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

3 **Dallas White Wing,**
4 Plaintiff,

5 v.

Case No.: **CV 06-25**

6 **Ho-Chunk Nation Legislature through**
7 **Wade Blackdeer, in his official capacity as**
8 **Nation Election Board through Mary Ellen**
9 **Dumas, in her official capacity as Chair of**
10 **the Election Board**
Defendants.

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**ORDER
(Granting Preliminary Injunction)**

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INTRODUCTION

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17 The Court must determine whether to grant the plaintiff's motion for a preliminary
18 injunction. The Court deems that the plaintiff satisfied the well-established standard for issuing
19 this manner of injunctive relief. Therefore, the Court enjoins the holding of the Special Election,
20 scheduled for May 2, 2006. The analysis and holding of the Court follows below.
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PROCEDURAL HISTORY

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25 The plaintiff, Dallas R. White Wing, initiated the current action by filing a *Complaint for*
26 *Declaratory Relief* (hereinafter *Complaint*) with the Court on March 31, 2006. A *Motion for*
27 *Temporary Restraining Order & Preliminary Injunction* (hereinafter *Plaintiff's Motion*)
28 permissibly accompanied the initial pleading. See *Ho-Chunk Nation Rules of Civil Procedure*

1 (hereinafter *HCN R. Civ. P.*), Rule 18. Consequently, the Court issued a *Summons* accompanied
2 by the above-mentioned *Complaint* on March 31, 2006, and delivered the documents by personal
3 service to the defendants' representative, Ho-Chunk Nation Department of Justice (hereinafter
4 DOJ).¹ The *Summons* informed the defendants of the right to file an *Answer* within twenty (20)
5 days of the issuance of the *Summons* pursuant to *HCN R. Civ. P.* 5(A)(2). The *Summons* also
6 cautioned the defendants that a *default judgment* could result from failure to file within the
7 prescribed time period.
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10 Due to the extraordinary relief requested in the *Plaintiff's Motion*, the Court mailed
11 *Notice(s) of Hearing* to the parties on April 5, 2006, informing them of the date, time and
12 location of the *Motion Hearing*. Prior to the *Hearing*, the defendants timely filed their *Response*
13 *in Opposition to Motion for TRO/Preliminary Injunction* (hereinafter *Defendants' Response*).
14 *Id.*, Rule 19(B). The Court convened the *Motion Hearing* on April 12, 2006 at 10:00 a.m. CDT.
15 The following parties appeared at the *Preliminary Injunction Hearing*: Dallas White Wing,
16 plaintiff; Attorney Glenn C. Reynolds, plaintiff's counsel; Vice President Wade N. Blackdeer,
17 defendant; Chairperson Mary Ellen Dumas, defendant; and DOJ Attorney Michael P. Murphy,
18 defendants' counsel.
19

20 **APPLICABLE LAW**

21
22 **CONSTITUTION OF THE HO-CHUNK NATION**

23 **Art. V - Legislature**

24 **Sec. 1. Composition of the Legislature.**

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27 ¹The *HCN R. Civ. P.* permit the Court to serve the *Complaint* upon the DOJ when the plaintiff/petitioner names as a
28 party either a unit of government or enterprise or an official or employee being sued in their official or individual
capacity. *HCN R. Civ. P.* 27(B).

1 (c) The Legislature shall select from among its Members a Vice President to serve
2 throughout such Member's term. The President shall preside over meetings of the Legislature.
3 The Vice President shall preside over meetings of the Legislature in the absence of the President
and at such times the Vice President shall retain the power to vote.

4 Sec. 2. Powers of the Legislature. The Legislature shall have the power:

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

6
7 (g) To set its own procedures, select its officers, and to enact laws governing
attendance of its members, including penalties for absences;

8 Art. VII - Judiciary

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10 Sec. 5. Jurisdiction of the Judiciary.

11 (a) The Trial Court shall have original jurisdiction over all cases and controversies,
12 both criminal and civil, in law or in equity, arising under the Constitution, laws, customs and
13 traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its
14 officials and employees, shall be a party. Any such case or controversy arising within the
jurisdiction of the Ho-Chunk Nation shall be filed in the Trial Court before it is filed in any other
15 court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of
the Nation's sovereign immunity.

