



1 divergences from the ideal legislative apportionment presumably resulting from reliance on factors not  
2 attributable to simply maintaining contiguous districts. *See Id.* The December 1, 2000 *Defendants'*  
3 *Notice and Filing of Submission of Final Redistricting Proposals* does not clearly state the desired order  
4 of preference of the four (4) included scenarios, and the Court notes mathematical and/or geographical  
5 errors on Scenarios 1A and 1C. Furthermore, the Court has questions regarding the applicability of the  
6 rational policy pronouncement, and the legitimate considerations arising therefrom, to the below noted  
7 divergences, and the apparent constitutional problem(s) affecting Scenarios 1C and 12A.

## 10 **APPLICABLE LAW**

### 13 **CONSTITUTION OF THE HO-CHUNK NATION**

#### 14 **Article V – Legislature**

##### 15 **Section 1. Composition of the Legislature.**

16 (b) The Legislature shall be composed of Representatives from the following Districts, subject to  
17 Section 4 of this Article: the Black River Falls District, consisting of Clark, Eau Claire and Jackson  
18 counties, which shall elect three (3) members; the Wisconsin Dells District, consisting of Wood, Juneau,  
19 Adams, Columbia, and Sauk counties, which shall select three (3) members; and the La Crosse-Tomah  
20 District, consisting of La Crosse, Monroe, Vernon, and Crawford counties, which shall elect one (1)  
21 member; and the Wittenberg District, consisting of Marathon and Shawano counties, which shall elect  
22 one (1) member; and three (3) members which shall be elected at-large from outside the Districts listed  
23 above.

24 **Section 4. Redistricting or Reapportionment.** The Legislature shall have the power to redistrict or  
25 reapportion including changing, establishing, or discontinuing Districts. The Legislature shall maintain  
26 an accurate census for the purposes of redistricting or reapportionment. The Legislature shall redistrict  
27 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

1 to the next election, and notice shall be provided to the voters.

2 Section 6. Terms of Office. Members of the Legislature shall serve four (4) year terms which shall  
3 be staggered. Legislators shall represent their respective Districts until their successors have been sworn  
4 into office except if the Legislator has been successfully removed or recalled in accordance with this  
5 Constitution. Members of the Legislature shall be elected by a majority of the eligible voters from their  
6 respective Districts.

5 Article IX – Removal, Recall and Vacancies

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7 Section 6. District Recall of Legislators. A member of the Legislature shall be removable by a  
8 recall vote called by a petition of thirty (30) percent of all eligible voters of the District which elected  
9 such a member of the Legislature. A petition shall be submitted to the Election Board, which shall hold  
10 a Special Election not less than thirty (30) days and not more than ninety (90) days from the date a  
11 petition is duly submitted. If the Election Board fails to hold such Special Election within ninety (90)  
12 days, any eligible voter of the Nation may request the Tribal Court to order such Special Election.

11 Article X – Bill of Rights

12 Section 1. Bill of Rights.

13 (a) The Ho-Chunk Nation, in exercising its powers of self-government, shall not:

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15 (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any  
16 person of liberty or property without due process of law;

16 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

17 Rule 57. Entry and Filing of Judgements.

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19 All judgements must be signed by the presiding trial court judge. All signed judgements shall be  
20 deemed complete and entered for all purposes after the signed judgement is filed with the Clerk. A copy  
21 of the entered judgement shall be mailed to each party within two (2) calendar days of filing. The time  
22 for taking an appeal shall begin running from the date the judgement is filed with the Clerk. Interest on  
23 a money judgement shall accrue from the date the judgement is filed with the Clerk at a rate set by the  
24 Legislature or at five (5) per cent per year if no rate is set.

23 Rule 61. Appeals.

24 Any *final Judgement* or *Order* of the Trial Court may be appealed to the Ho-Chunk Nation Supreme  
25 Court. The *Appeal* must comply with the Ho-Chunk Nation *Rules of Appellate Procedure*, specifically  
26 *Rules of Appellate Procedure*, Rule 7, Right of Appeal. All subsequent actions of a *final Judgement* or  
27 Trial Court *Order* must follow the HCN *Rules of Appellate Procedure*.

1 INTERIM RULES OF CIVIL PROCEDURE FOR USE IN ELECTION CHALLENGES

2 Rule 8. The final judgment of the Trial Court is appealable to the Ho-Chunk Supreme Court. The  
3 notice of appeal shall be filed and served within five (5) days of entry of the judgement.

4 Rule 9. The appellants (*sic*) brief shall be filed and served within ten days of the date of the notice of  
5 appeal. Any responding brief shall be filed within ten days of service of appellants (*sic*) brief. Further  
6 briefs may be permitted in the discretion of the Chief Justice of the Supreme Court. The appellant at  
7 their own cost must obtain a copy or (*sic*) the transcript and provide a copy to the respondent.

