

1
2
3

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

4 **Mr. Chloris Lowe Jr.,**
5 **Enrollment #439A001593;**
6 **Mr. Stewart J. Miller**
7 **Enrollment #439A002566,**

8 Plaintiffs,

9 v.

10 **Ho-Chunk Nation Legislature Members**
11 **Elliot Garvin, Gerald Cleveland, Sr., Myrna Thompson,**
12 **Isaac Greyhair, Dallas White Wing, Kevin Greengrass,**
13 **and Clarence Pettibone in their official capacity and**
14 **individually; and Ho-Chunk Nation Election Board,**

15 Defendants.

Case No.: CV 00-104

16
17
18
19
20
21
22
23
24
25
26
27

ORDER
(Determining Constitutionality of the Proposed
Redistricting/Reapportionment Scenarios)

INTRODUCTION

28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

The Court must determine whether the four (4) Ho-Chunk Nation Redistricting Scenarios [hereinafter Scenario(s)] proposed by the Ho-Chunk Nation Legislature [hereinafter Legislature] on December 1, 2000 satisfy constitutional standards partially enunciated by the Court in its *Order (Granting Plaintiffs' Motion for Summary Judgment)*, CV 00-104 (HCN Tr. Ct., Nov. 13, 2000), p. 13. Scenario 12A is *per se* unconstitutional since the adoption of such a proposal would create certain disagreement and conflict with the CONSTITUTION OF THE HO-CHUNK NATION [hereinafter

1 CONSTITUTION], ART. V, Secs. 4, 6 and 8. *See* CONSTITUTION, ART. VII, Sec. 6 (b). The Court assesses
2 the constitutionality of the remaining scenarios by reasonable application of the standards articulated in
3 the November 13, 2000 *Order (Granting Plaintiffs' Motion for Summary Judgment)*, representing the
4 Court's interpretation of the one-person/one-vote principle incorporated in the CONSTITUTION, ART. V,
5 Sec. 4. Only Scenario 30 reasonably complies with the Legislature's duty to redistrict and reapportion
6 "in pursuit of one-person/one-vote." CONSTITUTION, ART. V, Sec. 4.
7

8 9 **PROCEDURAL HISTORY**

10
11 The Court recounts the procedural history in significant detail in its *Order (Granting Plaintiffs'*
12 *Motion for Summary Judgment)*, CV 00-104 (HCN Tr. Ct., Nov. 13, 2000); *Order (Recognizing Right to*
13 *Challenge)*, CV 00-104 (HCN Tr. Ct., Nov. 8, 2000); and *Order (Partial Dismissal of Claims)*, CV 00-
14 104 (HCN Tr. Ct., Nov. 3, 2000). For purposes of this decision, the Court notes that it directed the
15 Legislature to devise a final redistricting and reapportionment proposal for judicial review on or before
16 December 1, 2000. *Order (Granting Plaintiffs' Motion for Summary Judgment)*, pp. 13-14.
17 Consequently, the Legislature collaboratively filed the *Defendants' Notice and Filing Submission of*
18 *Final Redistricting Proposals* on December 1, 2000.
19

20
21 Due to a perceived inattentiveness to constitutional standards, the Court issued the December 6,
22 2000 *Order (Requiring Further Justification)*, providing the defendants the opportunity to file a brief in
23 support of the final redistricting proposal and establishing a hearing date for oral argument. *Order*
24 *(Requiring Further Justification)*, pp. 10-11. The defendants timely filed the *Defendants' Notice and*
25 *Brief in Support of Redistricting Proposals* on December 8, 2000. The following parties appeared at the
26
27

1 December 8, 2000 *Hearing*: Stewart J. Miller; Attorney Gary J. Montana, plaintiffs’ counsel; Isaac
2 Greyhair, District 1 Legislator; and Attorney John S. Swimmer, defendants’ counsel.

