

SEP 25 2013

IN THE
HO-CHUNK NATION TRIAL COURT


Clerk of Court/Assistant

Mary Ellen Blackdeer Anwash,
Petitioner,

v.

Case No.: CV 12-73

Ho-Chunk Nation Office of Tribal
Enrollment,
Respondents,

ORDER
(Denying Emergency Motion)

INTRODUCTION

The Court must determine whether to grant the injunctive relief requested in the *Emergency Motion to Stay Pending Appeal* (hereinafter *Motion*). The Court declines to grant the motion as it lacks ripeness, and subsequently seeks to interfere with a coordinate branch of the Ho-Chunk Nation. The analysis of the Court follows below.

PROCEDURAL HISTORY

The Court recounts the procedural history of this case in detail in its *Reissued Order (Final J.)*, CV-12-13 (HCN Tr. Ct., September 12, 2013) at 1–2. This reissued order denied the petitioner’s appeal from the Enrollment Committee’s determination. The reissued order followed and corrected the *Order (Final Judgment)* of September 4, 2013. This order concerns the *Motion*, submitted *pro se* by the petitioner on September 16, 2013.

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APPLICABLE LAW

CONSTITUTION OF THE HO-CHUNK NATION

Sec. 5. Membership Code.

The Legislature shall have the power to enact laws not inconsistent with this Article to govern membership. Removal of any person who is not eligible for membership from the Membership Roll shall be done in accordance with the Membership Code, provided, that such removal is approved by at least two-thirds (2/3) vote of the General Council.

Sec. 6. Appeals

Any person who has been rejected for enrollment or who has been removed from the Membership Roll shall have the right to appeal to the Judiciary for a remedy in equity consistent with this Constitution.

Art. IV – General Council

Sec. 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 General Council hereby authorizes the judicial branch to interpret and apply the laws and Constitution of the Nation in accordance with Article VII.

Sec. 3. Powers Retained by the General Council.

(d) The General Council retains the power to establish its own procedures in accordance with this Constitution.

(f) Actions by the General Council shall be binding.

Art. VII- Judiciary

Sec. 5. Jurisdiction of the Judiciary

(a) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its officials and employees, shall be a party.

Sec. 6. Powers of the Trial Court.

1 (a) The Trial Court shall have the power to make findings of fact and conclusions of
2 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.

3 Sec. 7. Powers of the Supreme Court.

4 (b) The Supreme Court shall have the power to establish written rules for the
5 Judiciary, including qualifications to practice before the Ho-Chunk courts, provided such rules
6 are consistent with the laws of the Ho-Chunk Nation.

7 (c) Any decision of the Supreme Court shall be final.

8 TRIBAL ENROLLMENT AND MEMBERSHIP CODE, 6 HCC § 7

9 5. Committee on Tribal Enrollment.

10 a. Committee Membership.

11 (1) Within the Department of Heritage Preservation, there will be a
12 Committee on Tribal Enrollment that will serve the Office of Tribal Enrollment in an
13 advisory capacity and hear appeals in accordance with this Code.

14 g. Findings and Recommendations.

15 (3) Timeline for Findings and Recommendations. The Committee will issue
16 written findings and recommendations to the parties within ten (10) Days of the hearing.

17 12. Appeals to Trial Court.

18 a. An appeal of the findings and recommendations of the Committee on Tribal
19 Enrollment must be filed in the Trial Court within thirty (30) Days of the date of the findings and
20 recommendations.

21 b. Scope of Judicial Review. Decisions of the Trial Court will be based upon a
22 review of the record of the Committee on Tribal Enrollment's proceedings, oral arguments, if
23 any, and any written statements submitted. The Trial Court will not exercise de novo review of
24 the Committee's findings and recommendations and will give proper deference to the expertise
of the Committee and to its determinations of credibility. The Trial Court will not substitute its
discretion for discretion legally vested in the Committee. The Trial Court will strictly construe
the provisions of this Code.

25 c. The Trial Court will determine whether the findings and recommendations of the
26 Committee:

27 (1) contains irregularities of procedure;
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1 (2) is arbitrary, capricious or unreasonable;

2 (3) is unsupported by Clear and Convincing Evidence upon the whole record; or

3 HO-CHUNK NATION RULES OF CIVIL PROCEDURE

4 Rule 5. Notice of Service of Process.

5 (A) Definitions.

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

12 (C) Methods of Service of Process

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

17 Rule 61. Appeals.

18 Any final Judgment or Order of the Trial Court may be appealed to the Supreme Court. The
19 Appeal must comply with the Ho-Chunk Nation Rules of Appellate Procedure, specifically Rules
20 of Appellate Procedure, Rule 7, Right of Appeal. All subsequent actions of a final Judgment or
21 Trial Court Order must follow the HCN Rules of Appellate Procedure.

22 Rule 63. Judicial Review of Administrative Adjudication.

23 (A) Any person aggrieved by a final agency decision may request that the Ho-Chunk Nation
24 Trial Court review such decision by filing a *Petition for Administrative Review* with the Court
25 within thirty (30) calendar days of such decision, unless otherwise provided.

26 Rule 68. Stays Pending Appeal.

27 The Court may delay execution of the final Order or Judgment during the appeal on its own
28 motion or on the request of either party if a bond is given or other conditions prescribed by the
Court are met that protect the interests of the party in whose favor the final Judgment or Order is
entered

FINDINGS OF FACT

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3 1. The petitioner, Mary Ellen Blackdeer Anwash, is a member of the Ho-Chunk Nation,
4 Tribal ID # 439A000151.