16 Sec. 6. Powers of the Tribal Court.

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

19 Art. VIII - Elections

20 Sec. 4. Election Board. The Legislature shall enact a law creating an Election Board.
21 The Election Board shall conduct all General and Special Elections. At least sixty (60) days
22 before the election, the Election Board may adopt rules and regulations governing elections.
Election Board members shall serve for two (2) years. Election Board members may serve more
23 than one term. The Legislature may remove Election Board members for good cause.

24 Art. IX - Removal, Recall and Vacancies

25 Sec. 10. Vacancies in the Legislature. If a vacancy occurs in the Legislature because of
26 death, mental or physical incapacity, removal or recall vote, or for any other reason, such
vacancy shall be filled in the following manner:

27
28 (a) If three (3) months or more remain before the next General Election, the Election
Board shall call a Special Election in the appropriate District to be held in thirty (30) days.

1 Art. X - Bill of Rights

2 Sec. 1. Bill of Rights.

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

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

7 Art. XII - Sovereign Immunity

8 Sec. 1. Immunity of Nation from Suit. The Ho-Chunk Nation shall be immune from suit
9 except to the extent that the Legislature expressly waives its sovereign immunity, and officials or
10 employees of the Ho-Chunk Nation acting within the scope of their duties or authority shall be
11 immune from suit.

12 Sec. 2. Suit Against Officials and Employees. Officials and employees of the Ho-Chunk
13 Nation who act beyond the scope of their duties or authority shall be subject to suit in equity only
14 for declaratory and non-monetary injunctive relief in Tribal Court by persons subject to its
15 jurisdiction for purposes of enforcing rights and duties established by this constitution or other
16 applicable laws.

17 OPEN MEETINGS ACT, 2 HCC § 2

18 Subsec. 3. Declaration of Policy.

19 a. Meetings of public bodies and District Meetings of the Nation shall be conducted
20 openly, notices shall be provided for such meetings, and such notices include the information
21 reasonably necessary to inform the public of the matters to be discussed or decided at the
22 meeting. The Judiciary shall take into account this policy and shall construe and interpret any
23 provision of this Act in favor of open and public meetings.

24 Subsec. 7. Public Notice.

25 a. A public body shall post notice of each regular or special meeting or hearing in a
26 prominent, noticeable place in the Nation's Executive Office Building and at the location of the
27 meeting, if not the Executive Office Building, no less than 48 hours prior to the meeting or
28 hearing, unless an emergency requires shorter notice. Such notice shall include the date, time,
location and proposed agenda and/or hearing purpose.

29 LEGISLATIVE ORGANIZATION CODE OF 2001, 2 HCC § 11

30 Subsec. 10. Rules of the Legislature.

31 a. The proceedings of the Legislature shall be conducted in accordance with rules
32 specified in the following sources expressed in the order of their priority.

- 1 (1) The Constitution of the Ho-Chunk Nation.
- 2 (2) Acts, Statutes and other legislative enactments.
- 3 (3) Written procedural regulation adopted by the Legislature from time to
- 4 time.
- 5 (4) Procedures generally recognized by the members of the Legislature as in
- 6 accordance with legislative practice since the enactment of the present Constitution, and
- 7 affirmed by a majority of the Legislators voting at a duly convened meeting.

8 c. Legislative and Committee Agendas.

9 (1) Legislative Meetings.

10 (a) All requests for agenda items submitted by the Judiciary Branch or

11 Executive Branch (and its Departments and Divisions) are to be received by the

12 legislative secretary not later than noon on the Thursday preceding the Legislative

13 Meeting scheduled for Tuesday of the following week.

14 (b) All Executive Branch agenda item submittals have the approval of the

15 Office of the President attached.

16 (c) Submitted agenda items shall include supporting documents and the

17 name(s) titles(s) of the individual(s) attending and presenting the matter.

