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**IN THE  
HO-CHUNK NATION TRIAL COURT**

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Mr. Chloris Lowe, Jr.,  
Enrollment #439A001593;  
Mr. Stewart J. Miller,  
Enrollment #439A002566,  
Plaintiffs,

v.

Case No.: CV 00-104

Ho-Chunk Nation Legislature Members  
Elliot Garvin, Gerald Cleveland, Myrna  
Thompson, Dallas White Wing, and  
Clarence Pettibone in their official capacity  
and individually; and Ho-Chunk Nation  
Election Board,  
Defendants.

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**ORDER  
(Determining Constitutionality of the Proposed  
Redistricting/Reapportionment Scenario)**

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**INTRODUCTION**

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The Court must determine whether the legislatively approved redistricting/  
reapportionment proposal, Scenario A, satisfies the appellate standard. The Court performed this  
inquiry at the October 19, 2001 *Hearing*. This *Order* memorializes the decision rendered at that  
*Hearing*.

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## PROCEDURAL HISTORY

The Court recounts the procedural history in significant detail in its *Order (Determining Constitutionality of the Proposed Redistricting/Reapportionment Scenario)*, CV 00-104 (HCN Tr. Ct., May 4, 2001) [hereinafter *Constitutionality III*]. For purposes of this decision, the Court notes that the electorate rejected Revised Scenario 1A in the July 7, 2001 Special Election. Consequently, the Court mailed *Notice(s) of Hearing* to the parties on July 18, 2001, informing them of the date, time and location of a *Status Hearing*. The Court convened the *Status Hearing* on July 27, 2001 at 10:30 A.M. CST. The following parties appeared at the *Hearing*: defendants' counsel, Ho-Chunk Nation Department of Justice [hereinafter DOJ] Attorneys John S. Swimmer, Michael P. Murphy, and Wendi A. Huling. The plaintiffs failed to appear, and did not provide the Court with notice explaining their non-attendance.

On August 24, 2001, the defendants submitted the *Defendants' Notice & Motion for Extension of Time*. The Court responded to the *Motion* by entering its August 28, 2001 *Order (Granting Extension of Time)* wherein it provided the defendants thirty (30) additional days to file a different final redistricting/reapportionment proposal. The defendants timely submitted the proposal, Scenario A, on September 27, 2001, but neglected to serve the plaintiffs with a copy of their submissions. The defendants corrected this oversight on September 28, 2001.

On October 4, 2001, the Court mailed *Notice(s) of Hearing* to the parties, informing them of the date, time and location of the *Hearing*. The defendants, by and through DOJ Attorney Michael P. Murphy, sought clarification concerning the purpose of the *Hearing* by means of an October 16, 2001 correspondence. The Court provided the defendants an explanation through its October 17, 2001 *Order (Regarding Hearing)*, noting that it intended to follow the identical

1 process of review utilized when determining the constitutionality of the previous redistricting/  
2 reapportionment proposal. *Order (Regarding Hearing)* at 1-2 (citing *Order (Implementation of*  
3 *Appellate Standard)*, CV 00-104 (HCN Tr. Ct., Mar. 30, 2001) at 16-17). The Court convened  
4 the *Hearing* on October 19, 2001 at 10:00 A.M. CST. The following parties appeared at the  
5 *Hearing*: plaintiffs' counsel, Attorney Gary J. Montana, and defendants' counsel, DOJ  
6 Attorneys Michael P. Murphy and Wendi A. Huling.  
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### 8 9 10 **FINDINGS OF FACT**

