

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

3
4 **Jenna Littlegeorge,**
Plaintiff,

5 v.

Case No.: **CV 09-100**

6
7 **Adam J. Hall, Enrollment Officer, and Ho-**
8 **Chunk Nation Office of Tribal Enrollment,**
Defendants,

9 -and-

10 **Jenna Littlegeorge,**
11 Petitioner,

12 v.

Case No.: **CV 10-13**

13 **Tribal Enrollment Committee,**
14 Respondent.

15 **DECISION**

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17 **INTRODUCTION**

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20 The Court must determine whether to uphold the findings and recommendations of the
21 Ho-Chunk Nation Committee on Tribal Enrollment (hereinafter Tribal Enrollment Committee or
22 Committee). The Court declines to affirm the findings and recommendations of the Tribal
23 Enrollment Committee. The analysis of the Court follows below.

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25 **PROCEDURAL HISTORY**

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27 The plaintiff, Jenna Littlegeorge, by and through her attorney James C. Ritland, initiated
28 the current action by filing a December 15, 2009 *Complaint for Temporary Restraining Order*

1 *and Permanent Injunction* in case number **CV 09-100**. However, the plaintiff did not articulate
2 the four (4) prong test for injunctive relief within the initial pleading or an accompanying
3 motion.¹ Therefore, the Court did not convene a hearing to determine the appropriateness of
4 issuing a preliminary injunction. The Court instead issued a *Summons* on the same date. The
5 defendants filed a timely *Answer* on January 4, 2010.

7 Simultaneously, the petitioner, Jenna Littlegeorge, by and through her attorney James C.
8 Ritland, initiated another action by filing a timely *Petition for Administrative Review* (hereinafter
9 *Petition*) with the Court on February 4, 2010, identified by case number **CV 10-13**. The Court
10 convened a scheduling hearing on March 5, 2010, at 11:00 a.m. CST. At that time, the parties
11 agreed to consolidate the matters. *See HCN R. Civ. P.* 47(A). Also on March 5, 2010, the Court
12 entered the *Scheduling Order*, setting forth the timelines and procedures to which the parties
13 should adhere during the pendency of the appeal.²

16 ¹ The plaintiff cited *HCN R. Civ. P.* 60, which concerns emergency orders. The Court typically issues *ex parte*
17 orders when dealing with juvenile protection, domestic abuse or housing matters, whereby the Court designates legal
18 custodians. *HCN R. Civ. P.* 60(A) requires irreparable harm, and *HCN R. Civ. P.* 60(B) requires irreparable loss, and
19 Rule 60(B) requires the four (4) prong test for injunctive relief within the initial pleading or an accompanying
20 motion. The Court has adopted a four-part test for the purpose of evaluating requests for preliminary injunctions. A
21 party must show that (1) they have no adequate remedy at law; (2) the threatened injury to the plaintiff outweighs
22 the harm of issuing an injunction; (3) the plaintiff has a reasonable likelihood of success on the merits; and (4)
23 granting the injunction serves the public interest. *See HCN Election Bd. v. Aurelia Lera Hopinkah*, SU 98-08 at 8
24 (*HCN S. Ct.*, Apr. 7, 1999); *Coalition for Fair Gov't II v. Chloris Lowe, Jr., et al.*, CV 96-22 (*HCN Tr. Ct.*, July 23,
25 1996); *Tracy Thundercloud v. HCN Election Bd.*, CV 95-16 (*HCN Tr. Ct.*, Aug. 28, 1995); and *Joyce Warner et al.*
26 *v. HCN Election Bd.*, CV 95-03-06, -09-10 (*HCN Tr. Ct.*, July 3, 1995).

27 ²The *HCN R. Civ. P.* indicate as follows: "laws provid[ing] for filing within one hundred eighty (180) days: TRIBAL
28 ENROLLMENT AND MEMBERSHIP ACT." *HCN R. Civ. P.*, 63(A)(3)(a). The TRIBAL ENROLLMENT AND MEMBERSHIP
CODE was subsequently enacted on October 16, 2007, and it supersedes the TRIBAL ENROLLMENT AND MEMBERSHIP
ACT OF 1995. The TRIBAL ENROLLMENT AND MEMBERSHIP CODE currently provides a thirty (30) day timeframe for
an individual to request a review of the "findings and recommendations" of the Committee. The *HCN R. Civ. P.* do
not reflect such amendment. A discrepancy exists between the TRIBAL ENROLLMENT AND MEMBERSHIP CODE and
the *HCN R. Civ. P.* regarding deadlines. However, the Ho-Chunk Nation General Council delegated exclusive
constitutional authority to the Ho-Chunk Nation Supreme Court "to establish written rules for the Judiciary."
CONST., ART. VII, § 7(b); *see also* HCN JUDICIARY ESTABLISHMENT & ORG. ACT, 1 HCC § 1.5c; *Bonnie Smith v.*
HCN Gaming Comm'n, SU 01-02 (*HCN S. Ct.*, May 11, 2001) at 2. Pursuant to this delegation, the Supreme Court
adopted the *Ho-Chunk Nation Rules of Civil Procedure* on May 11, 1996, which "govern the procedure of the Trial
Court in all actions and proceedings." *HCN R. Civ. P.* 1. Of particular relevance here, *HCN R. Civ. P.* 63 deals with
judicial review of administrative adjudication, and establishes court imposed deadlines and procedures for the
Judiciary. Furthermore, the Supreme Court issued an administrative rule, which indicates that the judges must enter
written decisions within three (3) months after the parties present a matter for either interim or final opinion. *In the*