18 (d) Legislator requests for the submission of additional documents or the

19 presence of additional people to appear at the meeting will be delivered to the

20 Office of the President or to the Chief Trial Judge by 4:30 p.m. on the same

21 Thursday (day that the agenda item is submitted to the Legislature).

22 (e) By 9:00 a.m. on the Friday before the scheduled Legislative

23 Meeting, the agenda shall be finalized.

24 (f) By noon on Monday of the week of the scheduled Legislative Meeting,

25 the agenda and packet providing the supporting documents shall be delivered to

26 the Office of the President.

27 (3) If a situation arises after the agenda deadlines, above, where an item must be

28 heard at the next legislative or Committee Meeting, inclusion on the agenda may only be

made upon mutual consent of the Vice President or Committee Presiding Officer and

either, as applicable, the President or the Chief Trial Judge.

1 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

2 Rule 5. Notice of Service of Process.

3 (A) Definitions.

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5 2. Summons - The official notice to the party informing him/her that he/she is identified
6 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (*See*
7 *HCN R. Civ. P. 6*) and that a *Default Judgment* may be entered against them if they do not file an
8 *Answer* in the prescribed time. It shall also include the name and location of the Court, the case
number, and the names of the parties. The *Summons* shall be issued by the Clerk of Court and
shall be served with a copy of the filed *Complaint* attached.

9 (C) Methods of Service of Process.

10 1. Personal Service. The required papers are delivered to the party in person by the
11 bailiff, or when authorized by the Court, a law enforcement officer from any jurisdiction, or any
12 other person not a party to the action who is eighteen (18) years of age or older and of suitable
discretion.

13 Rule 18. Types of Motions.

14 *Motions* are requests directed to the Court and must be in writing except for those made in Court.
15 *Motions* based on factual matters shall be supported by affidavits, references to other documents,
16 testimony, exhibits or other material already in the Court record. *Motions* based on legal matters
17 shall contain or be supported by a legal memorandum, which states the issues and legal basis
relied on by the moving party. The *Motions* referenced within these Rules shall not be
18 considered exhaustive of the *Motions* available to litigants.

19 Rule 19. Filing and Responding to Motions.

20 (B) Responses. A *Response* to a written *Motion* must be filed at least one (1) day before the
21 hearing. If no hearing is scheduled, the *Response* must be filed with the Court and served on the
22 other parties within ten (10) calendar days of the date the *Motion* was filed. The party filing the
Motion must file any *Reply* within three (3) calendar days.

23 Rule 27. The Nation as a Party.

24 (B) Civil Actions. When the Nation is filing a civil suit, a writ of mandamus, or the Nation is
25 named as a party, the Complaint should identify the unit of government, enterprise or name of
26 the official or employee involved. The Complaint, in the case of an official or employee being
27 sued, should indicate whether the official or employee is being sued in his or her individual or
28 official capacity. Service can be made on the Ho-Chunk Nation Department of Justice and will
be considered proper unless otherwise indicated by these rules, successive rules of the Ho-Chunk
Nation Court, or Ho-Chunk Nation Law.

