MUSCOGEE (CREEK) NATION CODE ANNOTATED

CONSTITUTION OF THE MUSCOGEE (CREEK) NATION

[ANNOTATED]

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UNDER THE GUIDANCE OF THE ALMIGHTY GOD, OUR CREATOR, WE THE PEOPLE OF THE MUSCOGEE (CREEK) NATION, TO PROMOTE UNITY, TO ESTABLISH JUSTICE, AND SECURE TO OURSELVES AND OUR CHILDREN THE BLESSINGS OF FREEDOM, TO PRESERVE OUR BASIC RIGHTS AND HERITAGE, TO STRENGTHEN AND PRESERVE SELF AND LOCAL GOVERNMENT, IN CONTINUED RELATIONS WITH THE UNITED STATES OF AMERICA, DO ORDAIN AND ESTABLISH THIS CONSTITUTION FOR THE MUSCOGEE (CREEK) NATION.

Notes of Decisions

1. Authority

Indian tribes were not made subject to the Bill of Rights. However, the laws of the Muscogee Nation are subject to the limitation imposed upon the tribal governments by the Indian Civil Rights Act of 1968, as amended, found at 25 U.S.C. 1301 et seq. This limits the powers of tribal governments by making certain provisions of the Bill of Rights applicable to tribal governments. *Ellis v. Muscogee (Creek) National Council,* SC 06–07 (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

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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)

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)

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)

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)

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)

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)

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)

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes,* 163 U.S. 376 (1896)) *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)

The sovereign authority of Indian tribes is limited in ways state and federal authority is not. *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)

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)

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)

[W]e have concluded that ''[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.'' (quoting *Mescalero Apache Tribe v.*

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Jones, 411 U.S. 145 (1973)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

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)

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)

[t]he [U.S.] Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as ''plenary and exclusive.'' This Court has traditionally identified the Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, and the Treaty Clause, Art. II, § 2, cl. 2, as sources of that 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)

[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)

Oliphant and *Duro* [*Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *Duro v. Reina*, 495 U.S. 676 (1990)] make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branches' own determinations. *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)

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)

[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)

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)

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)

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)

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)

25 U.S.C. § 2806 affirms that ''the provisions of this chapter alter neither . . . the law enforcement, investigative, or judicial authority of any . . . State, or political subdivision or agency thereof. . . .'' *Nevada v. Hicks*, 533 U.S. 353 (2001)

This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts. *Nevada v. Hicks*, 533 U.S. 353 (2001)

It is true that some statutes proclaim tribal-court jurisdiction over certain questions of federal law (quoting 25 U.S.C. § 1911 (Indian Child Welfare Act of 1978); 12 U.S.C. § 1715 (foreclosures brought by the Secretary of Housing and Urban Development against reservation homeowners)). But no provision in federal law provides for tribal-court jurisdiction over § 1983 [42 U.S.C. § 1983] actions. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he simpler way to avoid the removal problem is to conclude (as other indications suggest anyway) that tribal courts cannot entertain § 1983 suits. *Nevada v. Hicks*, 533 U.S. 353 (2001)

State officials operating on a reservation to investigate off-reservation violations of state law are properly held accountable for tortious conduct and civil rights violations in either state or

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federal court, but not in tribal court. *Nevada v. Hicks*, 533 U.S. 353 (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)

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)

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)

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)

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 reserva-

tion, *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)

A grant over land belonging to a tribe requires ''consent of the proper tribal officials,'' § 324, and the payment of just compensation, § 325. [25 U.S.C. §§ 323–328] *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)

''Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.'' [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)

We disagree that federal-question jurisdiction negates an Indian tribe's immunity from suit. Indeed, nothing in § 1331 unequivocally abrogates tribal sovereign immunity. In the context of the United States' sovereign immunity, we have held that [w]hile 28 U.S.C. § 1331 grants the court jurisdiction over all civil actions arising under the Constitution, laws or treaties of the United States, it does not independently waive the Government's sovereign immunity; § 1331 will only confer subject matter jurisdiction where some other statute provides such a waiver. (quoting from *High Country Citizens Alliance v. Clarke*, 454 F.3d 1177, 1181 (10th Cir. 2006)) (quotation omitted), *cert. denied*, 127 S.Ct. 2134 (2007)(citations omitted in original). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Like this case, *Tenneco* involved two different aspects of an Indian tribe's ''sovereignty'': its immunity from suit and the extent of its power to enact and enforce laws affecting non-Indians. But it does not stand for the proposition, as the Miner parties suggest, that an Indian tribe cannot invoke its sovereign immunity from suit in an action that challenges the limits of the tribe's authority over non-Indians. On the contrary, we held in *Tenneco* that the tribe was immune from suit. [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)

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)

The Court has no doubt that the political resourcefulness and resiliency exhibited for so long by the Creek Nation will finally enable the tribe to remove the uncertainty that has for so long dominated its political life and recapture the cherished self-determination that is its legal and moral right. The United States has given its word; the promise must be kept. *Harjo v. Kleppe*, 420 F. Supp. 1110 (1976).

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

Note 1

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)

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)

ARTICLE I [NAME, ORGANIZATION AND JURISDICTION OF TRIBE]

Section

Section headings are editorially supplied.

§ 1. [Name and organization of tribe]

The name of this tribe of Muscogee (Creek) people shall be ''The Muscogee (Creek) Nation'', and is hereby organized under Section 3 of the Act of June 26, 1936 (48 Stat. 1967)[1].

[1] 25 U.S.C.A. § 503.

Library References

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

Notes of Decisions

1. Construction and application

The Court finds the original formula of one (1) representative per district plus one (1) repre-

sentative 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)

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)

Indian tribes were not made subject to the Bill of Rights. However, the laws of the Muscogee Nation are subject to the limitation imposed upon the tribal governments by the Indian Civil Rights Act of 1968, as amended, found at 25 U.S.C. 1301 et seq. This limits the powers of tribal governments by making certain provisions of the Bill of Rights applicable to tribal governments. *Ellis v. Muscogee (Creek) National Council*, SC 06–07 (Muscogee (Creek) 2007)

We have held that the Constitution of this Nation must be strictly construed and interpreted; and where the plain language is clear, we must not place a different meaning on the words. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

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)

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 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)

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)

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)

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)

[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)

Under traditional Mvskoke law controversies were resolved by clan Vculvkvlke (elders). Their integrity was considered beyond reproach. They were obligated by the responsibilities of their position to decide cases fairly, and honestly, regardless of clan or family affiliation. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

Since this Nation's establishment of a constitutional form of government in 1867, Mvskoke law is ruled upon by appointed Judges, but the obligation under traditional Mvskoke law remain in effect. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

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).

Our use of any federal authorities considering this matter [writs] is limited to review of that of persuasive value. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Pursuant to NCA 89–21 § 103, the Court shall first apply tribal ordinances in any legal resolution. If there is no applicable tribal ordinance, then the court may process to apply federal law. If no tribal or federal laws are applicable, then the Court shall apply Oklahoma law. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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).

Adherence to National Council Ordinances and Muscogree (Creek) Nations Constitutional limits on this Courts power is required by our doctrine of separation of powers. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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

The Supreme Court has a duty to inquire into its own jurisdiction. *Kelly v. Wilde*, 5 Okla. Trib. 209 (Muscogee (Creek) 1996).

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).

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).

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 meaning of a constitutional provision reaches tribal courts, such courts become the final arbiter as to constitutionality of governmental actions. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

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).

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 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).

Article I § 2 states that political jurisdiction should be as it geographically appeared in 1900 which is based on those treaties entered into by the Muscogee (Creek) Nation and the United States of America. *Muscogee (Creek) Nation v. American Tobacco Co.,* 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Personal jurisdiction shall exist when person is served within jurisdictional territory or served anywhere in cases arising within territorial 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).

Absent express Congressional enactment to the contrary, the jurisdiction power of the Muscogee (Creek) Nation remains unscathed. *Muscogee (Creek) Nation v. American Tobacco Co.,* 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Cannons 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).

Entire reading of Treaty of 1856 in light of historical realties clearly indicates that the United States Congress has abrogated the treaty and subsequently restored the governmental powers of the Muscogee (Creek) Nation which includes the power of the Court to assert jurisdiction. *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 reorganized their tribal government under the Oklahoma Indian Welfare Act and adopted a new constitution which was approved by the United States Department of Interior and organizes tribal government into executive, legislative, and judicial branches with no divestiture of authority over non-Indians or corporations. *Muscogee (Creek) Nation v. American Tobacco Co.,* 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Due Process requires notice to be reasonably calculated to give parties notice of an action pending and giving those parties reasonable time to appear and object. *Muscogee (Creek) Nation v. American Tobacco Co.,* 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

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)

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)

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)

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)

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)

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)

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)

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes*, 163 U.S. 376 (1896)) *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)

The sovereign authority of Indian tribes is limited in ways state and federal authority is not. *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)

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)

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)

[W]e have concluded that ''[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.'' (quoting *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973)) *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)

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)

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)

[t]he [U.S.] Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as ''plenary and exclusive.'' This Court has traditionally identified the Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, and the Treaty Clause, Art. II, § 2, cl. 2, as sources of that 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)

[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)

Oliphant and *Duro* [*Oliphant v. Suquamish Tribe,* 435 U.S. 191 (1978); *Duro v. Reina,* 495 U.S. 676 (1990)] make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branch-

es' own determinations. *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 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)

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)

[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)

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)

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)

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)

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)

25 U.S.C. § 2806 affirms that ''the provisions of this chapter alter neither . . . the law enforcement, investigative, or judicial authority of any . . . State, or political subdivision or agency thereof. . . .'' *Nevada v. Hicks*, 533 U.S. 353 (2001)

This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts. *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)

It is true that some statutes proclaim tribal-court jurisdiction over certain questions of federal law.(quoting 25 U.S.C. § 1911 (Indian Child Welfare Act of 1978); 12 U.S.C. § 1715 (foreclosures brought by the Secretary of Housing and Urban Development against reservation homeowners)). But no provision in federal law provides for tribal-court jurisdiction over § 1983 [42 U.S.C. § 1983] actions. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he simpler way to avoid the removal problem is to conclude (as other indications suggest anyway) that tribal courts cannot entertain § 1983 suits. *Nevada v. Hicks*, 533 U.S. 353 (2001)

State officials operating on a reservation to investigate off-reservation violations of state law are properly held accountable for tortious conduct and civil rights violations in either state or federal court, but not in tribal court. *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)

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)

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, 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)

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)] we conclude, are not at odds with, and do not displace, *Montana*. Both decisions describe an exhaustion rule allowing tribal courts initially to respond to an invocation of their jurisdiction; neither establishes tribal court adjudicatory authority, even over the lawsuits involved in those cases. *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)

A grant over land belonging to a tribe requires ''consent of the proper tribal officials,'' § 324, and the payment of just compensation, § 325. [25 U.S.C. §§ 323–328] *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 federal government has had a ''longstanding policy of encouraging tribal self government.'' *Iowa Mutual Insurance Company v. LaPlante*, 107 S. Ct. 971, 480. U.S. 9, 94 L.Ed.2d 10 (1987).

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 effect on the political integrity, the economic security, or the health or welfare of the tribe. *Montana v. United States*, 101 S.Ct. 1245, 450 U.S. 544, 67 L.Ed.2d 493 (1981).

[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)

As for the argument of amici, we do not require that Nation certificate-of-title law be the exclusive source of establishing perfection and priority. *Malloy v. Wilserv Credit Union*, 516 F.3d 1180 (10th Cir. 2008)

''Tribal sovereign immunity is a matter of subject matter jurisdiction, which may be challenged by a motion to dismiss under Fed. R. Civ. P. 12(b)(1).'' *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1302–03 (10th Cir. 2001) (citation omitted). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

''Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.'' [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)

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)

This court has applied the Supreme Court's straightforward test to uphold Indian tribes' immunity from suit. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

We disagree that federal-question jurisdiction negates an Indian tribe's immunity from suit. Indeed, nothing in § 1331 unequivocally abrogates tribal sovereign immunity. In the context of the United States' sovereign immunity, we have held that ''[w]hile 28 U.S.C. § 1331 grants the court jurisdiction over all civil actions arising under the Constitution, laws or treaties of the United States, it does not independently waive the Government's sovereign immunity; § 1331 will only confer subject matter jurisdiction where some other statute provides such a waiver.'' [quoting from *High Country Citizens Alliance v. Clarke*, 454 F.3d 1177, 1181 (10th Cir. 2006)], *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Tribal sovereign immunity is deemed to be coextensive with the sovereign immunity of the United States. [quoting *Ramey Constr. Co. v. Apache Tribe of Mescalero Reservation*, 673 F.2d 315, 319–20 (10th Cir. 1982)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Therefore, in an action against an Indian tribe, we conclude that § 1331 will only confer subject matter jurisdiction where another statute provides a waiver of tribal sovereign immunity or the tribe unequivocally waives its immunity. *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 sover-

eign 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)

We also concluded that, in the suit against the tribal officers, the extent of the tribe's sovereignty to enact the challenged ordinances raised a federal issue sufficient for federal-question jurisdiction in the district court. [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)

Like this case, *Tenneco* involved two different aspects of an Indian tribe's ''sovereignty'': its immunity from suit and the extent of its power to enact and enforce laws affecting non-Indians. But it does not stand for the proposition, as the Miner parties suggest, that an Indian tribe cannot invoke its sovereign immunity from suit in an action that challenges the limits of the tribe's authority over non-Indians. On the contrary, we held in *Tenneco* that the tribe was immune from suit. [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)

We distinguished *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)] noting that the Supreme Court in that case emphasized the availability of the tribal courts and the intra-tribal nature of the issues, whereas in *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] the plaintiffs were non-Indians who had been denied any remedy in a tribal forum. *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)

The *Dry Creek* rule has ''minimal precedential value''; in fact, this court has never held it to be applicable other than in the *Dry Creek* [*Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] decision itself. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

The Miner parties clearly fail to come within the narrow *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] exception to tribal sovereign immunity. Considering whether they could have brought this action in the Tribal Court rather than the district court, they hypothesize that the Nation would have claimed immunity from suit in that forum as well. But they must show an actual attempt; their assumption of futility of the tribal-court remedy is not enough. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

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 review a question of tribal sovereign immunity de novo. *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

Indian tribes possess the same immunity from suit traditionally enjoyed by sovereign powers. *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)]. As with other forms of sovereign immunity, tribal immunity ''is subject to the superior and plenary control of Congress.'' Accordingly, absent explicit waiver of immunity or express authorization by Congress, federal courts do not have jurisdiction to entertain suits against an Indian tribe. (internal cites omitted). *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)

Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980)] has come to stand for the proposition that federal courts have jurisdiction to hear a suit against an Indian tribe under 25 U.S.C. § 1302, notwithstanding *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)]when three circumstances are present: (1) the dispute involves a non-Indian; (2) the dispute does not

involve internal tribal affairs; and (3) there is no tribal forum to hear the dispute. Our jurisprudence in this field is circumspect, and we have emphasized the need to construe the *Dry Creek* exception narrowly in order to prevent a conflict with *Santa Clara*.(internal cites omitted) *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

[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)

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)

Consent for fundamental political decisions may be obtained from the ultimate source of legislative authority, the people themselves. *Harjo v. Kleppe*, 420 F.Supp. 1110 (1976).

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 omit-

ted) *United States v. Green*, 140 Fed.Appx. 798, (10th Cir. 2005)

[t]ribal authorities may investigate unauthorized possession of firearms on gaming premises which is proscribed by tribal law. *See* Muscogee (Creek) Nation Code Ann., tit. 21., § 5–116(C). *United States v. Green*, 140 Fed. Appx. 798 (10th Cir. 2005)

2. Separation of powers

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 Court decided it had judicial power to render its decision in that case, not based on a specific grant of power, but on the implied powers derived from examination of the United States Constitution. See *Marbury v. Madison*, 1 Cranch, 137. The Court then decided, while not following United States law, the United State Supreme Court's decision was persuasive inasmuch as it was the opinion of the court that the Muscogee Nation Constitution was modeled after the U.S. Constitution as to the separation of powers doctrine. *Ellis v. Muscogee (Creek) National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

We think that the highest court of a sovereign government, when created by the Constitution of that government which recognizes the principle of separation of powers, is entitled to be free to function as the framers of that Constitution intended, and it should guard its prerogatives jealously to preserve its powers as an independent co-equal branch of government. *Ellis v. Muscogee (Creek) National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

Any demand for jury trial in the Supreme Court that is not based on a right found in the Indian Civil Rights Act, and if granted, would interfere with the inherent powers bestowed upon the Supreme Court by our Constitution. *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)

[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)

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)

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

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

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

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

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 pro-

cess 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 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)

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)

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)

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)

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

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

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

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)

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)

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

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)

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)

. . . the Court is also mindful of as our role as arbitrator of disputes and there are times that additional clarification to the Constitution meaning is needed. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Under the Doctrine of Separation of Powers, the Executive Branch as set out in the Muscogee (Creek) Nation Constitution Article V, and further as organized in the laws in Title 16 Muscogee (Creek) Nation Code,-''Executive Branch'' shall remain in full force and effect unless duly changed by proper procedures to secure a Constitutional Amendment or by Tribal Resolution. . . . as the head of the Executive Branch, the Principal Chief continues to have the authority to deal with all Executive Branch employment decisions, except over independent agencies as will be discussed *infra*; including but not limited to all appointments as set out in the Constitution of this Nation and any laws that the National Council shall enact. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

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

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)

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)

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)

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)

Under traditional Mvskoke law controversies were resolved by clan Vculvkvlke (elders). Their integrity was considered beyond reproach. They were obligated by the responsibilities of their position to decide cases fairly, and honestly, regardless of clan or family affiliation. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

Adherence to National Council Ordinances and Muscogree (Creek) Nations Constitutional limits on this Courts power is required by our doctrine of separation of powers. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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).

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).

The Court cannot supersede the powers granted to us with respect to our appellate authority. *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 IV § 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).

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

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

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 continues employment of individuals in violation of an earlier Order from that Court. *Cox v. Kamp*, 2 Okla. Trib. 303 (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).

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

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

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

Tribal Supreme Court has power, when enforcing sanctions pursuant to finding of contempt, to order financial institutions holding tribal funds to a tribal official in contempt. *In re Financial Services*, 2 Okla. Trib. 142 (Muscogee (Creek) 1990).

When judicial office is create by 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 Muscogee (Creek) Nation's Principal Chief. *In re District Judge*, 2 Okla. Trib. 100 (Muscogee (Creek) 1990).

Each of the three branches of Muscogee (Creek) Nation's government are separate, distinct legal entities. *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 the expenditure of funds belonging to the Tribe. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

Muscogee (Creek) Nation Ordinance NCA 87–37, which authorizes Principal Chief to enter into contracts and leaves the details of such contracts to his discretion, is constitutional. *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).

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)

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 the power 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).

Constitution of Muscogee (Creek) Nation establishes the judicial branch as necessary and separate branch of tribal government, and instills in that branch judicial authority and power of the 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 patterned after United States Constitution with respect to separation of powers; decisions of United States courts with respect to that doctrine are therefore applicable with equal force to government of Muscogee (Creek) Nation. *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).

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))

It is THEREFORE ORDERED, ADJUDGED AND DECREED that each Justice of the Supreme Court of the Muscogee (Creek) Nation shall and do retain their position and authority and shall continue to serve as Justice until their successor is duly qualified. *Done in Conference, October 31, 1986* (Muscogee (Creek) Nation (1986))

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 Muscogee (Creek) Nation may impose fines on officials of Nation's executive branch for failure to comply with writ of mandamus directing them to comply with valid

and constitutional tribal ordinance. *Frye v. Cox*, 2 Okla. Trib. 179 (Musc. (Cr.) D.Ct. 1991).

Muscogee (Creek) Nation Ordinance 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).

District Court of Muscogee (Creek) Nation has power to issue writ of mandamus to Nation's Principal Chief directing him to comply with constitutional tribal ordinance. *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).

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).

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).

Jurisdiction of courts of Muscogee (Creek) Nation is not to be defeated by actions of tribal officers at their pleasure. *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 (Musc. (Cr.) D.Ct. 1988).

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)

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 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)

[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)

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)

[W]e have concluded that ''[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.'' (quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

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)

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)

[t]he [U.S.] Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as ''plenary and exclusive.'' This Court has traditionally identified the Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, and the Treaty Clause, Art. II, § 2, cl. 2, as sources of that 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)

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)

[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)

Oliphant and *Duro* [*Oliphant v. Suquamish Tribe,* 435 U.S. 191 (1978); *Duro v. Reina,* 495 U.S. 676 (1990)] make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branches' own determinations. *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)

[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)

This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts. *Nevada v. Hicks*, 533 U.S. 353 (2001)

It is true that some statutes proclaim tribal-court jurisdiction over certain questions of federal law. (quoting 25 U.S.C. § 1911 (Indian Child Welfare Act of 1978); 12 U.S.C. § 1715 (foreclosures brought by the Secretary of Housing and Urban Development against reservation homeowners)). But no provision in federal law provides for tribal-court jurisdiction over § 1983 [42 U.S.C. § 1983] actions. *Nevada v. Hicks*, 533 U.S. 353 (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)

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)

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)

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)

Like this case, *Tenneco* involved two different aspects of an Indian tribe's ''sovereignty'': its immunity from suit and the extent of its power to enact and enforce laws affecting non-Indians. But it does not stand for the proposition, as the Miner parties suggest, that an Indian tribe cannot invoke its sovereign immunity from suit in an action that challenges the limits of the tribe's authority over non-Indians. On the contrary, we held in *Tenneco* that the tribe was immune from suit. [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)

Therefore, in an action against an Indian tribe, we conclude that § 1331 will only confer subject matter jurisdiction where another statute provides a waiver of tribal sovereign immunity or the tribe unequivocally waives its immunity. *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)

Tribal sovereign immunity is deemed to be coextensive with the sovereign immunity of the United States. [quoting *Ramey Constr. Co. v. Apache Tribe of Mescalero Reservation*, 673 F.2d 315, 319–20 (10th Cir. 1982)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

''Tribal sovereign immunity is a matter of subject matter jurisdiction, which may be challenged by a motion to dismiss under Fed. R. Civ. P. 12(b)(1).'' *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1302–03 (10th Cir. 2001) (citation omitted). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

''Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.'' [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)

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)

This court has applied the Supreme Court's straightforward test to uphold Indian tribes' immunity from suit. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980)] has come to stand for the proposition that federal courts have jurisdiction to hear a suit against an Indian tribe under 25 U.S.C. § 1302, notwithstanding *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)]when three circumstances are present: (1) the dispute involves a non-Indian; (2) the dispute does not involve internal tribal affairs; and (3) there is no tribal forum to hear the dispute. Our jurisprudence in this field is circumspect, and we have emphasized the need to construe the *Dry Creek* exception narrowly in order to prevent a conflict with *Santa Clara*.(internal cites omitted) *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

[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)

Indian tribes possess the same immunity from suit traditionally enjoyed by sovereign powers. *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)]. As with other forms of sovereign immunity, tribal immunity ''is subject to the superior and plenary control of Congress.'' Accordingly, absent explicit waiver of immunity or express authorization by Congress, federal courts do not have jurisdiction to entertain suits against an Indian tribe. (internal cites omitted). *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

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)

[t]ribal authorities may investigate unauthorized possession of firearms on gaming premises which is proscribed by tribal law. *See* Muscogee (Creek) Nation Code Ann., tit. 21., § 5–116(C). *United States v. Green*, 140 Fed. Appx. 798 (10th Cir. 2005)

3. Sovereign immunity

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 doctrine of sovereign immunity, a condition precedent to filing suit against the GOAB, is often accompanied by the doctrine of qualified immunity for government employees acting within the scope of their employment. Qualified immunity is not, however, absolute. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

The qualified immunity test requires a two-part analysis: ''(1) Was the law governing the official's conduct clearly established? (2) Under the law, could a reasonable officer have believed the conduct was lawful?'' [citing *Act-Up!/Portland v. Bagley*, 988 F.2d 868, 871 (9th Cir. 1993); *Tribble v. Gardner*, 860 F.2d 321, 324 (9th Cir. 1988), cert. denied, 490 U.S. 1075 (1989).] This Court is persuaded by and hereby adopts the forgoing reasoning regarding the application of the doctrine of qualified immunity. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

On remand, the District Court should apply the two-part test discussed above [(1) Was the law governing the official's conduct clearly established? (2) Under the law, could a reasonable officer have believed the conduct was lawful?] to determine whether the named individual defendants may be immune from suite under the doctrine of qualified immunity. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

As stated in the Court's *Glass* decision, MCNCA 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,*(* 2006)

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)

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)

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)

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)

[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)

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes*, 163 U.S. 376 (1896)) *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-Indi-

ans 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)

The sovereign authority of Indian tribes is limited in ways state and federal authority is not. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

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)

[W]e have concluded that ''[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.'' (quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)) *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95 (2005)

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)

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)

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)

Oliphant and *Duro* [*Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *Duro v. Reina*, 495 U.S. 676 (1990)] make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branches' own determinations. *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)

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]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)

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)

It is true that some statutes proclaim tribal-court jurisdiction over certain questions of federal law.(quoting 25 U.S.C. § 1911 (Indian Child Welfare Act of 1978); 12 U.S.C. § 1715 (foreclosures brought by the Secretary of Housing and Urban Development against reservation homeowners)). But no provision in federal law provides for tribal-court jurisdiction over § 1983 [42 U.S.C. § 1983] actions. *Nevada v. Hicks*, 533 U.S. 353 (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)

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)

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 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)

[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)

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)

Like this case, *Tenneco* involved two different aspects of an Indian tribe's ''sovereignty'': its immunity from suit and the extent of its power to enact and enforce laws affecting non-Indians. But it does not stand for the proposition, as the

Miner parties suggest, that an Indian tribe cannot invoke its sovereign immunity from suit in an action that challenges the limits of the tribe's authority over non-Indians. On the contrary, we held in *Tenneco* that the tribe was immune from suit. [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)

Therefore, in an action against an Indian tribe, we conclude that § 1331 will only confer subject matter jurisdiction where another statute provides a waiver of tribal sovereign immunity or the tribe unequivocally waives its immunity. *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)

Tribal sovereign immunity is deemed to be coextensive with the sovereign immunity of the United States. [quoting *Ramey Constr. Co. v. Apache Tribe of Mescalero Reservation*, 673 F.2d 315, 319–20 (10th Cir. 1982)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

''Tribal sovereign immunity is a matter of subject matter jurisdiction, which may be challenged by a motion to dismiss under Fed. R. Civ. P. 12(b)(1).'' *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1302–03 (10th Cir. 2001) (citation omitted). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

''Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.'' [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)

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)

This court has applied the Supreme Court's straightforward test to uphold Indian tribes' immunity from suit. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980)] has come to stand for the proposition that federal courts have jurisdiction to hear a suit against an Indian tribe under 25 U.S.C. § 1302, notwithstanding *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)]when three circumstances are present: (1) the dispute involves a non-Indian; (2) the dispute does not involve internal tribal affairs; and (3) there is no tribal forum to hear the dispute. Our jurisprudence in this field is circumspect, and we have emphasized the need to construe the *Dry Creek* exception narrowly in order to prevent a conflict with *Santa Clara*.(internal cites omitted) *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

[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)

Indian tribes possess the same immunity from suit traditionally enjoyed by sovereign powers. *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)]. As with other forms of sovereign immunity, tribal immunity ''is subject to the superior and plenary control of Congress.'' Accordingly, absent explicit waiver of immunity or express authorization by Congress, federal courts do not have jurisdiction to entertain suits against an Indian tribe. (internal cites

omitted). *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

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)

[t]ribal authorities may investigate unauthorized possession of firearms on gaming premises which is proscribed by tribal law. *See* Muscogee (Creek) Nation Code Ann., tit. 21., § 5–116(C). *United States v. Green*, 140 Fed. Appx. 798 (10th Cir. 2005)

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)

§ 2. [Political jurisdiction]

The political jurisdiction of The Muscogee (Creek) Nation shall be as it geographically appeared in 1900 which is based upon those Treaties entered

into by The Muscogee (Creek) Nation and the United States of America; and such jurisdiction shall include, however not limited to, properties held in trust by the United States of America and to such other properties as held by The Muscogee (Creek) Nation, such property, real and personal to be TAX–EXEMPT, from Federal and State taxation, when not inconsistent with Federal law.

Cross References

Districts, see Const. Art. VI, § 1.
Funds for out-of-boundaries citizens, see Title 35, § 5–101 et seq.

United States Code Annotated

Indian country defined, see 18 U.S.C.A. § 1151.

Notes of Decisions

1. Construction and application

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)

Indian tribes were not made subject to the Bill of Rights. However, the laws of the Muscogee Nation are subject to the limitation imposed upon the tribal governments by the Indian Civil Rights Act of 1968, as amended, found at 25 U.S.C. 1301 et seq. This limits the powers of tribal governments by making certain provisions of the Bill of Rights applicable to tribal governments. *Ellis v. Muscogee (Creek) National Council*, SC 06–07 (Muscogee (Creek) 2007)

We have held that the Constitution of this Nation must be strictly construed and interpreted; and where the plain language is clear, we must not place a different meaning on the words. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

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)

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 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)

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)

Since this Nation's establishment of a constitutional form of government in 1867, Mvskoke law is ruled upon by appointed Judges, but the obligation under traditional Mvskoke law remain in effect. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

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 questions 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).

Article I § 2 states that political jurisdiction should be as it geographically appeared in 1900 which is based on those treaties entered into by the Muscogee (Creek) Nation and the United States of America. *Muscogee (Creek) Nation v. American Tobacco Co.,* 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Personal jurisdiction shall exist when person is served within jurisdictional territory or served anywhere in cases arising within territorial jurisdiction of the Muscogee (Creek) Nation. *Muscogee (Creek) Nation v. American Tobacco Co.,* 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

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

Absent express Congressional enactment to the contrary, the jurisdiction power of the Muscogee (Creek) Nation remains unscathed. *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).

Entire reading of Treaty of 1856 in light of historical realties clearly indicates that the United States Congress has abrogated the treaty and subsequently restored the governmental powers of the Muscogee (Creek) Nation which includes the power of the Court to assert jurisdiction. *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 reorganized their tribal government under the Oklahoma Indian Welfare Act and adopted a new constitution which was approved by the United States Department of Interior and organizes tribal government into executive, legislative, and judicial branches with no divestiture of authority over non-Indians or corporations. *Muscogee (Creek) Nation v. American Tobacco Co.,* 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

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)

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)

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)

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)

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)

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)

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes*, 163 U.S. 376 (1896)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Indian courts ''differ from traditional American courts in a number of significant respects.'' (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)

[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)

The sovereign authority of Indian tribes is limited in ways state and federal authority is not. *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)

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)

Seeking the Tribal Court's aid in serving process on tribal members for a pending state-court action does not, we think, constitute consent to future litigation in the Tribal Court. *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 geo-

graphical 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)

[W]e have concluded that ''[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.'' (quoting *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973)) *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)

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)

[t]he [U.S.] Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as ''plenary and exclusive.'' This Court has traditionally identified the Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, and the Treaty Clause, Art. II, § 2, cl. 2, as sources of that 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)

Oliphant and *Duro* [*Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *Duro v. Reina*, 495 U.S. 676 (1990)] make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branches' own determinations. *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)

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)

[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)

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)

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 en-

couraging 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)

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)

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)

25 U.S.C. § 2806 affirms that ''the provisions of this chapter alter neither . . . the law enforcement, investigative, or judicial authority of any . . . State, or political subdivision or agency thereof. . . .'' *Nevada v. Hicks*, 533 U.S. 353 (2001)

This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts. *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)

It is true that some statutes proclaim tribal-court jurisdiction over certain questions of federal law.(quoting 25 U.S.C. § 1911 (Indian Child Welfare Act of 1978); 12 U.S.C. § 1715 (foreclosures brought by the Secretary of Housing and Urban Development against reservation homeowners)). But no provision in federal law provides for tribal-court jurisdiction over § 1983 [42 U.S.C. § 1983] actions. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Were § 1983[42 U.S.C. § 1983] claims cognizable in tribal court, defendants would inexplicably lack the right available to state-court § 1983 defendants to seek a federal forum. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he simpler way to avoid the removal problem is to conclude (as other indications suggest anyway) that tribal courts cannot entertain § 1983 suits. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Since it is clear, as we have discussed, that tribal courts lack jurisdiction over state officials for causes of action relating to their performance of official duties, adherence to the tribal exhaustion requirement in such cases ''would serve no purpose other than delay,'' and is therefore unnecessary. *Nevada v. Hicks*, 533 U.S. 353 (2001)

State officials operating on a reservation to investigate off-reservation violations of state law are properly held accountable for tortious conduct and civil rights violations in either state or federal court, but not in tribal court. *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)

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)

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)

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)] we conclude, are not at odds with, and do not displace, *Montana.* Both decisions describe an exhaustion rule allowing tribal courts initially to respond to an invocation of their jurisdiction; neither establishes tribal court adjudicatory authority, even over the lawsuits involved in those cases. *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[W]e do not extract from *National Farmers* anything more than a prudential exhaustion rule, in deference to the capacity of tribal courts ''to explain to the parties the precise basis for accepting [or rejecting] jurisdiction.'' (quoting *National Farmers Union Ins. Cos. v. Crow Tribe,* 471 U.S. 845 (1985)) *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)

A grant over land belonging to a tribe requires ''consent of the proper tribal officials,'' § 324, and the payment of just compensation, § 325. [25 U.S.C. §§ 323–328] *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

So long as the stretch [of road] is maintained as part of the State's highway, the Tribes cannot assert a landowner's right to occupy and exclude. *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[t]hose who drive carelessly on a public highway running through a reservation endanger all in the vicinity, and surely jeopardize the safety of tribal members. But if *Montana*'s [*Montana v. United States*, 450 U.S. 544 (1981)] second exception requires no more, the exception would severely shrink the rule. *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)

[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)

''Tribal sovereign immunity is a matter of subject matter jurisdiction, which may be challenged by a motion to dismiss under Fed. R. Civ. P. 12(b)(1).'' *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1302–03 (10th Cir. 2001) (citation omitted). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

''Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.'' [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)

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)

This court has applied the Supreme Court's straightforward test to uphold Indian tribes' immunity from suit. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

We disagree that federal-question jurisdiction negates an Indian tribe's immunity from suit. Indeed, nothing in § 1331 unequivocally abrogates tribal sovereign immunity. In the context of the United States' sovereign immunity, we have held that ''[w]hile 28 U.S.C. § 1331 grants the court jurisdiction over all civil actions arising under the Constitution, laws or treaties of the United States, it does not independently waive the Government's sovereign immunity; § 1331 will only confer subject matter jurisdiction where some other statute provides such a waiver.'' [quoting from *High Country Citizens Alliance v. Clarke*, 454 F.3d 1177, 1181 (10th Cir. 2006)](quotation omitted), *cert. denied*, 127 S.Ct. 2134 (2007)(citations omitted in original). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Tribal sovereign immunity is deemed to be coextensive with the sovereign immunity of the United States. [quoting *Ramey Constr. Co. v. Apache Tribe of Mescalero Reservation*, 673 F.2d 315, 319–20 (10th Cir. 1982)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Therefore, in an action against an Indian tribe, we conclude that § 1331 will only confer subject matter jurisdiction where another statute provides a waiver of tribal sovereign immunity or the tribe unequivocally waives its im-

munity. *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)

We also concluded that, in the suit against the tribal officers, the extent of the tribe's sovereignty to enact the challenged ordinances raised a federal issue sufficient for federal-question jurisdiction in the district court. [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)

Like this case, *Tenneco* involved two different aspects of an Indian tribe's ''sovereignty'': its immunity from suit and the extent of its power to enact and enforce laws affecting non-Indians. But it does not stand for the proposition, as the Miner parties suggest, that an Indian tribe cannot invoke its sovereign immunity from suit in an action that challenges the limits of the tribe's authority over non-Indians. On the contrary, we held in *Tenneco* that the tribe was immune from suit. [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)

We distinguished *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)] noting that the Supreme Court in that case emphasized the availability of the tribal courts and the intra-tribal nature of the issues, whereas in *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] the plaintiffs were non-Indians who had been denied any remedy in a tribal forum. *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)

The *Dry Creek* rule has ''minimal precedential value''; in fact, this court has never held it to be applicable other than in the *Dry Creek* [*Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] decision itself. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

The Miner parties clearly fail to come within the narrow *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] exception to tribal sovereign immunity. Considering whether they could have brought this action in the Tribal Court rather than the district court, they hypothesize that the Nation would have claimed immunity from suit in that forum as well. But they must show an actual attempt; their assumption of futility of the tribal-court remedy is not enough. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

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)

Indian tribes possess the same immunity from suit traditionally enjoyed by sovereign powers. *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)]. As with other forms of sovereign immunity, tribal immunity ''is subject to the superior and plenary control of Congress.'' Accordingly, absent explicit waiver of immunity or express authorization by Congress, federal courts do not have jurisdiction to entertain suits against an Indian tribe. (internal cites omitted). *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)

Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980)] has come to stand for the proposition that federal courts have jurisdiction to hear a suit against an Indian tribe under 25 U.S.C. § 1302, notwithstanding *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)]when three circumstances are present: (1) the dispute involves a non-Indian; (2) the dispute does not involve internal tribal affairs; and (3) there is no tribal forum to hear the dispute. Our jurisprudence in this field is circumspect, and we have emphasized the need to construe the *Dry Creek* exception narrowly in order to prevent a conflict with *Santa Clara*.(internal cites omitted) *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

[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)

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)

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)

[t]ribal authorities may investigate unauthorized possession of firearms on gaming premises which is proscribed by tribal law. *See* Muscogee (Creek) Nation Code Ann., tit. 21., § 5–116(C). *United States v. Green*, 140 Fed. Appx. 798 (10th Cir. 2005)

An officer may seize evidence of a crime if it is in plain view, its incriminating character is immediately apparent, and the officer has a lawful right of access to the item. *Horton v. California*, 496 U.S. 128 (1990) *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

§ 3. [Official seal]

The official seal of The Muscogee (Creek) Nation shall be the Seal as is illustrated:

Cross References

Great seal and official flag, see Title 37, § 1–101 et seq.
Ordinances, orders, resolutions or other acts to be stamped with seal, see Const. Art. VI, § 6.
Unauthorized use of the Great Seal of the Muscogee (Creek) Nation, see Title 14, § 2–504.

ARTICLE II [RIGHTS AND PRIVILEGES]

Section

Section headings are editorially supplied.

§ 1. [Opportunity for citizenship]

Each Muscogee (Creek) Indian by blood shall have the opportunity for citizenship in The Muscogee (Creek) Nation.

Cross References

Citizenship, see Const. Art. III, § 1 et seq.
Opportunity for citizenship, records, see Title 7, § 4–103.

§ 2. [Rights and privileges as citizens not to be abridged]

This Constitution shall not abridge the rights and privileges of individual citizens of The Muscogee (Creek) Nation enjoyed as citizens of the State of Oklahoma and of the United States of America.

United States Code Annotated

Constitutional rights of Indians, see 25 U.S.C.A. § 1302.

Notes of Decisions

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1. Due process, notice and opportunity

[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 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)

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)

The Supreme Court has the power to enforce its orders, and judgments subject to the rules of procedure as to ''due process'' which it has adopted. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

Indian tribes were not made subject to the Bill of Rights. However, the laws of the Muscogee Nation are subject to the limitation imposed upon the tribal governments by the Indian Civil Rights Act of 1968, as amended, found at 25 U.S.C. § 1301 et seq. This limits the powers of tribal governments by making certain provisions of the Bill of Rights applicable to tribal governments. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

We think that the highest court of a sovereign government, when created by the Constitution of that government which recognizes the principle of separation of powers, is entitled to be free to function as the framers of that Constitution intended, and it should guard its prerogatives jealously to preserve its powers as an independent co-equal branch of government. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

Any demand for jury trial in the Supreme Court that is not based on a right found in the Indian Civil Rights Act, and if granted, would interfere with the inherent powers bestowed upon the Supreme Court by our Constitution. *Ellis v. Muscogee (Creek) 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)

Due Process allows for a court to have a certain amount of discretion in fashioning indirect civil contempt sanctions as long as the sanction(s) imposed has comported with notions of fair play and justice. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

[T]he ideals of justice and fairness embodied in the doctrine of Due Process, which must be afforded to all citizens of the Muscogee (Creek) Nation, do not disappear at the door when a political appointee's nomination is being reviewed by either a Committee, a Subcommittee, a Planning Session, or the full membership of the National Council. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

Each and every political appointee should be afforded an opportunity to relate and discuss his or her qualifications for the position to which he or she has been nominated by the office of the Principal Chief-this is the opportunity to be heard. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

[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)

[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)

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)

Under traditional Mvskoke law controversies were resolved by clan Vculvkvlke (elders). Their integrity was considered beyond reproach. They were obligated by the responsibilities of their position to decide cases fairly, and honestly, regardless of clan or family affiliation. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

Nothing therein [Article VII of the Muscogee (Creek) Nation Constitution] mandates that said Justices and Judges shall be full citizens of the Muscogee (Creek) Nation and as is specifically set forth and provided for in the articles that pertain to the elected 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)

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)

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)

2. Oklahoma state compact

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)

§ 3. [Claims against United States]

This Constitution shall not abridge the rights and privileges of persons of Muscogee (Creek) blood for purposes of claims against the United States of America.

United States Code Annotated

Claims or suits of Tribes against United States, rights unimpaired by Indian Self-Determination and Educational Assistance Act, see 25 U.S.C.A. § 475.

§ 4. [Trust relationship with United States]

This Constitution shall not affect the rights and privileges of individual citizens of The Muscogee (Creek) Nation in their trust relationship with the United States of America as members of a federally recognized tribe.

§ 5. [Organization of tribal towns and recognition of traditions]

This Constitution shall not in any way abolish the rights and privileges of persons of the Muscogee (Creek) Nation to organize tribal towns or recognize its Muscogee (Creek) traditions.

Notes of Decisions

Powers of Charter Tribal Communities 1

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1. Powers of Charter Tribal Communities

[T]hat the Motion for Emergency Stay filed by Plaintiff/Appellant Thlopthlocco Tribal Town be, and the same hereby is GRANTED and the District Court's June 20, 2007 order dissolving its June 11, 2007 Temporary Restraining Order is stayed pending the conclusion of proceedings in this Court on Thlopthlocco Tribal Town's Application for a Writ of Mandamus... *Thlopthlocco Tribal Town v. Moore, Anderson, et al.*, SC 07–01 (Muscogee (Creek) 2007)

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).

A Muscogee (Creek) Nation Chartered Community is not a federally recognized tribe. *Reynolds v. Skaggs*, 4 Okla. Trib. 116 (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) National Principal Chief. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Validity of Muscogee (Creek) Nation NCA 83–11, which grants to Creek Nation charter communities ability to adopt constitutions granting separate rights, privileges, or immunities than those of the Muscogee (Creek) Nation was not properly before court, and not addressed by it. *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*, v. Okla. Trib. 132 (Muscogee (Creek) 1993)

Any classification restriction 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 pro-

moting 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 1/4 franchise rights of such citizens in denial of equal protection of the laws. *Courtwright, v. July*, 3 Okla. Trib 132 (Muscogee (Creek) 1993).

District Court has power to prescribe method of establishing an agenda for meetings of the Eufaula (Creek) Indian Community and how notices of meetings are to be posted. *McGirt v. Tiger*, 5 Okla Trib. 557 (Musc. (Cr.) D.Ct. 1993).

Where smokeshop 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).

No evidence found that by-laws of Checotah (Creek) Indian Community need approval of Principal Chief of Muscogee (Creek) Nation. *Courtwright v. July*, 3 Okla Trib. 75 (Musc. (Cr.) D.Ct. 1993).

Requirement provided in by-laws of Checotah (Creek) Indian Community that members thereof must attend three consecutive Community meetings in order to vote in community elections is valid. *Courtwright v. July*, 3 Okla. Trib. 75 (Musc. (Cr.) D.Ct. 1993).

District Court of the Muscogee (Creek) Nation has power to appoint an Ahaka Mvhereuca for purposes of mediating disputes within a Muscogee (Creek) Nation Chartered Community. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

District Court of the Muscogee (Creek) Nation has power to suspend control by officers or directors of Muscogee (Creek) Nation Chartered Communities over such communities and their resources where exigent circumstances exist. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

District Court of the Muscogee (Creek) Nation has power to direct officers of the Muscogee (Creek) Nation to provide training and technical assistance to officers and/or directors of Muscogee (Creek) Chartered Communities. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

Where dispute threatening stability and/or economic well being of a Muscogee (Creek) Nation Chartered Community has occurred that resulted in litigation, District Court may direct Community to pay reasonable attorneys' fees from Community funds. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

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).

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).

ARTICLE III [CITIZENSHIP]

Section

Section headings are editorially supplied.

Cross References

Citizenship/census, see Title 7, § 1–101 et seq.
Opportunity for citizenship, see Const. Art. II, § 1.

§ 1. [Citizenship Board]

The Principal Chief shall appoint, subject to majority approval of the Muscogee (Creek) National Council, a Citizenship Board comprised of five (5) citizens who shall be charged with the responsibility of the establishment and maintenance of a Citizenship Roll, showing degree of Muscogee (Creek) Indian blood based upon the final rolls prepared pursuant to the Act of April 26, 1906, (34 Stat. 137), and other evidence, as prescribed by ordinance.

Cross References

Citizenship Board, see Title 7, § 2–101 et seq.
Establishment of Citizenship Roll, see Title 7, §3–101 et seq.
Maintenance of Roll, see Title 7, §5–101 et seq.

§ 2. [Eligibility]

Persons eligible for citizenship in The Muscogee (Creek) Nation shall consist of Muscogee (Creek) Indians by blood whose names appear on the final rolls as provided by the Act of April 26, 1906 (34 Stat. 137), and persons who are lineal descendants of those Muscogee (Creek) Indians by blood whose names appear on the final rolls as provided by the Act of April 26, 1906 (34 Stat. 137); (except that an enrolled member of another Indian tribe, nation, band, or pueblo shall not be eligible for citizenship in The Muscogee (Creek) Nation.)

Cross References

Eligibility to vote, see Const. Art. IV, § 2.
Enrollment process, eligibility, see Title 7, § 4–101.

Notes of Decisions

1. Construction and application

The Supreme Court reviewed the record de novo and finds no evidence that the Citizenship Board acted arbitrarily and capriciously. *Muscogee (Creek) Nation of Oklahoma v. Graham and Johnson*, SC 06–03 (Muscogee (Creek) 2007)

Nothing therein [Article VII of the Muscogee (Creek) Nation Constitution] mandates that said Justices and Judges shall be full citizens of the Muscogee (Creek) Nation and as is specifically set forth and provided for in the articles that pertain to the elected 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)

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)

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)

§ 3. [Registration and certification]

(a) All persons eligible for citizenship shall register as an applicant for citizenship; and

(b) The Citizenship Board shall certify citizenship, and the declaration of citizenship may be affirmed at any time with the name of the individual being entered on the citizenship roll, and the persons being recognized as a citizen of The Muscogee (Creek) Nation, provided that:

(1) the person is a Muscogee (Creek) Indian by blood whose name appears on the final rolls as provided by the Act of April 26, 1906, (34 Stat. 137), or the person is a lineal descendant of a Muscogee (Creek) Indian by blood whose name appears on the final rolls provided by the Act of April 26, 1906, (34 Stat. 137); and is not an enrolled member of another tribe, nation, or pueblo; and

(2) has made application to the Citizenship Board to become a citizen of The Muscogee (Creek) Nation;

(c) Except those persons who are Muscogee (Creek) Indian by blood whose name appears on the final rolls as provided by the Act of April 26, 1906, (34 Stat. 137), shall be automatically included as citizens of the Muscogee (Creek) Nation.

Cross References

Confirmation of enrollment of living allottees, see Title 7, § 3–104.
Enrollment process, see Title 7, § 4–101 et seq.

Notes of Decisions

1. Construction and application

The Supreme Court reviewed the record de novo and finds no evidence that the Citizenship Board acted arbitrarily and capriciously. *Muscogee (Creek) Nation of Oklahoma v. Graham and Johnson*, SC 06–03 (Muscogee (Creek) 2007)

§ 4. [Full citizenship]

Full citizenship in The Muscogee (Creek) Nation shall be those persons and their lineal descendants whose blood quantum is one-quarter (1/4) or more

Muscogee (Creek) Indian, hereinafter referred to as those of full citizenship. All Muscogee (Creek) Indians by blood who are less than one-quarter (1/4) Muscogee (Creek) Indian by blood shall be considered citizens and shall have all rights and entitlements as members of the Muscogee (Creek) Nation except the right to hold office.

Cross References

Attorney General, qualifications, preference for full citizens, see Title 16, § 3–109.
District Judge and Supreme Court Justices, full citizenship, see Title 26, § 3–205.
Full citizen enrollment cards, see Title 7, § 4–109.
Principal Chief and Second Chief, see Const. Art. V, § 1.
Public Gaming Commissioner, full citizenship, see Title 21, § 2–102.

Notes of Decisions

1. Construction and application

Nothing therein [Article VII of the Muscogee (Creek) Nation Constitution] mandates that said Justices and Judges shall be full citizens of the Muscogee (Creek) Nation and as is specifically set forth and provided for in the articles that pertain to the elected 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)

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)

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 [ELECTIONS]

Section

Section headings are editorially supplied.

Cross References

Elections, see Title 19, § 1–101 et seq.

§ 1. [Election Board]

The Principal Chief shall appoint, subject to majority approval of The Muscogee (Creek) National Council, an Election Board comprised of five (5) citizens who shall be charged with the responsibility of conducting, as prescribed by ordinance, all regular and special elections of The Muscogee (Creek) Nation.

Cross References

Organization of Election Board and Precinct Election Committees, see Title 19, § 2–101 et seq.

Notes of Decisions

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1. Construction and application

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)

Court may order payment of reasonable attorneys' fees by tribe to successful plaintiff/candidate in judicially-resolved election-law dispute. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Court may declare a particular candidate to be the successful candidate in a particular election. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

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 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).

Ordinances of the Muscogee (Creek) Nation approve funding for use of electronic voting machines. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

Use of electronic voting machine is not an irregularity. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

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).

2. Conduct of elections

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)

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)

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 a two thirds vote, and is therefore invalid, denying Checotah citizens due process of law. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Any voting 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. *Courwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Although Checotah (Creek) Community's constitution requires residency before a person may vote in community elections, Checotah Community has failed to delineate its community boundaries with sufficient specificity. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

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).

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 as a candidate. *In re Burden*, 1 Okla. 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 a 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).

Ordinances of the Muscogee (Creek) Nation approve funding for use of electronic voting machines. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

Use of electronic voting machine is not an irregularity. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

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 voters. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (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. 1989).*

§ 2. [Eligibility to vote]

Every citizen of The Muscogee (Creek) Nation, regardless of religion, creed, or sex, shall be eligible to vote in the tribal elections provided that (a) they are registered voters for elections; (b) they are at least eighteen (18) years of age at the date of election, with the registrant providing sufficient proof of age to the Election Board; and (c) they hold citizenship.

Cross References

Citizenship, see Const. Art. III, § 1 et seq.
Procedure for determining eligibility, see Title 19, § 7–302.
Registration, see Title 19, § 4–101 et seq.

Notes of Decisions

Reapportionment 1

1. Reapportionment

[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)

§ 3. [Secret ballot]

All elections shall be by secret ballot.

Cross References

Disclosure of vote prohibited, see Title 19, § 7–202.
Voting, see Title 19, § 7–301 et seq.

§ 4. [Majority vote required]

No candidate for office shall be considered elected:

(a) Unless the candidate receives a majority of the votes cast, or

(b) When a candidate is unopposed for office he/she shall be automatically declared the winner.

[Amended by NCA 91–18.]

Historical and Statutory Notes

1991 Amendments

The 1991 amendment was passed by referendum on Dec. 7, 1991, by a vote of 3,720 to 555.

Cross References

Certification, see Title 19, § 8–101 et seq.

§ 5. [Run-off elections]

If there is any office in which a candidate does not receive the required majority of the votes, a run-off election shall be held between the two candidates receiving the highest number of votes in that particular election.

§ 6. [Dates of elections]

Election dates for offices of The Muscogee (Creek) Nation shall be no more than four (4) years apart.

§ 7. [National elections]

All citizens shall be allowed to vote for the Principal Chief and any such national office that shall be created.