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9 **FINDINGS OF FACT**

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11 1. The Court incorporates by reference the *Findings of Fact* enumerated in the November 13, 2000  
12 *Order (Granting Plaintiffs' Motion for Summary Judgment)*, pp. 7-9; November 8, 2000 *Order*  
13 *(Recognizing Right to Challenge)*, p. 6; and the November 3, 2000 *Order (Partial Dismissal of Claims)*,  
14 pp. 7-9.

15 2. On November 30, 2000, the Legislature adopted the LEGISLATIVE PROPOSAL FOR REDISTRICTING  
16 AND REAPPORTIONMENT SPECIAL ELECTION, RESOLUTION 11/30/00-E [hereinafter LEG. RES. 11/30/00-  
17 E].

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19 3. On December 1, 2000, the Legislature drafted a correspondence to the Court primarily  
20 emphasizing the compelling governmental interest of sustaining a bond with the aboriginal homeland of  
21 Wisconsin.<sup>1</sup> See *Legislative Correspondence*, pp. 1, 2, 13-16; See also LEG. RES. 11/30/00-E, p. 2  
22 (securing an association and bond with the aboriginal territory is of the utmost importance). Other  
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25 <sup>1</sup> The Legislature quotes tribal elder George Whitewing as stating, "I wanted our people to remember that we have clan  
26 lineage and historical ties in Wisconsin, not anywhere else. [T]his is where we come from, this is where we are created from,  
27 this is where our people are yet today." *Legislative Correspondence*, p. 13.

1 identified compelling interests flow from this main objective, i.e. sustaining language, culture and  
2 traditional customs.<sup>2</sup> *See Legislative Correspondence*, pp. 2, 13-16.

3 4. For purposes of developing redistricting and reapportionment scenarios, the Legislature utilized  
4 May 19, 2000 demographic figures as prepared by the Ho-Chunk Nation Office of Tribal Enrollment.  
5 The Ho-Chunk Nation has a total population of 6,072 enrolled members. *See LEG. RES. 11/30/00-E*, p.  
6 2. 1,856 enrolled members reside outside the State of Wisconsin. *See Ho-Chunk Nation Redistricting*  
7 *Scenarios 1A and 30*. 552 represents the ideal number of constituents per legislative representative. *See*  
8 *LEG. RES. 11/30/00-E*, p. 2.

10 5. Ho-Chunk Nation Redistricting Scenario 1A divides the State of Wisconsin into four (4) Districts  
11 with a fifth District encompassing all areas beyond the geographical boundaries of Wisconsin. The  
12 population calculation for District 3 appears in error, and the Court shall reflect the corrected figure in  
13 its synopsis. The five (5) Districts contain the following proportion of enrolled tribal members to  
14 legislative representative(s), including the rounded percentage deviation from the ideal legislative  
15 apportionment.  
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17 District 1: 1,247 enrolled members  
18 3 Legislators  
19 Ratio: 1 Legislator for 416 enrolled members  
20 Deviation: -25%

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22 District 2: 551 enrolled members  
23 1 Legislator  
24 Ratio: 1 Legislator for 551 enrolled members

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25 <sup>2</sup> The Legislature has noted the former presence of a portion of the Ho-Chunk people in northwestern Illinois during an  
26 approximate one-hundred (100) year period in the mid-eighteenth to mid-nineteenth centuries. *See Legislative*





1 (5) Districts contain the following proportion of enrolled tribal members to legislative representative(s),  
2 including the rounded percentage deviation from the ideal legislative apportionment.

3                   District 1:     1,488 enrolled members  
4                                    3 Legislators  
5                                    Ratio: 1 Legislator for 496 enrolled members  
6                                    Deviation: -10%

7                   District 2:     594 enrolled members  
8                                    1 Legislator  
9                                    Ratio: 1 Legislator for 594 enrolled members  
10                                   Deviation: +8%

11                   District 3:     426 enrolled members  
12                                   1 Legislator  
13                                   Ratio: 1 Legislator for 426 enrolled members  
14                                   Deviation: -23%

15                   District 4:     1,708 enrolled members  
16                                   3 Legislators  
17                                   Ratio: 1 Legislator for 569 enrolled members  
18                                   Deviation: +3%

19                   District 5:     1,856 enrolled members  
20                                   3 Legislators  
21                                   Ratio: 1 Legislator for 619 enrolled members  
22                                   Deviation: +12%