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FINDINGS OF FACT

1. The parties received proper notice of the April 12, 2006 *Motion Hearing*.
2. The plaintiff, Dallas R. White Wing, is an enrolled member of the Ho-Chunk Nation, Tribal ID# 439A002650, and resides at W18052 Townline Road, Wittenberg, WI 54499. *Compl.* at 1. The plaintiff serves as the duly elected legislative representative of District III.
3. The defendant, Ho-Chunk Nation Legislature (hereinafter Legislature) is a constitutional branch of government with principal offices located on trust lands at the Ho-Chunk Nation Headquarters, W9814 Airport Road, P.O. Box 667, Black River Falls, WI 54615. The defendant, Wade N, Blackdeer, is the duly selected legislative Vice President, and an enrolled member of the Ho-Chunk Nation, Tribal ID# 439A000205. CONSTITUTION OF THE HO-CHUNK NATION (hereinafter CONSTITUTION), ART. V, § 1(c). The defendant, Ho-Chunk Nation Election Board (hereinafter Election Board), is a constitutionally established entity, and maintains an address of 4 East Main Street, Black River Falls, WI 54615. *Id.*, ART. VIII, § 4. The defendant, Mary Ellen Dumas, is the Election Board Chairperson, and an enrolled member of the Ho-Chunk Nation, Tribal ID# 439A002156.
4. On March 22, 2006, the Legislature passed a resolution, directing the Election Board to call a Special Election for District III. HCN LEG. RES. 03-22-06C. The resolution directed the Election Board to call a Special Election due to the incapacity of the plaintiff. *Id.* at 2.
5. On March 24, 2006, a letter was transmitted to the plaintiff from Vice President Blackdeer, advising him of the resolution adopted by the Legislature. *Compl.*, Attach. 3 at 1.
6. On April 2, 2006, the Election Board convened and made a motion calling for a Special Election to be held on May 2, 2006, to fill the legislative vacancy in District III. The motion passed on a vote of 9-0-0. Defs.' Ex. B at 1.

1 7. The Election Board served notice of the Special Election by a poster to District III voters,
2 which was posted on April 3, 2006. Defs.' Ex. A.

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4 **DECISION**

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6 On March 31, 2006, the plaintiff in this case filed an initial pleading and motion to enjoin
7 enforcement of HCN LEG. RES. 03-22-06C, and to enjoin any action to fill or replace his seat in
8 the Legislature. The Court set forth the prevailing test for addressing a request for preliminary
9 injunction in its first case. *Joyce Warner et al. v. HCN Election Bd.*, CV 95-03-06,-09-10 (HCN
10 Tr. Ct., July 3, 1995) at 4 (citing *Merril Lynch, Pierce, Fenner & Smith, Inc. v. Salvano*,
11 999F.2d. 211, 214-15 (7th Cir. 1993)). The Ho-Chunk Nation Supreme Court subsequently
12 affirmed the use of the adopted federal standard. A movant must demonstrate by a
13 preponderance of the evidence that
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- 15 1. There is no adequate remedy at law.
- 16 2. The threatening [*sic*] injury to the person seeking the injunction
17 outweighs the harm of the injury.
- 18 3. The party seeking the injunction has at least a reasonable likelihood
19 of prevailing of [*sic*] the merits of their claim.
- 20 4. The issuance of the injunction serves the public interest.

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22 *Coalition for Fair Gov't v. Chloris A. Lowe, Jr. et al.*, SU 96-02 (HCN S. Ct., July 1, 1996) at 7.
23 The Court will apply the four-part inquiry to the instant case and determine if each part is
24 satisfied.

25
26 **II. IS THERE AN ADEQUATE REMEDY AT LAW?**

27 Both parties concede that the plaintiff cannot be compensated by money damages. *See*
28 *Defs.' Resp.* at 4. The harm the plaintiff seeks to prevent is the intangible harm that would result

1 from the action taken by the Legislature, that is: the calling of a Special Election to fill his
2 District III seat. Money damages cannot compensate the plaintiff. The Court finds the plaintiff
3 has no adequate remedy at law.
4