Notes of Decisions

Conduct of elections 1

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1. Conduct of elections

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)

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)

§ 8. [Repealed by 2009, Amendment 67 [A67], eff. Nov. 7, 2009]

Historical and Statutory Notes

The repealed section, relating to eligible voters in district elections, was repealed by 2009, [A67], passed by referendum on Nov. 7, 2009 by a vote of 1,292 to 1,128.

Notes of Decisions

Burden of proof 1

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1. Burden of proof

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)

Burden of proof is on petition to show an irregularity that is sufficient to change the ultimate result with mathematical certainty and that mathematical certainty exists when person

''A'' receives more votes than person ''B''. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

Candidate bringing protest before District Court of Muscogee (Creek) Nation bears burden of proof regarding allegations in protest petition. *In re Williams*, 3 Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1993).

§ 9. [Legal residence]

All citizens having legal residences outside the herein defined jurisdiction of The Muscogee (Creek) Nation shall declare a home district within the Muscogee (Creek) Nation which shall be recognized as his legal residence for purposes of voting in tribal elections.

Cross References

Change of residence to another district, see Title 19, § 4–114.
Districts, see Const. Art. VI, § 1.
Political jurisdiction, see Const. Art. I, § 2.

ARTICLE V [EXECUTIVE BRANCH]

Section

Section headings are editorially supplied.

§ 1. [Principal Chief and Second Chief]

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

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

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

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

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

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

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

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

Historical and Statutory Notes

2009 Amendments

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

1991 Amendments

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

Cross References

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

Library References

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

Notes of Decisions

1. Construction and application

It is also important for the parties to be reminded of *Harjo v. Kleppe*. Harjo states that the Principal Chief is not the sole embodiment of the Muscogee (Creek) Nation. These same principles apply to the National Council. The National Council is not the 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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The concept in our society is that all the roles within our society are important, and to be honored. Kinship and clan responsibilities are the bedrock of our society, in earlier times as warrior and peace keeping communities, and continuing today. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

For our tribal society to function properly, we must honor and respect the respective roles of others. Our Constitution is based on our societal values, as a people, and that interconnectedness lays out the separate powers and duties of the various branches of government. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

Unlike other societies. there is nowhere in Creek society that one group or individual has control of all of the affairs of tribal communities. *Ellis v. Muscogee (Creek) Nation National*

Council, ''Ellis II'', SC 06–07 (Muscogee (Creek) 2007)

The separations of authority and the requirement for respect of such separation is an ingrained part of our culture and society. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

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

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

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

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

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

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

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

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

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

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

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

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

Each and every political appointee should be afforded an opportunity to relate and discuss his or her qualifications for the position to which he or she has been nominated by the office of the Principal Chief—this is the opportunity to be heard. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Under traditional Mvskoke law controversies were resolved by clan Vculvkvlke (elders). Their integrity was considered beyond reproach. They were obligated by the responsibilities of their position to decide cases fairly, and honestly, regardless of clan or family affiliation. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

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

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

NCA 89–71 is an ordinance of the Muscogee (Creek) Nation that is constitutional and must be followed. *National Council v. Cox*, 5 Okla. Trib. 513 (Muscogee (Creek) 1990).

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

2. Executive power

It is also important for the parties to be reminded of *Harjo v. Kleppe*. Harjo states that the Principal Chief is not the sole embodiment of the Muscogee (Creek) Nation. These same principles apply to the National Council. The National Council is not the 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)

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

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

Nation National Council, ''Ellis II'', SC 06–07 (Muscogee (Creek) 2007)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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).

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 unbrided authority to the executive branch. *Cox v. Kamp*, 5 Okla. Trib. 530 (Muscogee (Creek) 1991).

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

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

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

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

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

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

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

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

3. Principal Chief powers

It is also important for the parties to be reminded of *Harjo v. Kleppe*. Harjo states that the Principal Chief is not the sole embodiment of the Muscogee (Creek) Nation. These same principles apply to the National Council. The National Council is not the 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)

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

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

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

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

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

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

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

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)

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

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

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

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

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

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

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

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

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

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

Each and every political appointee should be afforded an opportunity to relate and discuss his or her qualifications for the position to which he or she has been nominated by the office of the Principal Chief-this is the opportunity to be heard. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Muscogee (Creek) Nation Ordinance NCA 87–37, which authorizes Principal Chief to enter into contracts and leaves details of such contracts to his discretion is constitutional. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

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

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

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

No evidence found that by-laws of Checotah (Creek) Indian Community need approval of Principal Chief of Muscogee (Creek) Nation. *Courtwright v. July*, 3 Okla. Trib. 75 (Musc. (Cr.) D.Ct 1993).

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

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

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

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

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

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

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

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

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

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

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

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

4. Second Chief powers

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

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

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

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

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

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

§ 2. [Executive Office of the Principal Chief]

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

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

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

Cross References

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

Library References

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

Notes of Decisions

1. Other tribal officers

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

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

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

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

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

This Court hereby interprets the language of the Constitution to direct the National Council, at a regularly scheduled monthly meeting, to consider and vote either in affirmation or disaffirmation each and every Supreme Court Justice appointee presented by the office of the Principal Chief. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

[T]he ideals of justice and fairness embodied in the doctrine of due process, which must be afforded to all citizens of the Muscogee (Creek) Nation, do not disappear at the door when a political appointee's nomination is being reviewed by either a Committee, a Subcommittee, a Planning Session, or the full membership of the National Council. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

Each and every political appointee should be afforded an opportunity to relate and discuss his or her qualifications for the position to which he or she has been nominated by the office of the Principal Chief-this is the opportunity to be heard. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Replacement of resigned or removed tribal officers

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

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

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

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

3. Removal of tribal officers

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

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

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

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

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

§ 3. [Budget requests; administration of funds]

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

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

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

[Amended by 2009, [A51].]

Historical and Statutory Notes

2009 Amendments

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

Cross References

Funds and accounts, see Title 37, § 2–201 et seq.
Required annual budget items, see Title 37, § 2–101 et seq.

Notes of Decisions

Budget responsibility 1

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1. Budget responsibility

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Library References

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

Notes of Decisions

Extraordinary sessions 1

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1. Extraordinary sessions

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

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).

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).

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.

ARTICLE VII [JUDICIAL BRANCH]

Section

Section headings are editorially supplied.

§ 1. [Courts]

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.

Cross References

District Court, see Title 26, § 2–101 et seq.

Library References

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

Notes of Decisions

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1. Construction and application

[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) Administra-*

tion Review Board, et al., SC 07–03 (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)

The Court decided it had judicial power to render its decision in that case, not based on a specific grant of power, but on the implied powers derived from examination of the United States Constitution. See *Marbury v. Madison*, 1 Cranch, 137. The Court then decided, while not following United States law, the United State Supreme Court's decision was persuasive inasmuch as it was the opinion of the court that the Muscogee Nation Constitution was modeled after the U.S. Constitution as to the separation of powers doctrine. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

The Muscogee Nation Supreme Court was created by the Muscogee Nation Constitution and as such it is subject to those limitations contained in the Constitution. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

The Supreme Court has the power to enforce its orders, and judgments subject to the rules of procedure as to ''due process'' which it has adopted. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

Indian tribes were not made subject to the Bill of Rights. However, the laws of the Muscogee Nation are subject to the limitation imposed upon the tribal governments by the Indian Civil Rights Act of 1968, as amended, found at 25 U.S.C. § 1301 et seq. This limits the powers of tribal governments by making certain provisions of the Bill of Rights applicable to tribal governments. *Ellis v. Muscogee (Creek) 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)

Due Process allows for a court to have a certain amount of discretion in fashioning indirect civil contempt sanctions as long as the sanction(s) imposed has comported with notions of fair play and justice. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

Courts are required to hear actual cases and controversies and not hypothetical ones. However, the U.S. Supreme Court has stated a very important exception to this rule: if a case is capable of repetition, yet evading review, the Court should and could hear and decide the case. *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 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)

. . . the Court is also mindful of as our role as arbitrator of disputes and there are times that additional clarification to the Constitution meaning is needed. *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 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)

Under traditional Mvskoke law controversies were resolved by clan Vculvkvlke (elders). Their integrity was considered beyond reproach. They were obligated by the responsibilities of their position to decide cases fairly, and honestly, regardless of clan or family affiliation. *In Re:*

The Practice of Law Before the Courts of the Muscogee (Creek) Nation, SC 04–02 (Muscogee (Creek) 2005)

Fairness by judges to all is essential to maintain and foster respect for the tribal courts. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

The responsibility to perform judicial duties with impartiality extends to all cases and all persons before the Mvskoke Courts, whether Mvskoke citizens or others, and regardless of degree of relationship to the Judge. This is true under both Traditional Mvskoke law or under the Code of Conduct for Judges. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

Article VII of the Constitution of the Muscogee (Creek) Nation which establishes and defines the judicial branch of the Creek government contains all that is said regarding the Supreme Court and Inferior Courts. *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)

Nothing therein [Article VII of the Muscogee (Creek) Nation Constitution] mandates that said Justices and Judges shall be full citizens of the Muscogee (Creek) Nation and as is specifically set forth and provided for in the articles that pertain to the elected 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)

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)

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))*

It is THEREFORE ORDERED, ADJUDGED AND DECREED that each Justice of the Supreme Court of the Muscogee (Creek) Nation shall and do retain their position and authority and shall continue to serve as Justice until their successor is duly qualified. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

Since this Nation's establishment of a constitutional form of government in 1867, Mvskoke law is ruled upon by appointed Judges, but the obligation under traditional Mvskoke law remain in effect. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

The Muscogee (Creek) Nation has the power to establish Tribal Courts with civil and criminal jurisdiction. *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 271 U.S.App.D.C. 212 (1988).

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).

Pursuant to NCA 89–21103, the Court shall first apply tribal ordinances in any legal resolution. If there is no applicable tribal ordinance, then the court may process to apply federal law. If no tribal or federal laws are applicable, then the Court shall apply Oklahoma law. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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).

NCA 82–30 does not provide Supreme Court with the power to review non-final orders except for limited circumstances. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Adherence to National Council Ordinances and Muscogee (Creek) Nations Constitutional limits on this Courts power is required by our doctrine of separation of powers. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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).

It is a fundamental tenant 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).

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).

Because there is Muscogee (Creek) Nation case law on final decision being appealable, there was no need for the court to engage in a detailed analysis of federal final decision opinions. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Because the codes do not specifically discuss standard for mandamus, the Court is free to interpret its own standards for using writs. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Our use of any federal authorities considering this matter [writs] is limited to review of that of persuasive value. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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).

Following the 10th Circuit's pronouncement in *United States v. Roberts*, mandamus is not an appropriate remedy when the petitioners have adequate remedy for appeal. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

An aggrieved party may appeal to this Court from a final judgment entered in an action or special proceeding commenced in Tribal Court. *Kelly v. Wilde*, 5 Okla. Trib. 209 (Muscogee (Creek) 1996).

The Supreme Court has a duty to inquire into its own jurisdiction. *Kelly v. Wilde*, 5 Okla. Trib. 209 (Muscogee (Creek) 1996).

Court recognizes the concept of comity through previous order recognizing judicial proceedings of other sovereigns in the Muscogee (Creek) Nations Full Faith and Credit. *Grothaus v. Halliburton Oil Producing Co.*, 4 Okla. Trib. 319 (Muscogee (Creek) 1995).

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).

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).

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).

Supreme Court of the Muscogee (Creek) Nation may accept a question of law certified to it by the District Court of the Nation. *Reynolds v.*

Skaggs, 4 Okla. Trib. 51 (Muscogee (Creek) 1994).

The decision of a Supreme Court Justice to remove himself from a case properly before the Supreme Court is a decision that a Justice can make always taking into consideration the best interests of the Nation. *Reynolds v. Skaggs*, 4 Okla. Trib. 51 (Muscogee (Creek) 1994).

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).

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).

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).

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).

Court is aware of a limited range of interlocutory appeals are recognized in federal courts despite the lack of statutory provisions authorizing them. No such exceptions to the final rule order, however, have been articulated in our case law. *Health Board v. Skaggs and Health Board v. Taylor*, 5 Okla. Trib. 442 (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).

Supreme Court of the Muscogee (Creek) Nation may appoint District Judge as its referee to conduct fact finding hearing. *National Council v. Cox.*, 5 Okla. Trib. 512 (Muscogee (Creek) 1990).

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 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).

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).

Article I § 2 states that political jurisdiction should be as it geographically appeared in 1900 which is based on those treaties entered into by the Muscogee (Creek) Nation and the United States of America. *Muscogee (Creek) Nation v. American Tobacco Co.,* 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

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).

Personal jurisdiction shall exist when person is served within jurisdictional territory or served anywhere in cases arising within territorial jurisdiction of the Muscogee (Creek) Nation. *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).

Court adopting the minimum contacts jurisprudence of the federal courts determines that personal jurisdiction does exist against defendant tobacco companies. *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).

Absent express Congressional enactment to the contrary, the jurisdiction power of the Muscogee (Creek) Nation remains unscathed. *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).

Entire reading of Treaty of 1856 in light of historical realities clearly indicates that the United States Congress has abrogated the treaty and subsequently restored the governmental powers of the Muscogee (Creek) Nation which includes the power of the Court to assert jurisdiction. *Muscogee (Creek) Nation v. American Tobacco Co.,* 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

No indication in the 1867 Treaty that the Muscogee (Creek) Nation 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 reorganized their tribal government under the Oklahoma Indian Welfare Act and adopted a new constitution which was approved by the United States Department of Interior and organizes tribal government into executive, legislative, and judicial branches with no divestiture of authority over non-Indians or corporations. *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).

Due Process requires notice to be reasonably calculated to give parties notice of an action pending and giving those parties reasonable time to appear and object. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

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).

District Court of the Muscogee (Creek) Nation has power to appoint an Ahaka Mvhereuca for purposes of mediating disputes within a Muscogee (Creek) Nation Chartered Community. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

District Court of the Muscogee (Creek) Nation has power to suspend control by officers or directors of Muscogee (Creek) Nation Chartered Communities over such communities and their resources where exigent circumstances exist. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

District Court of the Muscogee (Creek) Nation has power to direct officers of the Muscogee (Creek) Nation to provide training and technical assistance to officers and/or directors of Muscogee (Creek) Chartered Communities. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

Where dispute threatening stability and/or economic well being of a Muscogee (Creek) Nation Chartered Community has occurred that resulted in litigation, District Court may direct Community to pay reasonable attorneys' fees from Community funds. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

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*, 2Okla. Trib. 411 (Muscogee (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).

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).

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 has power to prescribe method of establishing an agenda for meetings of the Eufaula (Creek) Indian Community and how notices of meetings are to be posted. *McGirt v. Tiger*, 5 Okla Trib. 557 (Musc. (Cr.) D.Ct. 1993).

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).

Although neither the Constitution nor Ordinances provide for mandamus, Court can look to Oklahoma law for guidance. *Kamp v. Cox*, 5 Okla. Trib. 520 (Musc. (Cr.) D.Ct. 1991).

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

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)

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)

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes*, 163 U.S. 376 (1896)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Indian courts ''differ from traditional American courts in a number of significant respects.'' (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)

[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)

The sovereign authority of Indian tribes is limited in ways state and federal authority is not. *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)

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)

Seeking the Tribal Court's aid in serving process on tribal members for a pending state-court action does not, we think, constitute consent to future litigation in the Tribal Court. *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)

[t]he [U.S.] Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as ''plenary and exclusive.'' This Court has traditionally identified the Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, and the Treaty Clause, Art. II, § 2, cl. 2, as sources of that power. *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)

[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)

Oliphant and *Duro* [*Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *Duro v. Reina*, 495 U.S. 676 (1990)] make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branches' own determinations. *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)

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]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)

[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)

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)

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)

25 U.S.C. § 2806 affirms that ''the provisions of this chapter alter neither . . . the law enforcement, investigative, or judicial authority of any . . . State, or political subdivision or agency thereof. . . .'' *Nevada v. Hicks*, 533 U.S. 353 (2001)

This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts. *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)

It is true that some statutes proclaim tribal-court jurisdiction over certain questions of federal law.(quoting 25 U.S.C. § 1911 (Indian Child Welfare Act of 1978); 12 U.S.C. § 1715 (foreclosures brought by the Secretary of Housing and Urban Development against reservation homeowners)). But no provision in federal law provides for tribal-court jurisdiction over § 1983 [42 U.S.C. § 1983] actions. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Were § 1983[42 U.S.C. § 1983] claims cognizable in tribal court, defendants would inexplicably lack the right available to state-court § 1983 defendants to seek a federal forum. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he simpler way to avoid the removal problem is to conclude (as other indications suggest anyway) that tribal courts cannot entertain § 1983 suits. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Since it is clear, as we have discussed, that tribal courts lack jurisdiction over state officials for causes of action relating to their performance of official duties, adherence to the tribal exhaustion requirement in such cases ''would serve no purpose other than delay,'' and is therefore unnecessary. *Nevada v. Hicks*, 533 U.S. 353 (2001)

State officials operating on a reservation to investigate off-reservation violations of state law are properly held accountable for tortious conduct and civil rights violations in either state or federal court, but not in tribal court. *Nevada v. Hicks*, 533 U.S. 353 (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)

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)] we conclude, are not at odds with, and do not displace, *Montana*. Both decisions describe an exhaustion rule allowing tribal courts initially to respond to an invocation of their jurisdiction; neither establishes tribal court adjudicatory authority, even over the lawsuits involved in those cases. *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[W]e do not extract from *National Farmers* anything more than a prudential exhaustion rule, in deference to the capacity of tribal courts ''to explain to the parties the precise basis for accepting [or rejecting] jurisdiction.'' (quoting *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985)) *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)

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)

[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)

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)

2. Inherent powers, generally

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)

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)

Indian tribes were not made subject to the Bill of Rights. However, the laws of the Muscogee Nation are subject to the limitation imposed upon the tribal governments by the Indian Civil Rights Act of 1968, as amended, found at 25 U.S.C. 1301 et seq. This limits the powers of tribal governments by making certain provisions of the Bill of Rights applicable to tribal governments. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (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 granting of jury trial takes away the fact finding part of the judicial power of a court, and makes jurors the fact finders in the case-although the jury is under the supervision and direction of the trial judge. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

We think that the highest court of a sovereign government, when created by the Constitution of that government which recognizes the principle of separation of powers, is entitled to be free to function as the framers of that Constitution intended, and it should guard its prerogatives jealously to preserve its powers as an independent co-equal branch of government. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

Any demand for jury trial in the Supreme Court that is not based on a right found in the Indian Civil Rights Act, and if granted, would interfere with the inherent powers bestowed upon the Supreme Court by our Constitution. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

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)

The Court decided it had judicial power to render its decision in that case, not based on a specific grant of power, but on the implied powers derived from examination of the United States Constitution. See *Marbury v. Madison*, 1 Cranch, 137. The Court then decided, while not following United States law, the United State Supreme Court's decision was persuasive inasmuch as it was the opinion of the court that the Muscogee Nation Constitution was modeled after the U.S. Constitution as to the separation of powers doctrine. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

The Muscogee Nation Supreme Court was created by the Muscogee Nation Constitution and as such it is subject to those limitations contained in the Constitution. *Ellis v. Muscogee*

(Creek) National Council, ''Ellis II'', SC 06–07 (Muscogee (Creek) 2007)

The Supreme Court has the power to enforce its orders, and judgments subject to the rules of procedure as to ''due process'' which it has adopted. *Ellis v. Muscogee (Creek) National Council,* 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)

Due Process allows for a court to have a certain amount of discretion in fashioning indirect civil contempt sanctions as long as the sanction(s) imposed has comported with notions of fair play and justice. *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)

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)

[T]his Court has the ability to judge the credibility of the witnesses... *Ellis v. Muscogee (Creek) Nation 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)

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)

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)

[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 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)

Fairness by judges to all is essential to maintain and foster respect for the tribal courts. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

Under traditional Mvskoke law controversies were resolved by clan Vculvkvlke (elders). Their integrity was considered beyond reproach. They were obligated by the responsibilities of their position to decide cases fairly, and honestly, regardless of clan or family affiliation. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

Since this Nation's establishment of a constitutional form of government in 1867, Mvskoke law is ruled upon by appointed Judges, but the obligation under traditional Mvskoke law remain in effect. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

This Court views the Canons as mandatory minimum standard; not as maximum requirements. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

. . . the Court is also mindful of as our role as arbitrator of disputes and there are times that additional clarification to the Constitution meaning is needed. *Ellis v. Muscogee (Creek) Nation National Council,* SC 05–03/05 (Muscogee (Creek) 2006)

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).

Tribal Supreme Court has power to vacate contempt enforcement decree subsequent to purging of contempt. *In re Financial Services*, 2 Okla. Trib. 185 (Muscogee (Creek) 1991).

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

Tribal Supreme Court has power, when enforcing sanctions pursuant to a finding of contempt, to order financial institutions holding tribal funds to desist from paying such funds to a tribal official in contempt. *In re Financial Services*, 2 Okla. Trib. 142 (Muscogee (Creek) 1990).

Tribal Supreme Court has authority to modify district court's order in a manner more favorable to appellee, where underlying facts warrant modification to correspond to relief petitioned and prayed for by appellee. *Bruner v. Tax Commission*, 1 Okla. Trib. 102 (Muscogee (Creek) 1987).

Article VII of the Constitution of the Muscogee (Creek) Nation which establishes and defines the judicial branch of the Creek government contains all that is said regarding the Supreme Court and Inferior Courts. *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)

Tribal Supreme Court has inherent power to direct that only duly licensed and admitted to practice attorneys may represent litigants in courts of Muscogee (Creek) Nation. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Courts may declare a particular candidate to be the successful candidate in a particular election. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 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))*

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))*

It is THEREFORE ORDERED, ADJUDGED AND DECREED that each Justice of the Supreme Court of the Muscogee (Creek) Nation shall and do retain their position and authority and shall continue to serve as Justice until their successor is duly qualified. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

District Court of Muscogee (Creek) Nation has power to direct discovery in civil cases, and to monetarily sanction a party where warranted by course of discovery proceedings. *Perry v. Holdenville Creek Community*, 3 Okla. Trib. 320 (Musc. (Cr.) D.Ct. 1993).

District Court of Muscogee (Creek) Nation may impose fines on officials of Nation's executive branch for failure to comply with writ of mandamus directing them to comply with valid and constitutional tribal ordinance. *Frye v. Cox*, 2 Okla. Trib. 179 (Musc. (Cr.) D.Ct. 1991).

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)

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)

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)

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)

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)

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes*, 163 U.S. 376 (1896)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Indian courts ''differ from traditional American courts in a number of significant respects.'' (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)

[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)

The sovereign authority of Indian tribes is limited in ways state and federal authority is not. *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)

Seeking the Tribal Court's aid in serving process on tribal members for a pending state-court action does not, we think, constitute consent to future litigation in the Tribal Court. *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)

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)

[W]e have concluded that ''[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.'' (quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)) *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)

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)

[t]he [U.S.] Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as ''plenary and exclusive.'' This Court has traditionally identified the Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, and the Treaty Clause, Art. II, § 2, cl. 2, as sources of that 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 au-

thority (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)

Oliphant and *Duro* [*Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *Duro v. Reina*, 495 U.S. 676 (1990)] make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branches' own determinations. *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)

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)

[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)

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)

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)

This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts. *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)

It is true that some statutes proclaim tribal-court jurisdiction over certain questions of federal law.(quoting 25 U.S.C. § 1911 (Indian Child Welfare Act of 1978); 12 U.S.C. § 1715 (foreclosures brought by the Secretary of Housing and Urban Development against reservation homeowners)). But no provision in federal law provides for tribal-court jurisdiction over § 1983 [42 U.S.C. § 1983] actions. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Were § 1983[42 U.S.C. § 1983] claims cognizable in tribal court, defendants would inexplicably lack the right available to state-court § 1983 defendants to seek a federal forum. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he simpler way to avoid the removal problem is to conclude (as other indications suggest anyway) that tribal courts cannot entertain § 1983 suits. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Since it is clear, as we have discussed, that tribal courts lack jurisdiction over state officials for causes of action relating to their performance of official duties, adherence to the tribal exhaustion requirement in such cases ''would serve no purpose other than delay,'' and is therefore unnecessary. *Nevada v. Hicks*, 533 U.S. 353 (2001)

State officials operating on a reservation to investigate off-reservation violations of state law are properly held accountable for tortious conduct and civil rights violations in either state or federal court, but not in tribal court. *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 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 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)

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)] we conclude, are not at odds with, and do not displace, *Montana*. Both decisions describe an exhaustion rule allowing tribal courts initially to respond to an invocation of their jurisdiction; neither establishes tribal court adjudicatory authority, even over the lawsuits involved in those cases. *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[W]e do not extract from *National Farmers* anything more than a prudential exhaustion rule, in deference to the capacity of tribal courts ''to explain to the parties the precise basis for accepting [or rejecting] jurisdiction.'' (quoting *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985)) *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)

A grant over land belonging to a tribe requires ''consent of the proper tribal officials,'' § 324, and the payment of just compensation, § 325. [25 U.S.C. §§ 323–328] *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)

[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)

''Tribal sovereign immunity is a matter of subject matter jurisdiction, which may be challenged by a motion to dismiss under Fed. R. Civ. P. 12(b)(1).'' *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1302–03 (10th Cir. 2001) (citation omitted). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

''Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.'' [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)

This court has applied the Supreme Court's straightforward test to uphold Indian tribes' immunity from suit. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Therefore, in an action against an Indian tribe, we conclude that § 1331 will only confer subject matter jurisdiction where another statute provides a waiver of tribal sovereign immunity or the tribe unequivocally waives its immunity. *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)

We distinguished *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)] noting that the Supreme Court in that case emphasized the availability of the tribal courts and the intra-tribal nature of the issues, whereas in *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] the plaintiffs were non-Indians who had been denied any remedy in a tribal forum. *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)

The Miner parties clearly fail to come within the narrow *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] exception to tribal sovereign immunity. Considering whether they could have brought this action in the Tribal Court rather than the district court, they hypothesize that the Nation would have claimed immunity from suit in that forum as well. But they must show an actual attempt; their assumption of futility of the tribal-court remedy is not enough. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

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)

Indian tribes possess the same immunity from suit traditionally enjoyed by sovereign powers. *Santa Clara Pueblo,* [*Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978)]. As with other forms of sovereign immunity, tribal immunity ''is subject to the superior and plenary control of Congress.'' Accordingly, absent explicit waiver of immunity or express authorization by Congress, federal courts do not have jurisdiction to entertain suits against an Indian tribe. (internal cites omitted). *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)

Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980)] has come to stand for the proposition that federal courts have jurisdiction to hear a suit against an Indian tribe under 25 U.S.C. § 1302, notwithstanding *Santa Clara Pueblo,* [*Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978)]when three circumstances are present: (1) the dispute involves a non-Indian; (2) the dispute does not involve internal tribal affairs; and (3) there is no tribal forum to hear the dispute. Our jurisprudence in this field is circumspect, and we have emphasized the need to construe the *Dry Creek* exception narrowly in order to prevent a conflict with *Santa Clara.*(internal cites omitted) *Walton v. Pueblo et al.,* 443 F.3d 1274 (10th Cir. 2006)

[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)

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) *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)

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)

[t]ribal authorities may investigate unauthorized possession of firearms on gaming premises which is proscribed by tribal law. *See* Muscogee (Creek) Nation Code Ann., tit. 21., § 5–116(C). *United States v. Green*, 140 Fed. Appx. 798 (10th Cir. 2005)

3. Jurisdiction—In general

Courts are required to hear actual cases and controversies and not hypothetical ones. However, the U.S. Supreme Court has stated a very important exception to this rule: if a case is capable of repetition, yet evading review, the Court should and could hear and decide the case. *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 decided it had judicial power to render its decision in that case, not based on a specific grant of power, but on the implied powers derived from examination of the United States Constitution. See *Marbury v. Madison*, 1 Cranch, 137. The Court then decided, while not following United States law, the United State Supreme Court's decision was persuasive inasmuch as it was the opinion of the court that the Muscogee Nation Constitution was modeled af-

ter the U.S. Constitution as to the separation of powers doctrine. *Ellis v. Muscogee (Creek) National Council,* SC 06–07 (Muscogee (Creek) 2007)

The Muscogee Nation Supreme Court was created by the Muscogee Nation Constitution and as such it is subject to those limitations contained in the Constitution. *Ellis v. Muscogee (Creek) National Council,* SC 06–07 (Muscogee (Creek) 2007)

The Supreme Court has the power to enforce its orders, and judgments subject to the rules of procedure as to ''due process'' which it has adopted. *Ellis v. Muscogee (Creek) National Council,* SC 06–07 (Muscogee (Creek) 2007)

Indian tribes were not made subject to the Bill of Rights. However, the laws of the Muscogee Nation are subject to the limitation imposed upon the tribal governments by the Indian Civil Rights Act of 1968, as amended, found at 25 U.S.C. 1301 et seq. This limits the powers of tribal governments by making certain provisions of the Bill of Rights applicable to tribal governments.*Ellis v. Muscogee (Creek) National Council,* SC 06–07 (Muscogee (Creek) 2007)

We think that the highest court of a sovereign government, when created by the Constitution of that government which recognizes the principle of separation of powers, is entitled to be free to function as the framers of that Constitution intended, and it should guard its prerogatives jealously to preserve its powers as an independent co-equal branch of government. *Ellis v. Muscogee (Creek) National Council,* SC 06–07 (Muscogee (Creek) 2007)

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 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)

For a Court of the Muscogee (Creek) Nation to hold someone in indirect civil contempt, the Court must determine by clear and convincing evidence that 1) the allegedly violated Order was valid and lawful; 2) the Order was clear, definite, and unambiguous; and 3) the alleged violator(s) had the ability to comply with the Order. Willful is defined as ''acts which are intentional, conscious, and directed towards achieving a purpose.'' *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

Under traditional Mvskoke law controversies were resolved by clan Vculvkvlke (elders). Their integrity was considered beyond reproach. They were obligated by the responsibilities of their position to decide cases fairly, and honestly, regardless of clan or family affiliation. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

Since this Nation's establishment of a constitutional form of government in 1867, Mvskoke law is ruled upon by appointed Judges, but the obligation under traditional Mvskoke law remain in effect. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

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 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)

[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 doctrine of sovereign immunity, a condition precedent to filing suit against the GOAB, is often accompanied by the doctrine of qualified immunity for government employees acting within the scope of their employment. Qualified immunity is not, however, absolute. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.,* SC 06–05 (Muscogee (Creek) 2008)

The qualified immunity test requires a two-part analysis: ''(1) Was the law governing the official's conduct clearly established? (2) Under the law, could a reasonable officer have believed the conduct was lawful?'' [citing *Act-Up/Portland v. Bagley*, 988 F.2d 868, 871 (9th Cir. 1993); *Tribble v. Gardner*, 860 F.2d 321, 324 (9th Cir. 1988), cert. denied, 490 U.S. 1075 (1989).] This Court is persuaded by and hereby adopts the forgoing reasoning regarding the application of the doctrine of qualified immunity. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.,* SC 06–05 (Muscogee (Creek) 2008)

As stated in the Court's *Glass* decision, MCNCA 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,*(* 2006)

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)

Pursuant to NCA 89–21$103, the Court shall first apply tribal ordinances in any legal resolution. If there is no applicable tribal ordinance, then the court may process to apply federal law. If no tribal or federal laws are applicable, then the Court shall apply Oklahoma law. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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).

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).

The Court cannot supersede the powers granted to us with respect to our appellate authority. *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).

Because there is Muscogee (Creek) Nation case law on final decision being appealable, there was no need for the court to engage in a detailed analysis of federal final decision opinions. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

The final order rule is an important element of our procedural law which serves to avoid unnecessary piecemeal review of lower court decisions. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Our use of any federal authorities considering this matter [writs] is limited to review of that of persuasive value. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Whether the Court chooses to adopt legal standards from 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).

An aggrieved party may appeal to this Court from a final judgment entered in an action or special proceeding commenced in Tribal Court. *Kelly v. Wilde*, 5 Okla. Trib. 209 (Muscogee (Creek) 1996).

The Supreme Court has a duty to inquire into its own jurisdiction. *Kelly v. Wilde*, 5 Okla. Trib. 209 (Muscogee (Creek) 1996).

Court recognizes the concept of comity through previous order recognizing judicial proceedings of other sovereigns in the Muscogee (Creek) Nations Full Faith and Credit. *Grothaus v. Halliburton Oil Producing Co.,* 4 Okla. Trib 319 (Muscogee (Creek) 1995).

Supreme Court of the Muscogee (Creek) Nation may accept a question of law certified to it by the District Court of the Nation. *Reynolds v. Skaggs*, 4 Okla. Trib. 51 (Muscogee (Creek) 1994).

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).

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

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 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).

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).

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).

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

Muscogee (Creek) 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 by Principal Chief. *Cox v. McIntosh*, 2 Okla. Trib. 182 (Muscogee (Creek) 1991).

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

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

Tribal courts have jurisdiction in cases where Tribe has regulatory jurisdiction pursuant to federal law. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

Tribal courts do not necessarily have jurisdiction over any dispute between tribal members 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).

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).

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).

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)

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))*

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).

Article I § 2 states that political jurisdiction should be as it geographically appeared in 1900 which is based on those treaties entered into by the Muscogee (Creek) Nation and the United States of America. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

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).

Personal jurisdiction shall exist when person is served within jurisdictional territory or served anywhere in cases arising within territorial jurisdiction of the Muscogee (Creek) Nation. *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).

Court adopting the minimum contacts jurisprudence of the federal courts determines that personal jurisdiction does exist against defendant tobacco companies. *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).

Absent express Congressional enactment to the contrary, the jurisdiction power of the Muscogee (Creek) Nation remains unscathed. *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).

Entire reading of Treaty of 1856 in light of historical realities clearly indicates that the United States Congress has abrogated the treaty and subsequently restored the governmental powers of the Muscogee (Creek) Nation which includes the power of the Court to assert jurisdiction. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

No indication in the 1867 Treaty that the Muscogee (Creek) Nation 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 reorganized their tribal government under the Oklahoma Indian Welfare Act and adopted a new constitution which was approved by the United States Department of Interior and organizes tribal government into executive, legislative, and judicial branches with no divestiture of authority over non-Indians or corporations. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Court has exclusive jurisdiction of cases involving election laws of the Muscogee (Creek) Nation. *In re Petition for Irregularities*, 5 Okla. Trib. 345 (Musc. (Cr.) D.Ct. 1997).

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

District Court of Muscogee (Creek) Nation has power to direct discovery in civil cases, and to monetarily sanction a party where warranted by course of discovery proceedings. *Perry v. Holdenville Creek Community*, 3 Okla. Trib. 320 (Musc. (Cr.) D.Ct. 1993).

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).

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 issue writ of mandamus to Nation's Principal Chief directing him to comply with constitutional tribal ordinance. *Frye v. Cox*, 2 Okla. Trib. 115 (Musc. (Cr.) D.Ct. 1990).

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).

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) 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).

Jurisdiction of tribal courts of Muscogee (Creek) Nation is limited to Muscogee (Creek) Nation's jurisdiction as defined by Article 1, section 2 of tribal constitution. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

Jurisdiction of courts of Muscogee (Creek) Nation over non-Indians is protective of interests and security of the tribe, and extends to non-Indians corporations doing business with the tribe. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

Non–Indians engaging in a business activity which would not exist without tribal resources or support are subject to jurisdiction of tribal courts. *National Council v. Preferred Mgmt. Cor p.*, 1 Okla. Trib. 278 (Muscogee (Cr.) D.Ct. 1989).

Non–Indians' activities on property in trust, owned or controlled by tribe, is subject to jurisdiction of tribal courts. *National Council v. Preferred Mgmt. Corp.*, 1 Okla. Trib. 278 (Musc. (Cr.) D.Ct. 1989).

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)

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, U. & A., Inc.*, 1 Okla. Trib. 267 (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, USA., Inc.*, 1 Okla. Trib. 267 (Musc. (Cr.) D.Ct. 1989).

Request for re-certification of number of district citizens for purposes of determining number of seats to be filled on Muscogee (Creek) National Council presents a justiciable controversy subject to jurisdiction of District Court of the Muscogee (Creek) Nation. *Thomas v. Election Board,* 1 Okla. Trib. 124 (Musc. (Cr.) D.Ct. 1987).

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)

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)

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)

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)

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)

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes*, 163 U.S. 376 (1896)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Indian courts ''differ from traditional American courts in a number of significant respects.'' (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)

[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)

The sovereign authority of Indian tribes is limited in ways state and federal authority is not. *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)

Seeking the Tribal Court's aid in serving process on tribal members for a pending state-court action does not, we think, constitute consent to future litigation in the Tribal Court. *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)

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)

[W]e have concluded that ''[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.'' (quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)) *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)

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)

[t]he [U.S.] Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as ''plenary and exclusive.'' This Court has traditionally identified the Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, and the Treaty Clause, Art. II, § 2, cl. 2, as sources of that 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)

Oliphant and *Duro* [*Oliphant v. Suquamish Tribe,* 435 U.S. 191 (1978); *Duro v. Reina,* 495 U.S. 676 (1990)] make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branches' own determinations. *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)

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)

[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)

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)

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)

This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts. *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)

It is true that some statutes proclaim tribal-court jurisdiction over certain questions of federal law.(quoting 25 U.S.C. § 1911 (Indian Child Welfare Act of 1978); 12 U.S.C. § 1715 (foreclosures brought by the Secretary of Housing and Urban Development against reservation homeowners)). But no provision in federal law provides for tribal-court jurisdiction over § 1983 [42 U.S.C. § 1983] actions. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Were § 1983[42 U.S.C. § 1983] claims cognizable in tribal court, defendants would inexplicably lack the right available to state-court § 1983 defendants to seek a federal forum. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he simpler way to avoid the removal problem is to conclude (as other indications suggest anyway) that tribal courts cannot entertain § 1983 suits. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Since it is clear, as we have discussed, that tribal courts lack jurisdiction over state officials for causes of action relating to their performance of official duties, adherence to the tribal exhaustion requirement in such cases ''would serve no purpose other than delay,'' and is therefore unnecessary. *Nevada v. Hicks*, 533 U.S. 353 (2001)

State officials operating on a reservation to investigate off-reservation violations of state law are properly held accountable for tortious conduct and civil rights violations in either state or federal court, but not in tribal court. *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 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 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)

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)] we conclude, are not at odds with, and do not displace, *Montana*. Both decisions describe an exhaustion rule allowing tribal courts initially to respond to an invocation of their jurisdiction; neither establishes tribal court adjudicatory authority, even over the lawsuits involved in those cases. *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[W]e do not extract from *National Farmers* anything more than a prudential exhaustion rule, in deference to the capacity of tribal courts ''to explain to the parties the precise basis for accepting [or rejecting] jurisdiction.'' (quoting *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985)) *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)

A grant over land belonging to a tribe requires ''consent of the proper tribal officials,'' § 324, and the payment of just compensation, § 325. [25 U.S.C. §§ 323–328] *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)

[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)

''Tribal sovereign immunity is a matter of subject matter jurisdiction, which may be challenged by a motion to dismiss under Fed. R. Civ. P. 12(b)(1).'' *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1302–03 (10th Cir. 2001) (citation omitted). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

''Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.'' [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)

This court has applied the Supreme Court's straightforward test to uphold Indian tribes' immunity from suit. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Therefore, in an action against an Indian tribe, we conclude that § 1331 will only confer subject matter jurisdiction where another statute provides a waiver of tribal sovereign immunity or the tribe unequivocally waives its immunity. *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*

We distinguished *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)] noting that the Supreme Court in that case emphasized the availability of the tribal courts and the intra-tribal nature of the issues, whereas in *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] the plaintiffs were non-Indians who had been denied any remedy in a tribal forum. *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)

The Miner parties clearly fail to come within the narrow *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] exception to tribal sovereign immunity. Considering whether they could have brought this action in the Tribal Court rather than the district court, they hypothesize that the Nation would have claimed immunity from suit in that forum as well. But they must show an

actual attempt; their assumption of futility of the tribal-court remedy is not enough. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

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)

Indian tribes possess the same immunity from suit traditionally enjoyed by sovereign powers. *Santa Clara Pueblo,* [*Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978)]. As with other forms of sovereign immunity, tribal immunity ''is subject to the superior and plenary control of Congress.'' Accordingly, absent explicit waiver of immunity or express authorization by Congress, federal courts do not have jurisdiction to entertain suits against an Indian tribe. (internal cites omitted). *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)

Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980)] has come to stand for the proposition that federal courts have jurisdiction to hear a suit against an Indian tribe under 25 U.S.C. § 1302, notwithstanding *Santa Clara Pueblo,* [*Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978)]when three circumstances are present: (1) the dispute involves a non-Indian; (2) the dispute does not involve internal tribal affairs; and (3) there is no tribal forum to hear the dispute. Our jurisprudence in this field is circumspect, and we have emphasized the need to construe the *Dry Creek* exception narrowly in order to prevent a conflict with *Santa Clara.*(internal cites omitted) *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

[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)

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)

[t]ribal authorities may investigate unauthorized possession of firearms on gaming premises which is proscribed by tribal law. *See* Muscogee (Creek) Nation Code Ann., tit. 21., § 5–116(C). *United States v. Green*, 140 Fed. Appx. 798 (10th Cir. 2005)

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)

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)

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)

4. ——Federal law, jurisdiction

The doctrine of sovereign immunity, a condition precedent to filing suit against the GOAB, is often accompanied by the doctrine of qualified immunity for government employees acting within the scope of their employment. Qualified immunity is not, however, absolute. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.,* SC 06–05 (Muscogee (Creek) 2008)

The Court decided it had judicial power to render its decision in that case, not based on a specific grant of power, but on the implied powers derived from examination of the United States Constitution. See *Marbury v. Madison,* 1 Cranch, 137. The Court then decided, while not following United States law, the United State Supreme Court's decision was persuasive inasmuch as it was the opinion of the court that the Muscogee Nation Constitution was modeled after the U.S. Constitution as to the separation of powers doctrine. *Ellis v. Muscogee (Creek) National Council,* SC 06–07 (Muscogee (Creek) 2007)

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)

[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 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)

Pursuant to NCA 89–21$103, the Court shall first apply tribal ordinances in any legal resolution. If there is no applicable tribal ordinance, then the court may process to apply federal law. If no tribal or federal laws are applicable, then the Court shall apply Oklahoma law. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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).

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).

Because there is Muscogee (Creek) Nation case law on final decision being appealable, there was no need for the court to engage in a detailed analysis of federal final decision opinions. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Our use of any federal authorities considering this matter [writs] is limited to review of that of persuasive value. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Whether the Court chooses to adopt legal standards from 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).

Following the 10th Circuit's pronouncement in *United States v. Roberts*, mandamus is not an appropriate remedy when the petitioners have adequate remedy for appeal. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Tribal courts do not necessarily have jurisdiction over any dispute between tribal members 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).

Court adopting the minimum contacts jurisprudence of the federal courts determines that personal jurisdiction does exist against defendant tobacco companies. *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).

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).

Entire reading of Treaty of 1856 in light of historical realities clearly indicates that the United States Congress has abrogated the treaty and subsequently restored the governmental powers of the Muscogee (Creek) Nation which includes the power of the Court to assert jurisdiction. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

No indication in the 1867 Treaty that the Muscogee (Creek) Nation 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 reorganized their tribal government under the Oklahoma Indian Welfare Act and adopted a new constitution which was approved by the United States Department of Interior and organizes tribal government into executive, legislative, and judicial branches with no divestiture of authority over non-Indians or corporations. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

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 (Muscogee (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 (Muscogee (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 or 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)

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)

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)

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)

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes*, 163 U.S. 376 (1896)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Indian courts ''differ from traditional American courts in a number of significant respects.'' (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)

[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)

The sovereign authority of Indian tribes is limited in ways state and federal authority is not. *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)

[t]he [U.S.] Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as ''plenary and exclusive.'' This Court has traditionally identified the Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, and the Treaty Clause, Art. II, § 2, cl. 2, as sources of that 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)

Oliphant and *Duro* [*Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *Duro v. Reina*, 495 U.S. 676 (1990)] make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branches' own determinations. *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)

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)

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)

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)

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)

25 U.S.C. § 2806 affirms that ''the provisions of this chapter alter neither . . . the law enforcement, investigative, or judicial authority of any . . . State, or political subdivision or agency thereof. . . .'' *Nevada v. Hicks*, 533 U.S. 353 (2001)

This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts. *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)

It is true that some statutes proclaim tribal-court jurisdiction over certain questions of federal law.(quoting 25 U.S.C. § 1911 (Indian Child Welfare Act of 1978); 12 U.S.C. § 1715 (foreclosures brought by the Secretary of Housing and Urban Development against reservation homeowners)). But no provision in federal law provides for tribal-court jurisdiction over § 1983 [42 U.S.C. § 1983] actions. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Were § 1983[42 U.S.C. § 1983] claims cognizable in tribal court, defendants would inexplicably lack the right available to state-court § 1983 defendants to seek a federal forum. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he simpler way to avoid the removal problem is to conclude (as other indications suggest anyway) that tribal courts cannot entertain § 1983 suits. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Since it is clear, as we have discussed, that tribal courts lack jurisdiction over state officials for causes of action relating to their performance of official duties, adherence to the tribal exhaustion requirement in such cases ''would serve no purpose other than delay,'' and is therefore unnecessary. *Nevada v. Hicks*, 533 U.S. 353 (2001)

State officials operating on a reservation to investigate off-reservation violations of state law are properly held accountable for tortious conduct and civil rights violations in either state or federal court, but not in tribal court. *Nevada v. Hicks*, 533 U.S. 353 (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)

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)

''Tribal sovereign immunity is a matter of subject matter jurisdiction, which may be challenged by a motion to dismiss under Fed. R. Civ. P. 12(b)(1).'' *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1302–03 (10th Cir. 2001) (citation omitted). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

''Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers.'' [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)

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)

This court has applied the Supreme Court's straightforward test to uphold Indian tribes' immunity from suit. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

We disagree that federal-question jurisdiction negates an Indian tribe's immunity from suit. Indeed, nothing in § 1331 unequivocally abrogates tribal sovereign immunity. In the context of the United States' sovereign immunity, we have held that ''[w]hile 28 U.S.C. § 1331 grants the court jurisdiction over all civil actions arising under the Constitution, laws or treaties of the United States, it does not independently waive the Government's sovereign immunity; § 1331 will only confer subject matter jurisdiction where some other statute provides such a waiver.'' [quoting from *High Country Citizens Alliance v. Clarke*, 454 F.3d 1177, 1181 (10th Cir. 2006)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

(quotation omitted), *cert. denied*, 127 S.Ct. 2134 (2007)(citations omitted in original). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Tribal sovereign immunity is deemed to be coextensive with the sovereign immunity of the United States. [quoting *Ramey Constr. Co. v. Apache Tribe of Mescalero Reservation*, 673 F.2d 315, 319–20 (10th Cir. 1982)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Therefore, in an action against an Indian tribe, we conclude that § 1331 will only confer subject matter jurisdiction where another statute provides a waiver of tribal sovereign immunity or the tribe unequivocally waives its immunity. *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)

We also concluded that, in the suit against the tribal officers, the extent of the tribe's sovereignty to enact the challenged ordinances raised a federal issue sufficient for federal-question jurisdiction in the district court. [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)

Like this case, *Tenneco* involved two different aspects of an Indian tribe's ''sovereignty'': its immunity from suit and the extent of its power to enact and enforce laws affecting non-Indians. But it does not stand for the proposition, as the Miner parties suggest, that an Indian tribe cannot invoke its sovereign immunity from suit in an action that challenges the limits of the tribe's authority over non-Indians. On the contrary, we held in *Tenneco* that the tribe was immune from suit. [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)

We distinguished *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)] noting that the Supreme Court in that case emphasized the availability of the tribal courts and the intra-tribal nature of the issues, whereas in *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] the plaintiffs were non-Indians who had been denied any remedy in a tribal forum. *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)

The *Dry Creek* rule has ''minimal precedential value''; in fact, this court has never held it to be applicable other than in the *Dry Creek* [*Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] decision itself. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

The Miner parties clearly fail to come within the narrow *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] exception to tribal sovereign immunity. Considering whether they could have brought this action in the Tribal Court rather than the district court, they hypothesize that the Nation would have claimed immunity from suit in that forum as well. But they must show an actual attempt; their assumption of futility of the tribal-court remedy is not enough. *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)

Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980)] has come to stand for the proposition that federal courts have jurisdiction to hear a suit against an Indian tribe under 25 U.S.C. § 1302, notwithstanding *Santa Clara Pueblo,* [*Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978)]when three circumstances are present: (1) the dispute involves a non-Indian; (2) the dispute does not involve internal tribal affairs; and (3) there is no tribal forum to hear the dispute. Our jurisprudence in this field is circumspect, and we have emphasized the need to construe the *Dry Creek* exception narrowly in order to prevent a conflict with *Santa Clara.*(internal cites omitted) *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

Indian tribes possess the same immunity from suit traditionally enjoyed by sovereign powers. *Santa Clara Pueblo,* [*Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978)]. As with other forms of sovereign immunity, tribal immunity ''is subject to the superior and plenary control of Congress.'' Accordingly, absent explicit waiver of immunity or express authorization by Congress, federal courts do not have jurisdiction to entertain suits against an Indian tribe. (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) *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)

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)

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)

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-Indi-

ans, 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)

[t]ribal authorities may investigate unauthorized possession of firearms on gaming premises which is proscribed by tribal law. *See* Muscogee (Creek) Nation Code Ann., tit. 21., § 5–116(C). *United States v. Green*, 140 Fed. Appx. 798 (10th Cir. 2005)

An officer may seize evidence of a crime if it is in plain view, its incriminating character is immediately apparent, and the officer has a lawful right of access to the item. *Horton v. California*, 496 U.S. 128 (1990) *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

We have suggested that incriminating evidence that may be seen through the window of a vehicle may be in plain view. *United States v. Sparks*, 291 F.3d 683 (10th Cir. 2002). This view may be assisted by a flashlight without any infringement of Fourth Amendment rights. *Texas v. Brown*, 460 U.S. 730 (1983) (internal cites omitted) *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

5. ——Treaty interpretation, jurisdiction

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 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).

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).

Article I § 2 states that political jurisdiction should be as it geographically appeared in 1900 which is based on those treaties entered into by the Muscogee (Creek) Nation and the United States of America. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

Absent express Congressional enactment to the contrary, the jurisdiction power of the Muscogee (Creek) Nation remains unscathed. *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).