1 On March 15, 2010, the petitioner filed a *Motion for Stay Pending Appeal*, asking the
2 Court to stay the Tribal Enrollment Committee proceedings pending the outcome of the current
3 action. *Mot. For Stay Pending Appeal* (Mar. 15, 2010) at 1.³ The petitioner filed a timely
4 *Plaintiff's Brief* on April 6, 2010. *HCN R. Civ. P.* 63(E). On April 6, 2010, the respondent filed
5 an *Administrative Record*, followed by an April 14, 2010 filing of *Official Exhibits*. *Id.*, Rule
6 63(D). The respondent filed an untimely *Respondent's Brief in Opposition to Petitioner's*
7 *Appeal* on May 21, 2010. *Id.*, Rule 63(E). The petitioner did not file a *Reply Brief*. *Id.*

9 The Court heard *Oral Arguments* on June 9, 2010, at 3:00 p.m. CDT. The following
10 parties were present: Jenna Littlegeorge (via telephone), petitioner; Attorney James C. Ritland
11 appearing for the petitioner; and HCN Department of Justice Attorney Wendi Ann Huling
12 appearing for the HCN Office of Enrollment.

14 APPLICABLE LAW

16 CONSTITUTION OF THE HO-CHUNK NATION

17 Sec. 3. Re-enrollment by General Council.

18 Any person of at least one-fourth (1/4) Ho-Chunk blood who has relinquished membership under
19 Section 2 of this Article may be re-enrolled into membership by a two-thirds (2/3) vote of the
20 General Council, provided, that such individual is not an enrolled member of any other Indian
21 Nation.

22 Sec. 5. Membership Code.

23 The Legislature shall have the power to enact laws not inconsistent with this Article to govern
24 membership. Removal of any person who is not eligible for membership from the Membership
25 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.

26 *Matter of Timely Issuance of Decisions*, ADMIN. RULE 04-09-05(1) (HCN S. Ct., Apr. 9, 2005). The TRIBAL
27 ENROLLMENT AND MEMBERSHIP CODE attempts to require the Court to issue a judgment within sixty (60) days of
the filing. Based upon *HCN R. Civ. P.* 63, *Judicial Review of Administrative Adjudication*, the briefing schedule
28 oftentimes extends beyond sixty (60) days of the filing. Therefore, the Court, relying upon the Supreme Court's
administrative rule, must enter a judgment on or prior to September 9, 2010. ADMIN. RULE 04-09-05(1).

³The petitioner neglected to cite to the appropriate rules from the *HCN R. Civ. P.*, and again did not contain the four
(4) prong test for injunctive relief within the initial pleading or an accompanying motion.

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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.

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

Art. V - Legislature

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

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

Sec. 3. Codes. The Legislature shall adopt Codes governing Membership, Open Meetings, Elections, Ethics including conflicts of interest, nepotism, and the conduct of all elected and appointed officials and employees, and other Codes as deemed necessary.

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.

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

Sec. 7. Powers of the Supreme Court.

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

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

5 TRIBAL ENROLLMENT AND MEMBERSHIP CODE, 6 HCC § 7

6 5. Committee on Tribal Enrollment.

7 a. Committee Membership.

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

11 g. Findings and Recommendations.

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

14 12. Appeals to Trial Court.

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

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

28 (2) is arbitrary, capricious or unreasonable;

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

HO-CHUNK NATION RULES OF CIVIL PROCEDURE

1 Rule 5. Notice of Service of Process.

2 (A) Definitions.

3 2. Summons - The official notice to the party informing him/her that he/she is identified
4 as a party to an action or is being sued, that an *Answer* is due in twenty (20) calendar days (*See*
5 *HCN R. Civ. P. 6*) and that a *Default Judgment* may be entered against them if they do not file an
6 *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.