3

4

APPLICABLE LAW

5

6

CONSTITUTION OF THE HO-CHUNK NATION

7

8 Preamble

9

10 We the People, pursuant to our inherent sovereignty, in order to form a more perfect government,
11 secure our rights, advance the general welfare, safeguard our interests, sustain our culture, promote our
12 traditions and perpetuate our existence, and secure the natural and self-evident right to govern ourselves,
13 do ordain and establish this Constitution for the Ho-Chunk Nation.

12 Article III – Organization of the Government

13

14 Section 2. Branches of Government. The government of the Ho-Chunk Nation shall be composed
of four (4) branches: General Council, Legislature, Executive, and Judiciary.

15

16 Section 3. Separation of Functions. No branch of the government shall exercise the powers or
functions delegated to another branch.

17

Article IV – General Council

18

19 Section 1. Powers of the General Council. The People of the Ho-Chunk Nation hereby grant all
inherent sovereign powers to the General Council. All eligible voters of the Ho-Chunk Nation are
entitled to participate in General Council.

20

21 Section 2. Delegation of Authority. The General Council hereby authorizes the legislative branch to
make laws and appropriate funds in accordance with Article V. The General Council hereby authorizes
the executive branch to enforce the laws and administer funds in accordance with Article VI. The
22 General Council hereby authorizes the judicial branch to interpret and apply the laws and Constitution
of the Nation in accordance with Article VII.

23

Article V – Legislature

24

25 Section 1. Composition of the Legislature.

26

(b) The Legislature shall be composed of Representatives from the following Districts, subject to

27

1 Section 4 of this Article: the Black River Falls District, consisting of Clark, Eau Claire and Jackson
2 counties, which shall elect three (3) members; the Wisconsin Dells District, consisting of Wood, Juneau,
3 Adams, Columbia, and Sauk counties, which shall select three (3) members; and the La Crosse-Tomah
4 District, consisting of La Crosse, Monroe, Vernon, and Crawford counties, which shall elect one (1)
5 member; and the Wittenberg District, consisting of Marathon and Shawano counties, which shall elect
6 one (1) member; and three (3) members which shall be elected at-large from outside the Districts listed
7 above.

8 Section 2. Powers of the Legislature. The Legislature shall have the power:

9 (a) To make laws, including codes, ordinances, resolutions, and statutes;

10 (r) To protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

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

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

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

28 Article VI – Judiciary

29 Section 4. Powers of the Judiciary. The judicial power of the Ho-Chunk Nation shall be vested in
30 the Judiciary. The Judiciary shall have the power to interpret and apply the Constitution and laws of the
31 Ho-Chunk Nation.

1 Section 6. Powers of the Tribal Court.

2 (a) The Trial Court shall have the power to make findings of fact and conclusions of law. The Trial
3 Court shall have the power to issue all remedies in law and in equity including injunctive and
4 declaratory relief and all writs including attachment and mandamus.

5 (b) The Trial Court shall have the power to declare the laws of the Ho-Chunk Nation void if such
6 laws are not in agreement with this Constitution.

7 Article VIII – Elections

8 Section 7. Challenges of Election Results. Any member of the Ho-Chunk Nation may challenge the
9 results of any election by filing suit in Tribal Court within ten (10) days after the Election Board
10 certifies the election results. The Tribal Court shall hear and decide a challenge to any election within
11 twenty (20) days after the challenge is filed in Tribal Court.

12 Article IX – Removal, Recall and Vacancies

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

19 Article X – Bill of Rights

20 Section 1. Bill of Rights.

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

22 (1) make or enforce any law prohibiting the free exercise of religion, or abridging the
23 freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a
24 redress of grievances.

25 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

26 Rule 57. Entry and Filing of Judgements.

27 All judgements must be signed by the presiding trial court judge. All signed judgements shall be
deemed complete and entered for all purposes after the signed judgement is filed with the Clerk. A copy
of the entered judgement shall be mailed to each party within two (2) calendar days of filing. The time

1 for taking an appeal shall begin running from the date the judgement is filed with the Clerk. Interest on
2 a money judgement shall accrue from the date the judgement is filed with the Clerk at a rate set by the
Legislature or at five (5) per cent per year if no rate is set.