Entire reading of Treaty of 1856 in light of historical realities clearly indicates that the United States Congress has abrogated the treaty and subsequently restored the governmental powers of the Muscogee (Creek) Nation which includes the power of the Court to assert jurisdiction. *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 reorganized their tribal government under the Oklahoma Indian Welfare Act and adopted a new constitution which was approved by the United States Department of Interior and organizes tribal government into executive, legislative, and judicial branches with no divestiture of authority over non-Indians or corporations. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

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)

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)

6. Interpretation of constitution, 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 re-

turned. 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 1,9 § 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 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 qualified immunity test requires a two-part analysis: ''(1) Was the law governing the official's conduct clearly established? (2) Under the law, could a reasonable officer have believed the conduct was lawful?'' [citing *Act-Up!/Portland v. Bagley,* 988 F.2d 868, 871 (9th Cir. 1993); *Tribble v. Gardner,* 860 F.2d 321, 324 (9th Cir. 1988), cert. denied, 490 U.S. 1075 (1989).] This Court is persuaded by and hereby adopts the forgoing reasoning regarding the application of the doctrine of qualified immunity. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.,* SC 06–05 (Muscogee (Creek) 2008)

On remand, the District Court should apply the two-part test discussed above [(1) Was the law governing the official's conduct clearly established? (2) Under the law, could a reasonable officer have believed the conduct was lawful?] to determine whether the named individual defendants may be immune from suit under the doctrine of qualified immunity. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.,* SC 06–05 (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 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)

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)

The Court hereby ORDERS George Tiger, in his capacity as Speaker of the National Council, to return the below described official Court record to the office of the Supreme Court no later that 10:00 a.m. on August 3, 2007, said record being described as: The full and complete original audio recording which constitutes a portion of the official transcript of the Supreme Court hearing which was held on July 18, 2007 in the above captioned matter. Failure to fully and timely comply with this Order shall be deemed an act of direct contempt of this Court. *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)

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)

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

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

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

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

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

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

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

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)

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)

[T]his Court finds indirect civil contempt to consist of willful disobedience of any process or order lawfully issued or made by the Court, or resistance willfully offered by any person to the execution of a lawful order or process of the Court. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

For a Court of the Muscogee (Creek) Nation to hold someone in indirect civil contempt, the Court must determine by clear and convincing evidence that 1) the allegedly violated Order was valid and lawful; 2) the Order was clear, definite, and unambiguous; and 3) the alleged violator(s) had the ability to comply with the Order. Willful is defined as ''acts which are intentional, conscious, and directed towards achieving a purpose.'' *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]his Court has the ability to judge the credibility of the witnesses... *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

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

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

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

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

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

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

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

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

The concept in our society is that all the roles within our society are important, and to be honored. Kinship and clan responsibilities are the bedrock of our society, in earlier times as warrior and peace keeping communities, and continuing today. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

For our tribal society to function properly, we must honor and respect the respective roles of others. Our Constitution is based on our societal values, as a people, and that interconnectedness lays out the separate powers and duties of the various branches of government. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

Unlike other societies. there is nowhere in Creek society that one group or individual has control of all of the affairs of tribal communities. *Ellis v. Muscogee (Creek) Nation National 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 reiter-

ate 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)

[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)

Due Process allows for a court to have a certain amount of discretion in fashioning indirect civil contempt sanctions as long as the sanction(s) imposed has comported with notions of fair play and justice. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

We hold that the penalties for any case of indirect civil contempt shall be: a) Court ordered corrective action, and or; b) Public Censure, and or; c) Fine of not less than $1,000, and or; d) Imprisonment of not more than l2 months. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

The Supreme Court reviewed the record de novo and finds no evidence that the Citizenship Board acted arbitrarily and capriciously. *Muscogee (Creek) Nation of Oklahoma v. Graham and Johnson,* SC 06–03 (Muscogee (Creek) 2007)

The Court decided it had judicial power to render its decision in that case, not based on a specific grant of power, but on the implied powers derived from examination of the United States Constitution. See *Marbury v. Madison,* 1 Cranch, 137. The Court then decided, while not following United States law, the United State Supreme Court's decision was persuasive inasmuch as it was the opinion of the court that the Muscogee Nation Constitution was modeled after the U.S. Constitution as to the separation of powers doctrine. *Ellis v. Muscogee (Creek) National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

The Muscogee Nation Supreme Court was created by the Muscogee Nation Constitution and as such it is subject to those limitations contained in the Constitution. *Ellis v. Muscogee (Creek) National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

The Supreme Court has the power to enforce its orders, and judgments subject to the rules of procedure as to ''due process'' which it has adopted. *Ellis v. Muscogee (Creek) National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

Indian tribes were not made subject to the Bill of Rights. However, the laws of the Muscogee Nation are subject to the limitation imposed upon the tribal governments by the Indian Civil Rights Act of 1968, as amended, found at 25 U.S.C. § 1301 et seq. This limits the powers of tribal governments by making certain provisions of the Bill of Rights applicable to tribal governments. *Ellis v. Muscogee (Creek) National Council, ''Ellis II'',* SC 06–07 (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)

We think that the highest court of a sovereign government, when created by the Constitution of that government which recognizes the principle of separation of powers, is entitled to be free to function as the framers of that Constitution intended, and it should guard its prerogatives jealously to preserve its powers as an independent co-equal branch of government. *Ellis v. Muscogee (Creek) National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

Any demand for jury trial in the Supreme Court that is not based on a right found in the Indian Civil Rights Act, and if granted, would interfere with the inherent powers bestowed upon the Supreme Court by our Constitution. *Ellis v. Muscogee (Creek) National Council, ''Ellis II'',* SC 06–07 (Muscogee (Creek) 2007)

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)

[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)

Courts are required to hear actual cases and controversies and not hypothetical ones. However, the U.S. Supreme Court has stated a very important exception to this rule: if a case is capable of repetition, yet evading review, the Court should and could hear and decide the case. *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)

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)

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)

We have held that the Constitution of this Nation must be strictly construed and interpreted; and where the plain language is clear, we must not place a different meaning on the words. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

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)

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)

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 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)

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)

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

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)

. . . 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 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)

. . . the Court is also mindful of as our role as arbitrator of disputes and there are times that additional clarification to the Constitution meaning is needed. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

Under the Doctrine of Separation of Powers, the Executive Branch as set out in the Muscogee (Creek) Nation Constitution Article V, and further as organized in the laws in Title 16 Muscogee (Creek) Nation Code,-''Executive Branch'' shall remain in full force and effect unless duly changed by proper procedures to secure a Constitutional Amendment or by Tribal Resolution. . . . as the head of the Executive Branch, the Principal Chief continues to have the authority to deal with all Executive Branch employment decisions, except over independent agencies as will be discussed *infra*; including but not limited to all appointments as set out in the Constitution of this Nation and any laws that the National Council shall enact. *Ellis v. Muscogee (Creek) Nation National Council*, SC 05–03/05 (Muscogee (Creek) 2006)

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

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

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

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 3–1 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)

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)

Under traditional Mvskoke law controversies were resolved by clan Vculvkvlke (elders). Their integrity was considered beyond reproach. They were obligated by the responsibilities of their position to decide cases fairly, and honestly, regardless of clan or family affiliation. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

Since this Nation's establishment of a constitutional form of government in 1867, Mvskoke law is ruled upon by appointed Judges, but the obligation under traditional Mvskoke law remain in effect. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (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)

Fairness by judges to all is essential to maintain and foster respect for the tribal courts. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

[T]he judge is not *required* by Canon 3 to disqualify himself. Nevertheless, Canon 3 cannot be disregarded. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

Indeed Canon 3 is to insure a judge's impartiality in all cases. As such, a judge should use his own best judgment in weighing his relative's role and interest in the case under consideration and determine if there could be a question of a lack of impartiality. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

The responsibility to perform judicial duties with impartiality extends to all cases and all persons before the Mvskoke Courts, whether Mvskoke citizens or others, and regardless of degree of relationship to the Judge. This is true under both Traditional Mvskoke law or under the Code of Conduct for Judges. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

This Court views the Canons as mandatory minimum standard; not as maximum requirements. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

Citizens do not differentiate between the person and the office of the Judge. A judge must therefore avoid impropriety in all activities. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

In determining a question of disqualification, it is essential for a judge to consider how his decisions will be perceived by prospective litigants in Muscogee (Creek) Nation Courts. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

It is the responsibility of the Judge in all cases to determine, himself, using his best judgment, if his decision will be perceived as unfair requiring recusal. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation*, SC 04–02 (Muscogee (Creek) 2005)

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 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)

As stated in the Court's *Glass* decision, MCNCA 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,(2006)

The Court cannot supersede the powers granted to us with respect to our appellate authority. *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 mattes of tribal law. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

The final order rule is an important element of our procedural law which serves to avoid unnecessary piecemeal review of lower court decisions. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Because the codes do not specifically discuss standard for mandamus, the Court is free to interpret its own standards for using writs. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Our use of any federal authorities considering this matter [writs] is limited to review of that of persuasive value. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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).

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).

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).

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 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).

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).

Court is aware of a limited range of interlocutory appeals are recognized in federal courts despite the lack of statutory provisions authorizing them. No such exceptions to the final rule order, however, have been articulated in our case law. *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).

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).

Article VII of the Constitution of the Muscogee (Creek) Nation which establishes and defines the judicial branch of the Creek government contains all that is said regarding the Supreme Court and Inferior Courts. *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)

Nothing therein [Article VII of the Muscogee (Creek) Nation Constitution] mandates that said Justices and Judges shall be full citizens of the Muscogee (Creek) Nation and as is specifically set forth and provided for in the articles that pertain to the elected 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)

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)

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))*

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).

Article I § 2 states that political jurisdiction should be as it geographically appeared in 1900 which is based on those treaties entered into by the Muscogee (Creek) Nation and the United States of America. *Muscogee (Creek) Nation v. American Tobacco Co.,* 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

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).

Due Process requires notice to be reasonably calculated to give parties notice of an action pending and giving those parties reasonable time to appear and object. *Muscogee (Creek) Nation v. American Tobacco Co.,* 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

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).

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)

Although neither the Constitution nor Ordinances provide for mandamus, Court can look to Oklahoma law for guidance. *Kamp v. Cox*, 5 Okla. Trib. 520 (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 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)

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)

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)

[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)

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes*, 163 U.S. 376 (1896)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Indian courts ''differ from traditional American courts in a number of significant respects.'' (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)

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)

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)

[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)

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)

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)

It is true that some statutes proclaim tribal-court jurisdiction over certain questions of federal law.(quoting 25 U.S.C. § 1911 (Indian Child Welfare Act of 1978); 12 U.S.C. § 1715 (foreclosures brought by the Secretary of Housing and Urban Development against reservation homeowners)). But no provision in federal law provides for tribal-court jurisdiction over § 1983 [42 U.S.C. § 1983] actions. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Were § 1983[42 U.S.C. § 1983] claims cognizable in tribal court, defendants would inexplicably lack the right available to state-court § 1983 defendants to seek a federal forum. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he simpler way to avoid the removal problem is to conclude (as other indications suggest anyway) that tribal courts cannot entertain § 1983 suits. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Since it is clear, as we have discussed, that tribal courts lack jurisdiction over state officials for causes of action relating to their performance of official duties, adherence to the tribal exhaustion requirement in such cases ''would serve no purpose other than delay,'' and is therefore unnecessary. *Nevada v. Hicks*, 533 U.S. 353 (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)

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)

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)

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)] we conclude, are not at odds with, and do not displace, *Montana*. Both decisions describe an exhaustion rule allowing tribal courts initially to respond to an invocation of their jurisdiction; neither establishes tribal court adjudicatory authority, even over the lawsuits involved in those cases. *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)

[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)

As for the argument of amici, we do not require that Nation certificate-of-title law be the exclusive source of establishing perfection and priority. *Malloy v. Wilserv Credit Union*, 516 F.3d 1180 (10th Cir. 2008)

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)

[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)

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)

[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) *Estate of Bruner v. Bruner*, 338 F.3d 1172 (10th Cir. 2003)

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)

[t]ribal authorities may investigate unauthorized possession of firearms on gaming premises which is proscribed by tribal law. *See* Muscogee (Creek) Nation Code Ann., tit. 21., § 5–116(C). *United States v. Green*, 140 Fed. Appx. 798 (10th Cir. 2005)

An officer may seize evidence of a crime if it is in plain view, its incriminating character is immediately apparent, and the officer has a lawful right of access to the item. *Horton v. California*, 496 U.S. 128 (1990) *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

We have suggested that incriminating evidence that may be seen through the window of a vehicle may be in plain view. *United States v. Sparks*, 291 F.3d 683 (10th Cir. 2002). This view may be assisted by a flashlight without any infringement of Fourth Amendment rights. *Texas v. Brown*, 460 U.S. 730 (1983) (internal cites omitted) *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

Having personally observed the gun and knowing Mr. Green's background as a felon, we have no doubt that the cross-deputized officer had probable cause to conclude that the gun was evidence of a crime. Thus, no warrant was required for law enforcement to seize the gun. *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

7. Judicial notice

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)

Judicial Notice can be taken at any stage of any legal proceeding. *Reynolds v. Skaggs*, 4 Okla. Trib. 51 (Muscogee (Creek) 1994).

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).

Muscogee (Creek) Nation Supreme Court may take judicial notice of laws and official records of Muscogee (Creek) Nation. *Bruner v. Tax Commission*, 1 Okla. Trib. 102 (Muscogee (Creek) 1987).

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)

8. Federal case law as precedent

The qualified immunity test requires a two-part analysis: ''(1) Was the law governing the official's conduct clearly established? (2) Under the law, could a reasonable officer have believed the conduct was lawful?'' [citing *Act-Up/Portalnd v. Bagley*, 988 F.2d 868, 871 (9th Cir. 1993); *Tribble v. Gardner*, 860 F.2d 321, 324 (9th Cir. 1988), cert. denied, 490 U.S. 1075 (1989).] This Court is persuaded by and hereby adopts the forgoing reasoning regarding the application of the doctrine of qualified immunity. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

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)

The Court decided it had judicial power to render its decision in that case, not based on a specific grant of power, but on the implied powers derived from examination of the United States Constitution. See *Marbury v. Madison*, 1 Cranch, 137. The Court then decided, while not following United States law, the United State Supreme Court's decision was persuasive inasmuch as it was the opinion of the court that the Muscogee Nation Constitution was modeled after the U.S. Constitution as to the separation of powers doctrine. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

Courts are required to hear actual cases and controversies and not hypothetical ones. However, the U.S. Supreme Court has stated a very important exception to this rule: if a case is capable of repetition, yet evading review, the Court should and could hear and decide the case. This Court agrees with and adopts this view [*Roe v. Wade*, 410 U.S. 112, 113–114 (1978)], and for the foregoing reason denies Defendant's Motion to Dismiss Case as Moot. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

This Court agrees with and adopts the reasoning of the United State 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)

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)

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)

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).

Constitution of Muscogee (Creek) Nation is patterned after United States Constitution with respect to separation of powers; decisions of United States courts with respect to that doctrine are therefore applicable with equal force to government of Muscogee (Creek) Nation. *Beaver, v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

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).

Our use of any federal authorities considering this matter [writs] is limited to review of that of persuasive value. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 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).

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)

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).

Entire reading of Treaty of 1856 in light of historical realties clearly indicates that the United States Congress has abrogated the treaty and subsequently restored the governmental powers of the Muscogee (Creek) Nation which includes the power of the Court to assert jurisdiction. *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 reorganized their tribal government under the Oklahoma Indian Welfare Act and adopted a new constitution which was approved by the United States Department of Interior and organizes tribal government into executive, legislative, and judicial branches with no divestiture of authority over non-Indians or corporations. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc.(Cr.) D.Ct. 1998).

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)

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)

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes*, 163 U.S. 376 (1896)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.*, 128 S.Ct. 2709 (2008)

Indian courts ''differ from traditional American courts in a number of significant respects.'' (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)

The sovereign authority of Indian tribes is limited in ways state and federal authority is

not. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

[W]e have concluded that ''[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.'' (quoting *Mescalero Apache Tribe v. Jones,* 411 U.S. 145 (1973)) *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 [U.S.] Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as ''plenary and exclusive.'' This Court has traditionally identified the Indian Commerce Clause, U.S. Const., Art. I, § 8, cl. 3, and the Treaty Clause, Art. II, § 2, cl. 2, as sources of that 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)

Oliphant and *Duro* [*Oliphant v. Suquamish Tribe,* 435 U.S. 191 (1978); *Duro v. Reina,* 495 U.S. 676 (1990)] make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branches' own determinations. *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)

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)

25 U.S.C. § 2806 affirms that ''the provisions of this chapter alter neither . . . the law enforcement, investigative, or judicial authority of any . . . State, or political subdivision or agency thereof. . . .'' *Nevada v. Hicks*, 533 U.S. 353 (2001)

This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Were § 1983[42 U.S.C. § 1983] claims cognizable in tribal court, defendants would inexplicably lack the right available to state-court § 1983 defendants to seek a federal forum. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he simpler way to avoid the removal problem is to conclude (as other indications suggest anyway) that tribal courts cannot entertain § 1983 suits. *Nevada v. Hicks*, 533 U.S. 353 (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)

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)

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)] we conclude, are not at odds with, and do not displace, *Montana*. Both decisions describe an exhaustion rule allowing tribal courts initially to respond to an invocation of their jurisdiction; neither establishes tribal court adjudicatory authority, even over the lawsuits involved in those cases. *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

A grant over land belonging to a tribe requires ''consent of the proper tribal officials,'' § 324, and the payment of just compensation, § 325. [25 U.S.C. §§ 323–328] *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[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)

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)

This court has applied the Supreme Court's straightforward test to uphold Indian tribes' immunity from suit. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

We disagree that federal-question jurisdiction negates an Indian tribe's immunity from suit. Indeed, nothing in § 1331 unequivocally abrogates tribal sovereign immunity. In the context of the United States' sovereign immunity, we have held that ''[w]hile 28 U.S.C. § 1331 grants the court jurisdiction over all civil actions arising under the Constitution, laws or treaties of the United States, it does not independently waive the Government's sovereign immunity; § 1331 will only confer subject matter jurisdiction where some other statute provides such a waiver.'' [quoting from *High Country Citizens Alliance v. Clarke*, 454 F.3d 1177, 1181 (10th Cir. 2006)]

(quotation omitted), *cert. denied*, 127 S.Ct. 2134 (2007)(citations omitted in original). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Tribal sovereign immunity is deemed to be coextensive with the sovereign immunity of the United States. [quoting *Ramey Constr. Co. v. Apache Tribe of Mescalero Reservation*, 673 F.2d 315, 319–20 (10th Cir. 1982)] *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

Therefore, in an action against an Indian tribe, we conclude that § 1331 will only confer subject matter jurisdiction where another stat-

ute provides a waiver of tribal sovereign immunity or the tribe unequivocally waives its immunity. *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)

We also concluded that, in the suit against the tribal officers, the extent of the tribe's sovereignty to enact the challenged ordinances raised a federal issue sufficient for federal-question jurisdiction in the district court. [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)

Like this case, *Tenneco* involved two different aspects of an Indian tribe's ''sovereignty'': its immunity from suit and the extent of its power to enact and enforce laws affecting non-Indians. But it does not stand for the proposition, as the Miner parties suggest, that an Indian tribe cannot invoke its sovereign immunity from suit in an action that challenges the limits of the tribe's authority over non-Indians. On the contrary, we held in *Tenneco* that the tribe was immune from suit. [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)

We distinguished *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)] noting that the Supreme Court in that case emphasized the availability of the tribal courts and the intra-tribal nature of the issues, whereas in *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] the plaintiffs were non-Indians who had been denied any remedy in a tribal forum. *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)

Indian tribes possess the same immunity from suit traditionally enjoyed by sovereign powers. *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)]. As with other forms of sovereign immunity, tribal immunity ''is subject to the superior and plenary control of Congress.'' Accordingly, absent explicit waiver of immunity or express authorization by Congress, federal courts do not have jurisdiction to entertain suits against an Indian tribe. (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) *Estate of Bruner v. Bruner*, 338 F.3d 1172 (10th Cir. 2003)

An officer may seize evidence of a crime if it is in plain view, its incriminating character is immediately apparent, and the officer has a lawful right of access to the item. *Horton v. California*, 496 U.S. 128 (1990) *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

We have suggested that incriminating evidence that may be seen through the window of a vehicle may be in plain view. *United States v. Sparks*, 291 F.3d 683 (10th Cir. 2002). This view may be assisted by a flashlight without any infringement of Fourth Amendment rights. *Texas v. Brown*, 460 U.S. 730 (1983) (internal cites omitted) *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

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)

9. Distribution of tribal judicial powers

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)

[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)

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 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 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)

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 doctrine of sovereign immunity, a condition precedent to filing suit against the GOAB, is often accompanied by the doctrine of qualified immunity for government employees acting within the scope of their employment. Qualified immunity is not, however, absolute. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

The qualified immunity test requires a two-part analysis: ''(1) Was the law governing the official's conduct clearly established? (2) Under the law, could a reasonable officer have believed the conduct was lawful?'' [citing *Act-Up/Portalnd v. Bagley*, 988 F.2d 868, 871 (9th Cir. 1993); *Tribble v. Gardner*, 860 F.2d 321, 324 (9th Cir. 1988), cert. denied, 490 U.S. 1075 (1989).] This Court is persuaded by and hereby adopts the forgoing reasoning regarding the application of the doctrine of qualified immunity. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

On remand, the District Court should apply the two-part test discussed above [(1) Was the law governing the official's conduct clearly established? (2) Under the law, could a reasonable officer have believed the conduct was lawful?] to determine whether the named individual defendants may be immune from suite under the doctrine of qualified immunity. *Molle and Chalakee v. The Gaming Operations Authority Board, et al.*, SC 06–05 (Muscogee (Creek) 2008)

[T]hat the Motion for Emergency Stay filed by Plaintiff/Appellant Thlopthlocco Tribal Town be, and the same hereby is GRANTED and the District Court's June 20, 2007 order dissolving its June 11, 2007 Temporary Restraining Order

is stayed pending the conclusion of proceedings in this Court on Thlopthlocco Tribal Town's Application for a Writ of Mandamus . . . *Thlopthlocco Tribal Town v. Moore, Anderson, et al.*, SC 07–01 (Muscogee (Creek) 2007)

The Court decided it had judicial power to render its decision in that case, not based on a specific grant of power, but on the implied powers derived from examination of the United States Constitution. See *Marbury v. Madison*, 1 Cranch, 137. The Court then decided, while not following United States law, the United State Supreme Court's decision was persuasive inasmuch as it was the opinion of the court that the Muscogee Nation Constitution was modeled after the U.S. Constitution as to the separation of powers doctrine. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

The Supreme Court has the power to enforce its orders, and judgments subject to the rules of procedure as to ''due process'' which it has adopted. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

The distinction between a civil contempt and criminal contempt is dependent on the consequences to person accused of contempt. If a person is sentenced to a definite term for a past deed, it is criminal. If a fine is imposed that is not redeemable, it is criminal. The application of sanctions designed to coerce a person to comply with a court's orders is civil so long as the contemnor is able to purge (avoid) the fine by complying with court's order or is able to get out of jail by complying with a court order. In these cases, the sixth amendment, right to a jury trial, does not apply. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

Indian tribes were not made subject to the Bill of Rights. However, the laws of the Muscogee Nation are subject to the limitation imposed upon the tribal governments by the Indian Civil Rights Act of 1968, as amended, found at 25 U.S.C. § 1301 et seq. This limits the powers of tribal governments by making certain provisions of the Bill of Rights applicable to tribal governments. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (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)

We think that the highest court of a sovereign government, when created by the Constitution of that government which recognizes the principle of separation of powers, is entitled to be free to function as the framers of that Constitution intended, and it should guard its prerogatives jealously to preserve its powers as an independent co-equal branch of government. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

Any demand for jury trial in the Supreme Court that is not based on a right found in the Indian Civil Rights Act, and if granted, would interfere with the inherent powers bestowed upon the Supreme Court by our Constitution. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

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)

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)

[T]his Court finds indirect civil contempt to consist of willful disobedience of any process or order lawfully issued or made by the Court, or resistance willfully offered by any person to the execution of a lawful order or process of the Court. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

For a Court of the Muscogee (Creek) Nation to hold someone in indirect civil contempt, the Court must determine by clear and convincing evidence that 1) the allegedly violated Order was valid and lawful; 2) the Order was clear, definite, and unambiguous; and 3) the alleged violator(s) had the ability to comply with the Order. Willful is defined as ''acts which are intentional, conscious, and directed towards achieving a purpose.'' *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]his Court has the ability to judge the credibility of the witnesses . . . *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)

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)

Due Process allows for a court to have a certain amount of discretion in fashioning indirect civil contempt sanctions as long as the sanction(s) imposed has comported with notions of fair play and justice. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

We hold that the penalties for any case of indirect civil contempt shall be: a) Court ordered corrective action, and or; b) Public Censure, and or; c) Fine of not less than $1,000, and or; d) Imprisonment of not more than l2 months. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

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)

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)

We have held that the Constitution of this Nation must be strictly construed and interpreted; and where the plain language is clear, we must not place a different meaning on the words. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

Courts are required to hear actual cases and controversies and not hypothetical ones. However, the U.S. Supreme Court has stated a very important exception to this rule: if a case is capable of repetition, yet evading review, the Court should and could hear and decide the case. This Court agrees with and adopts this view [*Roe v. Wade*, 410 U.S. 112, 113–114 (1978)], and for the foregoing reason denies Defendant's Motion to Dismiss Case as Moot. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

As stated in the Court's *Glass* decision, MCNCA 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 *(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)

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 Court is also mindful of as our role as arbitrator of disputes and there are times that additional clarification to the Constitution meaning is needed. *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 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)

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 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)

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)

[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)

Under traditional Mvskoke law controversies were resolved by clan Vculvkvlke (elders). Their integrity was considered beyond reproach. They were obligated by the responsibilities of their position to decide cases fairly, and honestly, regardless of clan or family affiliation. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

Since this Nation's establishment of a constitutional form of government in 1867, Mvskoke law is ruled upon by appointed Judges, but the obligation under traditional Mvskoke law remain in effect. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

Indeed Canon 3 is to insure a judge's impartiality in all cases. As such, a judge should use his own best judgment in weighing his relative's role and interest in the case under consideration and determine if there could be a question of a lack of impartiality. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

The responsibility to perform judicial duties with impartiality extends to all cases and all persons before the Mvskoke Courts, whether Mvskoke citizens or others, and regardless of degree of relationship to the Judge. This is true under both Traditional Mvskoke law or under the Code of Conduct for Judges. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

This Court views the Canons as mandatory minimum standard; not as maximum requirements. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

Citizens do not differentiate between the person and the office of the Judge. A judge must therefore avoid impropriety in all activities. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

In determining a question of disqualification, it is essential for a judge to consider how his decisions will be perceived by prospective litigants in Muscogee (Creek) Nation Courts. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

It is the responsibility of the Judge in all cases to determine, himself, using his best judgment, if his decision will be perceived as unfair requiring recusal. *In Re: The Practice of Law Before the Courts of the Muscogee (Creek) Nation,* SC 04–02 (Muscogee (Creek) 2005)

The final order rule is an important element of our procedural law which serves to avoid unnecessary piecemeal review of lower court decisions. *Brown and Williamson Tobacco Corp. v. District Court,* 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Petitioners, just as any other litigant in the Muscogee (Creek) Courts still has available the right to appeal after a final order is issued by the District Court. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Supreme Court of the Muscogee (Creek) Nation may accept a question certified to it by the District Court of the Nation. *Reynolds v. Skaggs*, 4 Okla. Trib. 51 (Muscogee (Creek) 1994).

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).

Muscogee (Creek) Nation Supreme Court has power to issue declaratory relief regarding procedure by which Principal Chief's veto of proposed ordinance was allegedly overridden, in suit brought by Principal Chief invoking Court's original jurisdiction. *Cox v. Childers*, 2 Okla. Trib. 276 (Muscogee (Creek) 1991).

Only in rare eases, involving emergency demanding immediate attention from Supreme Court, will Muscogee (Creek) Nation Supreme Court assume original jurisdiction without giving tribal district court opportunity to first hear case. *Cox v. Crow*, 2 Okla. Trib. 246 (Muscogee (Creek) 1991).

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 by Principal Chief. *Cox v. McIntosh*, 2 Okla. Trib. 182 (Muscogee (Creek) 1991).

Supreme Court of the Muscogee (Creek) Nation may appoint District Judge as its referee to conduct fact finding hearing. *National Council v. Cox.*, 5 Okla. Trib. 512 (Muscogee (Creek) 1990).

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 a seated district court judge. *In re District Judge*, 2 Okla. Trib. 54 (Muscogee (Creek) 1990).

Article VII of the Constitution of the Muscogee (Creek) Nation which establishes and defines the judicial branch of the Creek government contains all that is said regarding the Supreme Court and Inferior Courts. *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)

Nothing therein [Article VII of the Muscogee (Creek) Nation Constitution] mandates that said Justices and Judges shall be full citizens of the Muscogee (Creek) Nation and as is specifically set forth and provided for in the articles that pertain to the elected 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)

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)

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)

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))*

It is THEREFORE ORDERED, ADJUDGED AND DECREED that each Justice of the Supreme Court of the Muscogee (Creek) Nation

shall and do retain their position and authority and shall continue to serve as Justice until their successor is duly qualified. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

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).

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).

District Court has power to prescribe method of establishing an agenda for meetings of the Eufaula (Creek) Indian Community and how notices of meetings are to be posted. *McGirt v. Tiger*, 5 Okla Trib. 557 (Musc. (Cr.) D.Ct. 1993).

District Court of the Muscogee (Creek) Nation has power to appoint an Ahaka Mvhereuca for purposes of mediating disputes within a Muscogee (Creek) Nation Chartered Community. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

District Court of the Muscogee (Creek) Nation has power to suspend control by officers or directors of Muscogee (Creek) Nation Chartered Communities over such communities and their resources where exigent circumstances exist. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

District Court of the Muscogee (Creek) Nation has power to direct officers of the Muscogee (Creek) Nation to provide training and technical assistance to officers and/or directors of Muscogee (Creek) Chartered Communities. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (Musc. (Cr.) D.Ct. 1992).

Where dispute threatening stability and/or economic well being of a Muscogee (Creek) Nation Chartered Community has occurred that resulted in litigation, District Court may direct Community to pay reasonable attorneys' fees from Community funds. *Muscogee (Creek) Nation v. Holdenville Indian Community*, 5 Okla. Trib. 551 (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).

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)

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)

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)

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)

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)

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)

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes*, 163 U.S. 376 (1896)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Indian courts ''differ from traditional American courts in a number of significant respects.'' (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)

[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)

The sovereign authority of Indian tribes is limited in ways state and federal authority is not. *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)

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)

Seeking the Tribal Court's aid in serving process on tribal members for a pending state-court action does not, we think, constitute consent to future litigation in the Tribal Court. *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)

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)

[W]e have concluded that ''[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State.'' (quoting *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973)) *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)

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)

[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)

Oliphant and *Duro* [*Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978); *Duro v. Reina*, 495 U.S. 676 (1990)] make clear that the Constitution does not dictate the metes and bounds of tribal autonomy, nor do they suggest that the Court should second-guess the political branches' own determinations. *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)

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)

[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)

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)

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)

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)

This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts. *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)

It is true that some statutes proclaim tribal-court jurisdiction over certain questions of federal law.(quoting 25 U.S.C. § 1911 (Indian Child Welfare Act of 1978); 12 U.S.C. § 1715 (foreclosures brought by the Secretary of Housing and Urban Development against reservation homeowners)). But no provision in federal law provides for tribal-court jurisdiction over § 1983 [42 U.S.C. § 1983] actions. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Were § 1983 [42 U.S.C. § 1983] claims cognizable in tribal court, defendants would inexplicably lack the right available to state-court § 1983 defendants to seek a federal forum. *Nevada v. Hicks*, 533 U.S. 353 (2001)

[t]he simpler way to avoid the removal problem is to conclude (as other indications suggest anyway) that tribal courts cannot entertain § 1983 suits. *Nevada v. Hicks*, 533 U.S. 353 (2001)

Since it is clear, as we have discussed, that tribal courts lack jurisdiction over state officials for causes of action relating to their performance of official duties, adherence to the tribal exhaustion requirement in such cases ''would serve no purpose other than delay,'' and is therefore unnecessary. *Nevada v. Hicks*, 533 U.S. 353 (2001)

State officials operating on a reservation to investigate off-reservation violations of state law are properly held accountable for tortious conduct and civil rights violations in either state or federal court, but not in tribal court. *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 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 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)

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)] we conclude, are not at odds with, and do not displace, *Montana*. Both decisions describe an exhaustion rule allowing tribal courts initially to respond to an invocation of their jurisdiction; neither establishes tribal court adjudicatory authority, even over the lawsuits involved in those cases. *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[W]e do not extract from *National Farmers* anything more than a prudential exhaustion rule, in deference to the capacity of tribal courts ''to explain to the parties the precise basis for accepting [or rejecting] jurisdiction.'' (quoting *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845 (1985)) *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)

A grant over land belonging to a tribe requires ''consent of the proper tribal officials,'' § 324, and the payment of just compensation, § 325. [25 U.S.C. §§ 323–328] *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)

''Tribal sovereign immunity is a matter of subject matter jurisdiction, which may be challenged by a motion to dismiss under Fed. R. Civ. P. 12(b)(1).'' *E.F.W. v. St. Stephen's Indian High Sch.*, 264 F.3d 1297, 1302–03 (10th Cir. 2001) (citation omitted). *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

We disagree that federal-question jurisdiction negates an Indian tribe's immunity from suit. Indeed, nothing in § 1331 unequivocally abrogates tribal sovereign immunity. In the context

of the United States' sovereign immunity, we have held that ''[w]hile 28 U.S.C. § 1331 grants the court jurisdiction over all civil actions arising under the Constitution, laws or treaties of the United States, it does not independently waive the Government's sovereign immunity; § 1331 will only confer subject matter jurisdiction where some other statute provides such a waiver.'' [quoting from *High Country Citizens Alliance v. Clarke*, 454 F.3d 1177, 1181 (10th Cir. 2006)] (quotation omitted), *cert. denied*, 127 S.Ct. 2134 (2007)(citations omitted in original). *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)

We distinguished *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)] noting that the Supreme Court in that case emphasized the availability of the tribal courts and the intra-tribal nature of the issues, whereas in *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] the plaintiffs were non-Indians who had been denied any remedy in a tribal forum. *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)

The *Dry Creek* rule has ''minimal precedential value''; in fact, this court has never held it to be applicable other than in the *Dry Creek* [*Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] decision itself. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

The Miner parties clearly fail to come within the narrow *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] exception to tribal sovereign immunity. Considering whether they could have brought this action in the Tribal Court rather than the district court, they hypothesize that the Nation would have claimed immunity from suit in that forum as well. But they must show an actual attempt; their assumption of futility of the tribal-court remedy is not enough. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

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)

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) *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)

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)

10. Practice of law

Tribal Supreme Court has inherent power to direct that only duly licensed and admitted to practice attorneys may represent litigants in courts of the Muscogee (Creek) Nation. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

All attorneys desiring to practice law before courts of the Muscogee (Creek) Nation must apply to tribal Supreme Court upon motion of a member of that Court's Bar, accompanied by court-determined annual fees and dues. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

11. Standing

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).

12. Mootness

Courts are required to hear actual cases and controversies and not hypothetical ones. However, the U.S. Supreme Court has stated a very important exception to this rule: if a case is capable of repetition, yet evading review, the Court should and could hear and decide the case. This Court agrees with and adopts this view [*Roe v. Wade*, 410 U.S. 112, 113–114 (1978)], and for the foregoing reason denies Defendant's Motion to Dismiss Case as Moot. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

In light of court's decision that contract with Tribe is void due to absence of approval of contract as required by tribal law, other asserted reasons for invalidity of contract are moot. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

13. Justiciability

Request for re-certification of number of district citizens for purposes of determining number of seats to be filled on Muscogee (Creek) National Council presents justiciable controversy subject to jurisdiction of District Court of the Muscogee (Creek) Nation. *Thomas v. Election Board*, 1 Okla. Trib. 124 (Musc. (Cr.) D.Ct. 1987).

14. Pretrial procedure

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).

15. Notice and service of process

Personal jurisdiction shall exist when person is served within jurisdictional territory or served anywhere in cases arising within territorial jurisdiction of the Muscogee (Creek) Nation. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Court approves of service by certified mail as a common practice. *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).

Due Process requires notice to be reasonably calculated to give parties notice of an action pending and giving those parties reasonable time to appear and object. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

Service of process should be given in most efficient manner that will ensure defendants' receive notice. *Muscogee (Creek) Nation v. American Tobacco Co.*, 5 Okla. Trib. 401 (Musc. (Cr.) D.Ct. 1998).

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).

16. Recusal

The decision of a Supreme Court Justice to remove himself from a case properly before the Court is a decision the Justice can make as long as the best interests of the Nation are taken into consideration. *Reynolds v. Skaggs*, 4 Okla. Trib. 51 (Muscogee (Creek) 1994).

District judge should determine whether he has conflict of interest stemming from professional relationship between judge and attorney for one party. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

Where district court judge disqualifies, that judge should do so certify to tribal Supreme Court, which will appoint a temporary judge from among members of tribal bar association. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

Aggrieved party may apply to tribal Supreme Court to assume original jurisdiction and grant appropriate relief where trial court judge fails to disqualify. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

Participation of Justices or Justice in pretrial conference with attorneys for one party but not the other is not grounds for disqualification of that Justice or Justices when reason for conduct of pretrial conference in that format is failure of nonattending attorney to appear after provision of proper notice. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

17. Discovery

District Court of Muscogee (Creek) Nation has power to direct discovery in civil cases, and to monetarily sanction a party where warranted by course of discovery proceedings. *Perry v. Holdenville Creek Community*, 3 Okla. Trib. 320 (Musc. (Cr.) D.Ct. 1993).

18. Burden of proof

Candidate bringing protest before District Court of Muscogee (Creek) Nation bears burden of proof regarding allegations in protest petition. *In re Williams*, 3 Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1993).

19. Collateral attack

Where an individual has failed to challenge directly an administrative body's license revocation, but rather collaterally attacks the action in a later judicial injunctive proceeding against that individual, such subsequent judicial proceeding involves no retrial de novo of the issues resolved at the license-revocation hearing, but only involves the limited questions of notice and due process. *Bruner v. Tax Commission*, 1 Okla. Trib. 102 (Muscogee (Creek) 1987).

20. Remedies

Reason for declining writs of mandamus and prohibition is because these are extraordinary remedies to be issued only when no other means of attaining justice are available. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Following the 10th Circuit's pronouncement in *United States v. Roberts*, mandamus is not an appropriate remedy when the petitioners have adequate remedy for appeal. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Petitioners have same remedies of appeal available to them as all parties in our Court system. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Tribal Supreme Court has authority to modify district court's order in a manner more favorable to appellee, where underlying facts warrant modification to correspond to relief petitioned and prayed for by appellee. *Bryant v. Tax Commission*, 1 Okla. Trib. 102 (Muscogee (Creek) 1987).

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

The Bill of Rights does not apply to Indian tribes. (quoting *Talton v. Mayes*, 163 U.S. 376 (1896)) *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

Indian courts ''differ from traditional American courts in a number of significant respects.'' (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)

The sovereign authority of Indian tribes is limited in ways state and federal authority is not. *Plains Commercial Bank v. Long Family Land & Cattle Co. et al.,* 128 S.Ct. 2709 (2008)

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

This historical and constitutional assumption of concurrent state-court jurisdiction over federal-law cases is completely missing with respect to tribal courts. *Nevada v. Hicks*, 533 U.S. 353 (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)

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) *Estate of Bruner v. Bruner,* 338 F.3d 1172 (10th Cir. 2003)

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 have suggested that incriminating evidence that may be seen through the window of a vehicle may be in plain view. *United States v. Sparks*, 291 F.3d 683 (10th Cir. 2002). This view may be assisted by a flashlight without any infringement of Fourth Amendment rights. *Texas v. Brown*, 460 U.S. 730 (1983) (internal cites omitted) *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

An officer may seize evidence of a crime if it is in plain view, its incriminating character is immediately apparent, and the officer has a lawful right of access to the item. *Horton v. California*, 496 U.S. 128 (1990) *United States v. Green*, 140 Fed.Appx. 798 (10th Cir. 2005)

21. Temporary relief

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 USA., Inc.,* 1 Okla. Trib. 267 (Musc. (Cr.) D.Ct. 1989).

22. Declaratory relief

Muscogee (Creek) Nation Supreme Court has power to issue declaratory relief regarding procedure by which Principal Chief's veto of a proposed ordinance was allegedly overridden, in suit brought by Principal Chief invoking Court's original jurisdiction. *Cox v. Childers*, 2 Okla. Trib. 276 (Muscogee (Creek) 1991).

23. Injunction

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).

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).

24. Mandamus and prohibition

Reason for declining writs of mandamus and prohibition is because these are extraordinary remedies to be issued only when no other means of attaining justice are available. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Because the codes do not specifically discuss standard for mandamus, the Court is free to interpret its own standards for using writs. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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

Although neither the Constitution nor Ordinances provide for mandamus so the Court can look to Oklahoma Law for guidance. *Kamp v. Cox*, 5 Okla. Trib. 520 (Musc. (Cr.) D.Ct. 1991).

District Court of Muscogee (Creek) Nation may impose fines on officials of Nation's executive branch for failure to comply with writ of mandamus directing them to comply with valid and constitutional tribal ordinance. *Frye v. Cox*, 2 Okla. Trib. 179 (Musc. (Cr.) D.Ct. 1991).

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).

25. Contempt

The distinction between a civil contempt and criminal contempt is dependent on the consequences to person accused of contempt. If a person is sentenced to a definite term for a past deed, it is criminal. If a fine is imposed that is not redeemable, it is criminal. The application of sanctions designed to coerce a person to comply with a court's orders is civil so long as the contemnor is able to purge (avoid) the fine by complying with court's order or is able to get out of jail by complying with a court order. In these cases, the sixth amendment, right to a jury trial, does not apply. *Ellis v. Muscogee (Creek) National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

The Court hereby ORDERS George Tiger, in his capacity as Speaker of the National Council, to return the below described official Court record to the office of the Supreme Court no later that 10:00 a.m. on August 3, 2007, said record being described as: The full and complete original audio recording which constitutes a portion of the official transcript of the Supreme Court hearing which was held on July 18, 2007 in the above captioned matter. Failure to fully and timely comply with this Order shall be deemed an act of direct contempt of this Court. *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)

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)

[T]his Court finds indirect civil contempt to consist of willful disobedience of any process or order lawfully issued or made by the Court, or resistance willfully offered by any person to the execution of a lawful order or process of the Court. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

For a Court of the Muscogee (Creek) Nation to hold someone in indirect civil contempt, the Court must determine by clear and convincing evidence that 1) the allegedly violated Order was valid and lawful; 2) the Order was clear, definite, and unambiguous; and 3) the alleged violator(s) had the ability to comply with the Order. Willful is defined as ''acts which are intentional, conscious, and directed towards achieving a purpose.'' *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]his Court has the ability to judge the credibility of the witnesses... *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

Due Process allows for a court to have a certain amount of discretion in fashioning indirect civil contempt sanctions as long as the sanction(s) imposed has comported with notions of fair play and justice. *Ellis v. Muscogee (Creek) Nation National Council, ''Ellis II''*, SC 06–07 (Muscogee (Creek) 2007)

We hold that the penalties for any case of indirect civil contempt shall be: a) Court or-

dered corrective action, and or; b) Public Censure, and or; c) Fine of not less than $1,000, and or; d) Imprisonment of not more than l2 months. *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)

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

Tribal Supreme Court has power to vacate contempt enforcement decree subsequent to purging of contempt. *In re Financial Services*, 2 Okla. Trib. 185 (Muscogee (Creek) 1991).

Tribal Supreme Court has power, when enforcing sanctions pursuant to a finding of contempt, to order financial institutions holding tribal funds to desist from paying such funds to a tribal official in contempt. *In re Financial Services*, 2 Okla. Trib. 142 (Muscogee (Creek) 1990).

District Court of Muscogee (Creek) Nation may impose fines on officials of Nation's executive branch for failure to comply with writ of mandamus directing them to comply with valid and constitutional tribal ordinance. *Frye v. Cox*, 2 Okla. Trib. 179 (Musc. (Cr.) D.Ct. 1991).

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

26. Seizure

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 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'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 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)

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).

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. 118 (Musc. (Cr.) D.Ct. 1993).

Even where tribe has validly seized a 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 vehicle, and release that vehicle to interest holder or to owner. *Tax Commission v. Nave*, 2 Okla. Trib. 435 (Musc. (Cr.) D.Ct. 1992).

27. Attorney's fees

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).

Unsuccessful litigant is not entitled to Court award of attorney's fees, costs or expenses. *Fife v. Health Systems*, 4 Okla. Trib. 319 (Muscogee (Creek) 1995).

Court may order payment of reasonable attorneys' fees by tribe to successful plaintiff/candidate in judicially-resolved election-law dispute. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

§ 2. [Supreme Court]

The Supreme Court shall be composed of six (6) members appointed by the Principal Chief, subject to majority approval by the Muscogee (Creek) National Council, and whose term shall be for six (6) years beginning July 1. No person shall be appointed as a Supreme Court Justice who has a felony conviction in a court of competent jurisdiction.

[Amended by NCA 95–72.]

Historical and Statutory Notes

1995 Amendments

The 1995 amendment was passed by referendum on July 22, 1995, by a vote of 1,378 to 231.

Cross References

Nomination and confirmation procedures for Supreme Court Justices and District Court Judge, see Title 26, § 3–201 et seq.

Notes of Decisions

1. Construction and application

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)

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)

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)

Each and every political appointee should be afforded an opportunity to relate and discuss his or her qualifications for the position to which he or she has been nominated by the office of the Principal Chief-this is the opportunity to be heard. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

[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)

[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 supermajority. *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 Council, at a regularly scheduled monthly meeting, to consider and vote either in affirmation or disaffirmation each and every Supreme Court Justice appointee presented by the office of the 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 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)

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)

Article VII of the Constitution of the Muscogee (Creek) Nation which establishes and defines the judicial branch of the Creek government contains all that is said regarding the Supreme Court and Inferior Courts. *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)

Nothing therein [Article VII of the Muscogee (Creek) Nation Constitution] mandates that said Justices and Judges shall be full citizens of the Muscogee (Creek) Nation and as is specifically set forth and provided for in the articles that pertain to the elected 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)

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)

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))*

It is THEREFORE ORDERED, ADJUDGED AND DECREED that each Justice of the Supreme Court of the Muscogee (Creek) Nation shall and do retain their position and authority and shall continue to serve as Justice until their successor is duly qualified. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

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).

2. Vacancies

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)

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)

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)

Each and every political appointee should be afforded an opportunity to relate and discuss his or her qualifications for the position to which he or she has been nominated by the office of the Principal Chief-this is the opportunity to be heard. *Oliver v. Muscogee (Creek) National Council*, SC 06–04 (Muscogee (Creek) 2006)

[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)

[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 Council, at a regularly scheduled monthly meeting, to consider and vote either in affirmation or disaffirmation each and every Supreme Court Justice appointee presented by the office of the 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 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)

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)

Article VII of the Constitution of the Muscogee (Creek) Nation which establishes and defines the judicial branch of the Creek government contains all that is said regarding the Supreme Court and Inferior Courts. *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)

Nothing therein [Article VII of the Muscogee (Creek) Nation Constitution] mandates that said Justices and Judges shall be full citizens of the Muscogee (Creek) Nation and as is specifically set forth and provided for in the articles that pertain to the elected 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)

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)

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))*

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

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

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).

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

§ 3. [Appellate procedures]

The Supreme Court shall, with the approval of the Muscogee (Creek) National Council establish procedures to insure that the appellant receives due process of law and prompt and speedy relief.

Cross References

Establishment of procedures, see Title 26, § 3–108.
Rules of Appellate Procedure, see Title 27, App. 2.

Notes of Decisions

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1. Interlocutory appeal

Court is aware of a limited range of interlocutory appeals are recognized in federal courts despite the lack of statutory provisions authorizing them. No such exceptions to the final rule order, however, have been articulated in our case law. *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).

Aggrieved party may apply to tribal Supreme Court to assume original jurisdiction and grant appropriate relief where trial court judge fails to disqualify. *Preferred Mgmt. Corp. v. National Council*, 2 Okla. Trib. 37 (Muscogee (Creek) 1990).

2. Standard of appellate review

[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 Court decided it had judicial power to render its decision in that case, not based on a specific grant of power, but on the implied powers derived from examination of the United States Constitution. See *Marbury v. Madison*, 1 Cranch, 137. The Court then decided, while not following United States law, the United State Supreme Court's decision was persuasive inasmuch as it was the opinion of the court that the Muscogee Nation Constitution was modeled after the U.S. Constitution as to the separation of powers doctrine. *Ellis v. Muscogee (Creek) National Council, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007)

The Supreme Court reviewed the record de novo and finds no evidence that the Citizenship Board acted arbitrarily and capriciously. *Muscogee (Creek) Nation of Oklahoma v. Graham and Johnson*, SC 06–03 (Muscogee (Creek) 2007)

The Court cannot supersede the powers granted to us with respect to our appellate authority. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Where an individual has failed to challenge directly an administrative body's license revocation, but rather collaterally attacks the action in a later judicial injunctive proceeding against that individual, such subsequent judicial proceeding involves no retrial de novo of the issues resolved at the license-revocation hearing, but only involves the limited questions of notice and due process. *Bruner v. Tax Commission*, 1 Okla. Trib. 102 (Muscogee (Creek) 1987).

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)

3. Right to appeal

NCA 82–30 does not provide Supreme Court with the power to review non-final orders except for limited circumstances. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

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).

The Court cannot supersede the powers granted to us with respect to our appellate authority. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Because there is Muscogee (Creek) Nation case law on final decision being appealable, there was no need for the court to engage in a detailed analysis of federal final decision opinions. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

The final order rule is an important element of our procedural law which serves to avoid unnecessary piecemeal review of lower court decisions. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Petitioners, just as any other litigant in the Muscogee (Creek) Courts still has available the right to appeal after a final order is issued by the District Court. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Following the 10th Circuit's pronouncement in *United States v. Roberts*, mandamus is not an appropriate remedy when the petitioners have adequate remedy for appeal. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

Petitioners have same remedies of appeal available to them as all parties in our Court system. *Brown and Williamson Tobacco Corp. v. District Court*, 5 Okla. Trib. 447 (Muscogee (Creek) 1998).

An aggrieved party may appeal to this Court from a final judgment entered in an action or special proceeding commenced in Tribal Court. *Kelly v. Wilde*, 5 Okla. Trib. 209 (Muscogee (Creek) 1996).

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).

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).

Court is aware of a limited range of interlocutory appeals are recognized in federal courts despite the lack of statutory provisions authorizing them. No such exceptions to the final rule order, however, have been articulated in our case law. *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 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).

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)

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)] we conclude, are not at odds with, and do not displace, *Montana.* Both decisions describe an exhaustion rule allowing tribal courts initially to respond to an invocation of their jurisdiction; neither establishes tribal court adjudicatory authority, even over the lawsuits involved in those cases. *Strate v. A–1 Contractors*, 520 U.S. 438 (1997)

[W]e do not extract from *National Farmers* anything more than a prudential exhaustion rule, in deference to the capacity of tribal courts ''to explain to the parties the precise basis for accepting [or rejecting] jurisdiction.'' (quoting *National Farmers Union Ins. Cos. v. Crow Tribe,* 471 U.S. 845 (1985)) *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)

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)

We also concluded that, in the suit against the tribal officers, the extent of the tribe's sovereignty to enact the challenged ordinances raised a federal issue sufficient for federal-question jurisdiction in the district court. [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)

Like this case, *Tenneco* involved two different aspects of an Indian tribe's ''sovereignty'': its immunity from suit and the extent of its power to enact and enforce laws affecting non-Indians. But it does not stand for the proposition, as the Miner parties suggest, that an Indian tribe cannot invoke its sovereign immunity from suit in an action that challenges the limits of the tribe's authority over non-Indians. On the contrary, we held in *Tenneco* that the tribe was immune from suit. [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)

We distinguished *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978)] noting that the Supreme Court in that case emphasized the availability of the tribal courts and the intra-tribal nature of the issues, whereas in *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] the plaintiffs were non-Indians who had been denied any remedy in a tribal forum. *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)

The *Dry Creek* rule has ''minimal precedential value''; in fact, this court has never held it to be applicable other than in the *Dry Creek* [*Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] decision itself. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

The Miner parties clearly fail to come within the narrow *Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980)] exception to tribal sovereign immunity. Considering whether they could have brought this action in the Tribal Court rather than the district court, they hypothesize that the Nation would have claimed immunity from suit in that forum as well. But they must show an actual attempt; their assumption of futility of the tribal-court remedy is not enough. *Miner Electric and Russell Miner v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007)

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)

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)

Dry Creek [Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980)]

has come to stand for the proposition that federal courts have jurisdiction to hear a suit against an Indian tribe under 25 U.S.C. § 1302, notwithstanding *Santa Clara Pueblo*, [*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978)] when three circumstances are present: (1) the dispute involves a non-Indian; (2) the dispute does not involve internal tribal affairs; and (3) there is no tribal forum to hear the dispute. Our jurisprudence in this field is circumspect, and we have emphasized the need to construe the *Dry Creek* exception narrowly in order to prevent a conflict with *Santa Clara*.(internal cites omitted) *Walton v. Pueblo et al.*, 443 F.3d 1274 (10th Cir. 2006)

[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)

4. Preservation of issues for appeal

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)

Where an individual has failed to challenge directly an administrative body's license revocation, but rather collaterally attacks the action in a later judicial injunctive proceeding against that individual, such subsequent judicial proceeding involves no retrial de novo of the issues resolved at the license-revocation hearing, but only involves the limited questions of notice and due process. *Bruner v. Tax Commission*, 1 Okla. Trib. 102 (Muscogee (Creek) 1987).

Tribal Supreme Court has authority to modify district court's order in a manner more favorable to appellee, where underlying facts warrant modification to correspond to relief petitioned and prayed for by appellee. *Bruner v. Tax Commission*, 1 Okla. Trib. 102 (Muscogee (Creek) 1987).

