting that the Court issue a *Writ of Mandamus* and a *Writ of Prohibition* directing the National Council to “dismiss the Articles of Impeachment as the procedures in place in MCNA Title 31 violate [the Respondent’s] due process right[s.]”¹¹ The primary issues presented to the District Court were (1) whether the National Council could provide an impartial forum for the Court of Impeachment when several of its members were previously involved in the fact-finding investigation and subsequent internal affairs recommendation, and (2) whether an

⁹ *Id.*

¹⁰ See, SC-2021-06, *In Re: Court of Impeachment for National Council Representative Travis Scott, Order on Pre-Trial Motions*, at 5. (October 21, 2021).

¹¹ See, Muscogee (Creek) Nation District Court Case No. CV-2021-89, *Petition*, at 4. (October 13, 2021).

impeachment must be initiated by a Petition containing signatures of 20% of the registered voters in the district, or if the National Council may initiate impeachment proceedings on its own.

On November 12, 2021, the Muscogee (Creek) Nation District Court issued its *Order and Decision*, finding (1) that “impeachment proceedings are not judicial proceedings and there are significant differences between impeachment trials and criminal trials before a Court. The due process and impartiality standards are not the same.”¹² As such, the Court concluded that “[t]he fact that the National Council previously voted to impose certain penalties on [the Respondent], and such penalties were set aside by this Court as not provided for in the National Council internal rules, does not render the National Council incapable of carrying out its duties impartially in future impeachment proceedings[;]”¹³ and (2) that, while NCA 89-75, Section 104 (J), does provide that “[t]he National Council may consider a petition for removal of public officials or may initiate impeachment proceedings of its own volition[.]”¹⁴ this statutory provision is subordinate to, and does not conform with Article VIII of the Muscogee (Creek) Nation Constitution, which, the District Court found, only authorizes removal proceeding which are initiated by “[a] signed petition showing cause of removal containing twenty (20) percent of the registered voters in a district...”¹⁵ The Appellant filed its *Notice of Appeal* with the Muscogee (Creek) Nation Supreme Court on November 29, 2021, asserting that “the District Court’s decision is contrary to Article VIII of the Constitution and NCA 89-75, § 104(J), currently codified at Title 37, § 4-101, and requests that this Court overturn the District Court decision.”¹⁶

¹² See, Muscogee (Creek) Nation District Court Case No. CV-2021-89, *Order and Decision*, at 3. (November 12, 2021).

¹³ *Id.*

¹⁴ NCA 89-75, Section 104 (J).

¹⁵ Article VIII, Section 2, Muscogee (Creek) Nation Constitution.

¹⁶ See, SC-2021-10, Muscogee (Creek) Nation National Council v. Travis Scott, *Notice of Appeal*, at 1. (November 29, 2021).

JURISDICTION, SCOPE, AND STANDARD OF REVIEW

Appellate jurisdiction is proper under M(C)NCA Title 27, § 1-101 (C).¹⁷ This Court will review issues of law *de novo* and issues of fact for clear error.¹⁸ Each respective question will be addressed based on its applicable standard of review.

On April 1, 2022, this Court filed an *Order for Supplemental Briefing*, directing the parties to brief the Court on whether the above-styled appeal was justiciable in light of the November 2021 election results, wherein the Respondent was succeeded in office. The Court has agreed to continue review of this case on the basis that the primary issue presented on appeal is not advisory in nature, and is capable of repetition.¹⁹

ISSUES PRESENTED

1. Does NCA 89-75, § 104 (J), which provides that “[t]he National Council may consider a petition for removal of public officials or may initiate impeachment proceedings of its own volition[,]” violate Article VIII of the Muscogee (Creek) Nation Constitution?

DISCUSSION

While on the surface, this case centers around the alleged misconduct of a former Muscogee (Creek) Nation officer and the Nation’s ability to discipline and/or remove that individual from office, the heart of the matter revolves around the concept of separation of powers.

¹⁷ 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.