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- 12 1. The parties received proper notice of the October 19, 2001 *Hearing*.
  - 13 2. The parties earlier stipulated to the May 19, 2000 demographic figures calculated by the  
14 Ho-Chunk Nation Office of Tribal Enrollment [hereinafter Enrollment Office]. *Order (Granting*  
15 *Plaintiffs' Motion for Summary Judgment)*, CV 00-104 (HCN Tr. Ct., Nov. 13, 2001) at 7-8.  
16 The Ho-Chunk Nation Legislature [hereinafter Legislature] has subsequently used these  
17 demographic figures in preparing and presenting Scenario 1A, Scenario 1C, Scenario 12A and  
18 Scenario 30, *see Order (Determining Constitutionality of the Proposed Redistricting/*  
19 *Reapportionment Scenarios)*, CV 00-104 (HCN Tr. Ct., Dec. 14, 2000); Revised Scenario 1A  
20 and Scenario 1E, *see Order (Determining Constitutionality of the Proposed*  
21 *Redistricting/Reapportionment Scenarios)*, CV 00-104 (HCN Tr. Ct., Dec. 21, 2000); and  
22 Reintroduced Revised Scenario 1A, *see Constitutionality III*.  
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24 3. On July 7, 2001, the electorate voted to reject Reintroduced Revised Scenario 1A,  
25 requiring the Legislature "to submit a different final redistricting/reapportionment proposal for  
26 vote by the eligible voters." *Constitutionality III* at 14.  
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1 4. The Legislature has now chosen to utilize the updated August 1, 2001 demographic  
2 figures calculated by the Enrollment Office. *See* HO-CHUNK NATION LEGISLATIVE RESOLUTION  
3 [hereinafter HCN LEG. RES.] 09-19-01A at 2. The plaintiffs offered no objection to this change.  
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5 5. On September 27, 2001, the Legislature submitted Scenario A for judicial review. *See id.*  
6 Scenario A is identical in form to the rejected Reintroduced Revised Scenario 1A.<sup>1</sup> The use of  
7 recent demographic figures accounts for the only change in appearance.  
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## 11 DECISION

13 The Supreme Court of the Ho-Chunk Nation [hereinafter Supreme Court] has announced  
14 the standard by which the Court weighs the constitutionality of proposed final redistricting/  
15 reapportionment scenarios. *See Decision*, SU 00-17 (HCN S. Ct., Mar. 13, 2001) at 6.  
16 Specifically, “the pursuit of the one-person/one-vote representation requires a diligent, serious  
17 and continuous effort.” *Id.* The Supreme Court derived this test by reference to a definition of  
18 “pursuit” contained in BLACK’S LAW DICTIONARY. *Id.* The definition actually represented a  
19 New Mexico employment law standard used to determine the point at which an employee is said  
20 to have engaged in a “pursuit” or occupation. *See Order (Implementation of Appellate Standard)*  
21 at 13-14, n. 10. The Supreme Court attempted to offer further clarification of this misguided  
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27 <sup>1</sup> The Court strongly suggests that the Legislature clearly distinguish amongst its proposals in the future, identifying  
28 each by separate names so as to avoid the apparent inadvertence currently at issue. The resulting confusion also  
may have contributed to several errors present in a story appearing in the October 10, 2001 issue of the *Hocok  
Worak*.

1 standard, emphasizing that the pursuit requires “an effort that is made with a high degree of  
2 effort to achieve a particular point.”<sup>2</sup> *Decision* at 6.

3  
4 The Court respectfully declines to perform its review of Scenario A by recourse to and  
5 reliance upon reference materials.<sup>3</sup> In a certain sense, this approach may be the most logical  
6 since the applicable standard is completely detached and disassociated from the context of  
7 redistricting and reapportionment. However, such an interpretive methodology will almost  
8 always prove fatally flawed. In fact, if the Court relied upon reference materials for proper  
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11 <sup>2</sup> In any event, the Legislature cannot continue to allude to the rational basis level of scrutiny within its resolutions,  
12 *see* HCN LEG. RES. 09-19-01A at 2, since the Supreme Court disavowed such an approach, replacing it with the  
13 standard discussed above. *See Constitutionality III* at 8-13.

14 <sup>3</sup> The Supreme Court has often relied upon the Sixth Edition of BLACK’S LAW DICTIONARY in arriving at its  
15 determinations. The Court renders no opinion on such usage outside of the instant case, yet the Court respectfully  
16 questions whether the Supreme Court has always heeded the cautionary note contained within the *Preface* of this  
17 legal reference dictionary.

#### 18 *A Final Word of Caution*

19 The language of the law is ever-changing as the courts, Congress, state legislatures, and  
20 administrative agencies continue to define, redefine and expand legal words and terms.  
21 Furthermore, many legal terms are subject to variations from state to state and again can differ  
22 under federal laws. Also, the type of legal issue, dispute, or transaction involved can affect a  
23 given definition usage. Accordingly, a legal dictionary should only be used as a “starting point”  
24 for definitions. Additional research should follow for state or federal variations, for further or  
25 later court interpretations, and for specific applications.