Tribal Supreme Court has inherent power to direct that only duly licensed and admitted to practice attorneys may represent litigants in courts of the Muscogee (Creek) Nation. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Courts may declare a particular candidate to be the successful candidate in a particular election. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

§ 4. [Chief Justice; sessions]

The Supreme Court shall be presided over by a Supreme Court Justice chosen from their number and shall be in regular, quarterly-scheduled session, coinciding with that of the fiscal year.

Cross References

Chief Justice as administrative officer for Supreme Court, see Title 26, § 1–101.

§ 5. [Decisions]

The decision of the Supreme Court shall be in writing and shall be final.

Cross References

Decision of the Supreme Court, see Title 27, App. 2, Rule 23.

Notes of Decisions

1. Foreign judgments

Court recognizes the concept of comity through previous order recognizing judicial proceedings of other sovereigns in the Muscogee (Creek) Nations Full Faith and Credit. *Grothaus v. Halliburton Oil Producing Co.*, 4 Okla. Trib 319 (Muscogee (Creek) 1995).

Courts of Muscogee (Creek) Nation will grant full faith and credit to all written judgments, decrees, or orders of federal and state courts, and the courts of other tribes, provided that court whose judgment is sought to be enforced grants reciprocity to judgments of courts of Muscogee (Creek) Nation, pursuant to procedures specified by Order of that Nation's Supreme Court. *In re Full Faith and Credit*, 3 Okla. Trib. 211 (Muscogee (Creek) 1993).

Foreign judgments from courts not granting reciprocity to courts of Muscogee (Creek) Nation, or from courts outside the United States, may be enforced in Nation's courts as otherwise

provided by tribal law. *In re Full Faith and Credit*, 3 Okla. Trib. 211 (Muscogee (Creek) 1993).

§ 6. [Litigation between Tribal Officers]

All litigation between tribal officers shall originate in the District Court of the Muscogee (Creek) Nation, with the right of appeal to the Supreme Court. All questions of fact shall be determined by jury trial.

[Added by 2009, [A114].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7, 2009, by a vote of 1,516 to 844.

ARTICLE VIII [REMOVAL OF OFFICERS]

Section

Section headings are editorially supplied.

§ 1. [Procedures]

The National Council shall enact an ordinance outlining procedures and causes for removal. Such procedures shall contain, but not limit 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.

Cross References

Removal of officers, see Title 31, § 1–101 et seq.

§ 2. [Petition for removal of Representative]

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

Cross References

Petition to remove a public officer, see Title 31, §§ 1–201, 1–202.

§ 3. [Petition for removal of Principal Chief, Second Chief or Supreme Court Justice]

A signed petition showing cause of removal containing twenty (20) per cent 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-fourths (3/4) vote of The National Council shall be required for removal from office.

Cross References

Petition to remove a public officer, see Title 31, §§ 1–201, 1–202.

Notes of Decisions

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1. Removal of tribal officers

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

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

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

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))*

It is THEREFORE ORDERED, ADJUDGED AND DECREED that each Justice of the Supreme Court of the Muscogee (Creek) Nation shall and do retain their position and authority and shall continue to serve as Justice until their successor is duly qualified. *Done in Conference, October 31, 1986 (Muscogee (Creek) Nation (1986))*

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).

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. National Council, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).*

2. Replacement of resigned or removed tribal officers

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

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

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

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

ARTICLE IX [AMENDMENT OF CONSTITUTION]

Section
1. [Amendment procedure].
2. Repealed.

Section headings are editorially supplied.

Cross References

Constitution Amendment Committee, see Title 19, §§ 11–101 et seq.

§ 1. [Amendment procedure]

(a) This Constitution shall be amended by:

(1) Passage of an amendment ordinance before The Muscogee (Creek) National Council, which shall require affirmative vote of two-thirds (2/3) of the full membership of the National Council for approval.

(2) A two-thirds (2/3) affirmative vote of the eligible voters who vote in special election called for said purpose by the Principal Chief pursuant to the rules and regulations that The Muscogee Creek National Council shall prescribe.

(b) It shall be the duty of the Principal Chief to set such an election date at the request of a majority of The Muscogee (Creek) National Council within thirty (30) calendar days.

Library References

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

Notes of Decisions

1. Construction and application

[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 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)

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, "Ellis II"*, SC 06–07 (Muscogee (Creek) 2007).

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 Principal Chief and the National Council. *Ellis v. Muscogee (Creek) Nation National Council, "Ellis II"*, SC 06–07 (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)

§ 2. [Repealed by 2009, Amendment 105 [A105], eff. Nov. 7, 2009]

Historical and Statutory Notes

The repeal of this section, which related to a constitutional convention, was passed by referendum on Nov. 7, 2009, by a vote of 1,350 to 998. The section was derived from:

NCA 2002–153.

NCA 05–195.

NCA 05–106.

ARTICLE X [RATIFICATION OF CONSTITUTION; FIRST ELECTION]

Section
1. [Ratification].
2. [First election].

Section headings are editorially supplied.

§ 1. [Ratification]

This Constitution, when ratified by:

(a) Those eligible to vote herein defined as:

(1) Those persons whose names appear on the final rolls of the Act of April 26, 1906 (34 Stat. 137) or

(2) Those persons who are lineal descendants of a person whose name appears on the final rolls of April 26, 1906 (34 Stat. 137) and

(b) A majority of those eligible who are registered to vote who vote in this Constitution Ratification Election of The Muscogee (Creek) Nation provided at least 30 per cent of those registered voters shall vote

shall become effective upon the date of ratification.

§ 2. [First election]

For the purposes of the first election of officers and representatives under this Constitution:

(a) Those persons eligible to vote shall include all persons registered for the Constitutional Ratification Election and those persons thereafter registered who arc Muscogee (Creek) Indian by blood and 18 years of age or more on the date of the election.

(b) Each district shall elect one representative.

ADOPTED this 20th day of August, 1979, by the Creek Constitution Commission in accordance with the Court Order of September 2, 1976, in the case of Harjo v. Andrus, Case 74–189, U. S. District Court, Washington, D. C.

CREEK CONSTITUTION COMMISSION

August 20th, 1979 /s/

Bryant Jesse, Chairman

/s/ /s/

Louis Fish, Commissioner Allen Harjo, Commissioner

/s/ /s/

Virginia Thomas, Commissioner Robert Trepp, Commissioner

CERTIFIED:

August 20, 1979

Paula L. Francis

Recording Secretary

APPROVAL

I, Sidney L. Mills, Acting Deputy Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 26, 1936, 49 Stat. 1967, as amended and delegated to me by 230 DM 1.1, do hereby approve the Constitution of the Muscogee (Creek) Nation subject to ratification by the qualified voters as provided in Article X of the said constitution; provided, that nothing in this approval shall be construed as authorizing any action under the constitution that would be contrary to federal law.

Acting Deputy Commissioner of Indian Affairs

Washington, D.C.

Date: August 17, 1979

CERTIFICATE OF RESULTS OF ELECTION

The Acting Deputy Commissioner of Indian Affairs approved the foregoing Constitution of The Muscogee (Creek) Nation on August 17, 1979. It was submitted for ratification to the qualified voters of The Muscogee (Creek) Nation and was on October 6, 1979 duly ratified by a vote of 1,896 for, and 1,694 against, in an election in which at least thirty percent (30%) of the 9,125 qualified voters cast their ballots in accordance with Section 3 of the Act of June 26, 1936, 49 Stat. 1967 [1].

[1] 25 U.S.C.A. § 503.

/s/

Bryant Jesse

Chairman, Election Board

/s/

Allen Harjo Election Board Member

/s/

Virginia W. Thomas Election Board Member

/s/

Louis Fish

Election Board Member

/s/

Robert Trepp

Election Board Member

Date: October 9, 1979

ARTICLE XI [BURIALS AND CEMETERIES]

Section

Section headings are editorially supplied.

§ 1. [Protection of individual burials and cemeteries]

The government of the Muscogee (Creek) Nation shall protect individual burials and cemeteries which contain burials of Muscogee people. The tribal government shall participate in the reburial of disinterred Muscogee persons and all objects removed from the original burial site. Burials shall be reinterred at or in close proximity to the place from which they were disinterred, and in a place protected by a Conservation Easement in the name of the Muscogee Nation in perpetuity. Objects of cultural patrimony, except those in possession of a Citizen or ceremonial ground, shall be protected by law as tribal common property and as tribal intellectual property. The jurisdiction of the Muscogee Nation in enforcing this Amendment shall include: the cultural perimeter of Muskoghean peoples in the southeastern United States, routes of removal, the routes and camps of the exodus to Kansas and Texas caused by the United States Civil War, and those lands described by the Treaty of 1833. [Added by 2009, [A112].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7, 2009, by a vote of 1,685 to 694.

ARTICLE XII [INITIATIVE AND REFERENDUM]

Section

Section headings are editorially supplied.

§ 1. [Power of initiative and referendum]

The Muscogee (Creek) People may propose and enact laws by the initiative or reject acts of the Muscogee (Creek) Nation National Council by referendum.

[Added by 2009, [A113].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7, 2009, by a vote of 1,258 to 1,096.

§ 2. [Application; signatures; certification]

An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by not less than one hundred (100) qualified Muscogee (Creek) Nation voters as sponsors and shall be filed with the office authorized by the Muscogee (Creek) Nation law to receive the same. The application shall be certified, if found in proper form. Denial of certification shall be subject to judicial review.

[Added by 2009, [A113].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7, 2009, by a vote of 1,258 to 1,096.

§ 3. [Petition; subject matter summary; filing]

After certification of the application, a petition containing a summary of the subject matter shall be prepared by the person authorized by Muscogee (Creek) Nation law to do so for circulation by the sponsors. If signed by qualified Muscogee (Creek) Nation voters who are equal in number to at least fifteen (15) percent of the electorate, it may be filed.

[Added by 2009, [A113].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7, 2009, by a vote of 1,258 to 1,096.

§ 4. [Time of filing; preparation of ballot title and summary]

An initiative petition may be filed at any time. The person authorized by Muscogee (Creek) Nation law to do so shall prepare a ballot title and proposition summarizing the proposed law(s), and shall place it/them on the ballot for the first election held after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

[Added by 2009, [A113].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7, 2009, by a vote of 1,258 to 1,096.

§ 5. [Time of filing referendum petition]

A referendum petition may be filed only within ninety (90) days after adjournment of the legislative session at which the act was passed. The person authorized by Muscogee (Creek) Nation law to do so shall prepare a ballot title and proposition summarizing the act and shall place them on the ballot for the first election held after adjournment of that session.

[Added by 2009, [A113].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7, 2009, by a vote of 1,258 to 1,096.

§ 6. [Votes required; certification of election results; effective dates; repeal and amendment]

If a majority of the votes cast on the proposition favor its adoption, the initiated measure is enacted. If a majority of the votes cast on the proposition favor the rejection of an act referred, it is rejected. The person authorized by Muscogee (Creek) Nation law to do so shall certify the election returns. An initiated law becomes effective ninety (90) days after certification, is not subject to veto by the Principal Chief, and may not be repealed by the Muscogee (Creek) Nation National Council within two (2) years of the effective date. It may be amended at any time. An act rejected by referendum is void thirty (30) days after certification. Additional procedures for the initiative and referendum may be prescribed by Muscogee (Creek) Nation law.

[Added by 2009, [A113].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7 2009, by a vote of 1,258 to 1,096.

§ 7. [Purpose of initiative and referendum; amendment of Constitution]

The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, or to laws necessary for the immediate preservation of the public peace, health, or safety of the Muscogee (Creek) People. No article, section, or provision of the Muscogee (Creek) Nation Constitution shall be amended except as provided in this Constitution.

[Added by 2009, [A113].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7, 2009, by a vote of 1,258 to 1,096.

§ 8. [Recall of elected officials]

All elected and/or appointed officials of the Muscogee (Creek) Nation are subject to recall by the qualified Muscogee (Creek) voters. The grounds for recall of a judicial officer shall be established by the Muscogee (Creek) Nation Supreme Court. The grounds for recall of an officer, other than a judge, are: serious malfeasance or nonfeasance, during the term of office, in the performance of the duties of the office, or; a conviction, during the term of office, of a felony or conviction of a misdemeanor involving moral turpitude. After certification of the application, as set forth in § 2 of this Amendment, a Petition for Recall shall be prepared by the person authorized by Muscogee (Creek) Nation law to do so and the petition shall set forth the specific conduct that may warrant recall. A Recall Petition may not be issued for circulation by the sponsors until the Muscogee (Creek) Nation Supreme Court has determined that the facts alleged in the petition are true and there exist sufficient grounds for issuing a Recall Petition. A Recall Petition must be signed by qualified Muscogee (Creek) voters who are equal in number to at least fifteen (15) percent of the electorate. Upon a determination by the person authorized by Muscogee (Creek) Nation law to so determine that a petition has been signed by at least the minimum number of the eligible voters, a Recall Election must be conducted in the manner provided by Muscogee (Creek) Nation law. The incumbent shall continue to perform the duties of office until the Recall Election results are officially declared and, unless the incumbent declines or no longer qualifies, the incumbent shall, without filing, be deemed to have filed for the Recall Election. A Recall Election may not occur less than six (6) months before the end of the officer's term. An officer who is removed from office by a Recall Election or who resigns from office after a Petition for Recall issues may not be appointed to fill the vacancy that is created. Additional procedures and grounds for recall maybe prescribed by the National Council.

[Added by 2009, [A113].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7, 2009, by a vote of 1,258 to 1,096.

ARTICLE XIII [COLLEGE OF THE MUSCOGEE NATION BOARD OF REGENTS]

Section

Section headings are editorially supplied.

§ 1. [Board of Regents of the College of the Muscogee Nation]

The governing body of the Mvskoke Etvlwv Nakcokv Mvhakv Svhulwecvt, otherwise known in the English language as the College of the Muscogee Nation, is hereby vested in the Board of Regents consisting of five members to be appointed by the Principal Chief of the Muscogee (Creek) Nation with the advice and consent of the National Council. The term of said Regents shall be in accordance with the rules set forth in the Charter and the By-laws of the Mvskoke Etvlwv Nakcokv Mvhakv Svhulwecvt, the College of the Muscogee Nation. The exception is that the appointed members of the Board of Regents in office at the time of the adoption of this Amendment as provided by law at the time of this Amendment's ratification, shall continue in office during the term for which they were appointed, and thereafter as provided herein. Members of the Board of Regents of the Mvskoke Etvlwv Nakcokv Mvhakv Svhulwecvt, the College of the Muscogee Nation, shall be subject to removal from office only as provided by law for the removal of elective officers not liable to impeachment.

[Added by 2009, [A115].]

Historical and Statutory Notes

2009 Enactment

The 2009 enactment was passed by referendum on Nov. 7, 2009, by a vote of 1,653 to 711.

APPENDIX

TREATIES AND AGREEMENTS BETWEEN THE UNITED STATES OF AMERICA AND THE MUSCOGEE (CREEK) NATION

NOTE: The Muscogee (Creek) Nation and the Publisher wish to thank the Oklahoma State University Library for permission to download and reprint these treaties and agreements from their website (http://digital.library.okstate.edu), where there is an electronic version of Indian Affairs: Laws and Treaties, compiled and edited by Charles J. Kappler (Washington: Government Printing Office, 1904).

United States Code Annotated

Obligations of pre-1871 treaties with Indian nations or tribes not impaired, see 25 U.S.C.A. § 71.

TREATY WITH THE CREEKS, 1790

Aug. 7, 1790. 7 Stat., 35. Proclamation, Aug. 13, 1790.

A Treaty of Peace and Friendship made and concluded between the President of the United States of America, on the Part and Behalf of the said States, and the undersigned Kings, Chiefs and, Warriors of the Creek Nation of Indians, on the Part and Behalf of the said Nation.

THE parties being desirous of establishing permanent peace and friendship between the United States and the said Creek Nation, and the citizens and members thereof, and to remove the causes of war by ascertaining their limits, and making other necessary, just and friendly arrangements: The President of the United States, by Henry Knox, Secretary for the Department of War, whom he hath constituted with full powers for these purposes, by and with the advice and consent of the Senate of the United States, and the Creek Nation, by the undersigned Kings, Chiefs and Warriors, representing the said nation have agreed to the following articles.

ARTICLE I.

There shall be perpetual peace and friendship between all the citizens of the United States of America, and all the individuals, towns and tribes of the Upper, Middle and Lower Creeks and Semanolies composing the Creek nation of Indians.

ARTICLE II.

The undersigned Kings, Chiefs and Warriors, for themselves and all parts of the Creek Nation within the limits of the United States, do acknowledge themselves, and the said parts of the Creek nation, to be under the protection of the United States of America, and of no other sovereign whosoever; and they also stipulate that the said Creek Nation will not hold any treaty with an individual State, or with individuals of any State.

ARTICLE III.

The Creek Nation shall deliver as soon as practicable to the commanding officer of the troops of the United States, stationed at the Rock–Landing on the Oconee river, all citizens of the United States, white inhabitants or negroes, who are now prisoners in any part of the said nation. And if any such prisoners or negroes should not be so delivered, on or before the first day of June ensuing, the governor of Georgia may empower three persons to repair to the said nation, in order to claim and receive such prisoners and negroes.

ARTICLE IV.

The boundary between the citizens of the United States and the Creek Nation is, and shall be, from where the old line strikes the river Savannah; thence up the said river to a place on the most northern branch of the same, commonly called the Keowee, where a north east line to be drawn from the top of the Occunna mountain shall intersect; thence along the said line in a south-west direction to Tugelo river; thence to the top of the Currahee mountain; thence to the head or source of the main south branch of the Oconee river, called the Appalachee; thence down the middle of the said main south branch and river Oconee, to its confluence with the Oakmulgee, which form the river Altamaha; and thence down the middle of the said Altamaha to the old line on the said river, and thence along the said old line to the river St. Mary's.

And in order to preclude forever all disputes relatively to the head or source of the main south branch of the river Oconee, at the place where it shall be intersected by the line aforesaid, from the Currahee mountain, the same shall be ascertained by an able surveyor on the part of the United States, who shall

be assisted by three old citizens of Georgia, who may be appointed by the Governor of the said state, and three old Creek chiefs, to be appointed by the said nation; and the said surveyor, citizens and chiefs shall assemble for this purpose, on the first day of October, one thousand seven hundred and ninety-one, at the Rock Landing on the said river Oconee, and thence proceed to ascertain the said head or source of the main south branch of the said river, at the place where it shall be intersected by the line aforesaid, to be drawn from the Currahee mountain. And in order that the said boundary shall be rendered distinct and well known, it shall be marked by a line of felled trees at least twenty feet wide, and the trees chopped on each side from the said Currahee mountain, to the head or source of the said main south branch of the Oconee river, and thence down the margin of the said main south branch and river Oconee for the distance of twenty miles, or as much farther as may be necessary to mark distinctly the said boundary. And in order to extinguish forever all claims of the Creek nation, or any part thereof, to any of the land lying to the northward and eastward of the boundary herein described, it is hereby agreed, in addition to the considerations heretofore made for the said land, that the United States will cause certain valuable Indian goods now in the state of Georgia, to be delivered to the said Creek nation; and the said United States will also cause the sum of one thousand and five hundred dollars to be paid annually to the said Creek nation. And the undersigned Kings, Chiefs and Warriors, do hereby for themselves and the whole Creek nation, their heirs and descendants, for the considerations above-mentioned, release, quit claim, relinquish and cede, all the land to the northward and eastward of the boundary herein described.

ARTICLE V.

The United States solemnly guarantee to the Creek Nation, all their lands within the limits of the United States to the westward and southward of the boundary described in the preceding article.

ARTICLE VI.

If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the Creeks lands, such person shall forfeit the protection of the United States, and the Creeks may punish him or not, as they please.

ARTICLE VII.

No citizen or inhabitant of the United States shall attempt to hunt or destroy the game on the Creek lands: Nor shall any such citizen or inhabitant go into the Creek country without a passport first obtained from the Governor of some one of the United States, or the officer of the troops of the United States commanding at the nearest military post on the frontiers, or such other person as the President of the United States may, from time to time, authorize to grant the same.

ARTICLE VIII.

If any Creek Indian or Indians, or person residing among them, or who shall take refuge in their nation, shall commit a robbery or murder or other capital

crime, on any of the citizens or inhabitants of the United States, the Creek nation, or town or tribe to which such offender or offenders may belong, shall be bound to deliver him or them up, to be punished according to the laws of the United States.

ARTICLE IX.

If any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, shall go into any town, settlement or territory belonging to the Creek nation of Indians, and shall there commit any crime upon, or trespass against the person or property of any peaceable and friendly Indian or Indians, which if committed within the jurisdiction of any state, or within the jurisdiction of either of the said districts, against a citizen or white inhabitant thereof, would be punishable by the laws of such state or district, such offender or offenders shall be subject to the same punishment, and shall be proceeded against in the same manner, as if the offence had been committed within the jurisdiction of the state or district to which he or they may belong, against a citizen or white inhabitant thereof.

ARTICLE X.

In cases of violence on the persons or property of the individuals of either party, neither retaliation nor reprisal shall be committed by the other, until satisfaction shall have been demanded of the party of which the aggressor is, and shall have been refused.

ARTICLE XI.

The Creeks shall give notice to the citizens of the United States of any designs, which they may know or suspect to be formed in any neighboring tribe, or by any person whatever against the peace and interests of the United States.

ARTICLE XII.

That the Creek nation may be led to a greater degree of civilization, and to become herdsmen and cultivators, instead of remaining in a state of hunters, the United States will from time to time furnish gratuitously the said nation with useful domestic animals and implements of husbandry. And further to assist the said nation in so desirable a pursuit, and at the same time to establish a certain mode of communication the United States will send such, and so many persons, to reside in said nation as they may judge proper, and not exceeding four in number, who shall qualify themselves to act as interpreters. These persons shall have lands assigned them by the Creeks for cultivation for themselves and their successors in office; but they shall be precluded exercising any kind of traffic.

ARTICLE XIII.

All animosities for past grievances shall henceforth cease; and the contracting parties will carry the foregoing treaty into full execution, with all good faith and sincerity.

ARTICLE XIV.

This treaty shall take effect and be obligatory on the contracting parties, as soon as the same shall have been ratified by the President of the United States, with the advice and consent of the Senate of the United States.

In witness of all and every thing herein determined, between the United States of America, and the whole Creek nation, the parties have hereunto set their hands and seals, in the city of New York, within the United States, this seventh day of August, one thousand seven hundred and ninety.

In behalf of the United States:

H. Knox, [L. S.]

Secretary of War and sole commissioner for treating with the Creek nation of Indians.

In behalf of themselves, and the whole Creek nation of Indians:

Alexander McGillivray, [L. S.]

Cusetahs:

Fuskatche Mico, or Birdtail King, his x mark, [L. S.]

Neathlock, or Second–Man, his x mark, [L. S.]

Halletemalthle, or Blue Giver, his x mark, [L. S.]

Little Tallisee:

Opay Mico, or the Singer, his x mark, [L. S.]

Totkeshajou, or Samoniac his x mark, [L. S.]

Big Tallisee:

Hopothe Mico, or Tallisee King, his x mark, [L. S.]

Opototache, or Long Side, his x mark, [L. S.]

Tuckabatchy:

Soholessee, or Young Second Man his x mark, [L. S.]

Ocheehajou, or Aleck Cornel, his x mark, [L. S.]

Natchez:

Chinabie, or the Great Natchez Warrior, his x mark, [L. S.]

Natsowachehee, or the Great Natchez Warrior's Brother, his x mark, [L. S.]

Thakoteehee, or the Mole, his x mark, [L. S.]

Oquakabee, his x mark, [L. S.]

Cowetas:

Tuskenaah, or Big Lieutenant, his x mark, [L. S.]

Homatah, or Leader, his x mark, [L. S.]

Chinnabie, or Matthews, his x mark, [L. S.]

Juleetaulematha, or Dry Pine, his x mark, [L. S.]

Of the Broken Arrow:

Chawookly Mico, his x mark, [L. S.]

Coosades:

Coosades Hopoy, or the Measurer, his x mark, [L. S.]
Muthtee, the Misser, his x mark, [L. S.]
Stimafutchkee, or Good Humor, his x mark, [L. S.]
Alabama Chief:
Stilnaleeje, or Disputer, his x mark, [L. S.]
Oaksoys:
Mumagechee, David Francis, his x mark, [L. S.]

Done in the presence of—
Richard Morris, chief justice of the State of New York,
Richard Varick, mayor of the city of New York,
Marinus Willet,
Thomas Lee Shippen, of Pennsylvania,
John Rutledge, jun'r,
Joseph Allen Smith,
Henry lzard,
Joseph Cornell, interpreter, his x mark.

TREATY WITH THE CREEKS, 1796

June 29, 1796. 7 Stat., 56. Proclamation, Mar. 18, 1797.

A treaty of peace and friendship made and concluded between the President of the United States of America, on the one Part, and Behalf of the said States, area the undersigned Kings, Chiefs and Warriors of the Creek Nation of Indians, on the Part of the said Nation.[1]

The parties being desirous of establishing permanent peace and friendship between the United States and the said Creek nation, and the citizens and members thereof; and to remove the causes of war, by ascertaining their limits, and making other necessary, just and friendly arrangements; the President of the United States, by Benjamin Hawkins, George Clymer, and Andrew Pickens, Commissioners whom he hath constituted with powers for these purposes, by and with the advice and consent of the Senate; and the Creek Nation of Indians, by the undersigned Kings Chiefs and Warriors, representing the whole Creek Nation, have agreed to the following articles:

ARTICLE I.

The Treaty entered into, at New–York, between the parties on the 7th day of August, 1790, is, and shall remain obligatory on the contracting parties, according to the terms of it, except as herein provided for.

ARTICLE II.

The boundary line from the Currahee mountain, to the head, or source of the main south branch of the Oconeé river, called, by the white people, Appalat-

chee, and by the Indians, Tulapocka, and down the middle of the same, shall be clearly ascertained, and marked, at such time, and in such manner, as the President shall direct. And the Indians will, on being informed of the determination of the President, send as many of their old chiefs, as he may require, to see the line ascertained and marked.

ARTICLE III.[1]

The President of the United States of America shall have full powers, whenever he may deem it advisable, to establish a trading or military post on the south side of the Alatamaha, on the bluff, about one mile above Beard's bluff; or any where from thence down the said river on the lands of the Indians, to garrison the same with any part of the military force of the United States, to protect the posts, and to prevent the violation of any of the provisions or regulations subsisting between the parties: And the Indians do hereby annex to the post aforesaid, a tract of land of five miles square, bordering one side on the river; which post and the lands annexed thereto, are hereby ceded to, and shall be to the use, and under the government of the United States of America.

ARTICLE IV.[1]

As soon as the President of the United States has determined on the time and manner of running the line from the Currahee mountain, to the head or source of the main south branch of the Oconee, and notified the chiefs of the Creek land of the same, a suitable number of persons on their part shall attend to see the same completed: And if the President should deem it proper, then to fix on any place or places adjoining the river, and on the Indian lands for military or trading posts; the Creeks who attend there, will concur in fixing the same, according to the wishes of the President. And to each post, the Indians shall annex a tract of land of five miles square, bordering one side on the river. And the said lands shall be to the use and under the government of the United States of America. Provided always, that whenever any of the trading or military posts mentioned in this treaty, shall, in the opinion of the President of the United States of America, be no longer necessary for the purposes intended by this cession, the same shall revert to and become a part of the Indian lands.

ARTICLE V.

Whenever the President of the United States of America, and the king of Spain, may deem it advisable to mark the boundaries which separate their territories, the President shall give notice thereof to the Creek chiefs, who will furnish two principal chiefs, and twenty hunters to accompany the persons employed on this business, as hunters and guides from the Chocktaw country, to the head of St. Mary's. The chiefs shall receive each half a dollar per day, and the hunters one quarter of a dollar each per day, and ammunition, and a reasonable value for the meat delivered by them for the use of the persons on this service.

ARTICLE VI.

The Treaties of Hopewell, between the United States and the Chocktaws and Chickasaws, and at Holston between the Cherokees and the United States, mark the boundaries of those tribes of Indians. And the Creek nation do hereby

relinquish all claims to any part of the territory inhabited or claimed by the citizens of the United States, in conformity with the said treaties.

ARTICLE VII.

The Creek nation shall deliver, as soon as practicable, to the superintendent of Indian affairs, at such place as he may direct, all citizens of the United States; white inhabitants and negroes who are now prisoners in any part of the said nation, agreeably to the treaty at New–York, and also all citizens, white inhabitants, negroes and property taken since the signing of that treaty. And if any such prisoners, negroes or property should not be delivered, on or before the first day of January next, the governor of Georgia may empower three persons to repair to the said nation, in order to claim and receive such prisoners, negroes and property, under the direction of the President of the United States.

ARTICLE VIII.

In consideration of the friendly disposition of the Creek nation towards the government of the United States, evidenced by the stipulations in the present treaty, and particularly the leaving it in the discretion of the President to establish trading or military posts on their lands; the commissioners of the United States, on behalf of the said states, give to the said nation, goods to the value of six thousand dollars, and stipulate to send to the Indian nation, two blacksmiths, with strikers, to be employed for the upper and lower Creeks with the necessary tools.

ARTICLE IX.

All animosities for past grievances shall henceforth cease, and the contracting parties will carry the foregoing treaty into full execution with all good faith and sincerity. Provided nevertheless, That persons now under arrest, in the state of Georgia, for a violation of the treaty at New–York, are not to be included in this amnesty, but are to abide the decision of law.

ARTICLE X.

This treaty shall take effect and be obligatory on the contracting parties, as soon as the same shall have been ratified by the President of the United States, by and with the advise and consent of the senate. Done at Colerain, the 29th of June, one thousand seven hundred and ninety-six.

Benjamin Hawkins, [L. S.]

George Clymer, [L. S.]

Andrew Pickens, [L. S.]

Cowetas:

Chruchateneah, his x mark, [L. S.]

Tusikia Mico, his x mark, [L. S.]

Inclenis Mico, his x mark, [L. S.]

Tuskenah, his x mark, [L. S.]

Ookfuskee Tustuneka, his x mark, [L. S.]
Clewalee Tustuneka, his x mark, [L. S.]
Cussitas:
Tusikia Mico, his x mark, [L. S.]
Cussita Mico, his x mark, [L. S.]
Fusateehee Mico, his x mark, [L. S.]
Opoey Mico, his x mark, [L. S.]
Broken Arrows:
Tustuneka Mico, his x mark, [L. S.]
Othley Opoey, his x mark, [L. S.]
Opoev Tustuneka, his x mark, [L. S.]
Oboethly Tustuneka, his x mark, [L. S.]
Euchees:
Euchee Mico, his x mark, [L. S.]
Usuchees:
Osaw Enehah, his x mark, [L. S.]
Ephah Tuskenah, his x mark, [L. S.]
Tusikia Mico, his x mark, [L. S.]
Chehaws:
Chehaw Mico, his x mark, [L. S.]
Talehanas:
Othley Poey Mico, his x mark, [L. S.]
Othley Poey Tustimiha, his mark, [L. S.]
Oakmulgees:
Opoey Thlocco, his x mark, [L. S.]
Parachuckley, his x mark, [L. S.]
Tuskenah, his x mark, [L. S.]
Euphales:
Pahose Mico, his x mark, [L. S.]
Tustunika Chopco, his x mark, [L. S.]
Ottassees:
Fusatchee Hulloo Mico, his x mark, [L. S.]
Tusikia Mico, his x mark, [L. S.]
Mico Opoey, his x mark, [L. S.]
Tallessees:
Tallessee Mico, his x mark, [L. S.]
Othley Poey Mico, his x mark, [L. S.]
Little Oakjoys:

Meeke Matla, his x mark, [L. S.]
Hicory Ground:
Opoey Mico, his x mark, [L. S.]
Kuyalegees:
Kelese Hatkie, his x mark, [L. S.]
Weakis:
Nenehomotca Opoey, his x mark, [L. S.]
Tusikia Mico, his x mark, [L. S.]
Cleewallees:
Opoey-e-Matla, his x mark, [L. S.]
Coosis:
Hosonupe Hodjo, his x mark, [L. S.]
Tuckabathees:
Holahto Mico, his x mark, [L. S.]
Tustunika Thlocco, his x mark, [L. S.]
Oakfuskees:
Pashphalaha, his x mark, [L. S.]
Abacouchees:
Spani Hodjo, his x mark, [L. S.]
Tustonika, his x mark, [L. S.]
Upper Euphales:
Opoey, his x mark, [L. S.]
Natchees:
Chinibe, his x mark, [L. S.]
Upper Cheehaws:
Spokoi Elodjo, his x mark, [L. S.]
Tustunika, his x mark, [L. S.]
Mackasookos:
Tuskeehenehaw, his x mark, [L. S.]
Oconees:
Knapematha Thlocco, his x mark, [L. S.]
Cusetahs:
Cusa Mico, his x mark, [L. S.]
Tusekia Mico Athee, his x mark, [L. S.]
Halartee Matla, his x mark, [L. S.]
Talahoua Mico, his x mark, [L. S.]
Neathlocto, his x mark, [L. S.]
Nuckfamico, his x mark, [L. S.]
Estechaco Mico, his x mark, [L. S.]

Tuskegee Tuskinagee, his x mark, [L. S.]
Cochus Mico, his x mark, [L. S.]
Opio Hajo, his x mark, [L. S.]
Oneas Tustenagee, his x mark, [L. S.]
Alak Ajo, his x mark, [L. S.]
Stilcpeck Chatee, his x mark, [L. S.]
Tuchesee Mico, his x mark, [L. S.]
Kealeegees:
Cheea Hajo, his x mark, [L. S.]
Hitchetaws:
Talmasee Matla, his x mark, [L. S.]
Tuckabatchees:
Tustincke Hajo, his x mark, [L. S.]
Okolissa, his x mark, [L. S.]
Cow-eta Matla, his x mark, [L. S.]
Coosa Mico, his x mark, [L. S.]
Fusatchee Mico, his x mark, [L. S.]
Pio Hatkee, his x mark, [L. S.]
Foosatchee Mico, his x mark, [L. S.]
Neathlaco, his x mark, [L. S.]
Tuchabatchee Howla, his x mark, [L. S.]
Spoko Hajo, his x mark, [L. s.]
Coosis:
Tuskegee Tustinagee, his x mark, [L. S.]
Talmasa Watalica, his x mark, [L. S.]
Euphalees:
Totkes Hago, his x mark, [L. S.]
Otasees:
Opio Tustinagee, his x mark, [L. S.]
Yafkee Mall Hajo, his x mark, [L. S.]
Oboyethlee Tustinagee, his x mark, [L. S.]
Tustinagee Hajo, his x mark, [L. S.]
Hillibee Tustinagee Hajo, his x mark, [L. S.]
Effa Tuskeena, his x mark, [L. S.]
Emathlee Loco, his x mark, [L. S.]
Tustanagee Mico, his x mark, [L. S.]
Yaha Tustinagee, his x mark, [L. S.]
Cunctastee Tustanagee, his x mark, [L. S.]

Ottasees:
Coosa Tustinagee, his x mark, [L. S.]
Neamatle Matla, his x mark, [L. S.]
Kialeegees:
Chuckchack Nincha, his x mark, [L. S.]
Opoyo Matla, his x mark, [L. S.]
Lachlee Matla, his x mark, [L. S.]
Big Tallasees:
Chowostia Hajo, his x mark, [L. S.]
Neathloco Opvo, his x mark, [L. S.]
Neathloco, his x mark, [L. S.]
Chowlactlev Mico, his x mark, [L. S.]
Tocoso Hajo, his x mark, [L. S.]
Hoochee Illatla, his x mark, [L. S.]
Howlacta, his x mark, [L. S.]
Tustinica Mico, his x mark, [L. S.]
Opoy Fraico, his x mark, [L. S.]
Big Talassee:
Houlacta, his x mark, [L. S.]
Etcatee Hajo, his x mark, [L. S.]
Chosolop Hajo, his x mark, [L. S.]
Coosa Hajo, his x mark, [L. S.]
Tuchabatchees:
Chohajo, his x mark, [L. S.]
Weeokees:
Tusticnika Hajo, his x mark, [L. S.]
Tuchabathees:
Neamatoochee, his x mark, [L. S.]
Cussitas:
Telewa Othleopoya his x mark, [L. S.]
Talmasse Matla, his x mark, [L. S.]
Niah Weathla, his x mark, [L. S.]
Emathlee-laco, his x mark, [L. S.]
Ottesee Matla, his x mark, [L. S.]
Muclassee Matla, his x mark, [L. S.]
Eufallee Matla, his x mark, [L. S.]
Tuckabatchees:
Cunipee Howla, his x mark, [L. S.]

Cowetas:

Elospotak Tustinagee, his x mark, [L. S.]

Natchez:

Spoko Hodjo, his x mark, [L. S.]

Uchees:

Tustinagee Chatee, his x mark, [L. S.]

Usuchees:

Spokoca Tustinagee, his x mark, [L. S.]

Othley-poey-Tustinagee, his mark, [L. S.]

Tuskeeneah, his x mark,

Witness:

J. Seagrove, superintendent Indian affairs, C. N.

Henry Gaither, lieutenant-colonel commandant,

Const. Freeman, A. W. D., major artillery and engineers,

Samuel Tinsley, captain, Third sub-legion.

Samuel Allison. ensign, Second sub-legion.

John W. Thompson, ensign, First IJ. S. S. legion.

Geo. Gillasspy, surgeon. L. U. S.

Tim. Barnard, D. A. and sworn interpreter.

James Burges, D. A. and sworn interpreter.

James Jordan.

Richard Thomas.

Alexander Cornels.

William Eaton, captain, Fourth U. S. sub-legion, commandant at Colerain, and secretary to the commission.

[1]This treaty was ratified on condition that the third and fourth articles should be modified as follows:

The Senate of the United States, two-thirds of the Senators present concurring, did, by their resolution of the second day of March instant, ''consent to, and advise the President of the United States, to ratify the Treaty of Peace and Friendship, made and concluded at Coleraine, in the state of Georgia, on the 29th June, 1796, between the President of the United States of America, on the part and behalf of the said States, and the Kings, Chiefs and Warriors of the Creek nation of Indians, on the part of the said nation: Provided, and on condition, that nothing in the third and fourth articles of the said treaty, expressed in the words following, 'Article 3d, The President of the United States of America shall have full powers, whenever he may deem it advisable, to establish a trading or military post on the south side of the Altamaha, on the bluff, about one mile above Beard's bluff; or any where from thence down the said river on the lands of the Indians, to garrison the same with any part of the military force of the United States, to protect the post, And the Indians do hereby annex to the post aforesaid, a tract of land of five miles square, bordering one side on the river, which post and the lands annexed thereto, are hereby ceded to, and shall be to the use, and under the government of the United States of America.'

'' 'Art. 4th, as soon as the President of the United States has determined on the time and manner of running the line from the Currahee mountain, to the head or source of the main south branch of the Oconnee, and notified the Chiefs of the Creek land of the same, a suitable number of persons on their part shall attend, to see the same completed: And if the President should deem it proper, then

to fix on any place or places adjoining the river, and on the Indian lands for military or trading posts: the Creeks who attend there, will concur in fixing the same, according to the wishes of the President. And to each post, the Indians shall annex a tract of land of five miles square, bordering one side on the river. And the said lands shall be to the use and under the government of the United States of America. Provided always, that whenever any of the trading or military posts mentioned in this treaty, shall, in the opinion of the President of the United States of America, be no longer necessary for the purposes intended by this cession, the same shall revert to, and become a part of the Indian lands,' shall be construed to affect any claim of the state of Georgia, to the right of preemption in the land therein set apart for military or trading posts; or to give to the United States without the consent of the said state, any right to the soil, or to the exclusive legislation over the same, or any other right than that of establishing, maintaining, and exclusively governing military and trading posts within the Indian territory mentioned in the said articles, as long as the frontier of Georgia may require these establishments.''

TREATY WITH THE CREEKS, 1802

June 16, 1802. 7 Stat., 68. Proclamation, Jan. 11, 1803.

A treaty of Limits between the United States of America and the Creek Nation of Indians.

THOMAS JEFFERSON, President of the United States of America, by James Wilkinson, of the state of Maryland, Brigadier General in the army of the United States, Benjamin Hawkins, of North–Carolina, and Andrew Pickens of South–Carolina, Commissioners Plenipotentiary of the United States, on the one part, and the Kings, Chiefs, Head Men and Warriors of the Creek Nation, in council assembled, on the other part, have entered into the following articles and conditions, viz.

ARTICLE I. The Kings, Chiefs, Head men and Warriors of the Creek nation, in behalf of the said nation, do by these presents cede to the United States of America all that tract and tracts of land, situate, lying and being within and between the following bounds, and the lines and limits of the extinguished claims of the said nation, heretofore ascertained and established by treaty. That is to say–beginning at the upper extremity of the high shoals of the Appalachee river, the same being a branch of the Oconee river, and on the southern bank of the same–running thence a direct course to a noted ford of the south branch of Little river, called by the Indians Chat-to-chuc-co hat-chee–thence a direct line to the main branch of Commissioners' creek, where the same is intersected by the path leading from the rock-landing to the Ocmulgee Old Towns, thence a direct line to Palmetto Creek, where the same is intersected by the Uchee path, leading from the Oconee to the Ocmulgee river–thence down the middle waters of the said Creek to Oconee river, and with the western bank of the same to its junction with the Ocmulgee river, thence across the Ocmulgee river to the south bank of the Altamaha river, and down the same at low water mark to the lower bank of Goose Creek, and from thence by a direct line to the Mounts, on the Margin of the Okefinocau swamp, raised and established by the commissioners of the United States and Spain at the head of the St. Mary's river; thence down the middle waters of the said river, to the point where the old line of demarkation strikes the same, thence with the said old line to the Altamaha river, and up the same to Goose Creek: and the said Kings, Chiefs, Head men and Warriors, do relinquish and quit claim to the United States all their right,

title, interest and pretensions, in and to the tract and tracts of land within and between the bounds and limits aforesaid, for ever.

ART. II. The commissioners of the United States, for and in consideration of the foregoing concession on the part of the Creek nation, and in full satisfaction for the same do hereby covenant and agree with the said nation, in behalf of the United States, that the said states shall pay to the said nation, annually, and every year, the sum of three thousand dollars, and one thousand dollars for the term of ten years, to the chiefs who administer the government, agreeably to a certificate under the hands and seals of the commissioners of the United States, of this date, and also twenty-five thousand dollars in the manner and form following, viz. Ten thousand dollars in goods and merchandise, the receipt of which is hereby acknowledged; ten thousand dollars to satisfy certain debts due from Indians and white persons of the Creek country to the factory of the United States; the said debts, after the payment aforesaid, to become the right and property of the Creek nation, and to be recovered for their use in such way and manner as the President of the United States may think proper to direct; five thousand dollars to satisfy claims for property taken by individuals of the said nation, from the citizens of the United States, subsequent to the treaty of Colerain, which has been or may be claimed and established agreeably to the provisions of the act for regulating trade and intercourse with the Indian tribes, and to preserve peace on the frontiers. And it is further agreed that the United States shall furnish to the said nation two sets of blacksmiths tools, and men to work them, for the term of three years.

ART. III. It is agreed by the contracting parties, that the garrison or garrisons which may be found necessary for the protection of the frontiers, shall be established upon the land of the Indians, at such place or places as the President of the United States may think proper to direct, in the manner and on the terms established by the treaty of Colerain.

ART. IV. The contracting parties to these presents, do agree that this treaty shall become obligatory and of full effect so soon as the same shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof. In testimony whereof, the commissioners plenipotentiary of the United States, and the kings, chiefs, Head men, and warriors, of the Creek nation, have hereunto subscribed their names and affixed their seals, at the camp of the commissioners of the United States, near fort Wilkinson on the Oconee river, this sixteenth day of June, in the year of our Lord one thousand eight hundred and two and of the independence of the United States the twenty-sixth.

James Wilkinson, [L. S.]

Benjamin Hawkins, [L. S.]

Andrew Pickens, [L. S.]

Efau Haujo, his x mark,

1 Tustunnuggee Thlucco, his x mark,

2 Hopoie Micco, his x mark,

3 Hopoie Olohtau, his x mark,

Tallessee Micco, his x mark,
Tussekia Micco, his x mark,
Micco Thlucco, his x mark,
Tuskenehau Chapco, his x mark,
Chouwacke le Micco, his x mark,
Toosce hatche Micco, his x mark,
Hopoie Yanholo, his x mark,
Hoithlewau le Micco, his x mark,
Efau Haujo, of Cooloome, his x mark,
Cussetuh Youholo, his x mark,
Wewocau Tustunnugee, his x mark,
Nehomahte Tustunnuggee, his x mark,
Tustunu Haujo, his x mark,
Hopoie Tustunnuggee, his x mark,
Talchischau Micco, his x mark,
Yaufkee Emautla Haujo, his x mark,
Coosaudee Tustunnuggee, his x mark,
Nenehomohtau Tustunnuggee Micco, his x mark,
Isfaunau Tustunnuggee, his x mark,
Efaulau Tustunnuggee, his x mark,
Tustunnuc Hoithlepoyuh, his x mark,
Ishopei Tustunnuggee, his x mark,
Cowetoh Tustunnuggee, his x mark,
Hopoithle Haujo, his x mark,
Wocsee Haujo, his x mark,
Uctijutchee Tustunnuggee, his mark,
Okelesau Hutkee, his x mark,
Pahose Micco, his x mark,
Micke Emautlau, his x mark,
Hoithlepoyau Haujo, his x mark,
Cussetuh Haujo, his x mark,
Ochesee Tustunnugee, his x mark,
Toosehatchee Haujo, his x mark,
Isfaune Hanjo, his x mark,
Hopoithle Hopoie, his x mark,
Olohtuh Emautlau, his x mark,

Timothy Barnard,
Alexander Cornells, his x mark,
Joseph Islands, his x mark,
Interpreters,

Alexander Macomb, jr. secretary to the commission,
William R. Boote, captain Second Regiment Infantry,
T. Blackburn, lieutenant commanding Company G.
John B. Barnes, lieutenant U. S. Army.
Wm. Hill, Ast. C. D.
Olohtau Haujo, his x mark,
Tulmass Haujo, his x mark,
Auttosee Emautlaw, his x mark.

TREATY WITH THE CREEKS, 1805

Nov. 14. 1805. 7 Stat., 96. Proclamation, June 2, 1806.

A convention between the United States and the Creek nation of Indians, concluded at the City of Washington, on the fourteenth day of November, in the year of our Lord one thousand eight hundred and five.

Articles of a Convention made between Henry Dearborn, secretary of war, being specially authorized therefor by the President of the United States, and Oche Haujo, William M'Intosh, Tuskenehau Chapce, Tuskenehau, Enehau Thlucco, Checopeheke, Emantlau, chiefs and head men of the Creek nation of Indians, duly authorized and empowered by said nation.

ART. I. The aforesaid chiefs and head men do hereby agree, in consideration of certain sums of money and goods to be paid to the said Creek nation by the government of the United States as hereafter stipulated, to cede and forever quit claim, and do, in behalf of their nation, hereby cede, relinquish, and forever quit claim unto the United States all right, title, and interest, which the said nation have or claim, in or unto a certain tract of land, situate between the rivers Oconee and Ocmulgee (except as hereinafter excepted) and bounded as follows, viz:

Beginning at the high shoals of Apalacha, where the line of the treaty of fort Wilkinson touches the same, thence running in a straight line, to the mouth of Ulcofauhatche, it being the first large branch or fork of the Ocmulgee, above the Seven Islands: Provided, however, That if the said line should strike the Ulcofauhatche, at any place above its mouth, that it shall continue round with that stream so as to leave the whole of it on the Indian side; then the boundary to continue from the mouth of the Ulcofauhatche, by the water's edge of the Ocmulgee river, down to its junction with the Oconee; thence up the Oconee to the present boundary at Tauloohatche creek; thence up said creek and following the present boundary line to the first-mentioned bounds, at the high shoals of Apalacha, excepting and reserving to the Creek nation, the title and posses-

sion of a tract of land, five miles in length and three in breadth, and bounded as follows, viz: Beginning on the eastern shore of the Ocmulgee river, at a point three miles on a straight line above the mouth of a creek called Oakchoncoolgau, which empties into the Ocmulgee, near the lower part of what is called the old Ocmulgee fields–thence running three miles eastwardly, on a course at right angles with the general course of the river for five miles below the point of beginning;–thence, from the end of the three miles, to run five miles parallel with the said course of the river; thence westwardly, at right angles with the last-mentioned line to the river; thence by the river to the first-mentioned bounds.

And it is hereby agreed, that the President of the United States, for the time being, shall have a right to establish and continue a military post, and a factory or trading house on said reserved tract; and to make such other use of the said tract as may be found convenient for the United States, as long as the government thereof shall think proper to continue the said military post or trading house. And it is also agreed on the part of the Creek nation, that the navigation and fishery of the Ocmulgee, from its junction with the Oconee to the mouth of the Ulcofauhatchee, shall be free to the white people; provided they use no traps for taking fish; but nets and seines may be used, which shall be drawn to the eastern shore only.

ART. II. It is hereby stipulated and agreed, on the part of the Creek nation that the government of the United States shall forever hereafter have a right to a horse path, through the Creek country, from the Ocmulgee to the Mobile, in such direction as shall, by the President of the United States, be considered most convenient, and to clear out the same, and lay logs over the creeks: And the citizens of said States, shall at all times have a right to pass peaceably on said path, under regulation and such restrictions, as the government of the United States shall from time to time direct; and the Creek chiefs will have boats kept at the several rivers for the conveyance of men and horses, and houses of entertainment established at suitable places on said path for the accommodation of travellers; and the respective ferriages and prices of entertainment for men and horses, shall be regulated by the present agent, Col. Hawkins, or by his successor in office, or as is usual among white people.

ART. III. It is hereby stipulated and agreed, on the part of the United States, as a full consideration for the land ceded by the Creek nation in the first article, as well as by permission granted for a horse path through their country, and the occupancy of the reserved tract, at the old Ocmulgee fields, that there shall be paid annually to the Creek nation, by the United States for the term of eight years, twelve thousand dollars in money or goods, and implements of husbandry, at the option of the Creek nation, seasonably signified from time to time, though the agent of the United States, residing with said nation, to the department of war; and eleven thousand dollars shall be paid in like manner, annually, for the term of the ten succeeding years, making in the whole, eighteen payments in the course of eighteen years, without interest: The first payment is to be made as soon as practicable after the ratification of this convention by the government of the United States, and each payment shall be made at the reserved tract, on the Ocmulgee fields.

ART. IV. And it is hereby further agreed, on the part of the United States, that in lieu of all former stipulation relating to blacksmiths, they will furnish the Creek nation for eight years, with two black-smiths and two strikers.

ART. V. The President of the United States may cause the line to be run from the high shoals of Apalacha, to the mouth of Ulcofauhatche, at such time, and in such manner, as he may deem proper, and this convention shall be obligatory on the contracting parties as soon as the same shall have been ratified by the government of the United States.

Done at the place, and on the day and year above written.

H. Dearborn, [L. S.]

Oche Haujo, his x mark, [L. S.]

William McIntosh, his x mark, [L. S.]

Tuckenehau Chapco, his x mark, [L. S.]

Tuckenehau, his x mark, [L. S.]

Enehau Thlucco, his x mark, [L. S.]

Chekopeheke Emanthau, his x mark, [L. S.]

Signed and sealed in presence of—

James Madison,

Rt. Smith,

Benjamin Hawkins,

Timothy Barnard,

Jno. Smith,

Andrew McClary.

The foregoing articles have been faithfully interpreted.

Timothy Barnard, interpreter.

TREATY WITH THE CREEKS, 1814

Aug. 9, 1814. 7 Stat., 120. Proclamation, Feb. 16, 1815.

Articles of agreement and capitulation, made and concluded this ninth day of August, one thousand eight hundred and fourteen, between major general Andrew Jackson, on behalf of the President of the United States of America, and the chiefs, deputies, and warriors of the Creek Nation.