3 Rule 61. Appeals.

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

7 INTERIM RULES OF CIVIL PROCEDURE FOR USE IN ELECTION CHALLENGES

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

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

13

14

FINDINGS OF FACT

15

16

17 1. The Court incorporates by reference the *Findings of Fact* enumerated in the December 6, 2000
18 *Order (Requiring Further Justification)*, pp. 4-8; November 13, 2000 *Order (Granting Plaintiffs'*
19 *Motion for Summary Judgment)*, pp. 7-9; November 8, 2000 *Order (Recognizing Right to Challenge)*, p.
20 6; and the November 3, 2000 *Order (Partial Dismissal of Claims)*, pp. 7-9.

21

22 2. The parties received proper notice of the December 8, 2000 *Hearing*.

23

24 3. The defendants offered no constitutional history for purposes of interpreting the CONSTITUTION,
ART. V, Secs. 4, 6 or 8. The qualified voters of the Wisconsin Winnebago Tribe adopted the
25 CONSTITUTION at the September 17, 1994 Secretarial Election. Ada E. Deer, Assistant Secretary –

26

27

1 Indian Affairs, approved the adoption of the CONSTITUTION on November 1, 1994.

2 4. The first special redistricting/reapportionment election under the CONSTITUTION, ART. V, Sec. 4
3 occurred on December 19, 1995. *See Mark Stroessner v. Ho-Chunk Nation Election Board & Ho-Chunk*
4 *Nation Legislature*, CV 95-25 (HCN Tr. Ct., Jan 4, 1996). The eligible voters chose to retain the *status*
5 *quo*, and “[n]o election challenge was received by the Clerk of Court within the ten days required by the
6 HO-CHUNK NATION CONSTITUTION, ART. VIII, § 7.” *Id.*, p. 1.

7
8 5. Under the No Action or No Change Scenario, District 5 contains the largest percentage deviation
9 from the ideal legislative apportionment of 552 constituents per legislative representative. *See*
10 LEGISLATIVE PROPOSAL FOR REDISTRICTING AND REAPPORTIONMENT SPECIAL ELECTION, RESOLUTION
11 11/30/00-E [hereinafter LEG. RES. 11/30/00-E], p. 2; *See also Order (Granting Plaintiffs’ Motion for*
12 *Summary Judgment)*, p. 8. A positive eighty-one percent (+81%) deviation exists in District 5, yielding
13 a maximum one hundred and forty-four percent (144%) disparity between Districts 5 and 3. *See Order*
14 *(Granting Plaintiffs’ Motion for Summary Judgment)*, p. 8. A negative three percent (-3%) deviation
15 exists in District 2, yielding a minimum twenty-six percent (26%) disparity between Districts 2 and 1.
16 *See Id.*

17
18 6. Under Scenario 1C, District 2 contains the largest percentage deviation from the ideal legislative
19 apportionment. *See LEG. RES. 11/30/00-E*, p. 2; *See also Order (Requiring Further Justification)*, pp. 6-

20
21 7. A negative fifty percent (-50%) deviation exists in District 2, yielding a maximum thirty-eight (38%)
22 disparity between Districts 2 and 3 or 4. *See Order (Requiring Further Justification)*, pp. 6-7. Also, a
23 negative forty-three percent (43%) deviation exists in District 1. *See Id.* A negative twelve percent
24 (12%) deviation exists in Districts 3 and 4, yielding no disparity between those two (2) districts. *See Id.*

25
26 7. Under Scenario 1C, the computations cannot account for the voting pattern of the 1,856 at-large
27