5 **II. DOES THE THREATENED HARM TO THE PLAINTIFF**
6 **OUTWEIGH THE HARM OF ISSUING THE INJUNCTION?**

7 The plaintiff seeks to enjoin the enforcement of HCN LEG. RES. 03-22-06C, which will
8 ultimately result in filling his legislative seat by means of a Special Election scheduled for May
9 2, 2006. Furthermore, the plaintiff contends that he was neither given notice nor an opportunity
10 to be heard prior to the March 22, 2006 legislative meeting regarding his alleged incapacitation.
11 He was excused from legislative meetings up to and including the March 22, 2006 session. The
12 March 22, 2006 legislative minutes show that the plaintiff was excused. *HCN Leg. Mins.* (Mar.
13 22, 2006) at 1. It would be a grave harm if the plaintiff's seat was filled by Special Election, and
14 it was later determined that the actions of the Legislature were improper. If a preliminary
15 injunction is granted, the plaintiff will continue to serve as a legislator until this case can be
16 resolved. Moreover, the scheduled Special Election will be delayed. In other words, if the
17 actions of the Legislature are later found to be proper, its action would only be delayed. This is
18 the potential harm if the preliminary injunction is granted.
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21 If the Court does not grant the *Plaintiff's Motion*, the Special Election will take place as
22 scheduled on May 2, 2006, and a legislator will be elected. Financial and human resources to
23 conduct an election would be expended. If the Court later finds for the plaintiff and determines
24 that the legislative action was improper, the Nation would have two (2) elected legislators for the
25 same seat. Another harm is avoided by issuing the injunction, namely: the harm to the rule of
26 law. The CONSTITUTION provides:
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1 If a vacancy occurs in the Legislature because of death, mental or physical
2 incapacity, removal or recall vote, or for any other reason, such vacancy
3 shall be filled in the following manner:

4 (a) If three (3) months or more remain before the next General
5 Election shall call a Special Election in the appropriate District to be held
6 within thirty (30) days.

6 CONST., ART. IX, § 10(a).

7 The Judiciary has not interpreted this provision in relation to how a "physical incapacity"
8 should be determined by the Legislature and whether a vacancy has occurred. However, as
9 previously stated: "[i]f a Preliminary Injunction is not granted, the legislative action to fill the
10 District III legislative seat would be given effect without the Court have the opportunity to make
11 a ruling interpreting this provision as it applies to the facts of this case." *Dallas White v. Ho-*
12 *Chunk Gen. Council et al.* CV 04-99 (HCN Tr. Ct., Nov 18, 2004) at 11. The Court finds that
13 the threatened harm to the plaintiff outweighs the harm of issuing the injunction
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16 **III. DOES THE PLAINTIFF HAVE A REASONABLE
17 LIKELIHOOD OF SUCCESS ON THE MERITS?**

18 The question before the Court is new and has never been analyzed. There are no set of
19 rules to guide the Legislature nor the Court as to the determination of "physical incapacity," and
20 what criteria one would use to find a legislative seat vacant due to "physical incapacity." In this
21 instance, at the March 22, 2006 legislative meeting, the minutes reflect Legislator Kathyleen V.
22 Lonetree-Whiterabbit stating

23 that as the Chair of the Administration Committee that Rep. Dallas White
24 Wing has been absent from the Administration Committee since October ,
25 2005, she has not received any oral or written communication from Rep.
26 White Wing informing her of his status. Until she does receive information
27 on his status, from this time it will be recorded in the meeting minutes that
28 he is unexcused from the meeting. Rep. Kathy Lonetree-Whiterabbit also
presented a resolution for the Election Board to call for a Special Election
for District III.

1 *HCN Leg. Mins.* (Mar. 22, 2006) at 1. At the same meeting, the plaintiff was shown as excused
2 from the meeting. *Id.*

3
4 In the afternoon session of the legislative meeting, under an *Agenda Amendment* heading,
5 a motion was made by Legislator Myrna Thompson "to amend the agenda to hear the District
6 4/Thorn White Eagle Request then hear item 9, directing the Election Board to call for a special
7 election for District III Resolution. Second by Rep. K. Lonetree-Whiterabbit. 9-0-0." *Id.* at 3.
8 Later in the proceeding, under the *New Business* section, the motion to direct the Election Board
9 to call a Special Election for District 3 was introduced by Legislator Lonetree-Whiterabbit and
10 seconded by Legislator Douglas G. Greengrass. The motion passed with the vote of 9-0-0.
11 Legislator Ona M. Garvin was absent. *Id.*

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13 In this instance, no factual basis for the decision by the Legislature to declare the District
14 III seat vacant was given. The CONSTITUTION requires that "[t]he Ho-Chunk Nation, in
15 exercising its powers of self government, shall not deny any person within its jurisdiction the
16 equal protection of its laws or deprive any person liberty, or property without the due process of
17 law." CONST., ART. X, § 1(a)(8). The plaintiff was neither provided notice of the March 22,
18 2006 legislative action nor was he afforded the opportunity to be heard in the matter regarding
19 his incapacity. The action of declaring a vacancy and calling for a Special Election is a grave
20 act. For this to be done properly, there must be procedural requirements and a standard to follow.
21 A standard by the Legislature to declare a legislator incapacitated is lacking. *See* CONST., ART.
22 V, § 2(a).