WHEREAS an unprovoked, inhuman, and sanguinary war, waged by the hostile Creeks against the United States, hath been repelled, prosecuted and determined, successfully, on the part of the said States, in conformity with principles of national justice and honorable warfare—And whereas consideration is due to the rectitude of proceeding dictated by instructions relating to the re-establishment of peace: Be it remembered, that prior to the conquest of

that part of the Creek nation hostile to the United States, numberless aggressions had been committed against the peace, the property, and the lives of citizens of the United States, and those of the Creek nation in amity with her, at the mouth of Duck river, Fort Mimms, and elsewhere, contrary to national faith, and the regard due to an article of the treaty concluded at New–York, in the year seventeen hundred ninety, between the two nations: That the United States, previously to the perpetration of such outrages, did, in order to ensure future amity and concord between the Creek nation and the said states, in conformity with the stipulations of former treaties, fulfill, with punctuality and good faith, her engagements to the said nation: that more than two-thirds of the whole number of chiefs and warriors of the Creek nation, disregarding the genuine spirit of existing treaties, suffered themselves to be instigated to violations of their national honor, and the respect due to a part of their own nation faithful to the United States and the principles of humanity, by impostures [impostors,] denominating themselves Prophets, and by the duplicity and misrepresentation of foreign emissaries, whose governments are at war, open or understood, with the United States. Wherefore,

1st—The United States demand an equivalent for all expenses incurred in prosecuting the war to its termination, by a cession of all the territory belonging to the Creek nation within the territories of the United States, lying west, south, and south-eastwardly, of a line to be run and described by persons duly authorized and appointed by the President of the United States—Beginning at a point on the eastern bank of the Coosa river, where the south boundary line of the Cherokee nation crosses the same; running from thence down the said Coosa river with its eastern bank according to its various meanders to a point one mile above the mouth of Cedar creek, at Fort Williams, thence east two miles, thence south two miles, thence west to the eastern bank of the said Coosa river, thence down the eastern bank thereof according to its various meanders to a point opposite the upper end of the great falls, (called by the natives Woetumka,) thence east from a true meridian line to a point due north of the mouth of Ofucshee, thence south by a like meridian line to the mouth of Ofucshee on the south side of the Tallapoosa river, thence up the same, according to its various meanders, to a point where a direct course will cross the same at the distance of ten miles from the mouth thereof, thence a direct line to the mouth of Summochico creek, which empties into the Chatahouchie river on the east side thereof below the Eufaulau town, thence east from a true meridian line to a point which shall intersect the line now dividing the lands claimed by the said Creek nation from those claimed and owned by the state of Georgia: Provided, nevertheless, that where any possession of any chief or warrior of the Creek nation, who shall have been friendly to the United States during the war and taken an active part therein, shall be within the territory ceded by these articles to the United States, every such person shall be entitled to a reservation of land within the said territory of one mile square, to include his improvements as near the centre thereof as may be, which shall inure to the said chief or warrior, and his descendants, so long as he or they shall continue to occupy the same, who shall be protected by and subject to the laws of the United States; but upon the voluntary abandonment thereof, by such possessor or his descendants, the right of occupancy or possession of said lands shall

devolve to the United States, and be identified with the right of property ceded hereby.

2nd—The United States will guarantee to the Creek nation, the integrity of all their territory eastwardly and northwardly of the said line to be run and described as mentioned in the first article.

3d—The United States demand, that the Creek nation abandon all communication, and cease to hold any intercourse with any British or Spanish post, garrison, or town; and that they shall not admit among them, any agent or trader, who shall not derive authority to hold commercial, or other intercourse with them, by license from the President or authorized agent of the United States.

4th—The United States demand an acknowledgment of the right to establish military posts and trading houses, and to open roads within the territory, guaranteed to the Creek nation by the second article, and a right to the free navigation of all its waters.

5th—The United States demand, that a surrender be immediately made, of all the persons and property, taken from the citizens of the United States, the friendly part of the Creek nation, the Cherokee, Chickasaw, and Choctaw nations, to the respective owners; and the United States will cause to be immediately restored to the formerly hostile Creeks, all the property taken from them since their submission, either by the United States, or by any Indian nation in amity with the United States, together with all the prisoners taken from them during the war.

6th—The United States demand the caption and surrender of all the prophets and instigators of the war, whether foreigners or natives, who have not submitted to the arms of the United States, and become parties to these articles of capitulation, if ever they shall be found within the territory guaranteed to the Creek nation by the second article.

7th—The Creek nation being reduced to extreme want, and not at present having the means of subsistence, the United States, from motives of humanity, will continue to furnish gratuitously the necessaries of life, until the crops of corn can be considered competent to yield the nation a supply, and will establish trading houses in the nation, at the discretion of the President of the United States, and at such places as he shall direct, to enable the nation, by industry and economy, to procure clothing.

8th—A permanent peace shall ensue from the date of these presents forever, between the Creek nation and the United States, and between the Creek nation and the Cherokee, Chickasaw, and Choctaw nations.

9th—If in running east from the mouth of Summochico creek, it shall so happen that the settlement of the Kennards, fall within the lines of the territory hereby ceded, then, and in that case, the line shall be run east on a true meridian to Kitchofoonee creek, thence down the middle of said creek to its junction with Flint River, immediately below the Oakmulgee town, thence up the middle of Flint river to a point due east of that at which the above line struck the Kitchofoonee creek, thence east to the old line herein before mentioned, to wit: the line dividing the lands claimed by the Creek nation, from

those claimed and owned by the state of Georgia. The parties to these presents, after due consideration, for themselves and their constituents, agree to ratify and confirm the preceding articles, and constitute them the basis of a permanent peace between the two nations; and they do hereby solemnly bind themselves, and all the parties concerned and interested, to a faithful performance of every stipulation contained therein.

In testimony whereof, they have hereunto, interchangeably, set their hands and affixed their seals, the day and date above written.

Andrew Jackson, major general commanding Seventh Military District, [L. S.]

Tustunnuggee Thlucco, speaker for the Upper Creeks, his x mark, [L. S.]

Micco Aupoegau, of Toukaubatchee, his x mark, [L. S.]

Tustunnuggee Hopoiee, speaker of the Lower Creeks, his x mark, [L. S.]

Micco Achulee, of Cowetau, his x mark, [L. S.]

William McIntosh, jr., major of Cowetau, his x mark, [L. S.]

Tuskee Eneah, of Cussetau, his x mark, [L. S.]

Faue Emautla, of Cussetau, his x mark, [L. S.]

Toukaubatchee Tustunnuggee of Hitchetee, his x mark, [L. S.]

Noble Kinnard, of Hitchetee, his x mark, [L. S.]

Hopoiee Hutkee, of Souwagoolo, his x mark, [L. S.]

Hopoiee Hutkee, for Hopoie Yoholo, of Souwogoolo, his x mark, [L. S.]

Folappo Haujo, of Eufaulau, on Chattohochee, his x mark, [L. S.]

Pachee Haujo, of Apalachoocla, his x mark, [L. S.]

Timpoeechee Bernard, Captain of Uchees, his x mark, [L. S.]

Uchee Micco, his x mark, [L. S.]

Yoholo Micco, of Kialijee, his x mark, [L. S.]

Socoskee Emautla, of Kialijee, his x mark, [L. S.]

Choocchau Haujo, of Woccocoi, his x mark, [L. S.]

Esholoctee, of Nauchee, his x mark, [L. S.]

Yoholo Micco, of Tallapoosa Eufaulau, his x mark, [L. S.]

Stinthellis Haujo, of Abecoochee, his x mark, [L. S.]

Ocfuskee Yoholo, of Toutacaugee, his x mark, [L. S.]

John O'Kelly, of Coosa, [L. S.]

Eneah Thlucco, of Immookfau, his x mark, [L. S.]

Espokokoke Haujo, of Wewoko, his x mark, [L. S.]

Eneah Thlucco Hopoiee, of Talesee, his x mark, [L. S.]

Efau Haujo, of Puccan Tallahassee, his x mark, [L. S.]

Talessee Fixico, of Ocheobofau, his x mark, [L. S.]

Nomatlee Emautla, or captain Issacs, of Cousoudee, his x mark, [L. S.]

Tuskegee Emautla, or John Carr, of Tuskegee, his x mark, [L. S.]

Alexander Grayson, of Hillabee, his x mark, [L. S.]

Lowee, of Ocmulgee, his x mark, [L. S.]

Nocoosee Emautla, of Chuskee Tallafau, his x mark, [L. S.]

William McIntosh, for Hopoiee Haujo, of Ooseoochee, his x mark, [L. S.]

William McIntosh, for Chehahaw Tustunnuggee, of Chehahaw, his x mark, [L. S.]

William McIntosh, for Spokokee Tustunnuggee, of Otellewhoyonnee, his x mark, [L. S.]

Done at fort Jackson, in presence of—
Charles Cassedy, acting secretary,

Benjamin Hawkins, agent for Indian affairs,

Return J. Meigs, A. C. nation,

Robert Butler, Adjutant General U. S. Army,

J. C. Warren, assistant agent for Indian affairs,

George Mayfield,

Alexander Curnels,

George Lovett,

Public interpreters.

TREATY WITH THE CREEKS, 1818

Jan. 22, 1818. 7 Stat., 171. Proclamation, Mar. 28, 1818.

A treaty of limits between the United States and the Creek nation of Indians, made and concluded at the Creek Agency, on Flint river, the twenty-second day of January, in the year of our Lord, one thousand eight hundred and eighteen.

JAMES MONROE, President of the United States of America, by David Brydie Mitchell, of the state of Georgia, agent of Indian affairs for the Creek nation, and sole commissioner, specially appointed for that purpose, on the one part, and the undersigned kings, chiefs, head men, and warriors, of the Creek nation, in council assembled, on behalf of the said nation, of the other part, have entered into the following articles and conditions, viz:

ART. 1. The said kings, chiefs, head men, and warriors, do hereby agree, in consideration of certain sums of money to be paid to the said Creek nation, by the government of the United States, as hereinafter stipulated, to cede and forever quit claim, [and do, in behalf of their said nation, hereby cede, relinquish, and forever quit claim,] unto the United States, all right, title, and interest, which the said nation have, or claim, in or unto, the two following tracts of land, situate, lying, and being, within the following bounds; that is to say: 1st. Beginning at the mouth of Goose Creek, on the Alatamahau river,

thence, along the line leading to the Mounts, at the head of St. Mary's river, to the point where it is intersected by the line run by the commissioners of the United States under the treaty of Fort Jackson, thence, along the said last-mentioned line, to a point where a line, leaving the same, shall run the nearest and a direct course, by the head of a creek called by the Indians Alcasalekie, to the Ocmulgee river; thence, down the said Ocmulgee river, to its junction with the Oconee, the two rivers there forming the Alatamahau; thence, down the Alatamahau, to the first-mentioned bounds, at the mouth of Goose creek. 2d. Beginning at the high shoals of the Appalachee river, and from thence, along the line designated by the treaty made at the city of Washington, on the fourteenth day of November, one thousand eight hundred and five [fifteen], to the Ulcofouhatchie, it being the first large branch, or fork, of the Ocmulgee, above the Seven Islands; thence, up the eastern bank of the Ulcofouhatchie, by the water's edge, to where the path, leading from the high shoals of the Appalachie to the shallow ford on the Chatahochie, crosses the same; and, from thence, along the said path, to the shallow ford on the Chatahochie river; thence up the Chatahochie river, by the water's edge, on the eastern side, to Suwannee old town; thence, by a direct line, to the head of Appalachie; and thence, down the same, to the first-mentioned bounds at the high shoals of Appalachie.

ART. 2. It is hereby stipulated and agreed, on the part of the United States, as a full consideration for the two tracts of land ceded by the Creek nation in the preceding article, that there shall be paid to the Creek nation by the United States, within the present year, the sum of twenty thousand dollars, and ten thousand dollars shall be paid annually for the term of ten succeeding years, without interest; making, in the whole, eleven payments in the course of eleven years, the present year inclusive; and the whole sum to be paid, one hundred and twenty thousand dollars.

ART. 3. And it is hereby further agreed, on the part of the United States, that, in lieu of all former stipulations relating to blacksmiths, they will furnish the Creek nation for three years with two black-smiths and strikers.

ART. 4. The President may cause any line to be run which may be necessary to designate the boundary of any part of both, or either, of the tracts of land ceded by this treaty, at such time and in such manner as he may deem proper. And this treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the government of the United States.

Done at the place, and on the day before written.

D. B. Mitchell.

Tustunnugee Thlucco, his x mark, [L. S.]

Tustunnugee Hopoie, his x mark, [L. S.]

William McIntosh, [L. S.]

Tuskeenchaw, his x mark, [L. S.]

Hopoie Haujo, his x mark, [L. S.]

Cotchau Haujo, his x mark, [L. S.]

Inthlansis Haujo, his x mark, [L. S.]
Cowetau Micco, his x mark, [L. S.]
Cusselau Micco, his x mark, [L. S.]
Eufaula Micco, his x mark, [L. S.]
Hopoethle Hauja, his x mark, [L. S.]
Hopoie Hatkee, his x mark, [L. S.]
Yoholo Micco, his x mark, [L. S.]
Tustunnugee, his x mark, [L. S.]
Fatuske Henehau, his x mark, [L. S.]
Yauhau Haujo, his x mark, [L. S.]
Tuskeegee Emautla, his x mark, [L. S.]
Tustunnugee Hoithleloeo, his x mark, [L. S.]

Present:
D. Brearly, colonel Seventh Infantry.
Wm. S. Mitchell, assistant agent, I.A.C.N.
M. Johnson, lieutenant corps of artillery.
Sl. Hawkins,
George [G. L.] Lovet,
Interpreters.

TREATY WITH THE CREEKS, 1821

Jan. 8, 1821. 7 Stat., 215. Proclamation, Mar. 2, 1821.

Articles of a treaty entered into at the Indian Spring, in the Creek Nation, by Daniel M. Forney, of the State of North Carolina, and David Meriwether, of the State of Georgia, specially appointed for that purpose, on the part of the United States; and the Chiefs, Head Men, and Warriors, of the Creek Nation, in council assembled.

ART. 1. The Chiefs, Head Men, and Warriors, of the Creek Nation, in behalf of the said nation, do, by these presents, cede to the United States all that tract or parcel of land, situate, lying, and being, east of the following bounds and limits, viz: Beginning on the east bank of Flint river, where Jackson's line crosses, running thence, up the eastern bank of the same, along the water's edge, to the head of the principal western branch; from thence, the nearest and a direct line, to the Chatahooche river, up the eastern bank of the said river, along the water's edge, to the shallow Ford, where the present boundary line between the state of Georgia and the Creek nation touches the said river: Provided, however, That, if the said line should strike the Chatahooche river, below the Creek village Buzzard–Roost, there shall be a set-off made, so as to leave the said village one mile within the Creek nation; excepting and reserving

to the Creek nation the title and possession, in the manner and form specified, to all the land hereafter excepted, viz: one thousand acres, to be laid off in a square, so as to include the Indian Spring in the centre thereof; as, also, six hundred and forty acres on the western bank of the Oakmulgee river, so as to include the improvements at present in the possession of the Indian Chief General M'Intosh.

ART. 2. It is hereby stipulated, by the contracting parties, that the title and possession of the following tracts of land shall continue in the Creek nation so long as the present occupants shall remain in the personal possession thereof, viz: one mile square, each, to include, as near as may be, in the centre thereof, the improvements of Michey Barnard, James Barnard, Buckey Barnard, Cussena Barnard, and Efauemathlaw, on the east side of Flint river; which reservations shall constitute a part of the cession made by the first article, so soon as they shall be abandoned by the present occupants.

ART. 3. It is hereby stipulated, by the contracting parties, that, so long as the United States continue the Creek agency at its present situation on Flint river, the land included within the following boundary, viz: beginning on the east bank of Flint river, at the mouth of the Boggy Branch, and running out, at right angles, from the river, one mile and a half; thence up, and parallel with, the river, three miles: thence, parallel with the first line, to the river; and thence, down the river, to the place of beginning; shall be reserved to the Creek nation for the use of the United States' agency, and shall constitute a part of the cession made by the first article, whenever the agency shall be removed.

ART. 4. It is hereby stipulated and agreed, on the part of the United States, as a consideration for the land ceded by the Creek nation by the first article, that there shall be paid to the Creek nation, by the United States, ten thousand dollars in hand, the receipt whereof is hereby acknowledged; forty thousand dollars as soon as practicable after the ratification of this convention; five thousand dollars, annually, for two years thereafter; sixteen thousand dollars, annually, for five years thereafter; and ten thousand dollars, annually, for six years thereafter; making, in the whole, fourteen payments in fourteen successive years, without interest, in money or goods and implements of husbandry, at the option of the Creek nation, seasonably signified, from time to time, through the agent of the United States residing with said nation, to the Department of War. And, as a further consideration for said cession, the United States do hereby agree to pay to the state of Georgia whatever balance may be found due by the Creek nation to the citizens of said state, whenever the same shall be ascertained, in conformity with the reference made by the commissioners of Georgia, and the chiefs, head men, and warriors, of the Creek nation, to be paid in five annual instalments without interest, provided the same shall not exceed the sum of two hundred and fifty thousand dollars; the commissioners of Georgia executing to the Creek nation a full and final relinquishment of all the claims of the citizens of Georgia against the Creek nation, for property taken or destroyed prior to the act of Congress of one thousand eight hundred and two, regulating the intercourse with the Indian tribes.

ART. 5. The President of the United States shall cause the line to be run from the head of Flint river to the Chatahooche river, and the reservations made to the Creek nation to be laid off, in the manner specified in the first, second, and

third, articles of this treaty, at such time and in such manner as he may deem proper, giving timely notice to the Creek nation; and this Convention shall be obligatory on the contracting parties, as soon as the same shall have been ratified by the government of the United States.

Done at the Indian Spring, this eighth day of January, A. D. eighteen hundred and twenty-one.

D. M. Forney, [L. S.]
D. Meriwether, [L. S.]
Wm. McIntosh, [L. S.]
Tustunnugee Hopoie, his x mark, [L. S.]
Efau Emauthlau, his x mark, [L. S.]
Holoughlan, or Col. Blue, his x mark, [L. S.]
Cussetau Micco, his x mark, [L. S.]
Sotetan Haujo, his x mark, [L. S.]
Etomme Tustunnugee, his x mark, [L. S.]
Taskagee Emauthlau, his x mark, [L. S.]
Tuckle Luslee, his x mark, [L. S.]
Tuckte Lustee Haujo, his x mark, [L. S.]
Cunepee Emauthlau, his x mark, [L. S.]
Hethlepoie, his x mark, [L. S.]
Tuskeenaheocki, his x mark, [L. S.]
Chaughle Micco, his x mark, [L. S.]
Isfaune Tustunnuggee Haujo, his x mark, [L. S.]
Wau Thlucco Haujo, his x mark, [L. S.]
Itchu Haujo, his x mark, [L. S.]
Alabama Tustunnuggee,his x mark, [L. S.]
Holoughlan Tustunnuggee, his x mark, [L. S.]
Auhauluck Yohola, his x mark, [L. S.]
Oseachee Tustunnuggee, his x mark, [L. S.]
Houpauthlee Tustunnuggee, his x mark, [L. S.]
Nenehaumaughtoochie, his x mark, [L. S.]
Henelau Tixico, his x mark, [L. S.]
Tusekeagh Haujo, his x mark, [L. S.]
Joseph Marshall, [L. S.]

In presence of—
I. McIntosh,

David Adams,

Daniel Newman,

Commissioners of Georgia.

D. B. Mitchell, Agent for I. A.

William Meriwether, secretary U. S.

William Cook, secretary C. G.

William Hambly,

Sl. Hawkins,

George Levett,

Interpreters.

Discharge for All Claims

Articles of agreement entered into, between the undersigned Commissioners, appointed by the Governor of the state of Georgia, for and on behalf of the citizens of the said state, and the Chiefs, Head Men, and Warriors, of the Creek nation of Indians.

WHEREAS, at a conference opened and held at the Indian Spring, in the Creek nation, the citizens of Georgia, by the aforsaid commissioners, have represented that they have claims to a large amount against the said Creek nation of Indians: Now, in order to adjust and bring the same to a speedy and final settlement, it is hereby agreed by the aforesaid commissioners, and the chiefs, head men, and warriors, of the said nation, that all the talks had upon the subject of these claims at this place, together with all claims on either side, of whatever nature or kind, prior to the act of Congress of one thousand eight hundred and two, regulating the intercourse with the Indian tribes, with the documents in support of them, shall be referred to the decision of the President of the United States, by him to be decided upon, adjusted, liquidated, and settled, in such manner, and under such rules, regulations, and restrictions, as he shall prescribe: Provided, however, if it should meet the views of the President of the United States, it is the wish of the contracting parties, that the liquidation and settlement of the aforesaid claims shall be made in the state of Georgia, at such place as he may deem most convenient for the parties interested, and the decision and award, thus made and rendered, shall be binding and obligatory upon the contracting parties.

In witness whereof, we have hereunto set our hands and seals, this eighth day of January, one thousand eight hundred and twenty-one.

J. McIntosh, [L. S.]

David Adams, [L. S.]

Daniel Newman, [L. S.]

William McIntosh, [L. S.]

Tustunnuggee Hopoie, his x mark, [L. S.]

Efau Emauthlau, his x mark, [L. S.]

Present:
D. M. Forney,
D. Meriwether.

DISCHARGE FOR ALL CLAIMS ON THE CREEKS.

Jan. 8, 1821

WHEREAS a treaty or convention has this day been made and entered into, by and between the United States and the Creek nation, by the provisions of which the United States have agreed to pay, and the commissioners of the state of Georgia have agreed to accept, for and on behalf of the citizens of the state of Georgia, having claims against the Creek nation, prior to the year one thousand eight hundred and two, the sum of two hundred and fifty thousand dollars:

Now, know all men by these presents, that we, the undersigned, commissioners of the state of Georgia, for, and in consideration of, the aforesaid sum of two hundred and fifty thousand dollars, secured by the said treaty or convention to be paid to the state of Georgia, for the discharge of all bona fide and liquidated claims, which the citizens of the said state may establish against the Creek nation, do, by these presents, release, exonerate, and discharge, the said Creek nation from all and every claim and claims, of whatever description, nature, or kind, the same may be, which the citizens of Georgia now have, or may have had, prior to the year one thousand eight hundred and two, against the said nation. And we do hereby assign, transfer, and set over, unto the United States, for the use and benefit of the said Creek nation, for the consideration hereinbefore expressed, all the right, title, and interest, of the citizens of the said state, to all claims, debts, damages, and property, of every description and denomination, which the citizens of the said state have, or had, prior to the year one thousand eight hundred and two, as aforesaid, against the said Creek nation.

In witness whereof, we have hereunto affixed our hands and seals, at the Mineral Spring, in the said Creek nation, this eighth day of January, one thousand eight hundred and twenty-one.

J. McIntosh, [L. S.]
David Adams, [L. S.]
Daniel Newman, [L. S.]

Present:
D. M. Forney,
D. Meriwether,
D. B. Mitchell, Agent for Indian Affairs.

TREATY WITH THE CREEKS, 1825

Feb. 12, 1825. 7 Stat., 237. Proclamation, Mar. 7, 1825.

Articles of a convention, entered into and concluded at the Indian Springs, between Duncan G. Campbell, and James Meriwether, Commissioners on the part of the United States of America, duly authorised, and the Chiefs of the Creek Nation, in Council assembled.

WHEREAS the said Commissioners, on the part of the United States, have represented to the said Creek Nation that it is the policy and earnest wish of the General Government, that the several Indian tribes within the limits of any of the states of the Union should remove to territory to be designated on the west side of the Mississippi river, as well for the better protection and security of said tribes, and their improvement in civilization, as for the purpose of enabling the United States, in this instance, to comply with the compact entered into with the State of Georgia, on the twenty-fourth day of April, in the year one thousand eight hundred and two: And the said Commissioners having laid the late Message of the President of the United States, upon this subject, before a General Council of said Creek Nation, to the end that their removal might be effected upon terms advantageous to both parties:

And whereas the Chiefs of the Creek Towns have assented to the reasonableness of said proposition, and expressed a willingness to emigrate beyond the Mississippi, *those of Tokaubatchee excepted*:

These presents therefore witness, that the contracting parties have this day entered into the following Convention:

ART. 1. The Creek nation cede to the United States all the lands lying within the boundaries of the State of Georgia, as defined by the compact hereinbefore cited, now occupied by said Nation, or to which said Nation have title or claim; and also, all other lands which they now occupy, or to which they have title or claim, lying north and west of a line to be run from the first principal falls upon the Chatauhoochie river, above Cowetau town, to Ocfuskee Old Town, upon the Tallapoosa, thence to the falls of the Coosaw river, at or near a place called the Hickory Ground.

ART. 2. It is further agreed between the contracting parties, that the United States will give, in exchange for the lands hereby acquired, the like quantity, acre for acre, westward of the Mississippi, on the Arkansas river, commencing at the mouth of the Canadian Fork thereof, and running westward between said rivers Arkansas and Canadian Fork, for quantity. But whereas said Creek Nation have considerable improvements within the limits of the territory hereby ceded, and will moreover have to incur expenses in their removal, it is further stipulated, that, for the purpose of rendering a fair equivalent for the losses and inconveniences which said Nation will sustain by removal, and to enable them to obtain supplies in their new settlement, the United States agree to pay to the Nation emigrating from the lands herein ceded, the sum of four hundred thousand dollars, of which amount there shall be paid to said party of the second part, as soon as practicable after the ratification of this treaty, the sum of two hundred thousand dollars. And as soon as the said party of the second part shall notify the Government of the United States of their readiness to commence their removal, there shall be paid the further sum of one hundred

thousand dollars. And the first year after said emigrating party shall have settled in their new country, they shall receive of the amount first above named, the further sum of twenty-five thousand dollars. And the second year, the sum of twenty-five thousand dollars. And annually, thereafter, the sum of five thousand dollars, until the whole is paid.

ART. 3. And whereas the Creek Nation are now entitled to annuities of thirty thousand dollars each, in consideration of cessions of territory heretofore made, it is further stipulated that said last mentioned annuities are to be hereafter divided in a just proportion between the party emigrating and those that may remain.

ART. 4. It is further stipulated that a deputation from the said parties of the second part, may be sent out to explore the territory herein offered them in exchange; and if the same be not acceptable to them, then they may select any other territory, west of the Mississippi, on Red, Canadian, Arkansas, or Missouri Rivers—the territory occupied by the Cherokees and Choctaws excepted; and if the territory so to be selected shall be in the occupancy of other Indian tribes, then the United States will extinguish the title of such occupants for the benefit of said emigrants.

ART. 5. It is further stipulated, at the particular request of the said parties of the second part, that the payment and disbursement of the first sum herein provided for, shall be made by the present Commissioners negotiating this treaty.

ART. 6. It is further stipulated, that the payments appointed to be made, the first and second years, after settlement in the West, shall be either in money, merchandise, or provisions, at the option of the emigrating party.

ART. 7. The United States agree to provide and support a blacksmith and wheelwright for the said party of the second part, and give them instruction in agriculture, as long, and in such manner, as the President may think proper.

ART. 8. Whereas the said emigrating party cannot prepare for immediate removal, the United States stipulate, for their protection against the incroachments, hostilities, and impositions of the whites, and of all others; but the period of removal shall not extend beyond the first day of September, in the year eighteen hundred and twenty-six.

ART. 9. This treaty shall be obligatory on the contracting parties, so soon as the same shall be ratified by the President of the United States, by and with the consent of the Senate thereof.

In testimony whereof, the commissioners aforesaid, and the chiefs and head men of the Creek nation, have hereunto set their hands and seals, this twelfth day of February, in the year of our Lord one thousand eight hundred and twenty-five.

Duncan G. Campbell, [L. S.]

James Meriwether, [L. S.]

Commissioners on the part of the United States.

William McIntosh, head chief of Cowetaus, [L. S.]

Etommee Tustunnuggee, of Cowetau, his x mark, [L. S.]
Holahtau, or Col. Blue, his x mark, [L. S.]
Cowetau Tustunnuggee, his x mark, [L. S.]
Artus Mico, or Roby McIntosh, his x mark, [L. S.]
Chilly McIntosh, [L. S.]
Joseph Marshall, [L. S.]
Athlan Hajo, his x mark, [L. S.]
Tuskenahah, his x mark, [L. S.]
Benjamin Marshall, [L. S.]
Coccus Hajo, his x mark, [L. S.]
Forshatepu Mico, his x mark, [L. S.]
Oethlamata Tustunnuggee, his x mark,[L. S.]
Tallasee Hajo, his x mark, [L. S.]
Tuskegee Tustunnuggee, his mark, [L. S.]
Foshajee Tustunnuggee, his x mark, [L. S.]
Emau Chuccolocana, his x mark, [L. S.]
Abeco Tustunnuggee, his x mark, [L. S.]
Hijo Hajo, his x mark, [L. S.]
Thla Tho Hajo, his x mark, [L. S.]
Tomico Holueto, his x mark, [L. S.]
Yah Te Ko Hajo, his x mark, [L. S.]
No Cosee Emautla, his x mark, [L. S.]
Col. Wm. Miller, Thleeatchca, his x mark, [L. S.]
Abeco Tustunnuggee, his x mark, [L. S.]
Hoethlepoga Tustunnuggee, his x mark, [L. S.]
Hepocokee Emautla, his x mark, [L. S.]
Samuel Miller, his x mark, [L. S.]
Tomoc Mico, his x mark, [L. S.]
Charles Miller, his x mark, [L. S.]
Tallasee Hoja, or John Carr, his x mark,[L. S.]
Otulga Emautla, his x mark, [L. S.]
Ahalaco Yoholo of Cusetau, his x mark,[L. S.]
Walucco Hajo, of New Yauco, his x mark, [L. S.]
Cohausee Ematla, of New Yauco, his x mark, [L. S.]
Nineomau Tochee, of New Yauco, his x mark,[L. S.]
Konope Emautla, Sand Town, his x mark, [L. S.]
Chawacala Mico, Sand Town, his x mark, [L. S.]

Foctalustee Emaulta, Sand Town, his x mark, [L. S.]
Josiah Gray, from Hitchatee, his x mark, [L. S.]
William Kannard, from Hitchatee, his x mark, [L. S.]
Neha Thlucto Hatkee, from Hitchatee, his x mark,[L. S.]
Halathla Fixico, from Big Shoal, his x mark, [L. S.]
Alex. Lasley, from Talledega, his x mark, [L. S.]
Espokoke Hajo, from Talledega, his x mark, [L. S.]
Emauthla Hajo, from Talledega, his x mark, [L. S.]
Nincomatachee, from Talledega, his x mark, [L. S.]
Chuhah Hajo, from Talledega, his x mark, [L. S.]
Efie Ematla, from Talledega, his x mark, [L. S.]
Atausee Hopoie, from Talledega, his x mark, [L. S.]
James Fife, from Talledega, his x mark, [L. S.]

Executed on the day as above written, in presence of—
John Crowell, agent for Indian Affairs,
Wm. F. Hay, secretary,
Wm. Meriwether,
Wm. Hambly, United States interpreter.

Whereas, by a stipulation in the Treaty of the Indian Springs, in 1821, there was a reserve of land made to include the said Indian Springs for the use of General William M'Intosh, be it therefore known to all whom it may concern, that we, the undersigned chiefs and head men of the Creek nation, do hereby agree to relinquish all the right, title, and control of the Creek nation to the said reserve, unto him the said William M'lntosh and his heirs, forever, in as full and ample a manner as we are authorized to do.

Big B. W. Warrior, [L. S.]
Yoholo Micco, his x mark, [L. S.]
Little Prince, his x mark, [L. S.]
Hopoie Hadjo, his x mark, [L. S.]
Tuskehenahau, his x mark, [L. S.]
Oakefuska Yohola, his x mark, [L. S.]
John Crowell, agent for Indian affairs, [L. S.]
July 25, 1825.

Feb. 14, 1825. Additional article.

Whereas the foregoing articles of convention have been concluded between the parties thereto: And, whereas, the Indian Chief, General William McIntosh, claims title to the Indian Spring Reservation (upon which there are very extensive buildings and improvements) by virtue of a relinquishment to said McIntosh, signed in full council of the nation: And, whereas the said General William McIntosh hath claim to another reservation of land on the Ocmulgee river, and by his lessee and tenant, is in possession thereof:

Now these presents further witness, that the said General William McIntosh, and also the Chiefs of the Creek Nation, in council as assembled, do quit claim, convey, and cede to the United States, the reservations aforesaid, for, and in consideration of, the sum of twenty-five thousand dollars, to be paid at the time and in the manner as stipulated, for the first installment provided for in the preceding treaty. Upon the ratification of these articles, the possession of said reservations shall be considered as passing to the United States, and the accruing rents of the present year shall pass also.

In testimony whereof, the said commissioners, on the part of the United States, and the said William McIntosh, and the chiefs of the Creek nation, have hereunto set their hands and seals, at the Indian Springs, this fourteenth day of February, in the year of our Lord one thousand eight hundred and twenty-five.

Duncan G. Campbell, [L. S.]
James Meriwether, [L. S.]
United States commissioners.

William McIntosh, [L. S.]
Eetommee Tustunnuggee, his x mark, [L. S.]
Tuskegoh Tustunnuggee, his x mark, [L. S.]
Cowetau Tustunnuggee, his x mark, [L. S.]
Col. Wm. Miller, his x mark, [L. S.]
Josiah Gray, his x mark, [L. S.]
Nehathlucco Hatchee, his x mark, [L. S.]
Alexander Lasley, his x mark, [L. S.]
William Canard, his x mark, [L. S.]

Witnesses at execution:
Wm. F. Hay, secretary,
Wm. Hambly, United States interpreter.

TREATY WITH THE CREEKS, 1826

Jan. 24, 1826. 7 Stat., 286. Proclamation, Apr. 22, 1826.

Articles of a treaty made at the City of Washington, this twenty-fourth day of January, one thousand eight hundred and twenty-six, between James Barbour, Secretary of War, thereto specialty authorized by the

President of the United States, and the undersigned, Chiefs and Head Men of the Creek Nation of Indians, who have received full power from the said Nation to conclude and arrange all the matters herein provided for.

WHEREAS a treaty was concluded at the Indian Springs, on the twelfth day of February last, between Commissioners on the part of the United States, and a portion of the Creek Nation, by which an extensive district of country was ceded to the United States.

And whereas a great majority of the Chiefs and Warriors of the said Nation have protested against the execution of the said Treaty, and have represented that the same was signed on their part by persons having no sufficient authority to form treaties, or to make cessions, and that the stipulations in the said Treaty are, therefore, wholly void.

And whereas the United States are unwilling that difficulties should exist in the said Nation, which may eventually lead to an intestine war, and are still more unwilling that any cession of land should be made to them, unless with the fair understanding and full assent of the Tribe making such cession, and for a just and adequate consideration, it being the policy of the United States, in all their intercourse with the Indians, to treat them justly and liberally, as becomes the relative situation of the parties.

Now, therefore, in order to remove the difficulties which have thus arisen, to satisfy the great body of the Creek Nation, and to reconcile the contending parties into which it is unhappily divided, the following articles have been agreed upon and concluded, between James Barbour, Secretary of War, specially authorized as aforesaid, and the said Chiefs and Head Men representing the Creek Nation of Indians:

ARTICLE 1.

The Treaty concluded at the Indian Springs, on the twelfth day of February, one thousand eight hundred and twenty-five, between Commissioners on the part of the United States and the said Creek Nation of Indians, and ratified by the United States on the seventh day of March, one thousand eight hundred and twenty-five, is hereby declared to be null and void, to every intent and purpose whatsoever; and every right and claim arising from the same is hereby canceled and surrendered.

ARTICLE 2.

The Creek Nation of Indians cede to the United States all the land belonging to the said Nation in the State of Georgia and lying on the east side of the middle of the Chatahoochie river. And, also, another tract of land lying within the said State, and bounded as follows: Beginning at a point on the western bank of the said river forty-seven miles below the point where the boundary line between the Creeks and Cherokees strikes the Chatahoochie river, near the Buzzard's Roost, measuring the said distance in a direct line, and not following the meanders of the said river; and from the point of beginning, running in a direct line to a point in the boundary line, between the said Creeks and the Cherokees, thirty miles west of the said Buzzard's Roost; thence to the Buzzard's Roost, and thence with the middle of the said river to the place of beginning.

ARTICLE 3.

Immediately after the ratification of this Treaty, the United States agree to pay to the Chiefs of the said nation the sum of two hundred and seventeen thousand six hundred dollars to be divided among the Chiefs and Warriors of the said Nation.

ARTICLE 4.

The United States agree to pay to the said Nation an additional perpetual annuity of twenty thousand dollars.

ARTICLE 5.

The difficulties which have arisen in the said nation, in consequence of the Treaty of the Indian Springs, shall be amicably adjusted, and that portion of the Creek Nation who signed that treaty shall be admitted to all their privileges, as members of the Creek Nation, it being the earnest wish of the United States, without undertaking to decide upon the complaints of the respective parties, that all causes of dissatisfaction should be removed.

ARTICLE 6.

That portion of the Creek Nation, known as the friends and followers of the late General William McIntosh, having intimated to the government of the United States their wish to remove west of the Mississippi, it is hereby agreed, with their assent, that a deputation of five persons shall be sent by them, at the expense of the United States, immediately after the ratification of this Treaty, to examine the Indian country west of the Mississippi, not within either of the States or Territories, and not possessed by the Choctaws or Cherokees. And the United States agree to purchase for them, if the same can be conveniently done upon reasonable terms, wherever they may select, a country whose extent shall, in the opinion of the President, be proportioned to their numbers. And if such purchase cannot be thus made, it is then agreed that the selection shall be made where the President may think proper, just reference being had to the wishes of the emigrating party.

ARTICLE 7.

The emigrating party shall remove within twenty four months and the expense of their removal shall be defrayed by the United States. And such subsistence shall also be furnished them, for a term not exceeding twelve months after their arrival at their new residence, as, in the opinion of the President, their numbers and circumstances may require.

ARTICLE 8.

An agent, or sub-agent and Interpreter, shall be appointed to accompany and reside with them. And a blacksmith and wheelwright shall be furnished by the United States. Such assistance shall also be rendered to them in their agricultural operations, as the President may think proper.

ARTICLE 9.

In consideration of the exertions used by the friends and followers of General McIntosh to procure a cession at the Indian Springs, and of their past difficulties and contemplated removal, the United States agree to present to the Chiefs of the party, to be divided among the Chiefs and Warriors, the sum of

one hundred thousand dollars, if such party shall amount to three thousand persons, and in that proportion for any smaller number. Fifteen thousand dollars of this sum to be paid immediately after the ratification of this treaty, and the residue upon their arrival in the country west of the Mississippi.

ARTICLE 10.

It is agreed by the Creek Nation, that an agent shall be appointed by the President, to ascertain the damages sustained by the friends and followers of the late General McIntosh, in consequence of the difficulties growing out of the Treaty of the Indian Springs, as set forth in an agreement entered into with General Gains, at the Broken Arrow, and which have been done contrary to the laws of the Creek Nation; and such damages shall be repaired by the said Nation, or the amount paid out of the annuity due to them.

ARTICLE 11.

All the improvements which add real value to any part of the land herein ceded shall be appraised by Commissioners, to be appointed by the President; and the amount thus ascertained shall be paid to the parties owning such improvements.

ARTICLE 12.

Possession of the country herein ceded shall be yielded by the Creeks on or before the first day of January next.

ARTICLE 13.

The United States agree to guarantee to the Creeks all the country, not herein ceded, to which they have a just claim, and to make good to them any losses they may incur in consequence of the illegal conduct of any citizen of the United States within the Creek country.

ARTICLE 14.

The President of the United States shall have authority to select, in some part of the Creek country, a tract of land, not exceeding two sections, where the necessary public buildings may be erected, and the persons attached to the agency may reside.

ARTICLE 15.

Wherever any stream, over which it may be necessary to establish ferries, forms the boundary of the Creek country, the Creek Indians shall have the right of ferriage from their own land, and the citizens of the United States from the land to which the Indian title is extinguished.

ARTICLE 16.

The Creek Chiefs may appoint three Commissioners from their own people, who shall be allowed to attend the running of the lines west of the Chatahoochy river, and whose expenses, while engaged in this duty, shall be defrayed by the United States.

ARTICLE 17.

This treaty, after the same has been ratified by the President and Senate, shall be obligatory on the United States and on the Creek Nation. In testimony whereof, the said James Barbour, Secretary of War, authorized as aforesaid,

and the chiefs of the said Creek nation of Indians, have hereunto set their hands, at the City of Washington, the day and year aforesaid.

James Barbour,
O-poth-le Yoholo, his x mark,
John Stidham, his x mark,
Mad Wolf, his x mark,
Menawee, his x mark,
Tuskeekee Tustunnuggee, his x mark,
Charles Cornells, his x mark,
Timpoochy Barnard, his x mark,
Apauly Tustunnuggee, his x mark,
Coosa Tustunnuggee, his x mark,
Nahetluc Hopie, his x mark,
Selocta, his x mark,
Ledagi, his x mark,
Yoholo Micco, his x mark.

In presence of—
Thomas L. McKenney,
Lewis Cass,
John Crowell, agent for Indian Affairs,
Hezekiah Miller,
John Ridge, secretary Creek delegation,
David Vann.

SUPPLEMENTARY ARTICLE TO THE CREEK TREATY OF THE TWENTY–FOURTH JANUARY, 1826.

Mar. 31, 1826. 7 Stat., 289.

WHEREAS a stipulation in the second article of the Treaty of the twenty-fourth day of January, 1826, between the undersigned, parties to said Treaty, provides for the running of a line ''beginning at a point on the western bank of the Chatahoochee river, forty-seven miles below the point where the boundary line between the Creeks and Cherokees strikes the said river, near the Buzzard's Roost, measuring the said distance in a direct line, and not following the meanders of the said river, and from the point of beginning running in a direct line to a point in the boundary line between the said Creeks and the Cherokees, thirty miles west of the said Buzzard's Roost, thence to the Buzzard's Roost and thence with the middle of said river to the place of beginning.'' And whereas it having been represented to the party to the said Treaty in behalf of the Creek

Nation, that a certain extension of said lines might embrace in the cession all the lands which will be found to lie within the chartered limits of Georgia, and which are owned by the Creeks, the undersigned do hereby agree to the following extension of said lines, viz: In the place of ''forty-seven miles,'' as stipulated in the second article of the Treaty aforesaid, as the point of beginning, the undersigned agree that it shall be fifty miles, in a direct line below the point designated in the second article of said Treaty; thence running in a direct line to a point in the boundary line between the Creeks and Cherokees, forty-five miles west of said Buzzard's Roost, in the place of ''thirty miles,'' as stipulated in said Treaty; thence to the Buzzard's Roost, and thence to the place of beginning-it being understood that these lines are to stop at their intersection with the boundary line between Georgia and Alabama, wherever that may be, if that line shall cross them in the direction of the Buzzard's Roost, at a shorter distance than it is provided they shall run; and provided, also, that if the said dividing line between Georgia and Alabama shall not be reached by the extension of the two lines aforesaid, the one three, and the other fifteen miles, they are to run and terminate as defined in this supplemental article to the Treaty aforesaid.

It is hereby agreed, in consideration of the extension of said lines, on the part of the other party to the Treaty aforesaid, in behalf of the United States, to pay to the Creek Nation, immediately upon the ratification of said Treaty, the sum of thirty thousand dollars.

In witness whereof, the parties aforesaid have hereunto set their hands and seals, this thirty-first day of March, in the year of our Lord one thousand eight hundred twenty-six.

James Barbour, [L. S.]

Opothle Yoholo, his x mark, [L. S.]

John Stidham, his x mark, [L. S.]

Mad Wolf, his x mark, [L. S.]

Tuskeekee Tustunnuggee, his x mark, [L. S.]

Yoholo Micco, his x mark, [L. S.]

Menawee, his x mark, [L. S.]

Charles Cornells, his x mark, [L. S.]

Apauly Tustunnuggee, his x mark, [L. S.]

Coosa Tustunnuggee, his x mark, [L. S.]

Nahetluc Hopie, his x mark, [L. S.]

Selocta, his x mark, [L. S.]

Timpoochy Barnard, his x mark, [L. S.]

Ledagi, his x mark, [L. S.]

In presence of—
Thomas L. McKenney,

John Crowell, agent for Indian affairs,
John Ridge, secretary,
David Vann,
Wm. Hambly.

TREATY WITH THE CREEKS, 1827

Nov. 15, 1827. 7 Stat., 307. Proclamation, Mar. 4, 1828.

Articles of agreement made and concluded at the Creek Agency, on the fifteenth day of November, one thousand eight hundred and twenty-seven, between Thomas L. McKenney, and John Crowell, in behalf of the United States, of the one part, and Little Prince and others, Chiefs and Head Men of the Creek Nation, of the other part.

WHEREAS a Treaty of Cession was concluded at Washington City in the District of Columbia, by JAMES BARBOUR, Secretary of War, of the one part, and OPOTHLEOHOLO, JOHN STIDHAM, and OTHERS, of the other part, and which Treaty bears date the twenty-fourth day of January, one thousand eight hundred and twenty-six; and whereas, the object of said Treaty being to embrace a cession by the Creek Nation, of all the lands owned by them within the chartered limits of Georgia, and it having been the opinion of the parties, at the time when said Treaty was concluded, that all, or nearly all, of said lands were embraced in said cession, and by the lines as defined in the said Treaty, and the supplemental article thereto: and whereas it having been since ascertained that the said lines in said Treaty, and the supplement thereto, do not embrace all the lands owned by the Creek Nation within the chartered limits of Georgia, and the President of the United States having urged the Creek Nation further to extend the limits as defined in the Treaty aforesaid, and the Chiefs and head men of the Creek Nation being desirous of complying with the wish of the President of the United States, therefore, they, the Chiefs and head men aforesaid, agree to cede, and they do hereby cede to the United States, all the remaining lands now owned or claimed by the Creek Nation, not heretofore ceded, and which, on actual survey, may be found to lie within the chartered limits of the State of Georgia

In consideration whereof, and in full compensation for the above cession, the undersigned, THOMAS L. McKENNEY, and JOHN CROWELL, in behalf of the United States, do hereby agree to pay to the Chiefs and head men of the Creek Nation aforesaid, and as soon as may be after the approval and ratification of this agreement, in the usual forms, by the President and Senate of the United States, and its sanction by a council of the Creek Nation, to be immediately convened for the purpose, or by the subscription of such names, in addition to those subscribed to this instrument, of Chiefs and head men of the nation, as shall constitute it the act of the Creek Nation——the sum of twenty-seven thousand four hundred and ninety-one dollars.

It is further agreed by the parties hereto, in behalf of the United States, to allow, on account of the cession herein made, the additional sum of fifteen thousand dollars, it being the understanding of both the parties, that five

thousand dollars of this sum shall be applied, under the direction of the President of the United States, towards the education and support of Creek children at the school in Kentucky, known by the title of the ''Chocktaw Academy,'' and under the existing regulations; also, one thousand dollars towards the support of the Withington, and one thousand dollars towards the support of the Asbury stations, so called, both being schools in the Creek Nation, and under regulations of the Department of War; two thousand dollars for the erection of four horse mills, to be suitably located under the direction of the President of the United States; one thousand dollars to be applied to the purchase of cards and wheels, for the use of the Creeks, and the remaining five thousand dollars, it is agreed, shall be paid in blankets and other necessary and useful goods, immediately after the signing and delivery of these presents.

In witness whereof, the parties have hereunto set their hands and seals, this fifteenth day of November, one thousand eight hundred and twenty-seven.

Thomas L. McKenney, [L. S.]

John Crowell, [L. S.]

Little Prince, his x mark, [L. S.]

Epau-emathla, his x mark, [L. S.]

Timpouchoe Burnard, his x mark, [L. S.]

Hathlan Haujo, his x mark, [L. S.]

Oke-juoke Yau-holo, his x mark, [L. S.]

Cassetaw Micco, his x mark, [L. S.]

In presence of—

Luther Blake, secretary,

Andrew Hamill,

Whitman C. Hill,

Thomas Crowell.

Whereas, the above articles of agreement and cession were entered into at the Creek agency on the day and date therein mentioned, between the Little Prince, the head man of the nation, and five other chiefs, and Thomas L. McKenney and John Crowell, commissioners on the part of the United States, for the cession of all the lands owned or claimed by the Creek nation, and not heretofore ceded, and which, on actual survey, may be found to lie within the chartered limits of the State of Georgia, and which said agreement was made subject to the approval and ratification by the President and Senate of the United States, and the approval and sanction of the Creek nation, in general council of the said nation.

Now, these presents witnesseth, that we, the undersigned, chiefs and head men of the Creek nation in general council convened, at Wetumph, the third day of January, one thousand eight hundred and twenty-eight, have agreed and stipulated with John Crowell, commissioner on the part of the United States,

for and in consideration of the additional sum of five thousand dollars, to be paid to us in blankets, and other necessary articles of clothing, immediately after the signing and sealing of these presents, to sanction, and by these presents do hereby approve, sanction, and ratify, the abovementioned and foregoing articles of agreement and session.

In witness whereof, the parties have hereunto set their hands and seals, the day and date above mentioned.

John Crowell, [L. S.]

Broken Arrow Town:

Little Prince, his x mark, [L. S.]

Tuskugu, his x mark, [L. S.]

Cotche Hayre, his x mark, [L. S.]

Cusetau Town:

Tukchenaw, his x mark, [L. S.]

Epi Emartla, his x mark, [L. S.]

Oakpushu Yoholo, his x mark, [L. S.]

Cowetau Town:

Neah Thleuco, his x mark, [L. S.]

Tomasa Town:

Colitchu Ementla, his x mark, [L. S.]

Arthlau Hayre, his x mark, [L. S.]

Cowetaw Micco, his x mark, [L. S.]

Oswichu Town:

Halatta Tustinuggu, his x mark, [L. S.]

Octiatchu Emartla, his x mark, [L. S.]

Charles Emartla, his x mark, [L. S.]

Uchee Town:

Timpoeche Barned, his x mark, [L. S.]

Chawaccola Hatchu Town:

Coe E. Hayo, his x mark, [L. S.]

Powas Yoholo, his x mark, [L. S.]

Ema Hayre, his x mark,[L. S.]

In presence of—

Luther Blake, secretary,

Andrew Hamill,

Enoch Johnson,

Thomas Crowell.

Benjamin Marshall,
Paddy Carr,
interpreters.
Joseph Marshall,
John Winslett.

TREATY WITH THE CREEKS, 1832

Mar., 24, 1832. 7 Stat., 366. Proclamation, Apr. 4, 1832.

Articles of a treaty made at the City of Washington between Lewis Cass, thereto specially authorized by the President of the United States, and the Creek tribe of Indians.

ARTICLE I. The Creek tribe of Indians cede to the United States all their land, East of the Mississippi river.

ARTICLE II. The United States engage to survey the said land as soon as the same can be conveniently done, after the ratification of this treaty, and when the same is surveyed to allow ninety principal Chiefs of the Creek tribe to select one section each, and every other head of a Creek family to select one half section each, which tracts shall be reserved from sale for their use for the term of five years, unless sooner disposed of by them. A census of these persons shall be taken under the direction of the President and the selections shall be made so as to include the improvements of each person within his selection, if the same can be so made, and if not, then all the persons belonging to the same town, entitled to selections, and who cannot make the same, so as to include their improvements, shall take them in one body in a proper form. And twenty sections shall be selected, under the direction of the President for the orphan children of the Creeks, and divided and retained or sold for their benefit as the President may direct. Provided however that no selections or locations under this treaty shall be so made as to include the agency reserve.

ARTICLE III. These tracts may be conveyed by the persons selecting the same, to any other persons for a fair consideration, in such manner as the President may direct. The contract shall be certified by some person appointed for that purpose by the President but shall not be valid 'till the President approves the same. A title shall be given by the United States on the completion of the payment.

ARTICLE IV. At the end of five years, all the Creeks entitled to these selections, and desirous of remaining, shall receive patents therefor in fee simple, from the United States.

ARTICLE V. All intruders upon the country hereby ceded shall be removed therefrom in the same manner as intruders may be removed by law from other public land until the country is surveyed, and the selections made; excepting however from this provision those white persons who have made their own improvements, and not expelled the Creeks from theirs. Such persons may remain 'till their crops are gathered. After the country is surveyed and the selections made, this article shall not operate upon that part of it not included

in such selections. But intruders shall, in the manner before described, be removed from these selections for the term of five years from the ratification of this treaty or until the same are conveyed to white persons.

ARTICLE VI. Twenty-nine sections in addition to the foregoing may be located, and patents for the same shall then issue to those persons, being Creeks, to whom the same may be assigned by the Creek tribe. But whenever the grantees of these tracts possess improvements, such tracts shall be so located as to include the improvements, and as near as may be in the centre. And there shall also be granted by patent to Benjamin Marshall, one section of land, to include his improvements on the Chatahoochee river, to be bounded for one mile in a direct line along the said river, and to run back for quantity. There shall also be granted to Joseph Bruner a colored man, one half section of land, for his services as an interpreter.