¹⁸ See *A.D. Ellis v. Checotah Muscogee Creek Indian Community, et al.*, SC 10-01 at 3, ___ Mvs. L.R. ___ (May 22, 2013); *In the Matter of J.S. v. Muscogee (Creek) Nation*, SC 93-02, 4 Mvs. L.R. 124 (October 13, 1994); *McIntosh v. Muscogee (Creek) Nation*, SC 86-01, 4 Mvs. L.R. 28 (January 24, 1987); *Lisa K. Deere v. Joyce C. Deere*, SC 17-02 at 5, ___ Mvs. L.R. ___ (May 17, 2018); *Muscogee (Creek) Nation v. Bim Stephen Bruner*, SC 18-03 at 5, ___ Mvs. ___ (September 6, 2018); *Derek Huddleston v. Muscogee (Creek) Nation*, SC 18-02 at 3, ___ Mvs. ___ (October 4, 2018); *Bim Stephen Bruner v. Muscogee (Creek) Nation*, SC 18-04 at 4, ___ Mvs. ___ (May 13, 2019).

¹⁹ See, *Muscogee (Creek) Nation National Council v. Tiger*, SC-2011-06, at 8, ___ Mvs. L.R. ___ (February 14, 2014), wherein the Court states “[o]nly “justiciable” matters may be properly adjudicated by our Nation’s courts[.]” further defining “justiciability” as “a group of legal concepts used 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.”

What legislation is the National Council permitted to pass without violating the Nation’s Constitution, and what is the role of the Judicial Branch in interpreting that Constitution? These are fundamental questions for the Nation’s government. With respect to the case-at-hand, this Court has been presented with a piece of legislation²⁰ and a Constitutional provision,²¹ and has been asked to determine whether the legislation, as written, conforms to our Nation’s highest law.

To begin, this Court must examine its role in interpreting the law. As stated by Chief Justice John Marshall (United States Supreme Court) in Marbury v. Madison²², “[i]t is emphatically the province and duty of the judicial department to say what the law is.” Along these same lines, our Courts have previously found that “[t]he written Constitution of the Muscogee (Creek) Nation is the highest expression of the sovereign will of the people. The very life and spirit of the government centers around this written Constitution. It is the deliberate and affirmative utterance of the sovereign majority.”²³ “The Constitution must be strictly 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.”²⁴ “It is very probable that there will be inconveniences from following the Muscogee (Creek) Nation Constitution as it is written. If the Courts, Legislature or Principal Chief add to the plain language under the color of construction, then boundaries to governmental power have been distorted. To allow such to happen would inflict a wound upon the Constitution that nothing can heal. One step taken to enlarge the powers of government opens the door to another until all respect for the fundamental law is lost and the powers of government are

²⁰ NCA 89-75.

²¹ Article VIII of the Muscogee (Creek) Nation Constitution.

²² Marbury v. Madison, 5 U.S. 137, at 177. (February 1, 1803).

²³ Burden v. Cox, 1 Mvs. L. Rep. 140 (Muscogee (Creek) Nation District Court, November 18, 1988).

²⁴ Cox v. Childers, SC-1991-04, at 3, 4 Mvs. L. Rep. 74 (June 27, 1991).

just what those in authority please to call them.”²⁵ “A Constitution, by its very nature, serves as a limitation on the power of the government. Without judicial interpretation, however, it may be construed to have as many different meanings as it has readers. Once a case or controversy concerning the meaning of a constitutional provision reaches the courts, then the courts become the final arbiter as to the constitutionality of governmental actions as they relate to the constitution which empowers them. In other words, if the legislature does not provide for firm constraints on official action, then the courts must do so.”²⁶

Article VIII of the Muscogee (Creek) Nation Constitution details the removal procedures for certain officers of the Muscogee (Creek) Nation. This article specifically provides:

Section 1. The National Council shall enact an ordinance outlining procedures and causes for removal. Such procedures shall contain, but not limited to, the certification of the required petition, as provided in Section 2 and 3 of this Article and show of cause for removal, giving the accused an impartial hearing and allowance of time to answer to notice of such hearing.