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24 According to BLACK'S DICTIONARY, "disability" is defined, in part, as "[t]he inability to
25 perform some function; an objectively measurable condition of impairment, physical or mental . . .
26 . Also, termed incapacity." BLACK'S DICTIONARY, 474 (7th ed. 1999). Here there are no facts to
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1 provide an objective measurement to show that the plaintiff was incapacitated. The Legislature
2 lacked a standard by not "enacting [a] law[] governing attendance of its members, including
3 penalties for absences" in regard to "physical incapacity" of a member. CONST., ART. V, §
4 2(a)(g). Testimony was presented that only one (1) other representative, Legislator Elliot S.
5 Garvin, had a physical disability that prohibited him from attending legislative meetings.
6 Legislative minutes reflect that Legislator Garvin was excused from attendance from July 6,
7 2004 to October 26, 2004. *Leg. Min.* (July 6, 2004-Oct. 26, 2004). Why in this case was the
8 plaintiff's seat declared vacant due to "physical incapacity" while Legislator Garvin's seat was
9 not similarly classified while he was absent? Furthermore, the Legislature did not follow its
10 internal rules concerning the conduct of legislative meetings. 2 HCC § 11.10a(1-4).

13 The Legislature did not follow the routine procedure for placing an item on the agenda.
14 *Id.* § 11.10c(1)(a-f); *see also* 2 HCC § 2.3a, 7a. Yet, the LEGISLATIVE ORGANIZATION ACT OF
15 2001 contains an exception, noting that "[i]f a situation arises after the agenda deadlines, above,
16 where an item must be heard at the next Legislative . . . Meeting, inclusion on the agenda may
17 only be made upon the . . . consent of the Vice President" *Id.*, § 11.10c(3). There were no
18 facts presented that this occurred. No reasons were given why this item for a Special Election
19 had to be called when there was a period of roughly six (6) months where such an action could
20 have been brought.
21

23 The plaintiff was excused from the meeting. Also, the record is void of any action taken
24 by the Administrative Committee to bring this action to the full Legislature. It appears the action
25 was initiated by a single person. For this reason, there are constitutional safeguards against
26 arbitrary actions. If this action is allowed to occur, anyone could place an item on an agenda to
27 simply eliminate a seat without any basis in law. In the LEGISLATIVE ORGANIZATION ACT OF
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1 2001, there is no definition regarding what constitutes a "physical incapacity" for purposes of
2 declaring a legislative seat vacant.

3
4 The defendants argue that the officials named in this suit retain official and/or qualified
5 immunity from suit since they have not willfully undertaken an illegal action.

6 Regarding the immunity issue, the Ho-Chunk Nation Supreme Court
7 recently emphasized that "the principle of sovereign immunity exists
8 primarily to protect the public treasury from lawsuits seeking damages. It
9 does not prevent people from suing the HCN government to enforce their
10 rights under the HCN Constitution." *Hope B. Smith v. Ho-Chunk Nation*,
11 SU 03-08 (HCN S. Ct., Dec. 8, 2003) at 10; *see also* CONST., ART. XII, §
12 1-2. A plaintiff must institute such a suit against an official or employee,
13 claiming that the individual "act[ed] beyond the scope of their duties or
14 authority." CONST., ART. XII, § 2. Essentially, the plaintiff seeks to affect
15 the future actions of the official or employee in an effort to avoid a
16 continuing violation of the law. A plaintiff will typically request
injunctive relief against the official or employee entrusted with
implementing an allegedly illegal statutory provision. "The fact that the . .
officer, by virtue of his [or her] office, has some connection with the
enforcement of the act, is the important and material fact, and whether it
arises out of the general law, or is specially created by the act itself, is not
material so long as it exists." *Ex Parte Young*, 209 U.S. 123, 157 (1908).