ARTICLE VII. All the locations authorized by this treaty, with the exception of that of Benjamin Marshall shall be made in conformity with the lines of the surveys; and the Creeks relinquish all claim for improvements.

ARTICLE VIII. An additional annuity of twelve thousand dollars shall be paid to the Creeks for the term of five years, and thereafter the said annuity shall be reduced to ten thousand dollars, and shall be paid for the term of fifteen years. All the annuities due to the Creeks shall be paid in such manner as the tribe may direct.

ARTICLE IX. For the purpose of paying certain debts due by the Creeks, and to relieve them in their present distressed condition, the sum of one hundred thousand dollars, shall be paid to the Creek tribe as soon as may be after the ratification hereof, to be applied to the payment of their just debts, and then to their own relief, and to be distributed as they may direct, and which shall be in full consideration of all improvements.

ARTICLE X. The sum of sixteen thousand dollars shall be allowed as a compensation to the delegation sent to this place, and for the payment of their expenses, and of the claims against them.

ARTICLE XI. The following claims shall be paid by the United States.

For ferries, bridges and causeways, three thousand dollars, provided that the same shall become the property of the United States.

For the payment of certain judgments obtained against the chiefs eight thousand five hundred and seventy dollars.

For losses for which they suppose the United States responsible, seven thousand seven hundred and ten dollars.

For the payment of improvements under the treaty of 1826 one thousand dollars.

The three following annuities shall be paid for life.

To Tuske-hew-haw-Cusetaw two hundred dollars.

To the Blind Uchu King one hundred dollars.

To Neah Mico one hundred dollars.

There shall be paid the sum of fifteen dollars, for each person who has emigrated without expense to the United States, but the whole sum allowed under this provision shall not exceed fourteen hundred dollars.

There shall be divided among the persons, who suffered in consequence of being prevented from emigrating, three thousand dollars.

The land hereby ceded shall remain as a fund from which all the foregoing payments except those in the ninth and tenth articles shall be paid.

ARTICLE XII. The United States are desirous that the Creeks should remove to the country west of the Mississippi, and join their countrymen there; and for this purpose it is agreed, that as fast as the Creeks are prepared to emigrate, they shall be removed at the expense of the United States, and shall receive subsistence while upon the journey, and for one year after their arrival at their new homes—Provided however, that this article shall not be construed so as to compel any Creek Indian to emigrate, but they shall be free to go or stay, as they please.

ARTICLE XIII. There shall also be given to each emigrating warrior a rifle, moulds, wiper and ammunition and to each family one blanket. Three thousand dollars, to be expended as the President may direct, shall be allowed for the term of twenty years for teaching their children. As soon as half their people emigrate, one blacksmith shall be allowed them, and another when two-thirds emigrate, together with one ton of iron and two hundred weight of steel annually for each blacksmith.—These blacksmiths shall be supported for twenty years.

ARTICLE XIV. The Creek country west of the Mississippi shall be solemnly guarantied to the Creek Indians, nor shall any State or Territory ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves, so far as may be compatible with the general jurisdiction which Congress may think proper to exercise over them. And the United States will also defend them from the unjust hostilities of other Indians, and will also as soon as the boundaries of the Creek country West of the Mississippi are ascertained, cause a patent or grant to be executed to the Creek tribe; agreeably to the 3d section of the act of Congress of May 2d, [28,] 1830, entitled ''An act to provide for an exchange of lands with the Indians residing in any of the States, or Territories, and for their removal West of the Mississippi.''

ARTICLE XV. This treaty shall be obligatory on the contracting parties, as soon as the same shall be ratified by the United States.

In testimony whereof, the said Lewis Cass, and the undersigned chiefs of the said tribe, have hereunto set their hands at the city of Washington, this 24th day of March, A. D. 1832.

Lewis Cass,

Opothleholo, his x mark,

Tuchebatcheehadgo, his x mark,

Efiematla, his x mark,

Tuchebatche Micco, his x mark,

Tomack Micco, his x mark,
William McGilvery, his x mark
Benjamin Marshall.

In the presence of—
Samuel Bell,
William R. King,
John Tipton,
William Wilkins,
C. C. Clay,
J. Speight,
Samuel W. Mardis,
J. C. Isacks,
John Crowell, I. A.
Benjamin Marshall,
Thomas Carr,
John H. Brodnax,
Interpreters.

TREATY WITH THE CREEKS, 1833

Feb. 14, 1833. 7 Stat., 417. Proclamation, Apr. 12, 1834.

Articles of agreement and convention, made and concluded at Fort Gibson, between Montfort Stokes, Henry L. Ellsworth and John F. Schermerhorn, Commissioners on the part of the United States, and the undersigned Chiefs and Head-men of the Muskogee or Creek nation of Indians, this 14th day of February, A. D. 1833.

WHEREAS, certain articles of a treaty were concluded at the City of Washington, on the 24th day of January one thousand eight hundred and twenty-six, by and between James Barbour, Secretary of War, on behalf of the United States, and the Chiefs and head-men of the Creek nation of Indians; by which it is agreed that the said Indians shall remove to a country west of the Mississippi river: and whereas the sixth article of said treaty provides as follows:—''that a deputation of five persons shall be sent by them, (the Creek nation) at the expense of the United States, immediately after the ratification of the treaty, to examine the country west of the Mississippi, not within the limits of the States or Territories, and not possessed by the Choctaws or Cherokees. And the United States agree to purchase for them, if the same can conveniently be done upon reasonable terms, wherever they may select, a country, whose extent shall in the opinion of the President, be proportioned to their numbers. And if such purchase can not be thus made, it is then agreed that the selection shall be made where the President may think proper, just reference being had to the wishes of the emigrating party.'' And whereas, the Creek Indians aforesaid, did

send five persons as delegates, to explore the country pointed out to them by their treaty; which delegates selected a country west of the Territory of Arkansas, lying and being along and between the Verdigris, Arkansas, and Canadian rivers: and to the country thus selected, a party of the Creek Indians emigrated the following year. And whereas certain articles of treaty or convention, were concluded at the city of Washington on the 6th day of May, A. D. one thousand eight hundred and twenty-eight, by and between James Barbour Secretary of War, on behalf of the United States, and certain chiefs and head-men of the Cherokee nation of Indians; by the second article of which convention, a country was assigned to the Cherokee Indians aforesaid, including within its boundaries some of the lands previously selected and claimed by the Creek Indians, under their treaty aforesaid. And whereas, the President and Senate of the United States, for the purpose of protecting the rights secured to the Creek Indians, by their treaty stipulations, and with a view to prevent collision and misunderstanding between the two nations, ratified and confirmed the Cherokee treaty, on the 28th day of May, 1828, with the following proviso: viz.—''Provided, nevertheless, that the said convention shall not be so construed as to extend the northern boundary of the perpetual outlet west, provided for and guaranteed in the second article of said convention, north of the 36th deg. of north latitude, or so as to interfere with the lands assigned, or to be assigned, west of the Mississippi river to the Creek Indians, who have emigrated or may emigrate from the States of Georgia and Alabama, under the provisions of any treaty or treaties heretofore concluded between the United States and the Creek tribe of Indians: And provided further, that nothing in the said convention shall be construed to cede or assign to the Cherokees any lands heretofore ceded or assigned to any tribe or tribes of Indians, by any treaty now existing and in force, with any such tribe or tribes.'' And whereas the said proviso and ratification of the Cherokee treaty, was accepted by the delegates of the nation, then at the City of Washington as satisfactory to them, as is shown in and by their certain instrument in writing, bearing date the 31st day of May 1828, appended to and published with their treaty aforesaid. But, afterwards, the Cherokees of Arkansas and many of those residing east of the Mississippi at the time that treaty was concluded, removed to the country described in the second article of their treaty and settled upon a certain portion of the land claimed by the Creek Indians under their treaty provisions and stipulations. And whereas difficulties and dissensions thus arose between the Cherokees and Creek tribes about their boundary lines, which occasioned an appeal to the President of the United States for his interposition, and final settlement of the question, which they were unable to settle between themselves. And whereas the commissioners of the United States, whose names are signed hereto, in pursuance of the power and authority vested in them by the President of the United States, met the chiefs and head-men of the Cherokee and Creek nations of Indians, in council, on the 29th ultimo; and after a full and patient hearing and careful examination of all the claims, set up and brought forward by both the contending parties, they have this day effected an adjustment of all their difficulties, and have succeeded in defining and establishing boundary lines to their country west of the Mississippi, which have been acknowledged, in open council, this day, to be mutually satisfactory to both nations.

Now, therefore, for the purpose of securing the great objects contemplated by an amicable settlement of the difficulties heretofore existing between the Cherokee and Muskogee or Creek Indians, so injurious to both parties; and in order to establish boundary lines which will secure a country and permanent home to the whole Creek nation of Indians, including the Seminole nation who are anxious to join them, the undersigned commissioners, duly authorized to act on behalf of the United States, and the chiefs and head-men of the said Muskogee or Creek Indians, having full power and authority to act for their people west of the Mississippi, hereby agree to the following articles:

ART. I. The Muskogee or Creek nation of Indians, west of the Mississippi declare themselves to be the friends and allies of the United States, under whose parental care and protection they desire to continue: and that they are anxious to live in peace and friendship not only with their near neighbors and brothers, the Cherokees, but with all the surrounding tribes of Indians.

ART. II. The United States hereby agree, by and with the consent of the Creek and Cherokee delegates, this day obtained, that the Muskogee or Creek country west of the Mississippi, shall be embraced within the following boundaries, viz:—Beginning at the mouth of the north fork of the Canadian river, and run northerly four miles—thence running a straight line so as to meet a line drawn from the south bank of the Arkansas river opposite to the east or lower bank of Grand river, at its junction with the Arkansas, and which runs a course south, 44 deg. west, one mile, to a post placed in the ground—thence along said line to the Arkansas, and up the same and the Verdigris river, to where the old territorial line crosses it—thence along said line north to a point twenty-five miles from the Arkansas river where the old territorial line crosses the same—thence running a line at right angles with the territorial line aforesaid, or west to the Mexico line—thence along the said line southerly to the Canadian river or to the boundary of the Choctaw country—thence down said river to the place of beginning. The lines, hereby defining the country of the Muskogee Indians on the north and east, bound the country of the Cherokees along these courses, as settled by the treaty concluded this day between the United States and that tribe.

ART. III. The United States will grant a patent, in fee simple, to the Creek nation of Indians for the land assigned said nation by this treaty or convention, whenever the same shall have been ratified by the President and Senate of the United States—and the right thus guaranteed by the United States shall be continued to said tribe of Indians, so long as they shall exist as a nation, and continue to occupy the country hereby assigned them.

ART. IV. It is hereby mutually understood and agreed between the parties to this treaty, that the land assigned to the Muskogee Indians, by the second article thereof, shall be taken and considered the property of the whole Muskogee or Creek nation, as well of those now residing upon the land, as the great body of said nation who still remain on the east side of the Mississippi: and it is also understood and agreed that the Seminole Indians of Florida, whose removal to this country is provided for by their treaty with the U. S. dated May 9th, 1832, shall also have a permanent and comfortable home on the lands hereby set apart as the country of the Creek nation: and they (the Seminoles) will hereafter be considered a constituent part of said nation, but

are to be located on some part of the Creek country by themselves—which location will be selected for them by the commissioners who have signed these articles of agreement or convention.

ART. V. As an evidence of the kind feeling of the United States towards the Muskogee Indians, and as a testimonial of the [their] gratification with the present amicable and satisfactory adjustment of their difficulties with the Cherokees, experienced by the commissioners, they agree on behalf of the United States, to furnish to the Creek Indians west of the Mississippi, one blacksmith and one wheelwright or wagon-maker, as soon as they may be required by the nation, in addition to those already employed—also, to erect shops and furnish tools for the same, and supply the smith shops with one ton of iron and two hundred and fifty pounds of steel each; and allow the said Creek Indians, annually, for education purposes, the sum of one thousand dollars, to be expended under the direction of the President of the United States—the whole of the above grants to be continued so long as the President may consider them conducive to the interest and welfare of the Creek Indians: And the United States will also cause to be erected, as soon as conveniently can be done, four patent railway mills, for grinding corn; and will immediately purchase for them twenty-four cross-cut saws. It being distinctly understood, however, that the grants thus made to the Creek Indians, by this article, are intended solely for the use and benefit of that portion of the Creek nation, who are now settled west of the Mississippi.

ART. VI. The United States agree that the improvements which the Creek Indians may be required to leave, in consequence of the boundary lines this day settled between their people and the Cherokees, shall be valued with as little delay as possible, and a fair and reasonable price paid for the same by the United States.

ART. VII. It is hereby agreed by the Creek nation, parties hereto, that if the saline or salt plains on the great western prairies, should come within the boundaries defined by this agreement, as the country of the Creek nation, then, and in that case the President of the United States, shall have the power to permit all other friendly Indian tribes to visit said salt plains and procure thereon and carry away salt sufficient for their subsistence, without hindrance or molestation from the said Creek Indians.

ART. VIII. It is agreed by the parties to this convention, that the country hereby provided for the Creek Indians, shall be taken in lieu of and considered to be the country provided or intended to be provided, by the treaty made between the United States and the Creek nation on the 24th day of January, 1826, under which they removed to this country.

ART. IX. This agreement shall be binding and obligatory upon the contracting parties, as soon as the same shall be ratified and confirmed by the President and Senate of the United States. Done in open council, at fort Gibson, this 14th day of February, A.D. one thousand eight hundred and thirty-three.

Montfort Stokes, [L. S.]

Henry L. Ellsworth, [L. S.]

J. F. Schermerhorn, [L. S.]
Roly McIntosh, his x mark, [L. S.]
Fuss-hatchie Micoe, his x mark, [L. S.]
Benj. Perryman, his x mark, [L. S.]
Hospottock Harjoe, his x mark, [L. S.]
Cowo-coogee, Maltha, his x mark, [L. S.]
Holthimotty Tustonnucky, his x mark, [L. S.]
Toatkah Haussie, his x mark, [L. S.]
Istauchoggo Harjoe, his x mark, [L. S.]
Chocoatie Tustonnucky, his x mark, [L. S.]
Chiefs of Creek nation.

Signed, sealed, and delivered in our presence:
S. C. Stambaugh, secretary to comms,
M. Arbuckle, colonel Seventh Infantry,
Jno. Campbell, agent Creeks,
Geo. Vashon, agent Cherokee, west,
N. Young, major U. S. Army,
Wilson Nesbitt,
W. Seawell, lieutenant Seventh Infantry,
Peter A. Carns,
Jno. Hambly, interpreter,
Alex. Brown, his x mark, Cherokee interpreter.

TREATY WITH THE COMANCHE, ETC., 1835

Aug. 24, 1835. 7 Stat., 474. Proclamation, May 19, 1836.

Treaty with the Comanche and Witchetaw Indians and their associated Bands.

FOR the purpose of establishing and perpetuating peace and friendship between the United States of America and the Comanche and Witchetaw nations, and their associated bands or tribes of Indians, and between these nations or tribes, and the Cherokee Muscogee, Choctaw, Osage, Seneca and Quapaw nations or tribes of Indians, the President of the United States has, to accomplish this desirable object, and to aid therein, appointed Governor M. Stokes, M. Arbuckle Brigdi.-Genl. United States army, and F. W. Armstrong, Actg. Supdt. Western Territory, commissioners on the part of the United States; and the said Governor M. Stokes and M. Arbuckle, Brigdi. Genl. United States army, with the chiefs and representatives of the Cherokee, Muscogee, Choctaw, Osage, Seneca, and Quapaw nations or tribes of Indians, have met the chiefs,

warriors, and representatives of the tribes first above named at Camp Holmes, on the eastern border of the Grand Prairie, near the Canadian river, in the Muscogee nation, and after full deliberation, the said nations or tribes have agreed with the United States, and with one another upon the following articles:

ARTICLE 1.

There shall be perpetual peace and friendship between all the citizens of the United States of America, and all the individuals composing the Comanche and Witchetaw nations and their associated bands or tribes of Indians, and between these nations or tribes and the Cherokee, Muscogee, Choctaw, Osage, Seneca and Quapaw nations or tribes of Indians.

ARTICLE 2.

Every injury or act of hostility by one or either of the contracting parties on the other, shall be mutually forgiven and forever forgot.

ARTICLE 3.

There shall be a free and friendly intercourse between all the contracting parties hereto, and it is distinctly understood and agreed by the Comanche and Witchetaw nations and their associated bands or tribes of Indians, that the citizens of the United States are freely permitted to pass and repass through their settlements or hunting ground without molestation or injury on their way to any of the provinces of the Republic of Mexico, or returning therefrom, and that each of the nations or tribes named in this article, further agree to pay the full value for any injury their people may do to the goods or property of the citizens of the United States taken or destroyed, when peaceably passing through the country they inhabit, or hunt in, or elsewhere. And the United States hereby guaranty to any Indian or Indians of either of the said Comanche or Witchetaw nations, and their associated bands or tribes of Indians, a full indemnification for any horses or other property which may be stolen from them: Provided, that the property so stolen cannot be recovered, and that sufficient proof is produced that it was actually stolen by a citizen of the United States, and within the limits thereof.

ARTICLE 4.

It is understood and agreed by all the nations or tribes of Indians parties to this treaty, that each and all of the said nations or tribes have free permission to hunt and trap in the Great Prairie west of the Cross Timber, to the western limits of the United States.

ARTICLE 5.

The Comanche and Witchetaw nations and their associated bands or tribes of Indians, severally agree and bind themselves to pay full value for any injury their people may do to the goods or other property of such traders as the President of the United States may place near to their settlements or hunting ground for the purpose of trading with them.

ARTICLE 6.

The Comanche and Witchetaw nations and their associated bands or tribes of Indians, agree, that in the event any of the red people belonging to the nations

or tribes residing south of the Missouri river and west of the State of Missouri, not parties to this treaty, should visit their towns or be found on their hunting ground, that they will treat them with kindness and friendship and do no injury to them in any way whatever.

ARTICLE 7.

Should any difficulty hereafter unfortunately arise between any of the nations or tribes of Indians parties hereunto, in consequence of murder, the stealing of horses, cattle, or other cause, it is agreed that the other tribes shall interpose their good offices to remove such difficulties, and also that the Government of the United States may take such measures as they may deem proper to effect the same object, and see that full justice is done to the injured party.

ARTICLE 8.

It is agreed by the commissioners of the United States, that in consequence of the Comanche and Witchetaw nations and their associated bands or tribes of Indians having freely and willingly entered into this treaty, and it being the first they have made with the United States or any of the contracting parties, that they shall receive presents immediately after signing, as a donation from the United States; nothing being asked from these nations or tribes in return, except to remain at peace with the parties hereto, which their own good and that of their posterity require.

ARTICLE 9.

The Commanche and Witchetaw nations and their associated bands or tribes, of Indians, agree, that their entering into this treaty shall in no respect interrupt their friendly relations with the Republic of Mexico, where they all frequently hunt and the Comanche nation principally inhabit; and it is distinctly understood that the Government of the United States desire that perfect peace shall exist between the nations or tribes named in this article and the said republic.

ARTICLE 10.

This treaty shall be obligatory on the nations or tribes parties hereto from and after the date hereof, and on the United States from and after its ratification by the Government thereof.

Done, and signed, and sealed at Camp Holmes, on the eastern border of the Grand Prairie, near the Canadian river, in the Muscogee nation, this twenty-fourth day of August, one thousand eight hundred and thirty-five, and of the independence of the United States the sixtieth.

Montfort Stokes, [L. S.]

M. Arbuckle, Brigadier-General U. S. Army, [L. S.]

Comanches:

Ishacoly, or the wolf, his x mark, [L. S.]

Queenashano, or the war eagle, his x mark, [L. S.]

Tabaqueena, or the big eagle, his x mark, [L. S.]

Pohowetowshah, or the brass man, his x mark, [L. S.]

Shabbakasha, or the roving wolf, his x mark, [L. S.]
Neraquassi, or the yellow horse, his x mark, [L. S.]
Toshapappy, or the white hare, his x mark, [L. S.]
Pahohsareya, or the broken arm, his x mark, [L. S.]
Pahkah, or the man who draws the bow, his x mark, [L. S.]
Witsitony, or he who sucks quick, his x mark, [L. S.]
Leahwiddikah, or one who stirs up water, his x mark, [L. S.]
Esharsotsiki, or the sleeping wolf, his x mark, [L. S.]
Pahtrisula, or the dog, his x mark, [L. S.]
Ettah, or the gun, his x mark, [L. S.]
Tennowikah, or the boy who was soon a man, his x mark, [L. S.]
Kumaquoi, or the woman who cuts buffalo meat, his x mark, [L. S.]
Taqquanno, or the amorous man, his x mark, [L. S.]
Kowa, or the stinking tobacco box, his x mark, [L. S.]
Soko, or the old man, his x mark, [L. S.]

Witchetaws:
Kanostowah, or the man who don't speak, his x mark, [L. S.]
Kosharokah, or the man who marries his wife twice, his x mark, [L. S.]
Terrykatowatix, the riding chief, his x mark, [L. S.]
Tahdaydy, or the traveller, his x mark, [L. S.]
Hahkahpillush, or the drummer, his x mark, [L. S.]
Lachkah, or the first man in four battles, his x mark, [L. S.]
Learhehash, or the man who weans children too soon, his x mark, [L. S.]
Lachhardich, or the man who sees things done in the wrong way, his x mark, [L. S.]
Noccuttardaditch, or the man who tries to excel the head chief, his x mark, [L. S.]
Katarded wadick, or the man who killed an enemy in the water, his x mark, [L. S.]
Losshah, or the twin, his x mark, [L. S.]
Taytsaaytah, or the ambitious adulterer, his x mark, [L. S.]
Tokaytah, or the summer, his x mark, [L. S.]
Musshakratsatady, or the man with the dog skin cap, his x mark, [L. S.]
Kipsh, or the man with one side of his head shaved, his x mark, [L. S.]

Cherokees:
Dutch, his x mark, [L. S.]

David Melton, his x mark, [L. S.]

Muscogees:
Roley McIntosh, his x mark, [L. S.]
Chilly McIntosh, [L. S.]
Cho-co-te-tuston-nogu, or marshal of the Cho-co-te-clan, his x mark, [L. S.]
Tus-ca-ne-ha, or the marshal, his x mark, [L. S.]
Tusly Harjoe, or crazy town, his x mark, [L. S.]
Alexander Lasley, his x mark, [L. S.]
Neha Harjoe, or crazy marshal, his x mark, [L. S.]
Tustunucke Harjoe, or crazy warrior, his x mark, [L. S.]
Powes Emarlo, or marshal of Powes clan, his x mark, [L. S.]
Cosa Yehola, or marshal of Cosa clan, his x mark, [L. S.]
Powes Yehola, or marshal of Powes clan, his x mark, [L. S.]
Toma Yehola, or marshal of Toma clan, his x mark, [L. S.]
Cosado Harjoe, or crazy Cosada, his x mark, [L. S.]
Neha Harjoe, or crazy marshal, his x mark, [L. S.]
Cosada Tustonnogee, or the Cosada warrior, his x mark, [L. S.]
Octiyachee Yehola, or marshal of Octiyachee clan, his x mark, [L. S.]
Nulthcup Tustonnogee, or the middle warrior, his x mark, [L. S.]
Ufala Harjoe, or crazy Ufala, his x mark, [L. S.]
Cholafixico, or a fox without a heart, his x mark, [L. S.]
Joseph Miller, his x mark, [L. S.]
Samuel Brown, his x mark, [L. S.]
Archi Kennard, his x mark, [L. S.]
Towannay, or the slender man, his x mark, [L. S.]
Saccasumky, or to be praised, his x mark, [L. S.]
Siah Hardridge, his x mark, [L. S.]
Warrior Hardridge, his x mark, [L. S.]
George Stedham, his x mark, [L. S.]
Itchhas Harjoe, or crazy beaver, his x mark, [L. S.]
Itchofake Harjoe, or crazy deer's heart, his x mark, [L. S.]
Satockhaky, or the broad side, his x mark, [L. S.]
Semehechee, or hide it away, his x mark, [L. S.]
Hoyane, or passed by, his x mark, [L. S.]
Melola, or waving, his x mark, [L. S.]
Mateter, or the man who missed it, his x mark, [L. S.]

Billy, his x mark, [L. S.]
Tuskia Harjoe, or crazy brave, his x mark, [L. S.]
Aussy, or the pursuer, his x mark, [L. S.]
Tohoithla, or standing upon, his x mark, [L. S.]
John Hambly, [L. S.]
K. Lewis, [L. S.]
John Wynn, [L. S.]
David McKillap, [L. S.]

Choctaws:
Musha-la-tubbee, or the man killer, his x mark, [L. S.]
Na-tuck-a-chee, or fair day, his x mark, [L. S.]
Par-chee-ste-cubbee, or the scalpholder, his x mark, [L. S.]
To-pi-a-chee-hubbee, or the painted face, his x mark, [L. S.]
Ya-cha-a-o-pay, or the leader of the warriors, his x mark, [L. S.]
Tus-qui-hola-tah, or the travelling warrior, his x mark, [L. S.]
Tic-eban-jo-hubbee, or the first for war, his x mark, [L. S.]
Nucke Stubbee, or the bullet that has killed, his x mark, [L. S.]
Toqua, or what you say, his x mark, [L. S.]
Po-sha-ma-stubbee, or the killer, his x mark, [L. S.]
Nuck-ho-ma-harjoe, or the bloody bullet, his x mark, [L. S.]
Thomas Mickie, his x mark, [L. S.]
Halam-be-sha, or the bat, his x mark, [L. S.]
Ok-chia, or life, his x mark, [L. S.]
Tus-ca-homa-madia, or the red warrior, his x mark, [L. S.]
Tun-up-me-a-moma, or the red man who has gone to war, his x mark, [L. S.]
Par-homa, or the red hoop, his x mark, [L. S.]
No-wah-ba, the man who kills the enemy when he meets him, his x mark, [L. S.]
Hisho-he-meta, or a young waiter, his x mark, [L. S.]
Cho-ma-la-tubbee, or the man who is sure his enemy is dead, his x mark, [L. S.]
Hokla-no-ma, the traveller in the town, his x mark, [L. S.]
William, his x mark, [L. S.]
Neasho Nubbee, he who knows where the enemy is killed, his x mark, [L. S.]
Jim, his x mark, [L. S.]
Eu-eck Harma, or the man who is never tired, his x mark, [L. S.]
Nat-la Homa, or the bloody man, his x mark, [L. S.]

Pia-o-sta, or to whoop four times, his x mark, [L. S.]
Pa-sha-oa-cubbee, or the man who puts his foot on the scalp, his x mark, [L. S.]
La-po-na, or the man who killed the enemy, his x mark, [L. S.]
A-mo-na-tubbee, or lying in wait to kill, his x mark, [L. S.]
A-fa-ma-tubbee, or the man who kills every thing he meets, his x mark, [L. S.]

Osages:
Fah-ha-la, or the leaping deer, his x mark, [L. S.]
Shone-ta-sah-ba, or the black dog, his x mark, [L. S.]
Wah-shin-pee-sha, or the wicked man, his x mark, [L. S.]
Tun-wan-le-he, or the town mover, his x mark, [L. S.]
Whoa-har-tee, or the war eagle, his x mark, [L. S.]
Me-tah-ne-gah, or the crazy robe, his x mark, [L. S.]
Wah-she-sho-hee, or the smart spirit, his x mark, [L. S.]
Ah-ke-tah, or the soldier, his x mark, [L. S.]
Weir-sah-bah-sha, or the hidden black, his x mark, [L. S.]
Ne-ko-jah, or the man hunter, his x mark, [L. S.]
Hor-tea-go, or like night, his x mark, [L. S.]
Wah-hah-tah-nee, or the fast runner, his x mark, [L. S.]
Wah-nah-shee, or the taker away, his x mark, [L. S.]
Ces-sah-ba, or the man in black, his x mark, [L. S.]
Es-kah-mar-ne, or the white horn, his x mark, [L. S.]
Kou-sah-she-la, or walking together, his x mark, [L. S.]
Tcha-to-kah, or the buffalo, his x mark, [L. S.]
O-ke-sah, or the man aside, his x mark, [L. S.]
Wah-she-wah-ra, or the stopper, his x mark, [L. S.]
Wah-ho-ba-shungee, ortheidolater, his x mark, [L. S.]
Tone-ba-wah-tcha-la, or hard to look at the sun rising, his x mark, [L. S.]
Shoe-chem-mo-nee, or the elk whistler, his x mark, [L. S.]
Wash-kah-cha, or the tumbler, his x mark, [L. S.]
Wah-ha, or the Pawnee chief's namesake, his x mark, [L. S.]
Wah-kee-bah-nah, or the hard runner, his x mark, [L. S.]
War-tcha-sheen-gah, or the scalp-carrier, his x mark, [L. S.]
O-shaun-ga-tun-ga, or the big path, his x mark, [L. S.]
Wah-hee-no-pee, or the bone necklace, his x mark, [L. S.]
Lee-sap-kah-pee, or the man who missed his enemy, his x mark, [L. S.]
Wah-to-ke-hak, or raw meat, his x mark, [L. S.]

Wah-wah-shee, or quick runner, his x mark, [L. S.]
Kah-he-ka-saree, or chief killer, his x mark, [L. S.]
O-lash-tah-ba, or plate-licker, his x mark, [L. S.]
Ma-ne-nah-shee, or the walker, his x mark, [L. S.]
Shaun-ga-mo-nee, or the fall chief, his x mark, [L. S.]
Tee-sha-wah-ra, or dry grass, his x mark, [L. S.]
Ne-kah-wah-shee-tun-gah, or the brave spirit, his x mark, [L. S.]

Senecas:
Thomas Brant, his x mark, [L. S.]
Small Crout Spicer, his x mark, [L. S.]
Isaac, his x mark, [L. S.]
Mingo Carpenter, his x mark, [L. S.]
John Sky, his x mark, [L. S.]
Henry Smith, his x mark, [L. S.]
Little Town Spicer, his x mark, [L. S.]
Young Henry, his x mark, [L. S.]
Peter Pork, his x mark, [L. S.]
William Johnston, his x mark, [L. S.]
Big Bone, his x mark, [L. S.]
Big Isaac, his x mark, [L. S.]
Civil Jack, his x mark, [L. S.]
Ya-ga-ha, or the water in the apple, his x mark, [L. S.]
Cau-ya-que-neh, or the snow drift, his x mark, [L. S.]
Ya-ta-ato, or the little lake, his x mark, [L. S.]
Douglass, his x mark, [L. S.]
George Herring, his x mark, [L. S.]

Quapaws:
Hi-ka-toa, or the dry man, his x mark, [L. S.]
Wa-ga-de-tone, or the maggot, his x mark, [L. S.]
Wa-to-va, or the spider, his x mark, [L. S.]
Ca-ta-hah, or the tortoise, his x mark, [L. S.]
Ma-towa-wah-cota, or the dug out, his x mark, [L. S.]
Wa-go-dah-hou-kah, or the plume, his x mark, [L. S.]
Ma-com-pa, or the doctor of the nose, his x mark, [L. S.]
Cas-sa, or the black tortoise, his x mark, [L. S.]

Haw-tez-chee-ka, or the little cedar, his x mark, [L. S.]
Ma-so-goda-toah, or the hawk, his x mark, [L. S.]
Wa-ka-toa-nosa, or the standing man, his x mark, [L. S.]
Motosa, or the black bear, his x mark, [L. S.]
Mor-bre-tone, or the little hawk, his x mark, [L. S.]
Mar-to-ho-ga, or the white bear, his x mark, [L. S.]
To-se-ca-da, or he who shows his track, his x mark, [L. S.]
Tah-tah-ho-so, or the wind, his x mark, [L. S.]
Hi-da-khe-da-sa, or the panther eagle, his x mark, [L. S.]
O-tene-cah-chee-ka, or he who struck the enemy, his x mark, [L. S.]
Me-ki-wah-kotah, or the star, his x mark, [L. S.]
Ka-ti-mo-ne, or clear weather, his x mark, [L. S.]
Vet-he-ka-ne, or thunder, his x mark, [L. S.]
Ne-to-sa-mo-ne, or the black freshet, his x mark, [L. S.]

In presence of-
R. B. Mason, major of dragoons,
G. Birch, major, U. S. Army,
Francis Lee, captain, Seventh Infantry,
Samuel G. I. DeCamp, surgeon,
W. Seawell, lieutenant and aid de camp; secretary to the commissioners,
Thomas B. Ballard,
Augustine A. Chouteau,
John Hambly, United States interpreter to the Creeks,
George Herron,
Leonard C. McPhail, assistant surgeon, U. S. Army,
Robert M. French

TREATY WITH THE KIOWA, ETC., 1837

May 26, 1837. 7 Stat., 533. Proclamation, Feb. 21, 1838.

Treaty with the Kioway, Ka-ta-ka and Ta-wa-ka-ro, Nations of Indians.

Whereas a treaty of peace and friendship was made and signed on the 24th day of August 1835, between Montfort Stokes and Brigadier General Matthew Arbuckle, commissioners on behalf of the United States on the one part; and the chiefs, and head-men and representatives of the Comanche, Witchetaw, Cherokee Muscogee, Choctaw, Osage, Seneca and Quapaw nations or tribes of Indians on the other part: and whereas the said treaty has been duly ratified by the Government of the United States; now know all whom it may concern, that the President of the United States, by letter of appointment and instructions of

the 7th day of April 1837, has authorized Col. A. P. Chouteau to make a convention or treaty between the United States and any of the nations or tribes of Indians of the Great Western Prairie; we the said Montfort Stokes, and A. P. Chouteau, commissioners of Indian treaties, have this day made and concluded a treaty of peace and friendship, between the United States of America, and the chiefs, headmen and representatives of the Kioway, Ka-ta-ka, and Ta-wa-ka-ro nations of Indians, on the following terms and conditions, that is to say:

ARTICLE 1.

There shall be perpetual peace and friendship between all the citizens of the United States of America and all the individuals composing the Kioway, Ka-ta-ka, and Ta-wa-ka-ro nations and their associated bands or tribes of Indians, and between these nations or tribes and the Muscogee and Osage nations or tribes of Indians.

ARTICLE 2.

Every injury or act of hostility by one or either of the contracting parties on the other, shall be mutually forgiven and for ever forgot.

ARTICLE 3.

There shall be a free and friendly intercourse between all the contracting parties hereto; and it is distinctly understood and agreed by the Kioway, Ka-ta-ka and Ta-wa-ka-ro nations, and their associated bands or tribes of Indians, that the citizens of the United States are freely permitted to pass and repass through their settlements or hunting ground without molestation or injury, on their way to any of the provinces of the Republics of Mexico or Texas, or returning therefrom, and that the nations or tribes named in this article further agree to pay the full value of any injury their people may do to the goods or property of the citizens of the United States, taken or destroyed when peaceably passing through the country they inhabit or hunt in, or elsewhere. -And the United States hereby guarantee to any Indian or Indians of the Kioway, Ka-ta-ka and Ta-wa-ka-ro nations, and their associated bands or tribes of Indians, a full indemnification for any horses or other property which may be stolen from them, Provided That the property so stolen cannot be recovered, and that sufficient proof is produced that it was actually stolen by a citizen of the United States, and within the limits thereof.

ARTICLE 4.

It is understood and agreed by all the nations or tribes of Indians, parties to this treaty, that each and all of the said nations or tribes have free permission to hunt and trap in the Great Prairie west of the Cross Timber to the western limits of the United States.

ARTICLE 5.

The Kioway, Ka-ta-ka and Ta-wa-ka-ro nations and their associated bands or tribes of Indians agree and bind themselves to pay full value for any injury their people may do to the goods or other property of such traders as the President of the United States may place near to their settlements or hunting ground for the purpose of trading with them.

ARTICLE 6.

The Kioway, Ka-ta-ka and Ka-wa-ka-ro nations and their associated bands or tribes of Indians, agree, that in the event any of the red people belonging to the nations or tribes of Indians residing south of the Missouri river, and west of the States of Missouri and Arkansas, not parties to this treaty, should visit their towns, or be found on their hunting ground, that they will treat them with kindness and friendship, and do no injury to them in any way whatever.

ARTICLE 7.

Should any difficulty hereafter unfortunately arise between any of the nations or tribes of Indians, parties hereunto, in consequence of murder, the stealing of horses, cattle, or other cause, it is agreed that the other tribes shall interpose their good offices to remove such difficulties; and also that the Government of the United States may take such measures as they may deem proper to effect the same object, and see that full justice is done to the injured party.

ARTICLE 8.

It is agreed by the commissioners of the United States that in consequence of the Kioway, Ka-ta-ka and Ta-wa-ka-ro nations and their associated bands or tribes of Indians having freely and willingly entered into this treaty, and it being the first they have made with the United States, or any of the contracting parties, that they shall receive presents immediately after signing, as a donation from the United States; nothing being asked from the said nations or tribes in return, except to remain at peace with the parties hereto, which their own good and that of their posterity require.

ARTICLE 9.

The Kioway, Ka-ta-ka and Ta-wa-ka-ro nations, and their associated bands or tribes of Indians, agree, that their entering into this treaty shall in no respect interrupt their friendly relations with the Republics of Mexico and Texas, where they all frequently hunt and the Kioway, Ka-ta-ka and Ta-wa-ka-ro nations sometimes visit; and it is distinctly understood that the Government of the United States desire that perfect peace shall exist between the nations or tribes named in this article, and the said Republics.

ARTICLE 10.

This treaty shall be obligatory on the nations or tribes, parties hereto, from and after the date hereof, and on the United States, from and after its ratification by the Government thereof.

Done and signed and sealed at Fort Gibson, this twenty-sixth day of May one thousand eight hundred and thirty-seven and of the independence of the United States the sixty-second.

M. Stokes, Commissioner of Indian treaties.

A. P. Chouteau, Commissioner Indian treaties.

Kioways:

Ta-ka-ta-couche, the Black Bird,

Cha-hon-de-ton, the Flying Squirrel,

Ta-ne-congais, the Sea Gull,

Bon-congais, the Black Cap,
To-ho-sa, the Top of the Mountain,
Sen-son-da-cat, the White Bird,
Con-a-hen-ka, the Horne Frog,
He-pan-ni-gais, the Night,
Ka-him-hi, the Prairie Dog,
Pa-con-ta, My Young Brother.

Ka-ta-kas:
Hen-ton-te, the Iron Shoe,
A-ei-kenda, the One who is Surrendered,
Cet-ma-ni-ta, the Walking Bear.

Ta-wa-ka-ros:
Ka-ta-ca-karo, He who receives the Word of God,
Ta-ce-hache, the One who Speaks to the Chief,
Ke-te-cara-con-ki, the White Cow,
Ta-ka, the Hunter of Men.

Muscogees:
Roly McIntosh,
Alex. Gillespie,
Samuel Miiler,
Samuel Perryman,
John Randam,
To-me-yo-hola,
Efi-emathla,
Chis-co-laco-mici,
Encotts Harjo,
Ufalila Harjo.

Osages:
Clermont, the Principal Chief,
Ka-hi-gair-tanga, the Big Chief,
Ka-hi-gair-wa-chin-pi-chais, the Mad Chief,
Chan-gais-mon-non, the Horse Thief,
Wa-cri-cha, the Liberal,
Ta-lais, the Going Deer,

Chonta-sa-bais, the Black Dog,
Wa-clum-pi-chais, the Mad Warrior
Mi-ta-ni-ga, the Crazy Blanket,
Wa-ta-ni-ga, the Crazy,
Hec-ra-ti, the War Eagle,
Tan-wan-ga-hais, the Townmaker,
Ha-ha-ga-la, the One they Cry For,
Chongais-han-ga, the Learned Dog,
Man-pa-cha, the Brave Man,
Joseph Staidegais, the Tall Joseph,
Tais-ha-wa-gra-kim, the Chief Bearer,
Sa-wa-the, the Dreadful,
Ca-wa-wa-gu, the One Who Gives Horses,
U-de-gais-ta-wa-ta-ni-ga, the Crazy Osage.

Witnesses:
Wm. Whistler, Lieutenant-Colonel Seventh Infantry, commanding.
B. L. E. Bonneville, captain, Seventh Infantry.
Francis Lee, captain, Seventh Infantry.
Jas. R. Stephenson, captain, Seventh Infantry.
P. S. G. Bell, captain, First Dragoons.
W. Seawell, captain, Seventh Infantry, and secretary to the commissioners.
S. W. Moore, first lieutenant and adjutant, Seventh Infantry.
Th. H. Holmes, first lieutenant, Seventh Infantry.
R. H. Ross, first lieutenant, Seventh Infantry.
J. H. Bailey, assistant surgeon.
G. K. Paul, first lieutenant, Seventh Infantry.
S. G. Simmons, first lieutenant, Seventh Infantry.
J. G. Reed, second lieutenant, Seventh Infantry.
J. M. Wells, second lieutenant, Seventh Infantry.
R. L. Dodge.
F. Britton, lieutenant, Seventh, U. S. Army.
S. Hardage, Creek interpreter.
(To the Indian names are subjoined marks.)

TREATY WITH THE CREEKS, 1838

Nov. 23, 1838. 7 Stat., 574. Proclamation, Mar. 2, 1839.

Articles of a treaty, made and concluded at Fort Gibson west of Arkansas between Captain William Armstrong act superintendent Western Territory, and Brevt Brig Gen Arbuckle commissioners on the part of

the United States and the undersigned chiefs being a full delegation of the Creek chiefs duly authorized and empowered by their nation to adjust ''their claims for property and improvements abandoned, or lost, in consequence of their emigration west of the Mississippi.''

ART. 1st.

The Creek nation do hereby relinquish all ''claims for property and improvements abandoned or lost, in consequence of their emigration west of the Mississippi,'' in consideration of the sums stipulated in the following articles.

ART. 2d.

The United States agree to pay the Creek nation for property & c. as set forth in the preceding article the sum of fifty thousand dollars in stock animals as soon as practicable after the ratification of this treaty. These animals to be furnished and distributed to the people of each town in proportion to their loss, as set forth by the accompanying schedule under the direction of their chiefs and an agent of the Government.

ART. 3d.

The United States further agrees to invest for the benefit of the individuals of the Creek nation referred to in the preceding article, the sum of three hundred and fifty thousand dollars and secure to them the interest of five per cent. thereon, to be paid annually, the interest for the first year to be paid in money, the interest thereafter to be paid in money, stock animals, blankets, domestics or such articles of a similar nature as the President of the United States may direct, to be distributed as set forth in the preceding article.

ART. 4th.

It is further agreed that the sum invested by the preceding article shall at the expiration of twenty-five years be appropriated under the direction of the President of the United States for the common benefit of the Creek nation.

ART. 5th.

The United States further agrees to pay the sum of twenty-one thousand one hundred and three dollars and thirty-three cents, to satisfy claims of the early Creek emigrants to the west, of the McIntosh party as set forth in the accompanying schedule marked (A.)

ART. 6th.

In consideration of the suffering condition of about two thousand five hundred of Creek nation who were removed to this country as hostiles and that are not provided for by this treaty, and the representation of the chiefs of the nation, that their extreme poverty has, and will cause them to commit depredations on their neighbours, it is therefore agreed on the part of the United States that the Creek Indians referred to in this article shall receive ten thousand dollars in stock animals for one year, as soon as convenience will permit after the ratification of this treaty.

It is however understood by the contracting parties that the rejection of this article will not effect the other provisions of this treaty.

In testimony whereof the commissioners on behalf of the United States and the delegates of the Creek nation have hereunto signed their names, this 23d day of November A. D. 1838 at Fort Gibson.

Wm. Armstrong,
Acting superintendent Western Territory,
M. Arbuckle,
Brevet Brigadier-General, U. S. Army.

Rowly McIntosh,
O Poth-le Yoholo,
Little Doctor,
Tus kem haw,
Ufawala Hadjo,
Fur-hutche-micco,
Cotchy Tustannuggee,
Chilby McIntosh,
Co-wock-co-ge Emarthlar,
Jas. Islands,
Tin Thlannis Hadjo,
Jim Boy,
Cotchay Emarta,
Jimmy Chopco,
Yargu,
Yar Dicker Tustannugga,
Charlo Hadjo,
Kusseter Micco,
Lotti Fixico,
Tom Marth Micco,
David Barnett,
Bob Tiger,
Tuckabatche Hadjo,
Cho Coater Tustannugga,
Echo Hadjo,
Tal Mars Hadjo,
Emarth Ea Hadjo,

Witnesses:

J. S. McIntosh, major, Seventh Infantry,

B. Riley, major, Fourth Infantry,

S. W. Moore, captain, Seventh Infantry,

W. K. Hanson, lieutenant, Seventh Infantry,

G. K. Paul, first lieutenant, Seventh Infantry, acting commissary sergeant,

D. J. Whiting, first lieutenant, Seventh Infantry,

G. J. Rains, captain, Seventh Infantry,

M. Stokes, agent for Cherokee nation,

James Logan, agent for Creek nation,

S. G. Simmons, first lieutenant, Seventh Infantry, secretary to the Commission.

(To the Indian names are subjoined marks.)

TREATY WITH THE CREEKS AND SEMINOLE, 1845

Jan. 4, 1845. 9 Stat., 821. Proclamation, July 18, 1845.

Articles of a treaty made by William Armstrong, P. M. Butler, James Logan, and Thomas L. Judge, commissioners in behalf of the United States, of the first part; the Creek tribe of Indians, of the second; and the Seminole tribe of Indians, of the third part.

WHEREAS it was stipulated, in the fourth article of the Creek treaty of 1833, that the Seminoles should thenceforward be considered a constituent part of the Creek nation, and that a permanent and comfortable home should be secured for them on the lands set apart in said treaty as the country of the Creeks; and whereas many of the Seminoles have settled and are now living in the Creek country, while others, constituting a large portion of the tribe, have refused to make their homes in any part thereof, assigning as a reason that they are unwilling to submit to Creek laws and government, and that they are apprehensive of being deprived, by the Creek authorities, of their property; and whereas repeated complaints have been made to the United States government, that those of the Seminoles who refused to go into the Creek country have, without authority or right, settled upon lands secured to other tribes, and that they have committed numerous and extensive depredations upon the property of those upon whose lands they have intruded:

Now, therefore, in order to reconcile all difficulties respecting location and jurisdiction, to settle all disputed questions which have arisen, or may hereafter arise, in regard to rights of property, and especially to preserve the peace of the frontier, seriously endangered by the restless and warlike spirit of the intruding Seminoles, the parties to this treaty have agreed to the following stipulations:

ARTICLE 1.

The Creeks agree that the Seminoles shall be entitled to settle in a body or separately, as they please, in any part of the Creek country; that they shall make their own town regulations, subject, however, to the general control of the Creek council, in which they shall be represented; and, in short, that no

distinctions shall be made between the two tribes in any respect, except in the management of their pecuniary affairs, in which neither shall interfere with the other.

ARTICLE 2.

The Seminoles agree that those of their tribe who have not done so before the ratification of this treaty, shall, immediately thereafter, remove to and permanently settle in the Creek country.

ARTICLE 3.

It is mutually agreed by the Creeks and Seminoles, that all contested cases between the two tribes, concerning the right of property, growing out of sales or transactions that may have occurred previous to the ratification of this treaty, shall be subject to the decision of the President of the United States.

ARTICLE 4.

The Creeks being greatly dissatisfied with the manner in which their boundaries were adjusted by the treaty of 1833, which they say they did not understand until after its execution, and it appearing that in said treaty no addition was made to their country for the use of the Seminoles, but that, on the contrary, they were deprived, without adequate compensation, of a considerable extent of valuable territory: And, moreover, the Seminoles, since the Creeks first agreed to receive them, having been engaged in a protracted and bloody contest, which has naturally engendered feelings and habits calculated to make them troublesome neighbors: The United States in consideration of these circumstances, agree that an additional annuity of three thousand dollars for purposes of education shall be allowed for the term of twenty years; that the annuity of three thousand dollars provided in the treaty of 1832 for like purposes shall be continued until the determination of the additional annuity above mentioned. It is further agreed that all the education funds of the Creeks, including the annuities above named, the annual allowance of one thousand dollars, provided in the treaty of 1833, and also all balances of appropriations for education annuities that may be due from the United States, shall be expended under the direction of President of the United States, for the purpose of education aforesaid.

ARTICLE 5.

The Seminoles having expressed a desire to settle in a body on Little River, some distance westward of the present residence of the greater portion of them, it is agreed that rations shall be issued to such as may remove while on their way to their new homes; and that, after their emigration is completed, the whole tribe shall be subsisted for six months, due notice to be given that those who do not come into the Creek country before the issues commence shall be excluded. And it is distinctly understood that all those Seminoles who refuse to remove to, and settle in, the Creek Country, within six months after this treaty is ratified, shall not participate in any of the benefits it provides: Except those now in Florida, who shall be allowed twelve months from the date of the ratification of this treaty for their removal.

ARTICLE 6.

The sum of fifteen thousand four hundred dollars, provided in the second article of the treaty of Payne's Landing, shall be paid in the manner therein pointed out, immediately after the emigration of those Seminoles who may remove to the Creek country is completed: also, as soon after such emigration as practicable, the annuity of three thousand dollars for fifteen years, provided in the fourth article of said treaty, and, in addition thereto, for the same period, two thousand dollars per annum in goods suited to their wants, to be equally divided among all the members of the tribe.

ARTICLE 7.

In full Satisfaction and discharge of all claims for property left or abandoned in Florida at the request of the officers of the United States, under promise of remuneration, one thousand dollars per annum, in agricultural implements, shall be furnished the Seminoles for five years.

ARTICLE 8.

To avoid all danger of encroachment, on the part of either Creeks or Seminoles, upon the territory of other nations, the northern and western boundary lines of the Creek country shall be plainly and distinctly marked.

In witness whereof, the said Commissioners and the undersigned Chiefs and Head Men of the Creek and Seminole tribes, have hereunto set their hands, at the Creek Agency, this fourth day of January, 1845.

Wm. Armstrong,

Acting Superintendent Western Territory.

P. M. Butler,

Cherokee Agent.

James Logan,

Creek Agent.

Thomas L. Judge,

Seminole Sub-Agent.

Creeks:

Roly McIntosh,

To-marth-le Micco,

Eu-faula Harjo,

O-poeth-le Yoholo,

Yargee,

Samuel Miller,

Cot-char Tustunnuggee,

*K. Lewis,

Tuskunar Harjo,

Tinthlanis Harjo,

To-cose Fixico,
*Samuel C. Brown,
Ho-tul-gar Harjo,
Oak-chun Harjo
Art-tis Fixico,
Joseph Carr,
Ar-ar-te Harjo,
Samuel Perryman,
O-switchee Emarthlar,
Talloaf Harjo,
David Barnett,
Jim Boy,
*B. Marshall,
Tinthlanis Harjo,
Co-ah-coo-che Emarthlar,
Thlathlo Harjo,
E-cho Harjo,
Co-ah-thlocco,
Ke-sar-che Harjo,
No cose Harjo,
Yar-dick-ah Harjo,
Yo-ho-lo Chop-ko
Phil Grayson,
Chu-ille,
E-cho Emarthla,
Pol-lot-ke,
Kot-che Harjo,
To-cose Micco,
Henry Marshall,
Matthew Marshall,
Che-was-tiah Fixico,
Tom Carr.

Seminoles:
Miccanope,
Coah-coo-che, or Wild Cat,
Alligator,

Nocose Yoholo,
Halleck Tustunnuggee,
Emah-thloo-chee,
Octi-ar-chee,
Tus-se-kiah,
Pos-cof-far,
E-con-chat-te-micco,
Black Dirt,
Itch-hos-se Yo-ho-lo,
Kap-pe-chum-e-coo-che,
O-tul-ga Harjo,
Yo-ho-lo Harjo,
O-switchee Emarthla,
Kub-bit-che,
An-lo-ne,
Yah-hah Fixico,
Fus-hat-chee, Micco,
O-chee-see Micco,
Tus-tun-nug-goo-chee.

In the presence of—

J. B. Luce, secretary to commissioners.
Samuel C. Brown, U. S. interpreter.
B. Marshall, Creek Nation interpreter.
Abraham, U. S. interpreter for Seminoles.
J. P. Davis, captain U.S. Army.
A. Cady, captain Sixth Infantry
J. B. S. Todd, captain Sixth Infantry
George W. Clarke.
Jno. Dillard.
J. L. Alexander.
J. H. Heard.