26 BLACK’S LAW DICTIONARY, iv (6th Ed. 1990); *see Jacob LoneTree et al. v. Robert Funmaker, Jr. et al.*, SU 00-16  
27 (HCN S. Ct., Mar. 16, 2001) at 11-12 (B. Hunter, J., dissenting) (defining “notice”); *Joelene Smith v. Scott Beard et*  
28 *al.*, SU 00-14 (HCN S. Ct., Mar. 12, 2001) at 1 (defining “clear and convincing proof”); *Chloris Lowe, Jr. et al. v.*  
*Ho-Chunk Nation Legislature Members et al.*, SU 00-15 (HCN S. Ct., Dec. 18, 2000) at 2 (defining “final”); *Ho-*  
*Chunk Nation v. Harry Steindorf et al.*, SU 00-04 (HCN S. Ct., Sept. 29, 2000) at 3 (defining “subject matter”);  
*Daniel Youngthunder, Sr. v. Jonette Pettibone et al.*, SU 00-05 (HCN S. Ct., July 28, 2000) at 2 (defining “abuse of  
discretion”); *James and Mildred Smith v. Ron Wilbur*, SU 99-12 (HCN S. Ct., Feb. 9, 2000) at 2 (defining “dicta”);  
*Joelene Smith v. Scott Beard et al.*, SU 99-09 (HCN S. Ct., Feb. 8, 2000) at 1 (defining “remand”); *Ho-Chunk*  
*Nation Election Bd v. Debra C. Greengrass*, SU 99-03 (HCN S. Ct., May 21, 1999) at 2 n.3 (defining “kindred”);  
*Ho-Chunk Nation Election Bd. et al. v. Aurelia Lera Hopinkah*, SU 98-08 (HCN S. Ct., Apr. 7, 1999) at 4 (defining  
“enact” and “amend”); *Ho-Chunk Nation Election Bd. v. Aurelia Lera Hopinkah*, SU 98-08 (HCN S. Ct., Dec. 1,  
1998) at 2 (defining “intervenor”); *Millie Decorah, as Fin. Dir. of the Ho-Chunk Nation et al. v. Joan Whitewater*,  
SU 98-02 (HCN S. Ct., Oct. 26, 1998) at 4 (defining “equitable relief”); *Joelene Smith v. Ho-Chunk Nation et al.*,  
SU 98-03, 04 (HCN S. Ct., July 31, 1998) at 2 (defining “per curiam”); *In re Rick McArthur*, SU 97-07 (HCN S.  
Ct., Feb. 27, 1998) at 4 (defining “jurisdiction”); *Lona Decorah v. Ho-Chunk Nation*, PRC 93-040 (HCN S. Ct., Feb.  
22, 1996) (defining “moot”). Courts may safely use reference materials to achieve clarity or discern unanimity.  
However, relying on a dictionary definition for a holding, without considering the unique context of a word or  
phrase or its specific application, proves questionable at best.

1 guidance, Scenario A might quite conceivably pass constitutional muster due to its submission  
2 denoting “a diligent,<sup>4</sup> serious<sup>5</sup> and continuous effort.”<sup>6</sup> *Id.* The Court has fortunately preempted  
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5 <sup>4</sup> **Diligent.** Attentive and persistent in doing a thing; steadily applied; active; sedulous; laborious; unremitting;  
6 untiring.

BLACK’S LAW DICTIONARY 457 (6th Ed. 1990).

7 **diligent**, adj. Careful; attentive; persistent in doing something.

BLACK’S LAW DICTIONARY 469 (7th Ed. 1999).

8 **diligent**, adj. having or showing care and conscientiousness in one’s work or duties.

NEW OXFORD AMERICAN DICTIONARY 478 (1st Ed. 2001).

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10 <sup>5</sup> **Serious.** Important; weighty; momentous, grave, great, as in the phrases “serious bodily harm,” “serious personal  
11 injury,” etc.

BLACK’S LAW DICTIONARY 1367 (6th Ed. 1990).

12 **serious**, adj. **1.** (Of conduct, opinions, etc.) weighty; important <serious violation of rules>. **2.** (Of an injury,  
13 illness, accident, etc.) dangerous; potentially resulting in death or other severe consequences <serious bodily harm>.

BLACK’S LAW DICTIONARY 1371 (7th Ed. 1999).

14 **serious**, adj. (of a subject, state, or activity) demanding careful consideration or application.