Section 2. A signed petition showing cause of removal containing twenty (20) percent of registered voters in a district shall be cause to consider removal of a council member.

Section 3. A signed petition showing cause of removal containing twenty (20) percent of the registered voters of the Muscogee (Creek) Nation shall be cause to consider removal of the Principal Chief, Second Chief, and/or any member of the Supreme Court. A three-fourth (3/4) vote of the National Council shall be required for removal from office.

In response to Article VIII, Section 1, the National Council enacted NCA 89-75, which established “procedures and causes for removal of Officers of the Muscogee (Creek) Nation and lesser Officers.” The specific provision at issue in these proceedings is Section 104 (J), which provides:

²⁵ *Cox v. National Council & Childers*, 1 Mvs. L. Rep. 150 (Muscogee (Creek) Nation District Court, January 6, 1989).

²⁶ *Courtwright v. July, et al.*, SC-1993-01, at 7, 4 Mvs L. Rep. 106 (June 28, 1993).

The National Council finds that: (J) The National Council may consider a petition for removal of public officials **or may initiate impeachment proceedings of its own volition.**

The Appellant in the above-styled action has initiated Impeachment proceedings against the Respondent.²⁷ However, no signed petition containing twenty (20) percent of the registered voters of the Respondent's district was obtained by the Appellant prior to filing its Articles of Impeachment. The Respondent argues that this violates Article VIII, Sections 1 and 2; that the signed Petition is required before removal procedures may be initiated. Alternatively, the Appellant argues that the provision in Article VIII, Section 1, which provide that "[s]uch procedures shall contain, **but not limited to**, the certification of the required petition..." [Emphasis Added] shows the framers intention that the National Council should be authorized to craft alternative avenues for initiating removal, so long as the Petition process is protected and included as one of those options. After reviewing the National Council's internal Rules of Procedure, Title 31, NCA 89-75, and Article VIII of the Constitution, the Muscogee (Creek) Nation District Court found that "[i]f Section 2 [of Article VIII] is read as a stand-alone paragraph, it does not state that the 20% rule is the *only* possibility for the National Council to consider removal. But when Sections 1, 2, and 3 are read together as a complete Article, the centrality of the 20% voter petition is unambiguous. The voter petition appears as the focus in every single paragraph of Article VIII. Most notably, Section 1 refers to the voter petition as the "required petition.""²⁸ This Court agrees. A plain reading of Article VIII, with its use of the phrase the "required petition[,]" in Section 1, shows a clear and unambiguous expectation that a Petition signed by twenty (20) percent of the

²⁷ Impeachment proceedings were stayed by Presiding Judge, Richard Lerblance, on October 21, 2021. See. *Order on Pre-Trial Motions, In Re: Court of Impeachment for National Council Representative Travis Scott*, SC-2021-06.

²⁸ See, Muscogee (Creek) Nation District Court Case No. CV-2021-89, *Order and Decision*, at 8. (November 12, 2021).

registered voters in a district must be obtained prior to initiating Article VIII removal procedures against (in this case) a National Council Representative. While the National Council is specifically directed by Article VIII to create law outlining “procedures and causes for removal[.]” Article VIII does not authorize the creation of any alternative avenue other than the Petition process. The second sentence of Article VIII, Section 1, is most instructive in this regard, as it explains that the National Council’s procedures “shall contain” (1) “certification of the required petition,” and (2) a “show of cause for removal, giving the accused an impartial hearing and allowance of time to answer to notice of such hearing.” Inclusion of the phrase “but not limited to” in this sentence simply grants the National Council authority to create procedures necessary to effectuate the required elements of the removal process. However, this language does not authorize the National Council to create alternative methods to initiate removal. On this point, the Appellant appears to argue that reference to the “required petition” does not mean that each removal proceeding must begin with the signed petition (as detailed in Article VIII, Sections 2 and 3), but that the National Council is only required to include the petition process as *an option* in its removal procedures; that the National Council is free to craft other initiating options as well. This Court does not agree.²⁹ Inclusion of the word “required” (a word of limitation) means exactly that. The signed petition is required. It defies logic to suggest that a removal process that calls for completion of a “required petition” would ultimately not demand that the petition be completed. To find otherwise would involve the legislature and this Court adding meaning that is not contained within the four corners of the Nation’s Constitution, thus distorting the plain reading of that document. As a result, this