7 (C) Methods of Service of Process

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

11 Rule 60. Emergency Order, Temporary Restraining Order and Ex Parte Temporary
12 Restraining Order.

13 (A) Emergency Order. The Court may enter an *Emergency Order* without a hearing if
14 it appears from the *Complaint*, affidavits and sworn testimony that irreparable harm will result
15 without the *Order*. The *Order* will expire in thirty (30) calendar days unless extended by the
16 Court for good cause. A hearing on the matters contained in the *Order* will be held prior to its
17 expiration. The removal of a child from its residence by the Department of Social Services or
equivalent agency and the imminent destruction of records or property essential to the case are
examples of matters that may require an *Emergency Order*.

18 (B) Temporary Restraining Order. When it appears from a party's pleading that a
19 party is entitled to judgment and any part thereof consists in restraining some act, the
20 commission or continuance of which during the litigation would injure the party, or when during
21 the litigation it shall appear that a party is doing or threatens or is about to do, or is procuring or
suffering some act to be done in violation of the rights of another party and tending to render the
judgment ineffectual, a temporary injunction may be granted to restrain such act.

22 Rule 61. Appeals.

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

27 Rule 63. Judicial Review of Administrative Adjudication.

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

3 3. The following laws provide for filing within one hundred eighty (180) days:
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5 a. TRIBAL ENROLLMENT AND MEMBERSHIP ACT

6 (E) Within thirty (30) calendar days of filing the *Petition for Administrative Review*, the
7 petitioner shall file a written brief, an *Initial Brief*, unless the petitioner has sought an evidentiary
8 modification pursuant to *HCN R. Civ. P. 63(D)(1)(a-b)*. The respondent shall have thirty (30)
9 calendar days after filing of the brief within which to file a *Response Brief*. After filing of
respondent's *Response Brief*, the petitioner may file the *Reply Brief* within ten (10) calendar
10 days.

11 **FINDINGS OF FACT**

12 1. The parties received proper notice of the *Scheduling Order* dated March 5, 2010; The
13 Court heard *Oral Arguments* on June 9, 2010.

14 2. The petitioner, Jenna Littlegeorge, is currently a member of the Ho-Chunk Nation, Tribal
15 ID # 439A004089, and resides at 2034A Algoma Blvd., Apt. A, Oshkosh, WI 54901.

16 3. The respondent, Ho-Chunk Nation Enrollment Committee, is a division within the Ho-
17 Chunk Nation Department of Heritage Preservation located on trust lands at Ho-Chunk Nation
18 Headquarters, W9814 Airport Road, P.O. Box 667, Black River Falls WI. *See* DEP'T OF
19 HERITAGE PRES. ESTABLISHMENT & ORG. ACT OF 2001, § 6.5c.
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21 4. The Tribal Enrollment Committee ordered the petitioner and her relatives to submit to
22 DNA analysis in order to establish Ho-Chunk lineage. *Order* (Tribal Enrollment Comm., Jan. 28,
23 2010) at 1.
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25 5. At the 2009 General Council, the Ho-Chunk Nation General Council rejected the motion
26 to remove Jenna Littlegeorge. *Admin. Record* at 6.
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DECISION

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2 The CONSTITUTION OF THE HO-CHUNK NATION (hereinafter CONSTITUTION) vests
3 legislative powers in the HCN Legislature (hereinafter Legislature) as delegated by the General
4 Council. CONST., ART. IV, § 2. The Legislature has the power to make laws, including codes,
5 ordinances, resolutions, and statutes. *Id.*, ART. V, § 2(a), § 3. In this instance, the
6 CONSTITUTION contains provisions that the Legislature enact a membership code, and the
7 Legislature subsequently enacted the TRIBAL ENROLLMENT AND MEMBERSHIP CODE. *Id.*, ART.
8 II, § 5. The CONSTITUTION indicates that “[a]ny person who has been rejected for enrollment or
9 who has been removed from the Membership Roll shall have the right to appeal to the Judiciary
10 for a remedy *in equity consistent with this Constitution.*” *Id.*, ART. II, § 6 (emphasis added).⁴
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13 The CONSTITUTION delineates the Trial Court as having “the power to issue all remedies
14 in law and in equity including injunctive and declaratory relief and all writs including attachment
15 and mandamus.” *Id.*, ART.VII, § 6(a). An equitable remedy is one administered according to
16 fairness as opposed to strictly formulated rules. *Ronald Kent Kirkwood v. Francis Decorah et*
17 *al.*, CV 04-33 (HCN Tr. Ct., Feb. 11, 2005) at 15. Equitable remedies are typically prospective
18 in nature and involve the court coercing a party to perform or refrain from performing an action.
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21 ⁴ The TRIBAL ENROLLMENT AND MEMBERSHIP CODE attempts to restrict the Court’s constitutionally granted
22 authority to hear such appeals and grant remedies in equity. Specifically, the legislation states,

23 [i]n reviewing a finding and recommendation of the Committee, the Trial Court will have two (2)
24 options. These two (2) options are to either sustain or remand the Committee’s findings and
25 recommendations. The Court may not reverse a Committee’s findings and recommendations. The
26 Trial Court will only remand the Committee’s findings and recommendations if the Court
27 determines that the Committee’s findings and recommendations contain irregularities of
28 procedures or are arbitrary, capricious, or unreasonable, or unsupported by Clear and Convincing
Evidence upon the whole record or involve an abuse of discretion. Upon remand, the Committee
will reconsider its findings and determinations in light of the Trial Court’s opinion and judgment.