(To the names of Indians, except those marked with an asterisk, are subjoined their marks.)

TREATY WITH THE CREEKS, 1854

June 13, 1854. 11 Stats., 599. Ratified July 21, 1854.

Supplementary article to the treaty with the Creek tribe of Indians made and concluded at Fort Gibson the twenty-third day of November, in the year eighteen hundred and thirty-eight.

Whereas the third article of said treaty provided for the investment by the United States of the sum of three hundred and fifty thousand dollars for the benefit of certain individuals of the Creek nation, but which sum remains uninvested; and the fourth article of the same treaty further provides that at the expiration of twenty-five years from the date thereof, the said sum of three hundred and fifty thousand dollars shall be appropriated for the common benefit of the Creek nation; which provision has caused great dissatisfaction, the individuals to whom the fund rightfully belongs never having authorized or assented to such a future disposition thereof; and whereas the chiefs and people of the Creek nation recognize and consider the said fund as the exclusive property of said individuals, and are opposed to their hereafter being deprived thereof; and whereas the annual interest thereon is of no advantage to the great body of the persons to whom it is payable, and the distribution of the principal of the fund would be far more beneficial for them and prevent probable contest and difficulty hereafter; and such distribution has been requested by the chiefs representing both the nation and the individual claimants of said fund, the following supplementary article to the aforesaid treaty of 1838, has this day been agreed to and entered into, by and between William H. Garrett, United States agent for the Creeks and Tuckabatche Micco, Hopoithle Yoholo, Benjamin Marshall, and George W. Stidham, chiefs and delegates of the Creek nation duly empowered to represent and act for the same and the individuals thereof to wit:

ARTICLE. It is hereby agreed and stipulated by and between the aforementioned parties, that the third and fourth articles of the treaty with the Creek nation of November 23, 1838, shall be and the same are hereby annulled; and the fund of three hundred and fifty thousand dollars therein mentioned and referred to shall be divided and paid out to the individuals of said nation for whose benefit the same was originally set apart, according to their respective and proportionate interests therein, as exemplified and shown by the schedule mentioned in the second article of said treaty; the said division and payment to be made by the United States so soon as the necessary appropriation for that purpose can be obtained from Congress.

In testimony whereof the said parties have hereunto set their hands and seals on this thirteenth day of June in the year of our Lord one thousand eight hundred and fifty-four.

W. H. Garrett, United States agent for the Creeks. [L. S.]

Tuckabatche Micco, his x mark, [L. S.]

Hopothlegoholo, his x mark, [L. S.]

B. Marshall, [L. S.]

G. W. Stidham, [L. S.]

Signed and sealed in the presence of—
James Abercrombie, Sen.
Andrew R. Potts,
Robert A. Allen,
Philip H. Raiford.

TREATY WITH THE CREEKS, ETC., 1856

Aug. 7, 1856. 11 Stats., 699. Ratified Aug. 16, 1856. Proclaimed Aug. 28, 1856.

Articles of agreement and convention between the United States and the Creek and Seminole Tribes of Indians, made and concluded at the city of Washington the seventh day of August, one thousand eight hundred and fifty-six, by George W. Manypenny, commissioner on the part of the United States, Tuck-a-batchee-Micco, Echo–Harjo, Chilly McIntosh, Benjamin Marshall, George W. Stidham, and Daniel N. McIntosh, commissioners on the part of the Creeks; and John Jumper, Tuste-nuc-o-chee, Pars-co-fer, and James Factor, commissioners on the part of the Seminoles:

Whereas the convention heretofore existing between the Creek and Seminole tribes of Indians west of the Mississippi River, has given rise to unhappy and injurious dissensions and controversies among them, which render necessary a readjustment of their relations to each other and to the United States; and

Whereas the United States desire, by providing the Seminoles remaining in Florida with a comfortable home west of the Mississippi River, and by making a liberal and generous provision for their welfare, to induce them to emigrate and become one people with their brethren already west, and also to afford to all the Seminoles the means of education and civilization, and the blessings of a regular civil government; and

Whereas the Creek Nation and individuals thereof, have, by their delegation, brought forward and persistently urged various claims against the United States, which it is desirable shall be finally adjusted and settled; and

Whereas it is necessary for the simplification and better understanding of the relations between the United States and said Creek and Seminole tribes of Indians, that all their subsisting treaty stipulations shall, as far as practicable, be embodied in one comprehensive instrument;

Now, therefore, the United States, by their commissioner, George W. Manypenny, the Creek tribe of Indians, by their commissioners, Tuck-a-batchee-Micco, Echo–Harjo, Chilly Mclntosh, Benjamin Marshall, George W. Stidham, and Daniel N. McIntosh; and the Seminole tribe of Indians, by their commissioners, John Jumper, Tuste-nuc-o-chee, Pars-co-fer, and James Factor, do hereby agree and stipulate as follows, viz:

ARTICLE 1.

The Creek Nation doth hereby grant, cede, and convey to the Seminole Indians, the tract of country included within the following boundaries, viz: beginning on the Canadian River, a few miles east of the ninety-seventh parallel of west longitude, where Ock-hi-appo, or Pond Creek, empties into the same; thence, due north to the north fork of the Canadian; thence up said north fork of the Canadian to the southern line of the Cherokee country; thence, with that line, west, to the one hundredth parallel of west longitude; thence, south along said parallel of longitude to the Canadian River, and thence down and with that river to the place of beginning.

ARTICLE 2.

The following shall constitute and remain the boundaries of the Creek country, viz: beginning at the mouth of the north fork of the Canadian River, and running northerly four miles; thence running a straight line so as to meet a line drawn from the south bank of the Arkansas River, opposite to the east or lower bank of Grand River, at its junction with the Arkansas, and which runs a course, south, forty-four degrees, west, one mile, to a post placed in the ground; thence along said line to the Arkansas and up the same and the Verdigris River, to where the old territorial line crosses it; thence along said line, north, to a point twenty-five miles from the Arkansas River, where the old territorial line crosses the same; thence running west with the southern line of the Cherokee country, to the north fork of the Canadian River, where the boundary of the session to the Seminoles defined in the preceding article, first strikes said Cherokee line; thence down said north fork, to where the eastern boundary-line of the said cession to the Seminoles strikes the same; thence, with that line, due south to the Canadian River, at the mouth of the Ock-hi-appo, or Pond Creek; and thence down said Canadian River to the place of beginning.

ARTICLE 3.

The United States do hereby solemnly guarantee to the Seminole Indians the tract of country ceded to them by the first article of this convention; and to the Creek Indians, the lands included within the boundaries defined in the second article hereof; and likewise that the same shall respectively be secured to and held by said Indians by the same title and tenure by which they were guaranteed and secured to the Creek Nation by the fourteenth article of the treaty of March twenty-fourth, eighteen hundred and thirty-two, the third article of the treaty of February fourteenth, eighteen hundred and thirty-three, and by the letters-patent issued to the said Creek Nation, on the eleventh day of August, eighteen hundred and fifty-two, and recorded in volume four of records of Indian deeds in the Office of Indian Affairs, pages 446 and 447. Provided however, That no part of the tract of country so ceded to the Seminole Indians, shall ever be sold, or otherwise disposed of without the consent of both tribes legally given.

ARTICLE 4.

The United States do hereby, solemnly agree and bind themselves, that no State or Territory shall ever pass laws for the government of the Creek or Seminole tribes of Indians, and that no portion of either of the tracts of country defined in the first and second articles of this agreement shall ever be embraced

or included within, or annexed to, any Territory or State, nor shall either, or any part of either, ever be erected into a Territory without the full and free consent of the legislative authority of the tribe owning the same.

ARTICLE 5.

The Creek Indians do hereby absolutely and forever quit-claim and relinquish to the United States all their right, title, and interest in and to any lands heretofore owned or claimed by them, whether east or west of the Mississippi River, and any and all claim for or on account of any such lands, except those embraced within the boundaries described in the second article of this agreement; and it doth also, in like manner, release and fully discharge the United States from all other claims and demands whatsoever, which the Creek Nation or any individual thereof may now have against the United States, excepting only such as are particularly or in terms provided for and secured to them by the provisions of existing treaties and laws; and which are as follows, viz: permanent annuities in money amounting to twenty-four thousand five hundred dollars, secured to them by the fourth article of the treaty of seventh August, seventeen hundred and ninety, the second article of the treaty of June sixteenth, eighteen hundred and two, and the fourth article of the treaty of January twenty-fourth, eighteen hundred and twenty-six: permanent provision for a wheelwright, for a blacksmith and assistant; blacksmith-shop and tools, and for iron and steel under the eighth article of the last-mentioned treaty; and costing annually one thousand seven hundred and ten dollars; two thousand dollars per annum, during the pleasure of the President, for assistance in agricultural operations under the same treaty and article; six thousand dollars per annum for education for seven years, in addition to the estimate for present fiscal year, under the fourth article of the treaty of January fourth, eighteen hundred and forty-five; one thousand dollars per annum during the pleasure of the President, for the same object, under the fifty article of the treaty of February fourteenth, eighteen hundred and thirty-three; services of a wagon-maker, blacksmith and assistant, shop and tools, iron and steel, during the pleasure of the President, under the same treaty and article, and costing one thousand seven hundred and ten dollars annually; the last instalment of two thousand two hundred and twenty dollars for two blacksmiths and assistants, shops and tools, and iron and steel, under the thirteenth article of the treaty of March twenty-fourth, eighteen hundred and thirty-two, and which last it is hereby stipulated shall be continued for seven additional years. The following shall also be excepted from the foregoing quit-claim, relinquishment, release, and discharge, viz: the fund created and held in trust for Creek orphans under the second article of the treaty of March twenty-fourth, eighteen hundred and thirty-two; the right of such individuals among the Creeks as have not received it, to the compensation in money provided for by the act of Congress of March third, eighteen hundred and thirty-seven, in lieu of reservations of land to which they were entitled, but which were not secured to them, under the said treaty of eighteen hundred and thirty-two; the right of the reservees under the same treaty, who did not dispose of their reservations to the amounts for which they have been or may be sold by the United States; and the right of such members of the tribe to military-bounty lands, as are entitled thereto under existing laws of the United States. The right and interest of the Creek Nation and people in and to the matters and things so

excepted, shall continue and remain the same as though this convention had never been entered into.

ARTICLE 6.

In consideration of the foregoing quit-claim, relinquishment, release, and discharge, and of the cession of a country for the Seminole Indians contained in the first article of this agreement, the United States do hereby agree and stipulate to allow and pay the Creek Nation the sum of one million of dollars, which shall be invested and paid as follows, viz: two hundred thousand dollars to be invested in some safe stocks, paying an interest of at least five per cent. per annum; which interest shall be regularly and faithfully applied to purposes of education among the Creeks; four hundred thousand dollars to be paid per capita, under the direction of the general council of the Creek Nation to the individuals and members of said nation, except such portion as they shall, by order of said national council, direct to be paid to the treasurer of said nation for any specified national object not exceeding ($100,000) one hundred thousand dollars, as soon as practicable after the ratification of this agreement; and two hundred thousand dollars shall be set apart to be appropriated and paid as follows, viz: ten thousand dollars to be equally distributed and paid to those individuals and their heirs, who, under act of Congress of March third, eighteen hundred and thirty-seven, have received money in lieu of reservations of land to which they were entitled, but which were not secured to them under the treaty of March twenty-fourth, eighteen hundred and thirty-two; one hundred and twenty thousand dollars to be equally and justly distributed and paid, under the direction of the general council, to those Creeks, or their descendants, who emigrated west of the Mississippi River prior to said treaty of eighteen hundred and thirty two, and to be in lieu of and in full compensation for the claims of such Creeks to an allowance equivalent to the reservations granted to the eastern Creeks by that treaty, and seventy thousand dollars for the adjustment and final settlement of such other claims of individual Creek Indians, as may be found to be equitable and just by the general council of the nation: Provided however, That no part of the three last-mentioned sums shall be allowed or paid to any other person or persons, whatsoever, than those who are actual and bona-fide members of the Creek Nation and belonging respectively to the three classes of claimants designated; said sums to be remitted and paid as soon as practicable after the general council shall have ascertained and designated the persons entitled to share therein. And provided further, That any balance of the said sum of seventy thousand dollars, which may be found not to be actually necessary for the adjustment and settlement of the claims for which it is set apart, shall belong to the nation, and be applied to such object or objects of utility or necessity as the general council shall direct. The remaining sum of two hundred thousand dollars shall be retained by the United States, until the removal of the Seminole Indians, now in Florida, to the country west of the Mississippi River herein provided for their tribe; whereupon the same, with interest thereon, at five per cent., from the date of the ratification of this agreement, shall be paid over to, or invested for the benefit of the Creek Nation, as may then be requested by the proper authorities thereof. Provided however, That if so paid over, it shall be equally divided and paid per capita to all the individuals and members of the Creek Nation, or be used and applied only for

such objects or purposes of a strictly national or beneficial character as the interests and welfare of the Creek people shall actually require.

ARTICLE 7.

It being the desire of the Creeks to employ their own teachers, mechanics, and farmers, all of the funds secured to the nation for educational, mechanical, and agricultural purposes, shall as the same become annually due, be paid over by the United States to the treasurer of the Creek Nation. And the annuities in money due the nation under former treaties, shall also be paid to the same officer, whenever the general council shall so direct.

ARTICLE 8.

The Seminoles hereby release and discharge the United States from all claims and demands which their delegation have set up against them, and obligate themselves to remove to and settle in the new country herein provided for them as soon as practicable. In consideration of such release, discharge, and obligation, and as the Indians must abandon their present improvements, and incur considerable expense in re-establishing themselves, and as the Government desires to secure their assistance in inducing their brethren yet in Florida to emigrate and settle with them west of the Mississippi River, and is willing to offer liberal inducements to the latter peaceably so to do, the United States do therefore agree and stipulate as follows, viz: To pay to the Seminoles now in the west the sum of ninety thousand dollars, which shall be in lieu of their present improvements, and in full for the expenses of their removal and establishing themselves in their new country; to provide annually for ten years the sum of three thousand dollars for the support of schools; two thousand dollars for agricultural assistance; and two thousand two hundred dollars for the support of smiths and smith-shops among them, said sums to be applied to these objects in such manner as the President shall direct. Also to invest for them the sum of two hundred and fifty thousand dollars, at five per cent. per annum, the interest to be regularly paid over to them per capita as annuity; the further sum of two hundred and fifty thousand dollars shall be invested in like manner whenever the Seminoles now remaining in Florida shall have emigrated and joined their brethren in the west, whereupon the two sums so invested, shall constitute a fund belonging to the united tribe of Seminoles, and the interest on which, at the rate aforesaid, shall be annually paid over to them per capita as an annuity; but no portion of the principal thus invested, or the interest thereon annually due and payable, shall ever be taken to pay claims or demands against said Indians, except such as may hereafter arise under the intercourse laws.

ARTICLE 9.

The United States agree to remove comfortably to their new country west, all those Seminoles now in Florida who can be induced to emigrate thereto; and to furnish them with sufficient rations of wholesome subsistence during their removal and for twelve months after their arrival at their new homes; also, to provide each warrior of eighteen years of age and upwards, who shall so remove, with one rifle-gun, if he shall not already possess one; with two blankets, a supply of powder and lead, a hunting-shirt, one pair of shoes, one and a half yards of strouding, and ten pounds of good tobacco; and each woman, youth, and child with a blanket, pair of shoes, and other necessary

articles of comfortable clothing, and to expend for them in improvements, after they shall all remove, the sum of twenty thousand dollars. And to encourage the Seminoles to devote themselves to the cultivation of the soil, and become a sober, settled, industrious, and independent people, the United States do further agree to expend three thousand dollars in the purchase of ploughs and other agricultural implements, axes, seeds, looms, cards, and wheels; the same to be proportionately distributed among those now west, and those who shall emigrate from Florida.

ARTICLE 10.

The Seminoles west do hereby agree and bind themselves to furnish, at such time or times as the President may appoint, a delegation of such members of their tribe as shall be selected for the purpose, to proceed to Florida, under the direction of an agent of the Government, to render such peaceful services as may be required of them, and otherwise to do all in their power to induce their brethren remaining in that State to emigrate and join them in the west; the United States agreeing to pay them and such members of the Creek tribe as may voluntarily offer to join them and be accepted for the same service, a reasonable compensation for their time and services, as well as their travelling and other actual and necessary expenses.

ARTICLE 11.

It is further hereby agreed that the United States shall pay Foc-te-lus-te-harjo, his heirs or assigns, the sum of four hundred dollars, in consideration of the unpaid services of said Foc-te-luc-te-harjoe, or Black Dirt, rendered by him as chief of the friendly band of Seminole warriors who fought for the United States during the Florida war.

ARTICLE 12.

So soon as the Seminoles west shall have removed to the new country herein provided for them, the United States will then select a site and erect the necessary buildings for an agency, including a council-house for the Seminoles.

ARTICLE 13.

The officers and people of each of the tribes of Creeks and Seminoles shall, at all times, have the right of safe conduct and free passage through the lands and territory of the other. The members of each shall have the right freely to settle within the country of the other, and shall thereupon be entitled to all the rights, privileges, and immunities of members thereof, except that no member of either tribe shall be entitled to participate in any funds belonging to the other tribe. Members of each tribe shall have the right to institute and prosecute suits in the courts of the other, under such regulations as may, from time to time, be prescribed by their respective legislatures.

ARTICLE 14.

Any person duly charged with a criminal offense against the laws of either the Creek or Seminole tribe, and escaping into the jurisdiction of the other, shall be promptly surrendered upon the demand of the proper authority of the tribe within whose jurisdiction the offense shall be alleged to have been committed.

ARTICLE 15.

So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Creeks and Seminoles shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property, within their respective limits; excepting, however, all white persons, with their property, who are not, by adoption or otherwise, members of either the Creek or Seminole tribe; and all persons not being members of either tribe, found within their limits, shall be considered intruders, and be removed from and kept out of the same by the United States agents for said tribes, respectively; (assisted, if necessary, by the military;) with the following exceptions, viz: such individuals with their families as may be in the employment of the Government of the United States; all persons peaceably travelling, or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States; and such persons as may be permitted by the Creeks or Seminoles, with the assent of the proper authorities of the United States, to reside within their respective limits without becoming members of either of said tribes.

ARTICLE 16.

The Creeks and Seminoles shall promptly apprehend and deliver up all persons accused of any crime against the laws of the United States, or of any State thereof, who may be found within their limits, on demand of any proper officer of a State or of the United States.

ARTICLE 17.

All persons licensed by the United States to trade with the Creeks or Seminoles shall be required to pay to the tribe within whose country they trade, a moderate annual compensation for the land and timber used by them, the amount of such compensation, in each case, to be assessed by the proper authorities of said tribe, subject to the approval of the United States agent therefor.

ARTICLE 18.

The United States shall protect the Creeks and Seminoles from domestic strife, from hostile invasion, and from aggression by other Indians and white persons, not subject to their jurisdiction and laws; and for all injuries resulting from such invasion or aggression, full indemnity is hereby guaranteed to the party or parties injured out of the Treasury of the United States, upon the same principle and according to the same rules upon which white persons are entitled to indemnity for injuries or aggressions upon them, committed by Indians.

ARTICLE 19.

The United States shall have the right to establish and maintain such military posts, military and post-roads and Indian agencies as may be deemed necessary within the Creek and Seminole country, but no greater quantity of land or timber shall be used for said purposes than shall be actually requisite; and if, in the establishment or maintenance of such posts, roads, or agencies, the property of any Creek or Seminole be taken, destroyed, or injured, or any property of

either nation, other than land and timber, just and adequate compensation shall be made by the United States. Such persons only as are or may be in the employment of the United States, in any capacity, civil or military, or subject to the jurisdiction and laws of the Creeks and Seminoles, shall be permitted to farm or raise stock within the limits of any of said military posts or Indian agencies. And no offender against the laws of either of said tribes shall be permitted to take refuge therein.

ARTICLE 20.

The United States, or any incorporated company, shall have the right of way for railroads, or lines of telegraphs, through the Creek and Seminole countries; but in the case of any incorporated company, it shall have such right of way only upon such terms, and payment of such amount to the Creeks and Seminoles, as the case may be, as may be agreed upon between it and the national council thereof; or, in case of disagreement by making full compensation, not only to individual parties injured, but also to the tribe for the right of way, all damage and injury done to be ascertained and determined in such manner as the President of the United States shall direct. And the right of way granted by either of said tribes for any railroad shall be perpetual or for such shorter term as the same may be granted, in the same manner as if there were no reversion of their lands to the United States provided for, in case of abandonment by them, or of extinction of their tribe.

ARTICLE 21.

The United States will cause such portions of the boundaries of the Creek and Seminole countries, as do not consist of well-defined natural boundaries, to be surveyed and permanently marked and established. The Creek and Seminole general councils may each appoint a commissioner from their own people to attend the running of their respective boundaries, whose expenses and a reasonable allowance for their time and services, while engaged in such duty, shall be paid by the United States.

ARTICLE 22

That this convention may conduce, as far as possible, to the restoration and preservation of kind and friendly feelings among the Creeks and Seminoles; a general amnesty of all past offences committed within their country, either west or east of the Mississippi, is hereby declared.

ARTICLE 23.

A liberal allowance shall be made to each of the delegations signing this convention; including, with the Seminole delegation, George W. Brinton, the interpreter, as a compensation for their travelling and other expenses in coming to and remaining in this city and returning home.

ARTICLE 24.

Should the Seminoles in Florida desire to have a portion of the country described in the first article of this agreement, set apart for their residence, it is agreed that the Seminoles west may make such arrangement, not inconsistent with this instrument, as may be satisfactory to their brethren in Florida.

ARTICLE 25.

The Creek laws shall be in force and continue to operate in the country herein assigned to the Seminoles, until the latter remove thereto; when they shall cease and be of no effect.

ARTICLE 26.

This convention shall supersede and take the place of all former treaties, between the United States and the Creeks, between the United States and the Florida Indians and Seminoles, and between the Creeks and Seminoles, inconsistent herewith; and shall take effect and be obligatory on the contracting parties from the date hereof, whenever it shall be ratified by the Senate and President of the United States.

ARTICLE 27.

And it is further agreed, that nothing herein contained shall be so construed as to release the United States from any liability other than those in favor of said nations or individuals thereof.

In testimony whereof, the said George W. Manypenny, commissioner on the part of the United States, and the said commissioners on the part of the Creeks and Seminoles, have hereunto set their hands and seals.

Done in triplicate at the city of Washington, on the day and year first above written.

Geo. W. Manypenny, [L. S.]

United States Commissioner.

Tuck-a-batchee-micco, his x mark, [L. S.]

Echo-harjo, his x mark, [L. S.]

Chilly McIntosh, [L. S.]

Benjamin Marshall, [L. S.]

George W. Stidham, [L. S.]

Daniel N. McIntosh, [L. S.]

Creek Commissioners.

John Jumper, his x mark, [L. S.]

Tus-te-nuc-o-chee, his x mark, [L. S.]

Pars-co-fer, his x mark, [L. S.]

James Factor, his x mark, [L. S.]

Seminole Commissioners.

Executed in presence of—

John W. Allen,

Edward Hanrick,

W. H. Garrett, Creek agent,

J. W. Washbourne, Seminole agent,

G. W. Stidham, United States interpreter,
Geo. W. Brinton, interpreter,
James R. Roche,
Chs. O. Joline.

TREATY WITH THE CREEKS, 1866

June 14, 1866. 14 Stats., 785. Ratified July 19, 1866. Proclaimed Aug. 11, 1866.

Treaty of cession and indemnity concluded at the city of Washington on the fourteenth day of June, in the year of our Lord one thousand eight hundred and sixty-six, by and between the United States, represented by Dennis N. Cooley, Commissioner of Indian Affairs, Elija Sells, superintendent of Indian affairs for the southern superintendency, and Col. Ely S. Parker, special commissioner, and the Creek Nation of Indians, represented by Ok-tars-sars-harjo, or Sands; Cow-e-to-me-co and Che-chu-chee, delegates at large, and D. N. McIntosh and James Smith, special delegates of the Southern Creeks.

PREAMBLE.

Whereas existing treaties between the United States and the Creek Nation have become insufficient to meet their mutual necessities; and whereas the Creeks made a treaty with the so-called Confederate States, on the tenth of July, one thousand eight hundred and sixty-one, whereby they ignored their allegiance to the United States, and unsettled the treaty relations existing between the Creeks and the United States, and did so render themselves liable to forfeit to the United States all benefits and advantages enjoyed by them in lands, annuities, protection, and immunities, including their lands and other property held by grant or gift from the United States; and whereas in view of said liabilities the United States require of the Creeks a portion of their land whereon to settle other Indians; and whereas a treaty of peace and amity was entered into between the United States and the Creeks and other tribes at Fort Smith, September thirteenth [tenth,] eighteen hundred and sixty-five, whereby the Creeks revoked, cancelled, and repudiated the aforesaid treaty made with the so-called Confederate States; and whereas the United States, through its commissioners, in said treaty of peace and amity, promised to enter into treaty with the Creeks to arrange and settle all questions relating to and growing out of said treaty with the so-called Confederate States: Now, therefore, the United States, by its commissioners, and the above-named delegates of the Creek Nation, the day and year above mentioned, mutually stipulate and agree, on behalf of the respective parties, as follows, to wit:

ARTICLE 1.

There shall be perpetual peace and friendship between the parties to this treaty, and the Creeks bind themselves to remain firm allies and friends of the United States, and never to take up arms against the United States, but always faithfully to aid in putting down its enemies. They also agree to remain at peace with all other Indian tribes; and, in return, the United States guarantees them

quiet possession of their country, and protection against hostilities on the part of other tribes. In the event of hostilities, the United States agree that the tribe commencing and prosecuting the same shall, as far as may be practicable, make just reparation therefor. To insure this protection, the Creeks agree to a military occupation of their country, at any time, by the United States, and the United States agree to station and continue in said country from time to time, at its own expense, such force as may be necessary for that purpose. A general amnesty of all past offenses against the laws of the United States, committed by any member of the Creek Nation, is hereby declared. And the Creeks, anxious for the restoration of kind and friendly feelings among themselves, do hereby declare an amnesty for all past offenses against their government, and no Indian or Indians shall be proscribed, or any act of forfeiture or confiscation passed against those who have remained friendly to, or taken up arms against, the United States, but they shall enjoy equal privileges with other members of said tribe, and all laws heretofore passed inconsistent herewith are hereby declared inoperative.

ARTICLE 2.

The Creeks hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in accordance with laws applicable to all members of said tribe, shall ever exist in said nation; and inasmuch as there are among the Creeks many persons of African descent, who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said country, and may return within one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens [thereof,] shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe.

ARTICLE 3.

In compliance with the desire of the United States to locate other Indians and freedmen thereon, the Creeks hereby cede and convey to the United States, to be sold to and used as homes for such other civilized Indians as the United States may choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south; the eastern half of said Creek lands, being retained by them, shall, except as herein otherwise stipulated, be forever set apart as a home for said Creek Nation; and in consideration of said cession of the west half of their lands, estimated to contain three millions two hundred and fifty thousand five hundred and sixty acres, the United States agree to pay the sum of thirty (30) cents per acre, amounting to nine hundred and seventy-five thousand one hundred and sixty-eight dollars, in the manner hereinafter provided, to wit: two hundred thousand dollars shall be paid per capita in money, unless otherwise directed by the President of the United States, upon the ratification of this treaty, to enable the Creeks to occupy, restore, and improve their farms, and to make their nation independent and self-sustaining,

and to pay the damages sustained by the mission schools on the North Fork and the Arkansas Rivers, not to exceed two thousand dollars, and to pay the delegates such per diem as the agent and Creek council may agree upon, as a just and fair compensation, all of which shall be distributed for that purpose by the agent, with the advice of the Creek council, under the direction of the Secretary of the Interior. One hundred thousand dollars shall be paid in money and divided to soldiers that enlisted in the Federal Army and the loyal refugee Indians and freedmen who were driven from their homes by the rebel forces, to reimburse them in proportion to their respective losses; four hundred thousand dollars be paid in money and divided per capita to said Creek Nation, unless otherwise directed by the President of the United States, under the direction of the Secretary of the Interior, as the same may accrue from the sale of land to other Indians. The United States agree to pay to said Indians, in such manner and for such purposes as the Secretary of the Interior may direct, interest at the rate of five per cent. per annum from the date of the ratification of this treaty, on the amount hereinbefore agreed upon for said ceded lands, after deducting the said two hundred thousand dollars; the residue, two hundred and seventy-five thousand one hundred and sixty-eight dollars, shall remain in the Treasury of the United States, and the interest thereon, at the rate of five per centum per annum, be annually paid to said Creeks as above stipulated.

ARTICLE 4.

Immediately after the ratification of this treaty the United States agree to ascertain the amount due the respective soldiers who enlisted in the Federal Army, loyal refugee Indians and freedmen, in proportion to their several losses, and to pay the amount awarded each, in the following manner, to wit: A census of the Creeks shall be taken by the agent of the United States for said nation, under the direction of the Secretary of the Interior, and a roll of the names of all soldiers that enlisted in the Federal Army, loyal refugee Indians, and freedmen, be made by him. The superintendent of Indian affairs for the Southern superintendency and the agent of the United States for the Creek Nation shall proceed to investigate and determine from said roll the amounts due the respective refugee Indians, and shall transmit to the Commissioner of Indian affairs for his approval, and that of the Secretary of the Interior, their awards, together with the reasons therefor. In case the awards so made shall be duly approved, said awards shall be paid from the proceeds of the sale of said lands within one year from the ratification of this treaty, or so soon as said amount of one hundred thousand ($100,000) dollars can be raised from the sale of said land to other Indians.

ARTICLE 5.

The Creek Nation hereby grant a right of way through their lands, to the Choctaw and Chickasaw country, to any company which shall be duly authorized by Congress, and shall, with the express consent and approbation of the Secretary of the Interior, undertake to construct a railroad from any point north of to any point in or south of the Creek country, and likewise from any point on their eastern to their western or southern boundary, but said railroad company, together with all its agents and employés, shall be subject to the laws of the United States relating to intercourse with Indian tribes, and also to such rules and regulations as may be prescribed by the Secretary of the Interior for

that purpose, and the Creeks agree to sell to the United States, or any company duly authorized as aforesaid, such lands not legally owned or occupied by a member or members of the Creek Nation, lying along the line of said contemplated railroad, not exceeding on each side thereof a belt or strip of land three miles in width, at such price per acre as may be eventually agreed upon between said Creek Nation and the party or parties building said road, subject to the approval of the President of the United States: Provided, however, That said land thus sold shall not be reconveyed, leased, or rented to, or be occupied by any one not a citizen of the Creek Nation, according to its laws and recognized usages: Provided, also, That officers, servants, and employés of said railroad necessary to its construction and management, shall not be excluded from such necessary occupancy, they being subject to the provisions of the Indian intercourse law and such rules and regulations as may be established by the Secretary of the Interior, nor shall any conveyance of any of said lands be made to the party building and managing said road until its completion as a first-class railroad, and its acceptance as such by the Secretary of the Interior.

ARTICLE 6.

[Stricken out.]

ARTICLE 7.

The Creeks hereby agree that the Seminole tribe of Indians may sell and convey to the United States all or any portion of the Seminole lands, upon such terms as may be mutually agreed upon by and between the Seminoles and the United States.

ARTICLE 8.

It is agreed that the Secretary of the Interior forthwith cause the line dividing the Creek country, as provided for by the terms of the sale of Creek lands to the United States in article third of this treaty, to be accurately surveyed under the direction of the Commissioner of Indian Affairs, the expenses of which survey shall be paid by the United States.

ARTICLE 9.

Inasmuch as the agency buildings of the Creek tribe have been destroyed during the late war, it is further agreed that the United States shall at their own expense, not exceeding ten thousand dollars, cause to be erected suitable agency buildings, the sites whereof shall be selected by the agent of said tribe, in the reduced Creek reservation, under the direction of the superintendent of Indian affairs.

In consideration whereof, the Creeks hereby cede and relinquish to the United States one section of their lands, to be designated and selected by their agent, under the direction of the superintendent of Indian affairs, upon which said agency buildings shall be erected, which section of land shall revert to the Creek nation when said agency buildings are no longer used by the United States, upon said nation paying a fair and reasonable value for said buildings at the time vacated.

ARTICLE 10.

The Creeks agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian territory: Provided, however, [That] said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. The Creeks also agree that a general council, consisting of delegates elected by each nation or tribe lawfully resident within the Indian territory, may be annually convened in said territory, which council shall be organized in such manner and possess such powers as are hereinafter described.

First. After the ratification of this treaty, and as soon as may be deemed practicable by the Secretary of the Interior, and prior to the first session of said council, a census, or enumeration of each tribe lawfully resident in said territory, shall be taken under the direction of the superintendent of Indian affairs, who for that purpose is hereby authorized to designate and appoint competent persons, whose compensation shall be fixed by the Secretary of the Interior, and paid by the United States.

Second. The first general council shall consist of one member from each tribe, and an additional member from each one thousand Indians, or each fraction of a thousand greater than five hundred, being members of any tribe lawfully resident in said territory, and shall be selected by said tribes respectively, who may assent to the establishment of said general council, and if none should be thus formerly selected by any nation or tribe, the said nation or tribe shall be represented in said general council by the chief or chiefs and head men of said tribe, to be taken in the order of their rank as recognized in tribal usage, in the same number and proportion as above indicated. After the said census shall have been taken and completed, the superintendent of Indian affairs shall publish and declare to each tribe the number of members of said council to which they shall be entitled under the provisions of this article, and the persons entitled to so represent said tribes shall meet at such time and place as he shall appoint, but thereafter the time and place of the sessions of said council shall be determined by its action: Provided, That no session in any one year shall exceed the term of thirty days, and provided that special sessions of said council may be called whenever, in the judgment of the Secretary of the Interior, the interest of said tribe shall require.

Third. Said general council shall have power to legislate upon all rightful subjects and matters pertaining to the intercourse and relations of the Indian tribes and nations resident in said territory, the arrest and extradition of criminals and offenders escaping from one tribe to another, the administration of justice between members of the several tribes of said territory, and persons other than Indians and members of said tribes or nations, the construction of works of internal improvement, and the common defence and safety of the nations of said territory. All laws enacted by said general council shall take effect at such time as may therein be provided, unless suspended by direction of the Secretary of the Interior or the President of the United States. No law shall be enacted inconsistent with the Constitution of the United States, or the laws of Congress, or existing treaty stipulations with the United States, nor shall said council legislate upon matters pertaining to the organization, laws, or customs of the several tribes, except as herein provided for.

Fourth. Said council shall be presided over by the superintendent of Indian affairs, or, in case of his absence from any cause, the duties of said superintendent enumerated in this article shall be performed by such person as the Secretary of the Interior may direct.

Fifth. The Secretary of the Interior shall appoint a secretary of said council, whose duty it shall be to keep an accurate record of all the proceedings of said council, and who shall transmit a true copy of all such proceedings, duly certified by the superintendent of Indian affairs, to the Secretary of the Interior immediately after the sessions of said council shall terminate. He shall be paid out of the Treasury of the United States an annually salary of five hundred dollars.

Sixth. The members of said council shall be paid by the United States the sum of four dollars per diem during the time actually in attendance on the sessions of said council, and at the rate of four dollars for every twenty miles necessary[il]ly traveled by them in going to and returning to their homes respectively, from said council, to be certified by the secretary of said council and the superintendent of Indian affairs.

Seventh. The Creeks also agree that a court or courts may be established in said territory, with such jurisdiction and organized in such manner as Congress may by law provide.

ARTICLE 11.

The stipulations of this treaty are to be a full settlement of all claims of said Creek Nation for damages and losses of every kind growing out of the late rebellion and all expenditures by the United States of annuities in clothing and feeding refugee and destitute Indians since the diversion of annuities for that purpose consequent upon the late war with the so-called Confederate States; and the Creeks hereby ratify and confirm all such diversions of annuities heretofore made from the funds of the Creek Nation by the United States, and the United States agree that no annuities shall be diverted from the objects for which they were originally devoted by treaty stipulations with the Creeks, to the use of refugee and destitute Indians other than the Creeks or members of the Creek Nation after the close of the present fiscal year, June thirtieth, eighteen hundred and sixty-six.

ARTICLE 12.

The United States re-affirms and re-assumes all obligations of treaty stipulations with the Creek Nation entered into before the treaty of said Creek Nation with the so-called Confederate States, July tenth, eighteen hundred and sixty-one, not inconsistent herewith; and further agrees to renew all payments accruing by force of said treaty stipulations from and after the close of the present fiscal year, June thirtieth, eighteen hundred and sixty-six, except as is provided in article eleventh.

ARTICLE 13.

A quantity of one hundred and sixty acres, to be selected according to legal subdivision, in one body, and to include their improvements, is hereby granted to every religious society or denomination, which has erected, or which, with the consent of the Indians, may hereafter erect, buildings within the Creek

country for missionary or educational purposes; but no land thus granted, nor the buildings which have been or may be erected thereon, shall ever be sold or otherwise disposed of, except with the consent and approval of the Secretary of the Interior; and whenever any such lands or buildings shall be so sold or disposed of, the proceeds thereof shall be applied, under the direction of the Secretary of the Interior, to the support and maintenance of other similar establishments for the benefit of the Creeks and such other persons as may be or may hereafter become members of the tribe according to its laws, customs, and usages; and if at any time said improvements shall be abandoned for one year for missionary or educational purposes, all the rights herein granted for missionary and educational purposes shall revert to the said Creek Nation.

ARTICLE 14.

It is further agreed that all treaties heretofore entered into between the United States and the Creek Nation which are inconsistent with any of the articles or provisions of this treaty shall be, and are hereby, rescinded and annulled; and it is further agreed that ten thousand dollars shall be paid by the United States, or so much thereof as may be necessary, to pay the expenses incurred in negotiating the foregoing treaty.

In testimony whereof, we, the commissioners representing the United States and the delegates representing the Creek nation, have hereunto set our hands and seals at the place and on the day and year above written.

D. N. Cooley, Commissioner Indian Affairs. [SEAL.]

Elijah Sells, Superintendent Indian Affairs. [SEAL.]

Ok-ta-has Harjo, his x mark. [SEAL.]

Cow Mikko, his x mark. [SEAL.]

Cotch-cho-chee, his x mark. [SEAL.]

D. N. McIntosh. [SEAL.]

James M. C. Smith. [SEAL.]

In the presence of—

J. W. Dunn, United States Indian agent.

J. Harlan, United States Indian agent.

Charles E. Mix.

J. M. Tebbetts.

Geo. A. Reynolds, United States Indian agent.

John B. Sanborn.

John F. Brown, Seminole delegate.

John Chupco, his x mark.

Fos-har-jo, his x mark.

Cho-cote-huga, his x mark.

R. Fields, Cherokee delegate.

Douglas H. Cooper.

Wm. Penn Adair.

Harry Island, his x mark, United States interpreter, Creek Nation.

Suludin Watie.

ARTICLES OF CESSION AND AGREEMENT, 1889

Mar. 1, 1889. 25 Stat., 757.

An act to ratify and confirm an agreement with the Muscogee (or Creek) Nation of Indians in the Indian Territory, and for other purposes.

Whereas it is provided by section eight of the act of March third, eighteen hundred and eighty-five, entitled ''An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes,'' ''that the President is hereby authorized to open negotiations with the Creeks, Seminoles, and Cherokees for the purpose of opening to settlement under the homestead laws the unassigned lands in said Indian Territory ceded by them respectively to the United States by the several treaties of August eleventh, eighteen hundred and sixty-six, March twenty-first, eighteen hundred and sixty-six, and July nineteenth, eighteen hundred and sixty-six; and for that purpose the sum of five thousand dollars, or so much thereof as may be necessary, be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated; his action hereunder to be reported to Congress;'' and

Whereas William F. Vilas, Secretary of the Interior, by and under the direction of the President of the United States, on the part of the United States, and the Muscogee (or Creek) Nation of Indians, represented by Pleasant Porter, David M. Hodge, and Esparhecher, delegates and representatives thereto duly authorized and empowered by the principal chief and national council of the said Muscogee (or Creek) Nation, did, on the nineteenth day of January, anno Domini eighteen hundred and eighty-nine, enter into and conclude articles of cession and agreement, which said cession and agreement is in words as follows:

Articles of cession and agreement made and concluded at the city of Washington on the nineteenth day of January in the year of our Lord eighteen hundred and eighty-nine, by and between the United States of America, represented by William F. Vilas, Secretary of the Interior, by and under direction of the President of the United States, and the Muscogee (or Creek) Nation of Indians, represented by Pleasant Porter, David M. Hodge, and Esparhecher, delegates and representatives thereunto duly authorized and empowered by the principal chief and national council of the said Muscogee (or Creek) Nation;

Whereas by a treaty of cession made and concluded by and between the said parties on the fourteenth day of June, eighteen hundred and sixty-six, the said Muscogee (or Creek) Nation, in compliance with the desire of the United States

to locate other Indians and freedmen thereon, ceded and conveyed to the United States, to be sold to and used as homes for such other civilized Indians as the United States might choose to settle thereon, the west half of their entire domain, to be divided by a line running north and south, which should be surveyed as provided in the eighth article of the said treaty; the eastern half of the lands of the said Muscogee (or Creek) Nation to be retained by them as a home;

And whereas but a portion of said lands so ceded for such use has been sold to Indians or assigned to their use, and the United States now desire that all of said ceded lands may be entirely freed from any limitation in respect to the use and enjoyment thereof and all claims of the said Muscogee (or Creek) Nation to such lands may be surrendered and extinguished as well as all other claims of whatsoever nature to any territory except the aforesaid eastern half of their domain;

Now, therefore, these articles of cession and agreement by and between the said contracting parties, witness:

I. That said Muscogee (or Creek) Nation, in consideration of the sum of money hereinafter mentioned, hereby absolutely cedes and grants to the United States, without reservation or condition, full and complete title to the entire western half of the domain of the said Muscogee (or Creek) Nation lying west of the division line surveyed and established under the said treaty of eighteen hundred and sixty-six, and also grants and releases to the United States all and every claim, estate, right, or interest of any and every description in or to any and all land and territory whatever, except so much of the said former domain of the said Muscogee (or Creek) Nation as lies east of the said line of division, surveyed and established as aforesaid, and is now held and occupied as the home of said nation.

II. In consideration whereof, and of the covenant herein otherwise contained, the United States agree to pay to the said Muscogee (or Creek) Nation the sum of two million two hundred and eighty thousand eight hundred and fifty-seven dollars and ten cents, whereof two hundred and eighty thousand eight hundred and fifty-seven dollars and ten cents shall be paid to the national treasurer of said Muscogee (or Creek) Nation, or to such other person as shall be duly authorized to receive the same, at such times and in such sums after the due ratification of this agreement (as hereinafter provided) as shall be directed and required by the national council of said nation, and the remaining sum of two million dollars shall be set apart and remain in the Treasury of the United States to the credit of the said nation, and shall bear interest at the rate of five per centum per annum from and after the first day of July, 1889, to be paid to the treasurer of said nation and to be judiciously applied under the direction of the legislative council thereof, to the support of their government, the maintenance of schools and educational establishments, and such other objects as may be designed to promote the welfare and happiness of the people of the said Muscogee (or Creek) Nation, subject to the discretionary direction of the Congress of the United States; Provided, That the Congress of the United States may at any time pay over to the said Muscogee (or Creek) Nation the whole, or, from time to time, any part of said principal sum, or of any principal sum belonging to said nation held in the Treasury of the United States, and

thereupon terminate the obligation of the United States in respect thereto and in respect to any further interest upon so much of said principal as shall be so paid and discharged.

III. It is stipulated and agreed that henceforth especial effort shall be made by the Creek Nation to promote the education of the youth thereof and extend their useful knowledge and skill in the arts of civilization; and the said nation agrees that it will devote not less than fifty thousand dollars, annually, of its income, derived hereunder, to the establishment and maintenance of schools and other means calculated to advance the end; and of this annual sum at least ten thousand dollars shall be applied to the education of orphan children of said nation.

IV. These articles of cession and agreement shall be of no force or obligation upon either party until they shall be ratified and confirmed, first, by act of the national council of said Muscogee (or Creek) Nation, and secondly, by the Congress of the United States, nor unless such ratification shall be on both sides made and completed before the first day of July, anno Domini eighteen hundred and eighty-nine.

V. No treaty or agreement heretofore made and now subsisting is hereby affected, except so far as the provisions hereof supersede and control the same.

In testimony whereof, we the said William F. Vilas, Secretary of the Interior, on the part of the United States, and the said Pleasant Porter, David M. Hodge, and Esparhecher, delegates of the Muscogee (or Creek) Nation, have hereunto set our hands and seals, at the place and on the day first above written, in duplicate.

WILLIAM F. VILAS, Secretary of the Interior. [SEAL.]

PLEASANT PORTER, [SEAL.]

DAVID M. HODGE, [SEAL.]

ESPARHECHER, his **X** mark. [SEAL.]

In presence of:

JOHN P. HUME,

ROBERT V. BELT.

Whereas the Muscogee (or Creek) Nation of Indians has accepted, ratified, and confirmed said articles of cession and agreement by act of its national council, approved by the principal chief of said nation on the thirty-first day of January, anno Domini eighteen hundred and eighty-nine, wherein it is provided that the grant and cession of land and territory therein made shall take effect when the same shall be ratified and confirmed by the Congress of the United States of America, Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said articles of cession and agreement are hereby accepted, ratified, and confirmed.

SEC. 2

That the lands acquired by the United States under said agreement shall be a part of the public domain, but they shall only be disposed of in accordance with the laws regulating homestead entries, and to the persons qualified to make such homestead entries, not exceeding one hundred and sixty acres to one qualified claimant. And the provisions of section twenty-three hundred and one of the Revised Statutes of the United States shall not apply to any lands acquired under said agreement. Any person who may enter upon any part of said lands in said agreement mentioned prior to the time that the same are opened to settlement by act of Congress shall not be permitted to occupy or to make entry of such lands or lay any claim thereto.

SEC. 3

That for the purpose of carrying out the terms of said articles of cession and agreement the sum of two million two hundred and eighty thousand eight hundred and fifty-seven dollars and ten cents is hereby appropriated.

SEC. 4

That the Secretary of the Treasury is hereby authorized and directed to pay, out of the appropriation hereby made, the sum of two hundred and eighty thousand eight hundred and fifty-seven dollars and ten cents, to the national treasurer of said Muscogee (or Creek) Nation, or to such person as shall be duly authorized to receive the same, at such time and in such sums as shall be directed and required by the national council of said nation, and the Secretary of the Treasury is hereby further authorized and directed to place the remaining sum of two million dollars in the Treasury of the United States to the credit of said Muscogee (or Creek) Nation of Indians, to be held for, and as provided in said articles of cession and agreement, and to bear interest at the rate of five per centum per annum, from and after the first day of July, anno Domini eighteen hundred and eighty-nine; said interest to be paid to the treasurer of said nation annually.

Approved, March 1, 1889.

ALLOTMENT ACT, 1898

June 28, 1898. 30 Stat., 495.

An act for the protection of the people of the Indian Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* * *

[**NOTE.**—The first twenty-eight sections of this act contain general legislation relating to the government of the Indian Territory. Section 29 relates to the Choctaw and Chickasaw nations.]

SEC. 30

That the agreement made by the Commission to the Five Civilized Tribes with the commission representing the Muscogee (or Creek) tribe of Indians on the twenty-seventh day of September, eighteen hundred and ninety-seven, as herein amended, is hereby ratified and confirmed, and the same shall be of full force

and effect if ratified before the first day of December, eighteen hundred and ninety-eight, by a majority of the votes cast by the members of said tribe at an election to be held for that purpose; and the executive of said tribe is authorized and directed to make public proclamation that said agreement shall be voted on at the next general election, to be called by such executive for the purpose of voting on said agreement; and if said agreement as amended be so ratified, the provisions of this Act shall then only apply to said tribe where the same do not conflict with the provisions of said agreement; but the provisions of said agreement, if so ratified, shall not in any manner affect the provisions of section fourteen of this Act, which said amended agreement is as follows:

This agreement, by and between the Government of the United States of the first part, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Frank C. Armstrong, Archibald S. McKennon, Alexander B. Montgomery, and Tams Bixby, duly appointed and authorized thereunto, and the government of the Muscogee or Creek Nation in the Indian Territory of the second part, entered into in behalf of such Muscogee or Creek government, by its commission, duly appointed and authorized thereunto, viz, Pleasant Porter, Joseph Mingo, David N. Hodge, George A. Alexander, Roland Brown, William A. Sapulpa, and Conchartie Micco,

Witnesseth, That in consideration of the mutual undertakings herein contained, it is agreed as follows:

GENERAL ALLOTMENT OF LAND.

1. There shall be allotted out of the lands owned by the Muscogee or Creek Indians in the Indian Territory to each citizen of said nation one hundred and sixty acres of land. Each citizen shall have the right, so far as possible, to take his one hundred and sixty acres so as to include the improvements which belong to him, but such improvements shall not be estimated in the value fixed on his allotment, provided any citizen may take any land not already selected by another; but if such land, under actual cultivation, has on it any lawful improvements, he shall pay the owner of said improvements for same, the value to be fixed by the commission appraising the land. In the case of a minor child, allotment shall be selected for him by his father, mother, guardian, or the administrator having charge of his estate, preference being given in the order named, and shall not be sold during his minority. Allotments shall be selected for prisoners, convicts, and incompetents by some suitable person akin to them, and due care shall be taken that all persons entitled thereto shall have allotments made to them.

2. Each allotment shall be appraised at what would be its present value, if unimproved, considering the fertility of the soil and its location, but excluding the improvements, and each allottee shall be charged with the value of his allotment in the future distribution of any funds of the nation arising from any source whatever, so that each member of the nation shall be made equal in the distribution of the lands and moneys belonging to the nation, provided that the minimum valuation to be placed upon any land in the said nation shall be one dollar and twenty-five cents ($1.25) per acre.

3. In the appraisement of the said allotment, said nation may have a representative to cooperate with a commission, or a United States officer,

designated by the President of the United States, to make the appraisement. Appraisements and allotments shall be made under the direction of the Secretary of the Interior, and begin as soon as an authenticated roll of the citizens of the said nation has been made. All citizens of said nation, from and after the passage of this Act, shall be entitled to select from the lands of said nation an amount equal to one hundred and sixty acres, and use and occupy the same until the allotments therein provided are made.

4. All controversies arising between the members of said nation as to their rights to have certain lands allotted to them shall be settled by the commission making allotments.

5. The United States shall put each allottee in unrestricted possession of his allotment and remove therefrom all persons objectionable to the allottee.

6. The excess of lands after allotment is completed, all funds derived from town sites, and all other funds accruing under the provisions of this agreement shall be used for the purpose of equalizing allotments, valued as herein provided, and if the same be found insufficient for such purpose, the deficiency shall be supplied from other funds of the nation upon dissolution of its tribal relations with the United States, in accordance with the purposes and intent of this agreement.

7. The residue of the lands, with the improvements thereon, if any there be, shall be appraised separately, under the direction of the Secretary of the Interior, and said lands and improvements sold in tracts of not to exceed one hundred and sixty acres to one person, to the highest bidder, at public auction, for not less than the appraised value per acre of land; and after deducting the appraised value of the lands, the remainder of the purchase money shall be paid to the owners of the improvement.

8. Patents to all lands sold shall be issued in the same manner as to allottees.

SPECIAL ALLOTMENTS.

9. There shall be allotted and patented one hundred and sixty acres each to Mrs. A. E. W. Robertson and Mrs. H. F. Buckner (nee Grayson) as special recognition of their services as missionaries among the people of the Creek Nation.

10. Harrell Institute, Henry Kendall College, and Nazareth Institute, in Muscogee, and Baptist University, near Muscogee, shall have free of charge, to be allotted and patented to said institutions or to the churches to which they belong, the grounds they now occupy, to be used for school purposes only and not to exceed ten acres each.

RESERVATIONS.

11. The following lands shall be reserved from the general allotment hereinbefore provided:

All lands hereinafter set apart for town sites; all lands which shall be selected for town cemeteries by the town-site commission as hereinafter provided; all lands that may be occupied at the time allotment begins by railroad companies duly authorized by Congress as railroad rights of way; one hundred sixty acres

at Okmulgee, to be laid off as a town, one acre of which, now occupied by the capitol building, being especially reserved for said public building; one acre for each church now located and used for purposes of worship outside of the towns, and sufficient land for burial purposes, where neighborhood burial grounds are now located; one hundred sixty acres each, to include the building sites now occupied, for the following educational institutions: Eufaula High School, Wealaka Mission, New Yaka Mission, Wetumpka Mission, Euchee Institute, Coweta Mission, Creek Orphan Home, Tallahassee Mission (colored), Pecan Creek Mission (colored), and Colored Orphan Home. Also four acres each for the six court-houses now established.