5 2. The respondent, Ho-Chunk Nation Enrollment Committee, is a division within the Ho-
6 Chunk Nation Department of Heritage Preservation located on trust lands at Ho-Chunk Nation
7 Headquarters, W9814 Airport Road, P.O. Box 667, Black River Falls WI. *See* DEP'T OF
8 HERITAGE PRES. ESTABLISHMENT & ORG. ACT OF 2001, § 6.5c.

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10 3. The Tribal Enrollment Committee ordered the petitioner and two paternal sibling
11 relatives to submit to DNA analysis in order to establish Ho-Chunk lineage. *In the Matter of the*
12 *Enrollment of Mary Ellen Blackdeer Anwash #439A000151* (Tribal Enrollment Comm., Oct. 8,
13 2012) at 1.

DECISION

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18 Through the filed motion, the petitioner requests that the Court enjoin both the General
19 Council and the Enrollment Committee from any future removal proceedings.¹ With respect to
20 an injunction against the General Council, the Court declines to issue any injunction on the basis
21 of ripeness. The principle of ripeness lies within the concept of justiciability, and essentially
22 concerns the issue of timeliness. The Court should “refrain from determining a hypothetical
23 cause of action since a concrete case or controversy would not exist.” *Chloris Lowe, Jr. et al. v.*
24 *HCN Legislature Members Elliot Garvin et al.*, CV 00-104 (HCN Tr. Ct., Nov. 3, 2000) at 11-12
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27 ¹ The *Motion* is primarily concerned with the request to stay any disenrollment proceedings at General Council, and
28 this Order does the same. As for the request against the Enrollment Committee, the Court’s understanding is that
existing law prevents the Enrollment Committee from continuing disenrollment proceedings until the petitioner has
either exhausted her remedies at appeal or waived them through inaction. While the Court therefore declines to
issue an injunction against them, it expects the Committee to comply with the law.

1 (citing *United Public Workers v. Mitchell*, 330 U.S. 75, 89-90 (1947)). The General Council is
2 not a party to this action, and the plaintiff has not demonstrated or proven knowledge as to when
3 in the future the General Council may or may not act on a potential removal. Therefore, the
4 petitioner fails to allege a ripe cause of action. *Jenna Littlegeorge v. Ho-Chunk Nation Office of*
5 *Tribal Enrollment, et al.*, CV 09-100, CV 10-13 (HCN Tr. Ct., Sept. 8, 2010).
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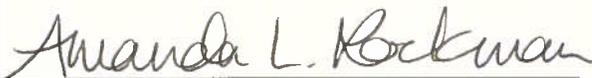
7 Additionally, the Court is wary of interfering with the political processes of the General
8 Council. The Supreme Court has previously indicated that it is “mindful . . . of the need to
9 respect the checks and balances written in the . . . CONSTITUTION.” *Lewis*, SU 06-07 at 7. The
10 Supreme Court has also stated that the “HCN courts are *extremely* reluctant to interfere with the
11 political decision of the General Council.” *Jacob Lonetree et al. v. Robert Funmaker et al.*, SU
12 00-16 (HCN S. Ct., Mar. 16, 2004) at 8 (emphasis added). The General Council is a co-ordinate
13 branch of the Ho-Chunk Nation’s government, and, under Article IV, Sections 1 and 2 of the
14 CONSTITUTION OF THE HO-CHUNK NATION (hereinafter “CONSTITUTION”), receives authority
15 directly from the people and delegates it to the other three branches of government. Because the
16 General Council is the source of this Court’s authority, this Court will not control or enjoin a
17 power which it has explicitly and constitutionally reserved to itself. Under Article IV, Section
18 3d, one such expressly reserved power is control over its own procedures. As a result, the Court
19 is unsure as to whether it would *ever* have the power to enjoin speech or procedures at a General
20 Council. It definitely declines to do so here, in a case without a clearly judicable controversy.²
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27 ² While the provisions described here do have clearly reserved powers, the Court is also aware of its delegated duties
28 to “interpret and apply the laws and Constitution of the Nation.” CONST., Art. IV § 2. It is possible that a case may
someday come wherein the Court must reconcile this duty with the reserved powers of the General Council.
However, the cannon of constitutional avoidance demands that it avoid making that decision unless it must. In this
case, the issue of ripeness means it need not do so.

1 **BASED UPON THE FOREGOING**, the Court shall not grant the *Petitioner's Motion*,
2 as it lacks ripeness and requests substantial interference with a coordinate branch of the Ho-
3 Chunk Nation.

4 The parties retain the right to file a timely post judgment motion with this Court in
5 accordance with *HCN R. Civ. P. 58*, Amendment to or Relief from Judgment or Order.
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7 Otherwise, “[a]ny final *Judgment* or *Order* of the Trial Court may be appealed to the Supreme
8 Court. The *Appeal* must comply with the *Rules of Appellate Procedure* [hereinafter *HCN R.*
9 *App. P.*], specifically *Rules of Appellate Procedure*, Rule 7, Right of Appeal.” *HCN R. Civ. P.*
10 61. The appellant “shall within sixty (60) calendar days after the day such judgment or order
11 was rendered, file with the Supreme Court Clerk, a *Notice of Appeal* from such judgment or
12 order, together with a filing fee as stated in the appendix or schedule of fees” *HCN R. App. P.*
13 7(b)(1). “All subsequent actions of a final *Judgment* or Trial Court *Order* must follow the [*HCN*
14 *R. App. P.*].” *HCN R. Civ. P. 61*.

15 **IT IS SO ORDERED** this 25th day of September 2013, by the Ho-Chunk Nation Trial
16 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

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21 Honorable Amanda L. Rockman
22 Associate Trial Court Judge
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