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

**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, Isaac Greyhair, Dallas White  
Wing, Kevin Greengrass, and Clarence  
Pettibone in their official capacity and  
individually; and Ho-Chunk Nation  
Election Board,**  
Defendants.

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**ORDER  
(Granting Extension of Time)**

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On August 24, 2001, the defendants, by and through Ho-Chunk Nation Department of Justice [hereinafter DOJ] Attorney Wendi A. Huling, filed the *Defendants' Notice & Motion for Extension of Time* accompanied by the *Defendants' Motion for Expedited Consideration* and *Affidavit of Tracy Thundercloud, Ho-Chunk Nation Area 1 Legislator* [hereinafter *Thundercloud Affidavit*]. The defendants request a sixty (60) day extension of time to submit a redistricting/reapportionment proposal for judicial review. The defendants argue that an extension is necessary since the Ho-Chunk Nation Legislature [hereinafter Legislature] decided at an August 15, 2001 legislative retreat to seek greater input from their constituency. *Thundercloud Affidavit* at 2.

1 In determining whether to grant the *Motion for Extension of Time*, the Court must weigh  
2 the desirability of increased voter involvement against several other factors, including the  
3 presence of factual inaccuracies in the *Motion*. First and foremost, any extension prolongs an  
4 unconstitutional apportionment scheme as reflected within the current composition of the  
5 Legislature. Second, the Legislature was aware of the requirement to redistrict and reapportion  
6 for over five (5) years. CONSTITUTION OF THE HO-CHUNK NATION [hereinafter CONSTITUTION],  
7 ART. V § 4. Third, the Legislature has previously engaged in “extensive Area meeting  
8 discussion” concerning redistricting and reapportionment during the course of a six (6) month  
9 deliberative period.<sup>1</sup> *Order (Implementation of Appellate Standard)*, CV 00-104 (HCN Tr. Ct.,  
10 Mar. 30, 2001) at 15 (*quoting Defendants’ Brief in Support of Motion for Summary Judgment*,  
11 CV 00-104 (Nov. 8, 2000) at 4). Fourth, the Court ordered the Legislature to confer with the  
12 electorate before submitting Revised Scenario 1A on April 19, 2001. *Order (Implementation of*  
13 *Appellate Standard)* at 15; *see also Hearing on Remand*, CV 00-104 (Log of Proceedings  
14 Electronically Recorded, Mar. 23, 2001, 11:20:21) at 1. Fifth, the Legislature sought to satisfy  
15 this requirement by reference to previous area discussions, *see infra*, rather than renewing  
16 dialogue with their constituency. *Order (Determining Constitutionality of the Proposed*  
17 *Redistricting/Reapportionment Scenario)*, CV 00-104 (HCN Tr. Ct., May 4, 2001) at 6, 14; *see*  
18 *also Hearing* (Log of Proceedings Electronically Recorded, April 23, 2001, 9:31:22) at 2. The  
19 Court deferred to the judgment of the Legislature, recognizing that nothing compelled further  
20 consultation at area meetings; individual legislators are sworn to uphold the CONSTITUTION and  
21 general interests of the Ho-Chunk Nation. *Id*; *see also* ELECTION ORDINANCE, ART. XV § 15.01.  
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28 <sup>1</sup> Legislative Counsel William A. Boulware, Jr. testified that he and other legislative attorneys conducted the  
“arduous and time consuming” process of gathering recommendations from the respective Districts. *Hearing*, CV  
00-104 (Log of Proceedings Electronically Recorded, April 23, 2001, 9:38:11) at 3.