1 tribal members although the defendants contend that the “Legislature has checked with the [Ho-Chunk
2 Nation Office of Tribal] Enrollment and found that the vote requirement is simple to research using the
3 ancestral annuity documents required for enrollment into the tribe.” *Legislative Correspondence*, Dec. 1,
4 2000, p. 15. Scenario 1C appeared on the October 14, 2000 Special Redistricting Election ballot, yet the
5 defendants have offered no evidence of attempts to determine at-large voter registration for purposes of
6 proper reapportionment. *See Complaint for Declaratory and Injunctive Relief*, Oct. 25, 2000, Ex. C.
7 The defendants also have not identified a single controlling standard for selection of ancestral
8 homelands by at-large voters.
9

10 8. Under Scenario 1A, District 3 contains the largest percentage deviation from the ideal
11 legislative apportionment. *See LEG. RES. 11/30/00-E*, p. 2; *See also Order (Requiring Further*
12 *Justification)*, pp. 5-6. A positive forty-eight percent (+48%) deviation exists in District 3, yielding a
13 maximum seventy-three percent (73%) disparity between Districts 3 and 1. *See Order (Requiring*
14 *Further Justification)*, pp. 5-6. No deviation exists in District 2, yielding a minimum three percent (3%)
15 disparity between Districts 2 and 4. *See Id.*
16

17 9. Under Scenario 30, District 3 contains the largest percentage deviation from the ideal legislative
18 apportionment. *See LEG. RES. 11/30/00-E*, p. 2; *See also Order (Requiring Further Justification)*, p. 8.
19 A negative twenty-three percent (-23%) deviation exists in District 3, yielding a maximum thirty-five
20 percent (35%) disparity between Districts 3 and 5. *See Order (Requiring Further Justification)*, p. 8. A
21 positive three percent (+3%) deviation exists in District 4, yielding a minimum five percent (5%)
22 disparity between Districts 4 and 2. *See Id.*
23

24 10. The defendants agreed with the Court proposed and incorporated mathematical and/or
25 geographical corrections to Scenarios 1A and 1C noted in the *Order (Requiring Further Justification)*,
26
27

1 pp. 5-7.

2 11. The defendants reiterated the weighty governmental policy of sustaining an association and bond
3 with the aboriginal homeland of Wisconsin. *See Order (Requiring Further Justification)*, pp. 4-5. One
4 of the Ho-Chunk Nation's most visible symbols, the Official Seal of the Ho-Chunk Nation, incorporates
5 the outline of the State of Wisconsin. The Ho-Chunk Nation, f/k/a Wisconsin Winnebago, has by
6 necessity forged relationships in the form of accommodations or alliances with the State of Wisconsin
7 and its political subdivisions and the other sovereign Indian nations located in Wisconsin.
8

9 12. At the December 8, 2000 *Hearing*, District 1 Legislator Isaac Greyhair set forth several
10 legitimate considerations as justification for the larger divergence(s) present in Scenario 30, including:
11 preserving the historical affinity of communities, maintaining family affiliations, and recognizing the
12 rural and suburban demographic characteristics. *See Affidavit of Isaac Greyhair*, Dec. 8, 2000; *See also*
13 *Order (Granting Plaintiffs' Motion for Summary Judgment)*, pp. 13-14.
14

15

16

17

18

19 **DECISION**

20

21

22 The Court feels compelled to provide a partial overview of the instant case prior to considering
23 the constitutionality of the proposed redistricting/reapportionment scenarios due, in part, to the
24 defendants' recent mischaracterization of the Court's holding in its November 13, 2000 *Order (Granting*