NEW OXFORD AMERICAN DICTIONARY 1556 (1st Ed. 2001).

15 <sup>6</sup> **Continuous.** Uninterrupted; unbroken; not intermittent or occasional; so persistently repeated at short intervals so  
16 as to constitute virtually and unbroken series. Connected, extended, or prolonged without cessation or interruption  
17 of sequence. *Sullivan v. John Hancock Mut. Life Ins. Co. of Boston, Mo.App.*, 110 S.W.2d 870, 877 (*sic*). As to  
18 *continuous Crime and Easement*, see those titles.

BLACK’S LAW DICTIONARY 322 (6th Ed. 1990) (emphasis in original).

19 **Effort.** An attempt; an endeavor; a struggle directed to the accomplishment of an object. To try.

BLACK’S LAW DICTIONARY 515 (6th Ed. 1990).

20 Definitions for the adjective “continuous” and the noun “effort” do not appear in the latest edition of  
21 BLACK’S LAW DICTIONARY. However, the word “continuous” does appear in definitions representing terms of art  
22 (*e.g.*, “continuous easement,” “continuous-representation doctrine,” and “continuous trigger”). See BLACK’S LAW  
23 DICTIONARY 317 (7th Ed. 1999).

24 **continuous**, adj. forming an unbroken whole; without interruption.

NEW OXFORD AMERICAN DICTIONARY 372 (1st Ed. 2001).

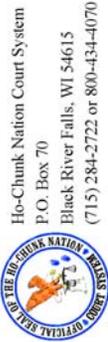
25 **effort**, n. a vigorous or determined attempt.

NEW OXFORD AMERICAN DICTIONARY 544 (1st Ed. 2001).

1 this type of nonsensical analysis by observing an admonition of the United States Supreme  
2 Court, namely: “To take a few words from their context and with them thus isolated to attempt  
3 to determine their meaning, certainly would not contribute greatly to the discovery of the  
4 purpose of the drafts[person]. . . .” *In the Interest of Minor Children: V.D.C., DOB 10/03/84 et*  
5 *al., by Debra Crowe v. Ho-Chunk Nation Office of Tribal Enrollment*, CV 00-25 (HCN Tr. Ct.,  
6 Apr. 6, 2001) at 11 n.6 (quoting *United States v. Am. Trucking Ass’ns*, 310 U.S. 534, 542  
7 (1940)).  
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9           On July 7, 2001, the eligible voters requested a “different” redistricting/reapportionment  
10 scenario for consideration, and Scenario A does not qualify as “different.” Population  
11 continually shifts because of transient voters and birth and mortality rates. The composition of  
12 Scenario A differs to the same extent that Reintroduced Revised Scenario 1A, based on May 19,  
13 2000 demographic figures, differed when voted on in the Special Election. Both scenarios  
14 employ the identical districting scheme. The inherent population fluctuation affects  
15 apportionment, but Scenario A does not represent a conscious attempt to redistrict or  
16 reapportionment, but Scenario A does not represent a conscious attempt to redistrict or  
17 reapportionment.  
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19           Therefore, the Legislature shall submit a different final redistricting/reapportionment  
20 proposal to the Court on or before November 9, 2001. The Court has now afforded the  
21 Legislature over four (4) months to generate a second scenario following the Special Election.  
22 The Court shall convene a *Hearing* on November 15, 2001 at 9:00 A.M. CST to allow the  
23 defendants the opportunity to advocate on behalf of the proposal.  
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**APPLICABLE LAW**

CONSTITUTION OF THE HO-CHUNK NATION

Article V – Legislature

Section 4. Redistricting or Reapportionment. The Legislature shall have the power to redistrict or reapportion including changing, establishing, or discontinuing Districts. The Legislature shall maintain an accurate census for the purposes of redistricting or reapportionment. The Legislature shall redistrict and reapportion at least once every five (5) years beginning in 1995, in pursuit of one-person/one-vote representation. The Legislature shall exercise this power only by submitting a final proposal to the vote of the people by Special Election which shall be binding and which shall not be reversible by the General Council. Any redistricting or reapportionment shall be completed at least six (6) months prior to the next election, and notice shall be provided to the voters.

**IT IS SO ORDERED** this 1<sup>st</sup> day of November, 2001 by the Ho-Chunk Nation Trial Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

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Honorable Todd R. Matha  
Associate Trial Court Judge