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**DECISION**

1 In reconciling proposed redistricting/reapportionment scenarios with the constitutional principle  
2 of one-person/one-vote representation, the Court disavowed usage of the ten percent (10%) maximum  
3 deviation standard for determination of *prima facie* unconstitutionality used by the United States  
4 Supreme Court since this guideline derived from the particularized experience of that court. *See Order*  
5 *(Granting Plaintiffs' Motion for Summary Judgment)*, p. 13, fn. 4 citing *Brown v. Thompson*, 462 U.S.  
6 835, 842-43 (1983); *See also* CONSTITUTION, ART. V, Sec. 4. The Court, however, determined that it  
7 would assess the propriety of a deviation not attributable to maintaining contiguous districts under a  
8 reasonableness standard. *See Order (Granting Plaintiffs' Motion for Summary Judgment)*, p. 13. Such a  
9 standard would necessarily assume due deference to the delegated authority of the Legislature.  
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11 The Legislature has expressed the importance of sustaining the bond with the aboriginal  
12 homeland of Wisconsin, but the Court fails to see how this purported rational policy consideration  
13 serves to justify the seemingly unreasonable deviations within the four (4) Wisconsin districts in Ho-  
14 Chunk Nation Redistricting Scenarios 1A, 1C and 30. The following facts illustrate this proposition. In  
15 Scenario 1A, a forty-eight percent (48%) maximum deviation from the ideal legislative apportionment  
16 exists in District 3. In Scenario 1C, a fifty percent (50%) maximum deviation from the ideal legislative  
17 apportionment exists in District 2.<sup>3</sup> In Scenario 30, a twenty-three percent (23%) maximum deviation  
18 from the ideal legislative apportionment exists in District 3. Therefore, the defendants must offer further  
19 justification for these divergences. Additionally, the defendants must explain why any newly proposed  
20 legitimate considerations should not be regarded as *post hoc* rationalizations.  
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22 Furthermore, the defendants must explain how Scenarios 1C and 12A prove consistent with the  
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1 basic principles and concepts underlying the model of representative democracy existing in the Ho-  
2 Chunk Nation. *See Order (Partial Dismissal of Claims)*, pp. 9-10; *See also* LEG. RES. 11/30/00-E, p. 2.  
3 The CONSTITUTION provides that “[m]embers of the Legislature shall be elected by a majority of the  
4 eligible voters from their respective Districts,” and that “[l]egislators shall represent their respective  
5 Districts.” CONSTITUTION, ART. V, Sec. 6. The CONSTITUTION presumes, if not requires, the existence  
6 of more than one (1) district. Under Scenario 12A, how can a legislator consistently and conscientiously  
7 represent his/her district while duly considering and protecting the concerns of the absentee voters, and  
8 how would the inevitable manifestations of such a unique situation comport with the Equal Protection  
9 Clause? *See Id.*, ART. X, Sec. 1 (a)(8). If the eligible at-large population truly constitute absentee  
10 voters, the curious situation exists wherein the at-large voters could recall a District 1 legislator. *See Id.*,  
11 ART. IX, Sec. 6. Also, the adoption of Scenario 12A would seemingly eviscerate and render obsolete  
12 the constitutional mandate to redistrict and reapportion at least once every five (5) years. *See Id.*, ART.  
13 V, Sec. 4.  
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16           Essentially, the defendants must offer further justification and explanation as to how the  
17 proposed redistricting/reapportionment scenarios approach the one-person/one-vote objective as nearly  
18 as practicable. *See Order (Granting Plaintiffs’ Motion for Summary Judgment)*, p. 13 citing *Reynolds v.*  
19 *Simms*, 377 U.S. 533, 577; *See also* CONSTITUTION, ART. V, Sec. 4. The defendants’ may submit a legal  
20 brief on the issues presented in this *Order* on or before December 8, 2000 at 12:00 P.M. CST. The  
21 Court shall convene a *Hearing* on December 8, 2000 at 3:00 P.M. CST or at the conclusion of the  
22 scheduled *Trial* in *Debra Linehan v. Majestic Pines*, CV 00-42.  
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26 <sup>3</sup> It remains unforeseeable the extent to which absentee voter “quasi-residence” would impact the existing deviation.  
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1 Any party may appeal a final judgment of the Court to the Supreme Court of the Ho-Chunk  
2 Nation. *Interim Rules of Civil Procedure for Use in Election Challenges* [hereinafter *Election R. Civ.*  
3 *P.*], Rule 8. A judgment becomes final once signed by the presiding judge and filed with the Clerk of  
4 Court. *HCN R. Civ. P. 57*; *See also Id.*, Rule 61. The parties must abide by the procedures set forth in  
5 the *Ho-Chunk Nation Rules of Appellate Procedure* to the extent such rules are in accordance with the  
6 *Election R. Civ. P. 8* and 9.  
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9 **IT IS SO ORDERED** this 6<sup>th</sup> day of November, 2000 at the Ho-Chunk Nation Trial Court in  
10 Black River Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation.  
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14 Hon. Todd R. Matha  
15 HCN Associate Trial Judge  
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