25

26

27

1 *Plaintiffs’ Motion for Summary Judgment*).¹ The plaintiffs initially filed an October 25, 2000
2 *Complaint*, requesting declaratory and injunctive relief on various enumerated grounds. *Complaint for*
3 *Declaratory and Injunctive Relief* [hereinafter *Complaint*], Oct. 25, 2000, pp. 15-17. Basically, the
4 plaintiffs timely challenged the results of the October 14, 2000 Special Redistricting Election, namely a
5 retention of the *status quo* by adoption of the No Action or No Change Scenario. *Id.*, p. 17; *See also*
6 CONSTITUTION, ART. VIII, Sec. 7. The Court consequently needed to hear and decide the submitted
7 challenge to the election results within twenty (20) days after the filing of the *Complaint*, and the Court
8 endeavored to limit the presented issues in order to comply with this constitutional requirement. *See*
9 CONSTITUTION, ART. VIII, Sec. 7; *See also Order (Partial Dismissal of Claims)*.

11 The Court ultimately identified one (1) fundamental issue in the instant case: whether the
12 Legislature complied with its constitutional mandate to redistrict and reapportion. *Order (Granting*
13 *Plaintiffs’ Motion for Summary Judgment)*, pp. 1, 9; *See also* CONSTITUTION, ART. V, Sec. 4. On this
14 issue, the Court granted the plaintiffs request for “declaratory judgment . . . based upon the fact that the
15 approved No Change and No Action (*sic*) apportionment proposal approved on October 14, 2000,
16 violated Article V. (*sic*) Section 4.” *Complaint*, p. 17. The Constitution clearly states that “[t]he
17 Legislature *shall redistrict and reapportion* once every five (5) years beginning in 1995, in pursuit of
18 one-person/one-vote representation.” CONSTITUTION, ART. V, Sec. 4 (emphasis added). The Legislature
19 failed to fulfill its constitutional obligation by enabling the eligible voters to adopt the No Action or No
20 Change Scenario. *Order (Granting Plaintiffs’ Motion for Summary Judgment)*, pp. 1, 9, 14. Inclusion
21 of this scenario on the Special Redistricting Election ballot represented a *per se* unconstitutional action
22
23
24

25 _____
26 ¹ The defendants suggest that the holding of the Court hinged on a protection of “each individual voter’s right to
27 representation.” *Defendants’ Brief in Support of Redistricting Proposals* [hereinafter *Defendants’ Brief*], Dec. 8, 2000, p. 2.

1 by the named legislators in this case. *Id.* It is an elementary proposition that the Legislature cannot
2 redistrict and reapportion by not redistricting and reapportioning. There exists no room for reasonable
3 debate on this issue. Based on this holding, the Court enjoined the Ho-Chunk Nation Election Board
4 from posting the *Official Notice of the General Primary Election*. *See Id.*, p. 14. The injunction and
5 continuing judicial intervention is a natural and necessary consequence of the Court’s decision:
6 declaring the result of the October 14, 2000 Special Redistricting Election unconstitutional.
7

8 **I. Does Scenario 12A generate disagreement with specific**
9 **provisions included in the CONSTITUTION, ART. V, Sec. 4, 6 and 8,**
10 **rendering such provisions irrelevant and nonsensical?**

11 The Court must interpret the CONSTITUTION in a manner which preserves the internal consistency
12 and cohesiveness of the document. The General Council has entrusted the Courts with “the power to
13 declare the laws of the Ho-Chunk Nation void if such laws are not in agreement with this Constitution.”
14 CONSTITUTION, ART. VII, Sec. 6 (b); *See also Id.*, ART. IV, Secs. 1 and 2. The Legislature presented
15 Scenario 12A for judicial review by means of LEG. RES. 11/30/00-E, thereby rendering such proposal a
16 law of the Ho-Chunk Nation. *See Id.*, ART. V, Sec. 2 (a); *See also Order (Granting Plaintiffs’ Motion*
17 *for Summary Judgment)*, p. 14. Scenario 12A purports to create a single tribal-state, eliminating
18 districts entirely. *Defendants’ Brief*, pp. 3-5. However, the CONSTITUTION clearly presumes the
19 continued existence of more than one (1) district, which comports with the model of representative
20 democracy pervading the CONSTITUTION. CONSTITUTION, ART. V, Secs. 6 and 8; *See also Order*
21 *(Partial Dismissal of Claims)*, pp. 9-10.
22