²⁹ Further, the Appellant’s argument conflicts with the National Council’s own internal rules of procedure, as adopted on September 26, 2020 (and in full effect at the time the Appellant initiated Impeachment Proceedings), wherein Section 109 (B) provides that “removal of a National Council member shall require a signed petition showing cause of removal containing twenty (20) per cent of the registered voters of a district.”

Court finds that the second provision of NCA 89-75, § 104 (J) does not comply with Article VIII of the Muscogee (Creek) Nation Constitution and must be struck as unconstitutional. As detailed in the District Court’s November 12, 2021, *Order and Decision*, NCA 89-75, § 125 contains a severability clause that provides:

In the event that any section or provision of this Act, or amendment made by this Act, is held invalid, it is the intent of the National Council that the remaining sections or provisions of this Act, and amendments made by this Act, shall continue in full force and effect.


As such, the remaining provisions of NCA 89-75 shall remain in full force and effect at this time.


CONCLUSION


The Constitution creates two avenues for removal of an elected and/or appointed official. The first option is through Article VIII – Removal of Officers. This option requires a signed petition containing twenty (20) percent of the registered voters in a district (for council members), or twenty (20) percent of registered voters of the Muscogee (Creek) Nation as a whole (for the Principal Chief, Second Chief, and/or any member of the Supreme Court). Pursuant to Article VIII, Section 1, this petition is required. The second option is through Article XII – Initiative and Referendum. Section 8 of this Article provides that *all* elected and/or appointed officials are subject to recall by the Muscogee (Creek) Nation voters on certain grounds after following the procedures prescribed therein. The Appellant in the above-styled action initiated impeachment proceedings against the Respondent pursuant to Article VIII without first obtaining a petition signed by twenty (20) percent of the registered voters of the Respondent’s district, on the basis that NCA 89-75, § 104 (J) authorized the National Council to “initiate impeachment proceedings of its own volition.” The Court finds that this second provision of NCA 89-75, § 104 (J) is inconsistent with Article VIII of the Muscogee (Creek) Nation Constitution and must be struck as


unconstitutional. The November 12, 2021, *Order and Decision* of the Muscogee (Creek) Nation District Court is affirmed.

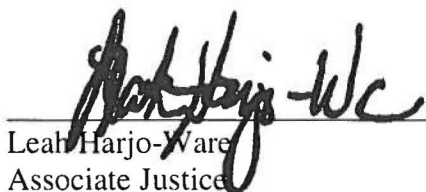
FILED AND ENTERED: July 20, 2022



Richard Lerbance
Chief Justice

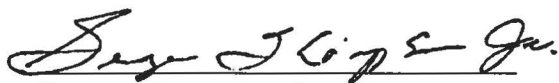

Amor McNac
Vice-Chief Justice


Andrew Adams, III
Associate Justice


Montie Deer
Associate Justice


Leah Harjo-Ware
Associate Justice


Kathleen R. Supernaw
Associate Justice


George Thompson, Jr.
Associate Justice

CERTIFICATE OF MAILING

I hereby certify that on July 20, 2022, I mailed a true and correct copy of the foregoing Order and Opinion with proper postage prepaid to each of the following: Jeffrey J. Davis, 171 Monroe Avenue, N.W., Suite 1000, Grand Rapids, Michigan 49503; Jeremy T. Pittman, 311 West 7th, P.O. Box 486, Okmulgee, Oklahoma 74447; Kyle B. Haskins, Muscogee (Creek) Nation National Council, P.O. Box 158, Okmulgee, OK 74447. A true and correct copy was also hand-delivered to Office of the Muscogee (Creek) Nation District Court.



Connie Dearman, Court Clerk