1 Sixth, the defendants state that “[t]he Court has set a deadline of August 29, 2001, for the  
2 defendants to provide a redistricting scenario to the Court,” *Defendants’ Motion for Expedited*  
3 *Consideration* at 1, but neglect to mention that the defendants recommended this deadline which  
4 the Court adjudged as reasonable. *Status Hearing*, CV 00-104 (Log of Proceedings  
5 Electronically Recorded, July 27, 2001, 10:50:19) at 1. Former DOJ Attorney John S. Swimmer  
6 recommended the August 29 deadline in the presence of DOJ Attorneys Michael P. Murphy and  
7 Wendi A. Huling. *Id.* Finally, the defendants indicate that they “have not had an opportunity to  
8 present different scenarios to the voting members at Area Meetings.” *Defendants’ Motion for*  
9 *Expedited Consideration* at 1. As noted above, this statement is simply false. On July 8, 2001,  
10 the Legislature should have recognized the need to generate another redistricting/  
11 reapportionment proposal as the voters had rejected Revised Scenario 1A. Nothing after or  
12 before July 8, 2001 has prevented the Legislature from routinely consulting with the voting  
13 membership. The Legislature cannot now reasonably contend a lack of preparedness since it  
14 consciously delayed considering renewing voter discussion until two (2) weeks ago.

18 **BASED UPON THE FOREGOING**, the Court shall grant an extension to file an  
19 approved redistricting/reapportionment proposal in light of its continued commitment to  
20 fostering voter participation and awareness, but declines to extend the deadline by sixty (60)  
21 days. The Legislature shall file the proposal on or before September 28, 2001. The extended  
22 timeframe should allow for the occurrence of regular and/or special area meetings. *See*  
23 CONSTITUTION, ART. V § 8.

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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.

Section 8. Meetings. The Legislature shall hold regular monthly meetings. The Legislature may hold special meetings as necessary. Members of the Legislature shall hold and attend regularly scheduled meetings in their respective Districts. Failure to attend such District meetings on a regular basis may constitute grounds for removal or recall. The Legislature shall not schedule a special meeting at the same time as a regularly scheduled District meeting.

AMENDED AND RESTATED HO-CHUNK NATION ELECTION ORDINANCE

Article XV – Oath of Office

Sec. 15.01. Oath of Office.

(a) The Election Board shall administer the Oath of Office in accordance with Article VIII, Section 8 of the Constitution, which states:

*Section 8. Oath of Office. The Election Board shall administer the oath for the offices of President, Legislature, and Judiciary on the 4th Wednesday following the election after the Election Board certifies the Election results.*

(b) The Election Board shall administer the Oath of Office to all duly elected officials of the Ho-Chunk Nation as follows:

I, \_\_\_\_\_, do solemnly swear that I will support and defend the Constitution of the Ho-Chunk Nation; that I will secure our rights, advance the general welfare, safeguard our interests, sustain our culture, promote our traditions and perpetuate our existence and secure the natural and self-evident right to govern ourselves, as I perform the duties of my office on behalf of the Ho-Chunk Nation with honor, dignity and sincerity.

1 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

2 Rule 19. Filing and Responding to Motions

3 (A) Motion. *Motions* may be filed by a party with any pleading or at any time after their first  
4 pleading has been filed. A copy of all written *Motions* shall be delivered or mailed to other  
5 parties at least five (5) calendar days before the time specified for a hearing on the *Motion*. A  
6 *Response* to a written *Motion* must be filed at least one day before the hearing. If no hearing is  
7 scheduled, the *Response* must be filed with the Court and served on the other parties within ten  
8 (10) calendar days of the date the *Motion* was filed. The party filing the *Motion* must file any  
9 *Reply* within three (3) calendar days.

10 (B) Motions for Expedited Consideration. Any *Motion* which requires action prior to the normal  
11 time period identified in part "A" above shall be accompanied by a *Motion for Expedited*  
12 *Consideration*. The *Motion* shall state (1) the reasons why the *Motion* should be heard prior to  
13 the normal time period allowed to respond, and (2) what efforts the party has made to resolve the  
14 issue with the opposing party prior to filing the *Motion for Expedited Consideration*.

15 **IT IS SO ORDERED** this 28<sup>th</sup> day of August, 2001 by the Ho-Chunk Nation Trial Court  
16 located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

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19 Honorable Todd R. Matha  
20 Associate Trial Court Judge