TITLES.

12. As soon as practicable after the completion of said allotments the principal chief of the Muscogee or Creek Nation shall execute under his hand and the seal of said nation, and deliver to each of said allottees, a patent, conveying to him all the right, title, and interest of the said nation in and to the land which shall have been allotted to him in conformity with the requirements of this agreement. Said patents shall be framed in accordance with the provisions of this agreement and shall embrace the land allotted to such patentee and no other land. The acceptance of his patent by such allottee shall be operative as an assent on his part to the allotment and conveyance of all the land of the said nation in accordance with the provisions of this agreement, and as a relinquishment of all his rights, title, and interest in and to any and all parts thereof, except the land embraced in said patent; except, also, his interest in the proceeds of all lands herein excepted from allotment.

13. The United States shall provide by law for proper record of land titles in the territory occupied by the said nation.

TOWN SITES.

14. There shall be appointed a commission, which shall consist of one member appointed by the executive of the Muscogee or Creek Nation, who shall not be interested in town property other than his home, and one member who shall be appointed by the President of the United States. Said commission shall lay out town sites, to be restricted as far as possible to their present limits, where towns are now located. No town laid out and platted by said commission shall cover more than four square miles of territory.

15. When said towns are laid out, each lot on which substantial and valuable improvements have been made shall be valued by the commission at the price a fee-simple title to the same would bring in the market at the time the valuation is made, but not to include in such value the improvements thereon.

16. In appraising the value of town lots, the number of inhabitants, the location and surrounding advantages of the town shall be considered.

17. The owner of the improvements on any lot shall have the right to buy the same at fifty per centum of the value within sixty days from the date of notice served on him that such lot is for sale, and if he purchase the same he shall, within ten days from his purchase, pay into the Treasury of the United States one-fourth of the purchase price and the balance in three equal annual

payments, and when the entire sum is paid he shall be entitled to a patent for the same, to be made as herein provided for patents to allottees.

18. In any case where the two members of the commission fail to agree as to the value of any lot they shall select a third person, who shall be a citizen of said nation and who is not interested in town lots, who shall act with them to determine said value.

19. If the owner of the improvements on any lot fail within sixty days to purchase and make the first payment on the same, such lot, with the improvements thereon (said lot and the improvements thereon having been theretofore properly appraised), shall be sold at public auction to the highest bidder, under the direction of said commission, at a price not less than the value of the lot and improvements, and the purchaser at such sale shall pay to the owner of the improvements the price for which said lot and the improvements thereon shall be sold, less fifty per centum of the said appraised value of the lot, and shall pay fifty per centum of said appraised value of the lot into the United States Treasury, under regulations to be established by the Secretary of the Interior, in four installments, as hereinbefore provided. Said commission shall have the right to reject a bid on any lot and the improvements thereon which it may consider below the real value.

20. All lots not having improvements thereon and not so appraised shall be sold by the commission from time to time at public auction, after proper advertisement, as may seem for the best interest of the said nation and the proper development of each town, the purchase price to be paid in four installments, as hereinbefore provided for improved lots.

21. All citizens or persons who have purchased the right of occupancy from parties in legal possession prior to the date of signing this agreement, holding lots or tracts of ground in towns, shall have the first right to purchase said lots or tracts upon the same terms and conditions as is provided for improved lots, provided said lots or tracts shall have been theretofore properly appraised, as hereinbefore provided for improved lots.

22. Said commission shall have the right to reject any bid for such lots or tracts which is considered by said commission below the fair value of the same.

23. Failure to make any one of the payments as heretofore provided for a period of sixty days shall work a forfeiture of all payments made and all rights under the contract; provided that the purchaser of any lot may pay full price before the same is due.

24. No tax shall be assessed by any town government against any town lot unsold by the commission, and no tax levied against a lot sold as herein provided shall constitute a lien on the same until the purchase price thereof has been fully paid.

25. No law or ordinance shall be passed by any town which interferes with the enforcement of or is in conflict with the constitution or laws of the United States, or in conflict with this agreement, and all persons in such towns shall be subject to such laws.

26. Said commission shall be authorized to locate a cemetery within a suitable distance from each town site, not to exceed twenty acres; and when

any town shall have paid into the United States Treasury for the benefit of the said nation ten dollars per acre therefor, such town shall be entitled to a patent for the same, as herein provided for titles to allottees, and shall dispose of same at reasonable prices in suitable lots for burial purposes; the proceeds derived therefrom to be applied by the town government to the proper improvement and care of said cemetery.

27. No charge or claim shall be made against the Muscogee or Creek Nation by the United States for the expenses of surveying and platting the lands and town site, or for grading, appraising and allotting the land, or for appraising and disposing of the town lots as herein provided.

28. There shall be set apart and exempted from appraisement and sale, in the towns, lots upon which churches and parsonages are now built and occupied, not to exceed fifty feet front and one hundred and fifty feet deep for each church and parsonage. Such lots shall be used only for churches and parsonages, and when they cease to be so used, shall revert to the members of the nation, to be disposed of as other town lots.

29. Said commission shall have prepared correct and proper plats of each town, and file one in the clerk's office of the United States district court for the district in which the town is located, one with the executive of the nation, and one with the Secretary of the Interior, to be approved by him before the same shall take effect.

30. A settlement numbering at least three hundred inhabitants, living within a radius of one-half mile at the time of the signing of this agreement, shall constitute a town within the meaning of this agreement. Congress may by law provide for the government of the said towns.

CLAIMS.

31. All claims, of whatever nature, including the ''Loyal Creek Claim'' made under article 4 of the treaty of 1866, and the ''Self Emigration Claim,'' under article 12 of the treaty of 1832, which the Muscogee or Creek Nation, or individuals thereof, may have against the United States, or any claim which the United States may have against the said nation, shall be submitted to the Senate of the United States as a board of arbitration; and all such claims against the United States shall be presented within one year from the date hereof, and within two years from the date hereof the Senate of the United States shall make final determination of said claim; and in the event that any moneys are awarded to the Muscogee or Creek Nation, or individuals thereof, by the United States, provision shall be made for the immediate payment of the same by the United States.

JURISDICTION OF COURTS.

32. The United States courts now existing, or that may hereafter be created in the Indian Territory, shall have exclusive jurisdiction of all controversies growing out of the title, ownership, occupation, or use of real estate in the territory occupied by the Muscogee or Creek Nation, and to try all persons charged with homicide, embezzlement, bribery and embracery hereafter committed in the territory of said Nation, without reference to race or citizenship of the person or persons charged with any such crime; and any citizen or officer

of said nation charged with any such crime shall be tried and, if convicted, punished as though he were a citizen or officer of the United States; and the courts of said nation shall retain all the jurisdiction which they now have, except as herein transferred to the courts of the United States.

ENACTMENTS OF NATIONAL COUNCIL.

33. No act, ordinance, or resolution of the council of the Muscogee or Creek Nation in any manner affecting the land of the nation, or of individuals, after allotment, or the moneys or other property of the nation, or citizens thereof (except appropriations for the regular and necessary expenses of the government of the said nation), or the rights of any person to employ any kind of labor, or the rights of any persons who have taken or may take the oath of allegiance to the United States, shall be of any validity until approved by the President of the United States. When such act, ordinance, or resolution passed by the council of said nation shall be approved by the executive thereof, it shall then be the duty of the national secretary of said nation to forward same to the President of the United States, duly certified and sealed, who shall, within thirty days after receipt thereof, approve or disapprove the same, and said act, ordinance, or resolution, when so approved, shall be published in at least two newspapers having a bona fide circulation throughout the territory occupied by said nation, and when disapproved shall be returned to the executive of said nation.

MISCELLANEOUS.

34. Neither the town lots nor the allotment of land of any citizen of the Muscogee or Creek Nation shall be subjected to any debt contracted by him prior to the date of his patent.

35. All payments herein provided for shall be made, under the direction of the Secretary of the Interior, into the United States Treasury, and shall be for the benefit of the citizens of the Muscogee or Creek Nation. All payments hereafter to be made to the members of the said nation shall be paid directly to each individual member by a bonded officer of the United States, under the direction of the Secretary of the Interior, which officer shall be required to give strict account for such disbursements to the Secretary.

36. The United States agrees to maintain strict laws in the territory of said nation against the introduction, sale, barter, or giving away of liquors and intoxicants of any kind or quality.

37. All citizens of said nation, when the tribal government shall cease, shall become possessed of all the rights and privileges of citizens of the United States.

38. This agreement shall in no wise affect the provisions of existing treaties between the Muscogee or Creek Nation and the United States, except in so far as it is inconsistent therewith.

In witness whereof, the said Commissioners do hereunto affix their names at Muscogee, Indian Territory, this the twenty-seventh day of September, eighteen hundred and ninety-seven.

HENRY L. DAWES, Chairman.
TAMS BIXBY, Acting Chairman.
FRANK C. ARMSTRONG,
ARCHIBALD S. MCKENNON,
A. B. MONTGOMERY,
Commission to the Five Civilized Tribes.
ALLISON L. AYLESWORTH, Acting Secretary.
PLEASANT PORTER, Chairman.
JOSEPH MINGO,
DAVID M. HODGE,
GEORGE A. ALEXANDER,
ROLAND (his **x** mark) BROWN,
WILLIAM A. SAPULPA,
CONCHARTY (his **x** mark) MICCO,
Muscogee or Creek Commission.
J. H. LYNCH, Secretary.
Approved, June 28, 1898.

ALLOTMENT ACT, 1901

Mar. 1, 1901. 31 Stat., 861.

An act to ratify and confirm an agreement with the Muscogee or Creek tribe of Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the agreement negotiated between the Commission to the Five Civilized Tribes and the Muscogee or Creek tribe of Indians at the city of Washington on the eighth day of March, nineteen hundred, as herein amended, is hereby accepted, ratified, and confirmed, and the same shall be of full force and effect when ratified by the Creek national council. The principal chief, as soon as practicable after the ratification of this agreement by Congress, shall call an extra session of the Creek national council and lay before it this agreement and the Act of Congress ratifying it, and if the agreement be ratified by said council, as provided in the constitution of said nation, he shall transmit to the President of the United States the act of council ratifying the agreement, and the President of the United States shall thereupon issue his proclamation declaring the same duly ratified, and that all the provisions of this agreement have become law according to the terms thereof: Provided, That such ratification by the Creek national council shall be made within ninety days from the approval of this Act by the President of the United States.

This agreement by and between the United States, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby,

Archibald S. McKennon, and Thomas B. Needles, duly appointed and authorized thereunto, and the Muskogee (or Creek) tribe of Indians, in Indian Territory, entered into in behalf of said tribe by Pleasant Porter, principal chief, and George A. Alexander, David M. Hodge, Isparhecher, Albert P. McKellop, and Cub McIntosh, delegates, duly appointed and authorized thereunto,

Witnesseth that in consideration of the mutual undertakings herein contained it is agreed as follows:

DEFINITIONS.

1. The words ''Creek'' and ''Muskogee,'' as used in this agreement, shall be deemed synonymous, and the words ''Creek Nation'' and ''tribe'' shall each be deemed to refer to the Muskogee Nation or Muskogee tribe of Indians in Indian Territory. The words ''principal chief'' shall be deemed to refer to the principal chief of the Muskogee Nation. The words ''citizen'' or ''citizens'' shall be deemed to refer to a member or members of the Muskogee tribe or nation of Indians. The words ''The Dawes Commission'' or ''commission'' shall be deemed to refer to the United States Commission to the Five Civilized Tribes.

GENERAL ALLOTMENT OF LANDS.

[2. Substitute for this section, see 1902, chapter 1323, section 2, post.]

3. All lands of said tribe, except as herein provided, shall be allotted among the citizens of the tribe by said commission so as to give each an equal share of the whole in value, as nearly as may be, in manner following: There shall be allotted to each citizen one hundred and sixty acres of land—boundaries to conform to the Government survey—which may be selected by him so as to include improvements which belong to him. One hundred and sixty acres of land, valued at six dollars and fifty cents per acre, shall constitute the standard value of an allotment, and shall be the measure for the equalization of values, and any allottee receiving lands of less than such standard value may, at any time, select other lands, which, at their appraised value, are sufficient to make his allotment equal in value to the standard so fixed.

[Substitute for second paragraph of this section, see 1902, chapter 1323, section 3, post.]

4. Allotment for any minor may be selected by his father, mother, or guardian, in the order named, and shall not be sold during his minority. All guardians or curators appointed for minors and incompetents shall be citizens.

Allotments may be selected for prisoners, convicts, and aged and infirm persons by their duly appointed agents, and for incompetents by guardians, curators, or suitable persons akin to them, but it shall be the duty of said commission to see that such selections are made for the best interests of such parties.

5. If any citizen have in his possession, in actual cultivation, lands in excess of what he and his wife and minor children are entitled to take, he shall, within ninety days after the ratification of this agreement, selected therefrom allotments for himself and family aforesaid, and if he have lawful improvements upon such excess he may dispose of the same to any other citizen, who may thereupon select lands so as to include such improvements; but, after the expiration of ninety days from the ratification of this agreement, any citizen

may take any lands not already selected by another; but if lands so taken be in actual cultivation, having thereon improvements belonging to another citizen, such improvements shall be valued by the appraisement committee, and the amount paid to the owner thereof by the allottee, and the same shall be a lien upon the rents and profits of the land until paid: Provided, That the owner of improvements may remove the same if he desires.

6. All allotments made to Creek citizens by said commission prior to the ratification of this agreement, as to which there is no contest, and which do not include public property, and are not herein otherwise affected, are confirmed, and the same shall, as to appraisement and all things else, be governed by the provisions of this agreement; and said commission shall continue the work of allotment of Creek lands to citizens of the tribe as heretofore, conforming to provisions herein; and all controversies arising between citizens as to their right to select certain tracts of land shall be determined by said commission.

7. Lands allotted to citizens hereunder shall not in any manner whatsoever, or at any time, be incumbered, taken, or sold to secure or satisfy any debt or obligation contracted or incurred prior to the date of the deed to the allottee therefor and such lands shall not be alienable by the allottee or his heirs at any time before the expiration of five years from the ratification of this agreement, except with the approval of the Secretary of the Interior.

Each citizen shall select from his allotment forty acres of land as a homestead, which shall be nontaxable and inalienable and free from any incumbrance whatever for twenty-one years, for which he shall have a separate deed, conditioned as above: Provided, That selections of homesteads for minors, prisoners, convicts, incompetents, and aged and infirm persons, who can not select for themselves, may be made in the manner herein provided for the selection of their allotments; and if, for any reason, such selection be not made for any citizen, it shall be the duty of said commission to make selection for him.

The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after the ratification of this agreement, but if he have no such issue, then he may dispose of his homestead by will, free from limitation herein imposed, and if this be not done, the land shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, free from such limitation.

8. [Substitute for this section, see 1902, chapter 1323, section 19, post].

9. When allotment of one hundred and sixty acres has been made to each citizen, the residue of lands, not herein reserved or otherwise disposed of, and all the funds arising under this agreement shall be used for the purpose of equalizing allotments, and if the same be insufficient therefor, the deficiency shall be supplied out of any other funds of the tribe, so that the allotments of all citizens may be made equal in value, as nearly as may be, in manner herein provided.

TOWN SITES.

10. All towns in the Creek Nation having a present population of two hundred or more shall, and all others may, be surveyed, laid out, and appraised

under the provisions of an Act of Congress entitled ''An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes,'' approved May thirty-first, nineteen hundred, which said provisions are as follows:

''That the Secretary of the Interior is hereby authorized, under rules and regulations to be prescribed by him, to survey, lay out, and plat into town lots, streets, alleys, and parks, the sites of such towns and villages in the Choctaw, Chickasaw, Creek, and Cherokee nations, as may at that time have a population of two hundred or more, in such manner as will best subserve the then present needs and the reasonable prospective growth of such towns. The work of surveying, laying out, and platting such town sites shall be done by competent surveyors, who shall prepare five copies of the plat of each town site which, when the survey is approved by the Secretary of the Interior, shall be filed as follows: One in the office of the Commissioner of Indian Affairs, one with the principal chief of the nation, one with the clerk of the court within the territorial jurisdiction of which the town is located, one with the Commission to the Five Civilized Tribes, and one with the town authorities, if there be such. Where in his judgment the best interests of the public service require, the Secretary of the Interior may secure the surveying, laying out, and platting of town sites in any of said nations by contract.

''Hereafter the work of the respective town-site commissions provided for in the agreement with the Choctaw and Chickasaw tribes ratified in section twenty-nine of the Act of June twenty eighth, eighteen hundred and ninety-eight, entitled 'An Act for the protection of the people of the Indian Territory, and for other purposes,' shall begin as to any town site immediately upon the approval of the survey by the Secretary of the Interior and not before.

''The Secretary of the Interior may in his discretion appoint a town-site commission consisting of three members for each of the Creek and Cherokee nations, at least one of whom shall be a citizen of the tribe and shall be appointed upon the nomination of the principal chief of the tribe. Each commission, under the supervision of the Secretary of the Interior, shall appraise and sell for the benefit of the tribe the town lots in the nation for which it is appointed, acting in conformity with the provisions of any then existing Act of Congress or agreement with the tribe approved by Congress. The agreement of any two members of the commission as to the true value of any lot shall constitute a determination thereof, subject to the approval of the Secretary of the Interior, and if no two members are able to agree the matter shall be determined by such Secretary.

''Where in his judgment the public interests will be thereby subserved, the Secretary of the Interior may appoint in the Choctaw, Chickasaw, Creek, or Cherokee Nation a separate town-site commission for any town, in which event as to that town such local commission may exercise the same authority and perform the same duties which would otherwise devolve upon the commission for that Nation. Every such local commission shall be appointed in the manner provided in the Act approved June twenty-eighth, eighteen hundred and ninety-eight, entitled 'An Act for the protection of the people of the Indian Territory.'

''The Secretary of the Interior, where in his judgment the public interests will be thereby subserved, may permit the authorities of any town in any of said nations, at the expense of the town, to survey, lay out, and plat the site thereof, subject to his supervision and approval, as in other instances.

''As soon as the plat of any town site is approved, the proper commission shall, with all reasonable dispatch and within a limited time, to be prescribed by the Secretary of the Interior, proceed to make the appraisement of the lots and improvements, if any, thereon, and after the approval thereof by the Secretary of the Interior, shall, under the supervision of such Secretary, proceed to the disposition and sale of the lots in conformity with any then existing Act of Congress or agreement with the tribe approved by Congress, and if the proper commission shall not complete such appraisement and sale within the time limited by the Secretary of the Interior, they shall receive no pay for such additional time as may be taken by them, unless the Secretary of the Interior for good cause shown shall expressly direct otherwise.

''The Secretary of the Interior may, for good cause, remove any member of any townsite commission, tribal or local, in any of said nations, and may fill the vacancy thereby made or any vacancy other wise occurring in like manner as the place was originally filled.

''It shall not be required that the townsite limits established in the course of the platting and disposing of town lots and the corporate limits of the town, if incorporated, shall be identical or coextensive, but such townsite limits and corporate limits shall be so established as to best subserve the then present needs and the reasonable prospective growth of the town, as the same shall appear at the times when such limits are respectively established: Provided further, That the exterior limits of all townsites shall be designated and fixed at the earliest practicable time under rules and regulations prescribed by the Secretary of the Interior.

''Upon the recommendation of the Commission to the Five Civilized Tribes the Secretary of the Interior is hereby authorized at any time before allotment to set aside and reserve from allotment any lands in the Choctaw, Chickasaw, Creek, or Cherokee nations, not exceeding one hundred and sixty acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed or be in process of construction in or through either of said nations prior to the allotment of the lands therein, and this irrespective of the population of such townsite at the time. Such townsites shall be surveyed, laid out, and platted, and the lands therein disposed of for the benefit of the tribe in the manner herein prescribed for other townsites: Provided further, That whenever any tract of land shall be set aside as herein provided which is occupied by a member of the tribe, such occupant shall be fully compensated for his improvements thereon under such rules and regulations as may be prescribed by the Secretary of the Interior: Provided, That hereafter the Secretary of the Interior may, whenever the chief executive or principal chief of said nation fails or refuses to appoint a townsite commissioner for any town or to fill any vacancy caused by the neglect or refusal of the townsite commissioner appointed by the chief executive or principal chief of said nation to qualify or act, in his discretion appoint a commission to fill the vacancy thus created.''

11. Any person in rightful possession of any town lot having improvements thereon, other than temporary buildings, fencing, and tillage, shall have the right to purchase such lot by paying one-half of the appraised value thereof, but if he shall fail within sixty days to purchase such lot and make the first payment thereon, as herein provided, the lot and improvements shall be sold at public auction to the highest bidder, under direction of the appraisement commission, at a price not less than their appraised value, and the purchaser shall pay the purchase price to the owner of the improvements, less the appraised value of the lot.

12. Any person having the right of occupancy of a residence or business lot or both in any town, whether improved or not, and owning no other lot or land therein, shall have the right to purchase such lot by paying one-half of the appraised value thereof.

13. Any person holding lands within a town occupied by him as a home, also any person who had at the time of signing this agreement purchased any lot, tract, or parcel of land from any person in legal possession at the time, shall have the right to purchase the lot embraced in same by paying one-half of the appraised value thereof, not, however, exceeding four acres.

14. All town lots not having thereon improvements, other than temporary buildings, fencing, and tillage, the sale or disposition of which is not herein otherwise specifically provided for, shall be sold within twelve months after their appraisement, under direction of the Secretary of the Interior, after due advertisement, at public auction to the highest bidder at not less than their appraised value.

Any person having the right of occupancy of lands in any town which has been or may be laid out into town lots, to be sold at public auction as above, shall have the right to purchase one-fourth of all the lots into which such lands may have been divided at two-thirds of their appraised value.

15. When the appraisement of any town lot is made, upon which any person has improvements as aforesaid, said appraisement commission shall notify him of the amount of said appraisement, and he shall, within sixty days thereafter, make payment of ten per centum of the amount due for the lot, as herein provided, and four months thereafter he shall pay fifteen per centum additional, and the remainder of the purchase money in three equal annual installments, without interest.

Any person who may purchase an unimproved lot shall proceed to make payment for same in such time and manner as herein provided for the payment of sums due on improved lots, and if in any case any amount be not paid when due, it shall thereafter bear interest at the rate of ten per centum per annum until paid. The purchaser may in any case at any time make full payment for any town lot.

16. All town lots purchased by citizens in accordance with the provisions of this agreement shall be free from incumbrance by any debt contracted prior to date of his deed therefor, except for improvements thereon.

17. No taxes shall be assessed by any town government against any town lot remaining unsold, but taxes may be assessed against any town lot sold as herein

provided, and the same shall constitute a lien upon the interest of the purchaser therein after any payment thereon has been made by him, and if forfeiture of any lot be made all taxes assessed against such lot shall be paid out of any money paid thereon by the purchaser.

18. The surveyors may select and locate a cemetery within suitable distance from each town, to embrace such number of acres as may be deemed necessary for such purpose, and the appraisement commission shall appraise the same at not less than twenty dollars per acre, and the town may purchase the land by paying the appraised value thereof; and if any citizen have improvements thereon, other than fencing and tillage, they shall be appraised by said commission and paid for by the town. The town authorities shall dispose of the lots in such cemetery at reasonable prices, in suitable sizes for burial purposes, and the proceeds thereof shall be applied to the general improvement of the property.

19. The United States may purchase, in any town in the Creek Nation, suitable land for court-houses, jails, and other necessary public buildings for its use, by paying the appraised value thereof, the same to be selected under the direction of the department for whose use such buildings are to be erected; and if any person have improvements thereon, other than temporary buildings, fencing, and tillage, the same shall be appraised and paid for by the United States.

20. Henry Kendall College, Nazareth Institute, and Spaulding Institute, in Muskogee, may purchase the parcels of land occupied by them, or which may have been laid out for their use and so designated upon the plat of said town, at one-half of their appraised value, upon conditions herein provided; and all other schools and institutions of learning located in incorporated towns in the Creek Nation may, in like manner, purchase the lots or parcels of land occupied by them.

21. All town lots or parts of lots, not exceeding fifty by one hundred and fifty feet in size, upon which church houses and parsonages have been erected, and which are occupied as such at the time of appraisement, shall be properly conveyed to the churches to which such improvements belong gratuitously, and if such churches have other adjoining lots inclosed, actually necessary for their use, they may purchase the same by paying one-half the appraised value thereof.

22. The towns of Clarksville, Coweta, Gibson Station, and Mounds may be surveyed and laid out in town lots and necessary streets and alieys, and platted as other towns, each to embrace such amount of land as may be deemed necessary, not exceeding one hundred and sixty acres for either, and in manner not to include or interfere with the allotment of any citizen selected prior to the date of this agreement, which survey may be made in manner provided for other towns; and the appraisement of the town lots of said towns may be made by any committee appointed for either of the other towns herein before named, and the lots in said towns may be disposed of in like manner and on the same conditions and terms as those of other towns. All of such work may be done under the direction of and subject to the approval of the Secretary of the Interior.

TITLES.

23. Immediately after the ratification of this agreement by Congress and the tribe, the Secretary of the Interior shall furnish the principal chief with blank deeds necessary for all conveyances herein provided for, and the principal chief shall thereupon proceed to execute in due form and deliver to each citizen who has selected or may hereafter select his allotment, which is not contested, a deed conveying to him all right, title, and interest of the Creek Nation and of all other citizens in and to the lands embraced in his allotment certificate, and such other lands as may have been selected by him for equalization of his allotment.

The principal chief shall, in like manner and with like effect, execute and deliver to proper parties deeds of conveyance in all other cases herein provided for. All lands or town lots to be conveyed to any one person shall, so far as practicable, be included in one deed, and all deeds shall be executed free of charge.

All conveyances shall be approved by the Secretary of the Interior, which shall serve as a relinquishment to the grantee of all the right, title, and interest of the United States in and to the lands embraced in his deed.

Any allottee accepting such deed shall be deemed to assent to the allotment and conveyance of all the lands of the tribe, as provided herein, and as a relinquishment of all his right, title, and interest in and to the same, except in the proceeds of lands reserved from allotment.

The acceptance of deeds of minors and incompetents, by persons authorized to select their allotments for them, shall be deemed sufficient to bind such minors and incompetents to allotment and conveyance of all other lands of the tribe, as provided herein.

The transfer of the title of the Creek tribe to individual allottees and to other persons, as provided in this agreement, shall not inure to the benefit of any railroad company, nor vest in any railroad company, any right, title, or interest in or to any of the lands in the Creek Nation.

All deeds when so executed and approved shall be filed in the office of the Dawes Commission, and there recorded without expense to the grantee, and such records shall have like effect as other public records.

RESERVATIONS.

24. The following lands shall be reserved from the general allotment herein provided for:

(a) All lands herein set apart for town sites.

(b) All lands to which, at the date of the ratification of this agreement, any railroad company may, under any treaty or act of Congress, have a vested right for right of way, depots, station grounds, water stations, stock yards, or similar uses connected with the maintenance and operation of the railroad.

(c) Forty acres for the Eufaula High School.

(d) Forty acres for the Wealaka Boarding School.

(e) Forty acres for the Newyaka Boarding School.

(f) Forty acres for the Wetumka Boarding School.

(g) Forty acres for the Euchee Boarding School.

(h) Forty acres for the Coweta Boarding School.

(i) Forty acres for the Creek Orphan Home.

(j) Forty acres for the Tallahassee Colored Boarding School.

(k) Forty acres for the Pecan Creek Colored Boarding School.

(*l*) Forty acres for the Colored Creek Orphan Home.

(m) All lands selected for town cemeteries, as herein provided.

(n) The lands occupied by the university established by the American Baptist Home Mission Society, and located near the town of Muskogee, to the amount of forty acres, which shall be appraised, excluding improvements thereon, and said university shall have the right to purchase the same by paying one-half the appraised value thereof, on terms and conditions herein provided. All improvements made by said university on lands in excess of said forty acres shall be appraised and the value thereof paid to it by the person to whom such lands may be allotted.

(*o*) [Repealed by 1902, chapter 1323, post, page 764.]

(p) One acre each for all churches and schools outside of towns now regularly used as such.

All reservations under the provisions of this agreement, except as otherwise provided herein, when not needed for the purposes for which they are at present used, shall be sold at public auction to the highest bidder, to citizens only, under directions of the Secretary of the Interior.

MUNICIPAL CORPORATIONS.

25. Authority is hereby conferred upon municipal corporations in the Creek Nation, with the approval of the Secretary of the Interior, to issue bonds and borrow money thereon for sanitary purposes, and for the construction of sewers, lighting plants, waterworks, and schoolhouses, subject to all the provisions of laws of the United States in force in the organized Territories of the United States in reference to municipal indebtedness and issuance of bonds for public purposes; and said provisions of law are hereby put in force in said nation and made applicable to the cities and towns therein the same as if specially enacted in reference thereto.

CLAIMS.

26. All claims of whatsoever nature, including the ''Loyal Creek claim'' under Article Four of the treaty of eighteen hundred and sixty-six, and the ''Self-emigration claim'' under Article Twelve of the treaty of eighteen hundred and thirty-two, which the tribe or any individual thereof may have against the United States, or any other claim arising under the treaty of eighteen hundred and sixty-six, or any claim which the United States may have against said tribe, shall be submitted to the Senate of the United States for determination; and within two years from the ratification of this agreement the Senate shall make final determination thereof; and in the event that any sums are awarded the

said tribe, or any citizen thereof, provision shall be made for immediate payment of same.

Of these claims the ''Loyal Creek claim,'' for what they suffered because of their loyalty to the United States Government during the civil war, long delayed, is so urgent in its character that the parties to this agreement express the hope that it may receive consideration and be determined at the earliest practicable moment.

Any other claim which the Creek Nation may have against the United States may be prosecuted in the Court of Claims of the United States, with right of appeal to the Supreme Court; and jurisdiction to try and determine such claim is hereby conferred upon said courts.

FUNDS OF THE TRIBE.

27. All treaty funds of the tribe shall hereafter be capitalized for the purpose of equalizing allotments and for the other purposes provided in this agreement.

ROLLS OF CITIZENSHIP.

28. No person, except as herein provided, shall be added to the rolls of citizenship of said tribe after the date of this agreement, and no person whomsoever shall be added to said rolls after the ratification of this agreement.

All citizens who were living on the first day of April, eighteen hundred and ninety-nine, entitled to be enrolled under section twenty-one of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled ''An Act for the protection of the people of the Indian Territory, and for other purposes,'' shall be placed upon the rolls to be made by said commission under said Act of Congress, and if any such citizen has died since that time, or may hereafter die, before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.

All children born to citizens so entitled to enrollment, up to and including the first day of July, nineteen hundred, and then living, shall be placed on the rolls made by said commission; and if any such child die after said date, the lands and moneys to which it would be entitled, if living, shall descend to its heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.

The rolls so made by said commission, when approved by the Secretary of the Interior, shall be the final rolls of citizenship of said tribe, upon which the allotment of all lands and the distribution of all moneys and other property of the tribe shall be made, and to no other persons.

29. Said commission shall have authority to enroll as Creek citizens certain full-blood Creek Indians now residing in the Cherokee Nation, and also certain full-blood Creek Indians now residing in the Creek Nation who have recently removed there from the State of Texas, and the families of full-blood Creeks who now reside in Texas, and such other recognized citizens found on the Creek rolls as might, by reason of nonresidence, be excluded from enrollment by section twenty-one of said Act of Congress approved June twenty-eighth,

eighteen hundred and ninety-eight: Provided, That such nonresidents shall, in good faith, remove to the Creek Nation before said commission shall complete the rolls of Creek citizens as aforesaid.

MISCELLANEOUS.

30. All deferred payments, under provisions of this agreement, shall constitute a lien in favor of the tribe on the property for which the debt was contracted, and if, at the expiration of two years from the date of payment of the fifteen per centum aforesaid, default in any annual payment has been made, the lien for the payment of all purchase money remaining unpaid may be enforced in the United States court within the jurisdiction of which the town is located in the same manner as vendor's liens are enforced; such suit being brought in the name of the principal chief, for the benefit of the tribe.

31. All moneys to be paid to the tribe under any of the provisions of this agreement shall be paid, under direction of the Secretary of the Interior, into the Treasury of the United States to the credit of the tribe, and an itemized report thereof shall be made monthly to the Secretary of the Interior and to the principal chief.

32. All funds of the tribe, and all moneys accruing under the provisions of this agreement, when needed for the purposes of equalizing allotments or for any other purposes herein prescribed, shall be paid out under the direction of the Secretary of the Interior; and when required for per capita payments, if any, shall be paid out directly to each individual by a bonded officer of the United States, under direction of the Secretary of the Interior, without unnecessary delay.

33. No funds belonging to said tribe shall hereafter be used or paid out for any purposes by any officer of the United States without consent of the tribe, expressly given through its national council, except as herein provided.

34. The United States shall pay all expenses incident to the survey, platting, and disposition of town lots, and of allotment of lands made under the provisions of this agreement, except where the town authorities have been or may be duly authorized to survey and plat their respective towns at the expense of such town.

35. Parents shall be the natural guardians of their children, and shall act for them as such unless a guardian shall have been appointed by a court having jurisdiction; and parents so acting shall not be required to give bond as guardians unless by order of such court, but they, and all other persons having charge of lands, moneys, and other property belonging to minors and incompetents, shall be required to make proper accounting therefor in the court having jurisdiction thereof in manner deemed necessary for the preservation of such estates.

36. All Seminole citizens who have heretofore settled and made homes upon lands belonging to the Creeks may there take, for themselves and their families, such allotments as they would be entitled to take of Seminole lands, and all Creek citizens who have heretofore settled and made homes upon lands belonging to Seminoles may there take, for themselves and their families, allotments of one hundred and sixty acres each, and if the citizens of one tribe

thus receive a greater number of acres than the citizens of the other, the excess shall be paid for by such tribe, at a price to be agreed upon by the principal chiefs of the two tribes, and if they fail to agree, the price shall be fixed by the Indian agent, but the citizenship of persons so taking allotments shall in no wise be affected thereby.

Titles shall be conveyed to Seminoles selecting allotments of Creek lands in manner herein provided for conveyance of Creek allotments, and titles shall be conveyed to Creeks selecting allotments of Seminole lands in manner provided in the Seminole agreement, dated December sixteenth, eighteen hundred and ninety-seven, for conveyance of Seminole allotments: Provided, That deeds shall be executed to allottees immediately after selection of allotment is made.

This provision shall not take effect until after it shall have been separately and specifically approved by the Creek national council and by the Seminole general council; and if not approved by either it shall fail altogether, and be eliminated from this agreement without impairing any other of its provisions.

37. [Substitute for this section, see 1902, chapter 1323, section 17, post.]

38. After any citizen has selected his allotment he may dispose of any timber thereon, but if he dispose of such timber, or any part of same, he shall not thereafter select other lands in lieu thereof, and his allotment shall be appraised as if in condition when selected.

No timber shall be taken from lands not so selected, and disposed of, without payment of reasonable royalty thereon, under contract to be prescribed by the Secretary of the Interior.

39. No noncitizen renting lands from a citizen for agricultural purposes, as provided by law, whether such lands have been selected as an allotment or not, shall be required to pay any permit tax.

40. The Creek school fund shall be used, under direction of the Secretary of the Interior, for the education of Creek citizens, and the Creek schools shall be conducted under rules and regulations prescribed by him, under direct supervision of the Creek school superintendent and a supervisor appointed by the Secretary, and under Creek laws, subject to such modifications as the Secretary of the Interior may deem necessary to make the schools most effective and to produce the best possible results.

All teachers shall be examined by or under direction of said superintendent and supervisor, and competent teachers and other persons to be engaged in and about the schools with good moral character only shall be employed, but where all qualifications are equal preference shall be given to citizens in such employment.

All moneys for running the schools shall be appropriated by the Creek national council, not exceeding the amount of the Creek school fund, seventy-six thousand four hundred and sixty-eight dollars and forty cents; but if it fail or refuse to make the necessary appropriations the Secretary of the Interior may direct the use of a sufficient amount of the school funds to pay all expenses necessary to the efficient conduct of the schools, strict account thereof to be rendered to him and to the principal chief.

All accounts for expenditures in running the schools shall be examined and approved by said superintendent and supervisor, and also by the general superintendent of Indian schools, in Indian Territory, before payment thereof is made.

If the superintendent and supervisor fail to agree upon any matter under their direction or control, it shall be decided by said general superintendent, subject to appeal to the Secretary of the Interior; but his decision shall govern until reversed by the Secretary.

41. The provisions of section thirteen of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled ''An Act for the protection of the people of the Indian Territory, and for other purposes,'' shall not apply to or in any manner affect the lands or other property of said tribe, or be in force in the Creek Nation, and no Act of Congress or treaty provision inconsistent with this agreement shall be in force in said nation, except section fourteen of said last-mentioned Act, which shall continue in force as if this agreement had not been made.

42. No act, ordinance, or resolution of the national council of the Creek Nation in any manner affecting the lands of the tribe, or of individuals after allotment, or the moneys or other property of the tribe, or of the citizens thereof, except appropriations for the necessary incidental and salaried expenses of the Creek government as herein limited, shall be of any validity until approved by the President of the United States. When any such act, ordinance, or resolution shall be passed by said council and approved by the principal chief, a true and correct copy thereof, duly certified, shall be immediately transmitted to the President, who shall, within thirty days after received by him, approve or disapprove the same. If disapproved, it shall be so indorsed and returned to the principal chief; if approved, the approval shall be indorsed thereon, and it shall be published in at least two newspapers having a bona fide circulation in the Creek Nation.

43. The United States agrees to maintain strict laws in said nation against the introduction, sale, barter, or giving away of liquors or intoxicants of any kind whatsoever.

44. This agreement shall in no wise affect the provisions of existing treaties between the United States and said tribe except so far as inconsistent therewith.

45. All things necessary to carrying into effect the provisions of this agreement, not otherwise herein specifically provided for, shall be done under authority and direction of the Secretary of the Interior.

46. The tribal government of the Creek Nation shall not continue longer than March fourth, nineteen hundred and six, subject to such further legislation as Congress may deem proper.

47. Nothing contained in this agreement shall be construed to revive or reestablish the Creek courts which have been abolished by former Acts of Congress.

Approved, March 1, 1901.

ALLOTMENT ACT, 1902

June 30, 1902. 32 Stat., 500.

An act to ratify and confirm a supplemental agreement with the Creek tribe of Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following supplemental agreement, submitted by certain commissioners of the Creek tribe of Indians, as herein amended, is hereby ratified and confirmed on the part of the United States, and the same shall be of full force and effect if ratified by the Creek tribal council on or before the first day of September, nineteen hundred and two, which said supplemental agreement is as follows:

This agreement by and between the United States, entered into in its behalf by the Commission to the Five Civilized Tribes, Henry L. Dawes, Tams Bixby, Thomas B. Needles, and Clifton R. Breckenridge, duly appointed and authorized thereunto, and the Muskogee (or Creek) Tribe of Indians, in Indian Territory, entered into in behalf of the said tribe by Pleasant Porter, principal chief, Roley McIntosh, Thomas W. Perryman, Amos McIntosh, and David M. Hodge, commissioners duly appointed and authorized thereunto, witnesseth, that in consideration of the mutual undertakings herein contained it is agreed as follows:

DEFINITIONS.

The words ''Creek'' and ''Muskogee'' as used in this agreement shall be deemed synonymous, and the words ''Nation'' and ''tribe'' shall each be deemed to refer to the Muskogee Nation or Muskogee tribe of Indians in Indian Territory. The words ''principal Chief'' shall be deemed to refer to the principal chief of the Muskogee Nation. The words ''citizen'' or ''citizens'' shall be deemed to refer to a member or members of the Muskogee tribe or nation of Indians. The word ''Commissioner'' shall be deemed to refer to the United States Commission to the Five Civilized Tribes.

ALLOTMENT OF LANDS.

2. Section 2 of the agreement ratified by act, of Congress approved March, 1901 (31 Stat. L., 861), is amended and as so amended is reenacted to read as follows:

All lands belonging to the Creek tribe of Indians in Indian Territory, except town sites and lands reserved for Creek schools and churches, railroads, and town cemeteries, in accordance with the provisions of the act of Congress approved March 1, 1901 (31 Stat. L., 861), shall be appraised at not to exceed $6.50 per acre, excluding only lawful improvements on lands in actual cultivation.

Such appraisement shall be made, under the direction and supervision of the Commission to the Five Civilized Tribes, by such number of committees with necessary assistance as may be deemed necessary to expedite the work, one member of each committee to be appointed by the principal chief. Said Commission shall have authority to revise and adjust the work of said committees; and if the members of any committee fail to agree as to the value of any

tract of land, the value thereof shall be fixed by said Commission. The appraisement so made shall be submitted to the Secretary of the Interior for approval.

3. Paragraph 2 of section 3 of the agreement ratified by said act of Congress approved March 1, 1901, is amended and as so amended is reenacted to read as follows:

If any citizen select lands the appraised value of which is $6.50 per acre, he shall not receive any further distribution of property or funds of the tribe until all other citizens have received lands and moneys equal in value to his allotment.

4. Exclusive jurisdiction is hereby conferred upon the Commission to the Five Civilized Tribes to determine, under the direction of the Secretary of the Interior, all controversies arising between citizens as to their right to select certain tracts of land.

5. Where it is shown to the satisfaction of said Commission that it was the intention of a citizen to select lands which include his home and improvements, but that through error and mistake he had selected land which did not include said home and improvements, said Commission is authorized to cancel said selection and the certificate of selection or allotment embracing said lands, and permit said citizen to make a new selection including said home and improvements; and should said land including said home and improvements have been selected by any other citizen of said nation, the citizen owning said home and improvements shall be permitted to file, within ninety days from the ratification of this agreement, a contest against the citizen having previously selected the same and shall not be prejudiced therein by reason of lapse of time or any provision of law or rules and regulations to the contrary.

DESCENT AND DISTRIBUTION.

6. The provisions of the act of Congress approved March 1, 1901 (31 Stat. L., 861), in so far as they provide for descent and distribution according to the laws of the Creek Nation, are hereby repealed and the descent and distribution of land and money provided for by said act shall be in accordance with chapter 49 of Mansfield's Digest of the Statutes of Arkansas now in force in Indian Territory: Provided, That only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation: And provided further, That if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to noncitizen heirs in the order named in said chapter 49.

ROLLS OF CITIZENSHIP.

7. All children born to those citizens who are entitled to enrollment as provided by the act of Congress approved March 1, 1901 (31 Stat. L., 861), subsequent to July 1, 1900, and up to and including May 25, 1901, and living upon the latter date, shall be placed on the rolls made by said commission. And if any such child has died since May 25, 1901, or may hereafter die before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.

8. All children who have not heretofore been listed for enrollment living May 25, 1901, born to citizens whose names appear upon the authenticated rolls of 1890 or upon the authenticated rolls of 1895 and entitled to enrollment as provided by the act of Congress approved March 1, 1901 (31 Stat. L., 861), shall be placed on the rolls made by said commission. And if any such child has died since May 25, 1901, or may hereafter die, before receiving his allotment of lands and distributive share of the funds of the tribe, the lands and moneys to which he would be entitled if living shall descend to his heirs as herein provided and be allotted and distributed to them accordingly.

9. If the rolls of citizenship provided for by the act of Congress approved March 1, 1901 (31 Stat. L., 861), shall have been completed by said commission prior to the ratification of this agreement, the names of children entitled to enrollment under the provisions of sections 7 and 8 hereof shall be placed upon a supplemental roll of citizens of the Creek Nation, and said supplemental roll when approved by the Secretary of the Interior shall in all respects be held to be a part of the final rolls of citizenship of said tribe: Provided, That the Dawes Commission be, and is hereby, authorized to add the following persons to the Creek roll: Nar-wal-le-pe-se, Mary Washington, Walter Washington and Willie Washington, who are Creek Indians but whose names were left off the roll through neglect on their part.

ROADS.

10. Public highways or roads 3 rods in width, being 1 and one-half rods on each side of the section line, may be established along all section lines without any compensation being paid therefor; and all allottees, purchasers, and others shall take the title to such lands subject to this provision. And public highways or roads may be established elsewhere whenever necessary for the public good, the actual value of the land taken elsewhere than along section lines to be determined under the direction of the Secretary of the Interior while the tribal government continues, and to be paid by the Creek Nation during that time; and if buildings or other improvements are damaged in consequence of the establishment of such public highways or roads, whether along section lines or elsewhere, such damages, during the continuance of the tribal government, shall be determined and paid in the same manner.

11. In all instances of the establishment of town sites in accordance with the provisions of the act of Congress approved May 31, 1900 (31 Stat. L., 231), or those of section 10 of the agreement ratified by act of Congress approved March 1, 1901 (31 Stat. L., 861), authorizing the Secretary of the Interior, upon the recommendation of the Commission to the Five Civilized Tribes, at any time before allotment, to set aside and reserve from allotment any lands in the Creek Nation not exceeding 160 acres in any one tract, at such stations as are or shall be established in conformity with law on the line of any railroad which shall be constructed, or be in process of construction, in or through said nation prior to the allotment of lands therein, any citizen who shall have previously selected such town site, or any portion thereof, for his allotment, or who shall have been by reason of improvements therein entitled to select the same for his allotment, shall be paid by the Creek Nation the full value of his improvements thereon at the time of the establishment of the town site, under rules and regulations to be prescribed by the Secretary of the Interior: Provided, however, That such

citizens may purchase any of said lands in accordance with the provisions of the Act of March 1, 1901 (31 Stat. L., 61): And provided further, That the lands which may hereafter be set aside and reserved for town sites upon recommendation of the Dawes Commission as herein provided shall embrace such acreage as may be necessary for the present needs and reasonable prospective growth of such town sites, and not to exceed 640 acres for each town site, and 10 per cent of the net proceeds arising from the sale of that portion of the land within the town site so selected by him, or which he was so entitled to select; and this shall be in addition to his right to receive from other lands an allotment of 160 acres.

CEMETERIES.

12. A cemetery other than a town cemetery included within the boundaries of an allotment shall not be desecrated by tillage or otherwise, but no interment shall be made therein except with the consent of the allottee, and any person desecrating by tillage or otherwise a grave or graves in a cemetery included within the boundaries of an allotment shall be guilty of a misdemeanor, and upon conviction be punished as provided in section 567 of Mansfield's Digest of the Statutes of Arkansas.

13. Whenever the town site surveyors of any town in the Creek Nation shall have selected and located a cemetery, as provided in section 18 of the act of Congress approved March 1, 1901 (31 Stat. L., 861), the town authorities shall not be authorized to dispose of lots in such cemetery until payment shall have been made to the Creek Nation for land used for said cemetery, as provided in said act of Congress, and if the town authorities fail or refuse to make payment as aforesaid within one year of the approval of the plat of said cemetery by the Secretary of the Interior, the land so reserved shall revert to the Creek Nation and be subject to allotment. And for lands heretofore or hereafter designated as parks upon any plat or any town site the town shall make payment into the Treasury of the United States to the credit of the Creek Nation within one year at the rate of $20 per acre, and if such payment be not made within that time the lands so designated as a park shall be platted into lots and sold as other town lots.

MISCELLANEOUS.

14. All funds of the Creek Nation not needed for equalization of allotments, including the Creek school fund, shall be paid out under direction of the Secretary of the Interior per capita to the citizens of the Creek Nation on the dissolution of the Creek tribal government.

15. The provisions of section 24 of the act of Congress approved March 1, 1901 (31 Stat. L., 861), for the reservation of land for the six established Creek court-houses, is hereby repealed.

16. Lands allotted to citizens shall not in any manner whatever or at any time be encumbered, taken, or sold to secure or satisfy any debt or obligation nor be alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the Interior. Each citizen shall select from his allotment forty acres of land, or a quarter of a quarter section, as a homestead, which shall be and remain nontaxable, inalienable, and free from any incum-

brance whatever for twenty-one years from the date of the deed therefor, and a separate deed shall be issued to each allottee for his homestead, in which this condition shall appear.

Selections of homesteads for minors, prisoners, convicts, incompetents and aged and infirm persons, who can not select for themselves, may be made in the manner provided for the selection of their allotments, and if for any reason such selection be not made for any citizen it shall be the duty of said Commission to make selection for him. The homestead of each citizen shall remain, after the death of the allottee, for the use and support of children born to him after May 25, 1901, but if he have no such issue then he may dispose of his homestead by will, free from the limitation herein imposed, and if this be not done the land embraced in his homestead shall descend to his heirs, free from such limitation, according to the laws of descent herein otherwise prescribed. Any agreement or conveyance of any kind or character violative of any of the provisions of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity.

17. Section 37 of the agreement ratified by said act of March 1, 1901, is amended, and as so amended is reenacted to read as follows:

''Creek citizens may rent their allotments, for strictly nonmineral purposes, for a term not to exceed one year for grazing purposes only and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same. Such leases for a period longer than one year for grazing purposes and for a period longer than five years for agricultural purposes, and leases for mineral purposes may also be made with the approval of the Secretary of the Interior, and not otherwise. Any agreement or lease of any kind or character violative of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity. Cattle grazed upon leased allotments shall not be liable to any tribal tax, but when cattle are introduced into the Creek Nation and grazed on lands not selected for allotment by citizens, the Secretary of the Interior shall collect from the owners thereof a reasonable grazing tax for the benefit of the tribe, and section 2117 of the Revised Statutes of the United States shall not hereafter apply to Creek lands.''

18. When cattle are introduced into the Creek Nation to be grazed upon either lands not selected for allotment or upon lands allotted or selected for allotment the owner thereof, or the party or parties so introducing the same, shall first obtain a permit from the United States Indian Agent, Union Agency, authorizing the introduction of such cattle. The application for said permit shall state the number of cattle to be introduced, together with a description of the same, and shall specify the lands upon which said cattle are to be grazed, and whether or not said lands have been selected for allotment. Cattle so introduced and all other live stock owned or controlled by noncitizens of the nation shall be kept upon inclosed lands, and if any such cattle or other live stock trespass upon lands allotted to or selected for allotment by any citizen of said nation, the owner thereof shall, for the first trespass, make reparation to the party injured for the true value of the damages he may have sustained, and for every trespass

thereafter double damages to be recovered with costs, whether the land upon which trespass is made is inclosed or not.

Any person who shall introduce any cattle into the Creek Nation in violation of the provisions of this section shall be deemed guilty of a misdemeanor and punished by a fine of not less than $100, and shall stand committed until such fine and costs are paid, such commitment not to exceed one day for every $2 of said fine and costs; and every day said cattle are permitted to remain in said nation without a permit for their introduction having been obtained shall constitute a separate offense.

19. Section 8 of the agreement ratified by said act of March 1, 1901, is amended and as so amended is reenacted to read as follows:

''The Secretary of the Interior shall, through the United States Indian agent in said Territory, immediately after the ratification of this agreement, put each citizen who has made selection of his allotment in unrestricted possession of his land and remove therefrom all persons objectionable to him; and when any citizen shall thereafter make selection of his allotment as herein provided and receive certificate therefor, he shall be immediately thereupon so placed in possession of his land, and during the continuance of the tribal government the Secretary of the Interior, through such Indian agent, shall protect the allottee in his right to possession against any and all persons claiming under any lease, agreement, or conveyance not obtained in conformity to law.''

20. This agreement is intended to modify and supplement the agreement ratified by said act of Congress approved March 1, 1901, and shall be held to repeal any provision in that agreement or in any prior agreement, treaty, or law in conflict herewith.

21. This agreement shall be binding upon the United States and the Creek Nation, and upon all persons affected thereby when it shall have been ratified by Congress and the Creek National Council, and the fact of such ratification shall have been proclaimed as hereinafter provided.

22. The principal chief, as soon as practicable after the ratification of this agreement by Congress, shall call an extra session of the Creek Nation council and submit this agreement, as ratified by Congress, to such council for its consideration, and if the agreement be ratified by the National council, as provided in the constitution of the tribe, the principal chief shall transmit to the President of the United States a certified copy of the act of the council ratifying the agreement, and thereupon the President shall issue his proclamation making public announcement of such ratification, thenceforward all the provisions of this agreement shall have the force and effect of law.

Approved, June 30, 1902.

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