23 The CONSTITUTION makes three (3) references to the legislators’ “respective Districts” within the
24 same article dealing with redistricting or reapportionment. CONSTITUTION, ART. V, Secs. 6 and 8. THE
25 AMERICAN HERITAGE DICTIONARY provides the following definition of the word ‘respective’: “relating
26
27

1 or pertaining to two or more persons or things regarded individually.” THE AMERICAN HERITAGE
2 DICTIONARY, Second College Edition (1991). The Supreme Court of the Ho-Chunk Nation [hereinafter
3 HCN Supreme Court] partially based a prior decision on the singular/plural distinction of a noun. *Ho-*
4 *Chunk Nation Election Board, Ho-Chunk Nation v. Aurelia Lera Hopinkah*, SU 98-08 (HCN S. Ct.,
5 April 7, 1999), pp. 4-5. The HCN Supreme Court declared the adoption of the AMENDED AND
6 RESTATED ELECTION ORDINANCE in agreement and consistent with the constitutional use of the word,
7 ‘election,’ rather than ‘elections.’ *Id.*

9 The Court provided the defendants the opportunity to reconcile its proposal of no districts, or
10 arguably one (1) district, with the constitutional reference to “respective districts.” CONSTITUTION, ART.
11 V, Secs. 6 and 8. The defendants answered by arguing that the CONSTITUTION does not expressly
12 require the continued presence of more than one (1) district, and the Court concedes this fact. The
13 defendants also argue that the CONSTITUTION enables the Legislature to discontinue districts, and the
14 Court likewise concedes this fact. *See Id.*, Sec. 4; *See also Order (Granting Plaintiffs’ Motion for*
15 *Summary Judgment)*, p. 12. However, the CONSTITUTION only requires that the Court determine
16 whether or not the law is “in agreement with this Constitution.” CONSTITUTION, ART. VII, Sec. 6 (b).
17 The defendants cannot contend that the proposal of no districts is reconcilable or in agreement with the
18 constitutional reference to “respective districts.” *Id.*, ART. V, Secs. 6 and 8. One cannot plausibly
19 maintain that no districts somehow could mean more than one (1) district.

22 The drafters of the CONSTITUTION certainly understood the import of their reference to
23 “respective districts” in relation to the legislative mandate to redistrict and reapportion. *Id.*, Secs. 4, 6
24 and 8. The obligation to redistrict and reapportion was neither remote nor unforeseeable, but rather a
25

26
27

1 given state of affairs at five (5) year intervals beginning in 1995.² *Id.*, Sec. 4. The drafters required
2 redistricting and reapportionment to occur within approximately one (1) year from the adoption of the
3 CONSTITUTION, and the Court must deduce that the drafters purposefully utilized specific language
4 surrounding such mandate.

5 As already established, “[t]he legislative requirement to redistrict and reapportion is absolute and
6 unambiguous.” *Order (Granting Plaintiffs’ Motion for Summary Judgment)*, p. 9. The defendants,
7 however, assert that “Scenario 12A would reduce the future need to redistrict and reapportion since all
8 elected officials would represent all of the Nation’s members. Of course, the Nation is always free to
9 reevaluate its representation model in the future should the need arise.” *Defendants’ Brief*, pp. 4-5. The
10 Court utterly fails to see how the explicit requirement to redistrict and reapportion transforms into a
11 voluntary option. CONSTITUTION, ART. V, Sec. 4. Furthermore, the Court cannot conceive how
12 redistricting could result in or arise from the absence of districts.³ Due to the several unreconcilable
13 disagreements with the CONSTITUTION, the Court declares Scenario 12A unconstitutional.
14

15
16 **II. Does Scenario 1C reasonably attempt to satisfy the one-**
17 **person/one-vote objective set forth in the CONSTITUTION, ART. V,**
18 **Sec. 4 as nearly as practicable?**