17 *Ronald K. Kirkwood v. Francis Decorah, in his official capacity as Dir. of HCN Dep't of*
18 *Housing, et al.*, CV 04-33 (HCN Tr. Ct., Feb. 11, 2005) at 13.

19 Here, the plaintiff seeks to enjoin the actions of the Legislature through Vice President
20 Blackdeer and the Election Board through Chairperson Dumas. The Court holds that the
21 plaintiff's suit survives any purported immunity defense. To deem otherwise would leave the
22 plaintiff with no judicial recourse to address his acknowledged harm. *See supra* p. 9. In
23 accordance with the reasons stated above, the plaintiff is likely to succeed on the merits of his
24 claim. The Court, however, dismisses the institutional defendants, Legislature and Election
25 Board, due to the retention of sovereign immunity from suit. *See* CONST., ART. XII, § 1; *see also*
26 *Timothy G. Whiteagle et al. v. Alvin Cloud, Chair of the Gen. Council, in his official capacity, et*
27
28

1 *al.*, CV 04-04 (HCN Tr. Ct., Aug. 5, 2004) at 20-21, *aff'd*, SU 04-06 (HCN S. Ct., Jan. 3, 2005).

2 All subsequent filings and decisions shall reflect this modification within the caption.

3 **IV. DOES ISSUING THE INJUNCTION SERVE THE PUBLIC**
4 **INTEREST?**

5 The answer to this question is decidedly yes. As stated in *Coalition for Fair Government*
6 *II*, "[a]n injunction can be a temporary measure to sort out facts and determine whether a more
7 full development of the facts and arguments will indicate whether further action is warranted."
8 *Coalition for Fair Government II*, CV 96-22 (HCN Tr. Ct., May 21, 1996) at 18, *aff'd*, SU 96-02
9 (HCN S. Ct., July 1, 1996). Here, the harm suffered by the plaintiff in relation to his claim to the
10 District III legislative seat reveals procedural due process violations. If constitutional protections
11 are not afforded to the Legislator whose seat is declared vacant without a standard or basis in
12 law, that Legislator will not be able to have his case heard before the Court.
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15 The CONSTITUTION mandates that "[t]he Ho-Chunk Nation, in exercising its powers of
16 self government, shall not . . . deprive any person of . . . property without the due process of
17 law." CONST., ART. X, § 1(a)(8). The Ho-Chunk Nation, by and through the Legislature and
18 Election Board, have undeniably exercised their powers in relation to the facts and circumstances
19 at issue in this case. Also, the Legislature undeniably deprived the plaintiff of his property, a
20 legislative seat, by declaring the seat vacant. The Court must have the opportunity to interpret
21 and apply the principles of due process as it relates to the challenged legislative action.
22

23 The Court's solemn responsibility is to interpret the CONSTITUTION and laws of the Ho-
24 Chunk Nation and also to give them meaning. The plaintiff is requesting that the due process
25 protections and the laws of the Nation be followed. This is in the public interest.
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CONCLUSION

The Plaintiff has met his initial burden of proof, *i.e.*, the four (4) prongs of the preliminary injunction test: (1) there is no adequate remedy at law; (2) the harm to the plaintiff and the CONSTITUTION outweighs the delay of the Special Election; (3) the plaintiff has a reasonable likelihood of success on the merits; and (4) the issuance of a preliminary injunction is in the public interest. **BASED UPON THE FOREGOING**, the Court grants the request for a preliminary injunction. The Court hereby enjoins Chairperson Dumas from holding the Special Election on May 2, 2006.

IT IS SO ORDERED this 19th day of April 2006, by the Ho-Chunk Nation Trial Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

Honorable JoAnn Jones²
Associate Trial Court Judge

² On April 4, 2006, Chief Justice Mary Jo B. Hunter elevated the presiding official to the position of Associate Judge by extraordinary appointment. HCN JUDICIARY ESTABLISHMENT & ORG. ACT, 1 HCC § 1.8c.