19 At the outset, the defendants acknowledge that Scenario 1C “is somewhat problematic.”
20 *Defendants’ Brief*, p. 5. The Legislature attempts to reapportion legislative seats on the basis of
21 population without discerning where 1,856 enrolled tribal members would declare residency as partially
22 defined by Scenario 1C. This sizeable group of at-large voters could support an assignment of three (3)
23

24 ² Arguably, the Ho-Chunk Nation has functioned under an unconstitutional scheme since 1995, but no individual has ever
25 pursued this issue in the Ho-Chunk Nation Judiciary. See *Mark Stroessner v. Ho-Chunk Nation Election Board & Ho-Chunk*
Nation Legislature, CV 95-25 (HCN Tr. Ct., Jan 4, 1996), p. 1.

26 ³ The Court feels compelled to note the distinct likelihood of a resulting disadvantage to the less populous communities and/or
27 counties under Scenario 12A when considering the potential harmful effects of staggered terms and recalls, but recognizes

1 legislative representatives. The defendants counter by arguing that the Court “cannot account for the
2 voting patterns of the 1,856 tribal members residing at large,” *Id.*, p. 7, but neither can the Legislature.
3 The Legislature instead appears to randomly allocate three (3) legislative seats within the four (4)
4 district area existing in the geographical boundaries of the State of Wisconsin without providing any
5 rationale for this decision. Therefore, the Court must limit its examination to that which is known.
6

7 Significant deviations from the ideal legislative apportionment exist within Districts 1 and 2.
8 The deviation in District 1 increases from a negative twenty-nine percent (-29%) under the *status quo* to
9 a negative forty-three percent (-43%) under Scenario 1C. The deviation in District 2 dramatically
10 increases from a negative three percent (-3%) under the *status quo* to a negative fifty percent (-50%)
11 under Scenario 1C. The Legislature cannot contend that Scenario 1C constitutes “in pursuit of one-
12 person/one-vote representation” when its scheme achieves the opposite result, and, therefore, Scenario
13 1C does not reasonably attempt to satisfy the constitutional requirement as nearly as practicable.
14
15 CONSTITUTION, ART. V, Sec. 4.

16 **III. Does Scenario 1A reasonably attempt to satisfy the one-**
17 **person/one-vote objective set forth in the CONSTITUTION, ART. V,**
18 **Sec. 4 as nearly as practicable?**

19 Scenario 1A similarly suffers from a clearly unreasonable deviation from the ideal legislative
20 apportionment as noted in Scenario 1C. District 3 contains a deviation of a positive forty-eight percent
21 (+48%), and the resulting disparity of seventy-three percent (73%) between Districts 3 and 1 represents
22 by far the largest disparity existing in any of the proposed scenarios. This contrasts strikingly with a
23 minimum three percent (3%) disparity between Districts 2 and 4 in Scenario 1A.
24

25 While Scenario 1A proves an improvement over the *status quo*, this Court is unwilling to

26 that such concern represents a political question. *See Id.*, ART. V, Sec. 6 and ART. IX, Sec. 6.
27

1 narrowly interpret “in pursuit of one-person/one-vote representation” as requiring only marginal or
2 slight improvements, especially when the defendants recognize the existence of superior alternatives.
3 *Defendants’ Brief*, pp. 8-9; *See also Order (Granting Plaintiffs’ Motion for Summary Judgment)*, pp. 10-
4 11, 13-14. Accordingly, the Court likewise deems that Scenario 1A does not reasonably attempt to
5 satisfy the constitutional requirement as nearly as practicable. CONSTITUTION, ART. V, Sec. 4. The
6 Court, however, is not oblivious to the inherently difficult political concerns and compromises which
7 result from the Legislature’s obligation to redistrict and reapportion. The Court intentionally declined to
8 adopt exacting standards in recognition of this fact. *See Order (Granting Plaintiffs’ Motion for*
9 *Summary Judgment)*, pp. 13-14.
10
11
12
13

14 **IV. Does Scenario 30 reasonably attempt to satisfy the one-**
15 **person/one-vote objective set forth in the CONSTITUTION, ART. V,**
16 **Sec. 4 as nearly as practicable?**

17 Scenario 30 best approximates one-person/one-vote of all the proposed scenarios. The
18 defendants recognize that Scenario 30 represents “a rational., Mathematically (*sic*) based formula that
19 provides representation as nearly as practicable given the limitations the Legislature is constrained with
20 and does not violate the dilute (*sic*) or diminish the vote of the at-large membership.” *Defendants’ Brief*,
21 p. 9. The Court does note that the deviation in District 2 increases from a negative three percent (-3%)
22 under the *status quo* to a positive eight percent (+8%) under Scenario 30, but deems the modification *de*
23 *minimis* and in accord with the constitutional standards enunciated by the Court. *Order (Granting*
24 *Plaintiffs’ Motion for Summary Judgment)*, p. 13. District 1 Legislator Isaac Greyhair presented
25 legitimate considerations to justify the negative twenty-three percent (-23%) deviation from the ideal
26
27

1 legislative apportionment occurring in District 3. Also, Scenario 30 fosters significant reductions in the
2 disparities between the districts. Most importantly, the Court shall not second-guess the reasonable
3 political decisions of the Legislature, nor shall it propose alternative scenarios lest it unduly intrude into
4 the legislative process. *See* CONSTITUTION, ART. III, Secs. 2 and 3 and ART. IV, Secs. 1 and 2. The
5 Court thereby holds Scenario 30 constitutional, and sanctions its inclusion on the second Special
6 Redistricting Election ballot.
7

8 Furthermore, the Court finds that the legislative objective of sustaining an association and bond
9 with the aboriginal homeland of Wisconsin represents a *rational policy* pronouncement. The
10 inferentially related governmental interests of preserving tradition, language and culture prove, at a
11 minimum, legitimate considerations.⁴ *See Id., Preamble* and ART. V, Sec. 2 (r). Therefore, the positive
12 twelve percent (+12%) deviation from the ideal legislative apportionment existing in District 5 not only
13 comports with the constitutional standards enunciated by the Court, but may justifiably increase in
14 future legislative redistricting and reapportionment due to the established rational policy
15 pronouncement.
16

17 **BASED UPON THE FOREGOING**, the Court approves the inclusion of Scenario 30 on the
18 second Special Redistricting Election ballot, and requires the Legislature to submit a second
19 legislatively approved redistricting/reapportionment scenario to the Court for judicial review on or
20 before December 15, 2000 at 4:30 P.M. CST. If necessary, the Court may convene a *Hearing* on
21 December 20, 2000 at 3:00 P.M. CST
22

23 Any party may appeal a final judgment of the Court to the HCN Supreme Court. *Interim Rules*
24

25 _____
26 ⁴ The Legislature may also permissibly endeavor to preserve religion given the absence of an Establishment Clause in the
27 CONSTITUTION. *Id.*, ART. X, Sec. 1 (a)(1).

1 *of Civil Procedure for Use in Election Challenges* [hereinafter *Election R. Civ. P.*], Rule 8. A judgment
2 becomes final once signed by the presiding judge and filed with the Clerk of Court. *HCNR. Civ. P. 57*;
3 *See also Id.*, Rule 61. The parties must abide by the procedures set forth in the *Ho-Chunk Nation Rules*
4 *of Appellate Procedure* to the extent such rules are in accordance with the *Election R. Civ. P. 8* and 9.
5

6
7 **IT IS SO ORDERED** this 14th day of December, 2000 at the Ho-Chunk Nation Trial Court in
8 Black River Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation.
9

10
11 _____
12 Hon. Todd R. Matha
13 HCN Associate Trial Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27