TRIBAL ENROLLMENT AND MEMBERSHIP CODE, 2 HCC § 7.12. A court of equity has traditionally had the power to
fashion any remedy deemed necessary and appropriate to do justice in the particular case. The legislation inhibits the
Court’s ability to review an appeal and grant appropriate or expansive relief. *See, e.g., Bride v. Baker*, 37 App. D.C.
231, 236 (D.C. Cir. 1911) (“Courts of equity are established to do justice in cases where an adequate remedy at law

1 *Id.*; *Hope B. Smith v. Ho-Chunk Nation*, SU 03-80 (HCN S. Ct., Dec. 8, 2003) at 11. The
2 TRIBAL ENROLLMENT AND MEMBERSHIP CODE allows the Court only two (2) options for review,
3 to either sustain or remand. *See supra* note 4. The TRIBAL ENROLLMENT AND MEMBERSHIP
4 CODE encroaches upon the Court’s ability to perform an appeal and grant appropriate or
5 expansive relief.⁵ *Id.*

7 The TRIBAL ENROLLMENT AND MEMBERSHIP CODE creates a committee to conduct
8 administrative adjudication by way of appeals.⁶ TRIBAL ENROLLMENT AND MEMBERSHIP CODE,
9 2 HCC § 7.8. Whether it is through adjudicatory rulemaking, informal rulemaking or legislative
10 rulemaking, this presupposes that the Legislature has the constitutional authority to make
11 enrollment decisions. The Legislature does not have that authority and cannot delegate any
12 power that it does not retain; therefore, any informal, formal or legislative rulemaking made by a
13 division or a subdivision of an Executive Department would not require any judicial deference.
14 The powers of the Legislature are enumerated within the CONSTITUTION, and the ability to
15 determine membership is not one of the enumerated powers of the Legislature. CONST., ART. V,
16 § 2. Nonetheless, the Court recognizes the legislative authority to enact a law governing
17 membership to provide a mechanism to effectuate the constitutional membership provisions.
18 Even so, the statutory limitation cannot supersede the constitutional grant of power to the Trial
19 Court. The Trial Court has the authority to “issue all remedies in law and equity.” CONST., ART.
20 VII, §6(a); *see also id.*, ART. II, § 6 (establishing a “right to appeal to the Judiciary for a remedy

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25 may not be had, and they should seek to do ultimate justice in all cases.”). The Court cannot practically employ its
26 equitable powers if improperly constrained to afford the utmost deferential treatment to the Committee’s decision.

27 ⁵ The predecessor legislation did not contain any similar provisions. TRIBAL ENROLLMENT AND MEMBERSHIP ACT
28 OF 1995, HCNL 015-85, §12.

⁶ The CONSTITUTION authorizes the Judiciary to hear appeals. CONST., ART. II, § 6. Nonetheless, the Legislature
also created a mechanism under the TRIBAL ENROLLMENT AND MEMBERSHIP CODE for the Tribal Enrollment
Committee within the Department of Heritage Preservation to hear appeals. TRIBAL ENROLLMENT AND MEMBERSHIP
CODE, 2 HCC § 7.5a(1) (forming a committee “that will serve the Office of Tribal Enrollment in an advisory
capacity and hear appeals in accordance with this Code”).

1 in equity”). Because of this constitutional mandate, it cannot be an error for the Trial Court to
2 exercise its remedial power.

3 The Supreme Court has previously ruled that the Court may review agency constitutional
4 interpretations de novo. *Willard Lonetree v. Larry Garvin*, SU 07-04 (HCN S. Ct., Oct. 8, 2007)
5 at 4. Supreme Court decisions “are binding on the Trial Court.” *Jacob LoneTree et al. v. Robert*
6 *Funmaker, Jr. et al.*, SU 00-16 (HCN Tr. Ct., Mar. 16, 2001) at 4 (citing CONST., ART. VII, §
7 7(c)). The Supreme Court earlier explained that “[s]tare decisis is the policy of courts to stand by
8 prior established precedent.” See *HCN Election Bd. v. Robert Mudd*, SU 97-05 (HCN S. Ct.,
9 Oct. 28, 1997) at 2. The Trial Court must observe binding precedent of the Supreme Court.
10 Likewise, the Supreme Court has favored a plain language approach and interpretation to the
11 CONSTITUTION, statutes, and contracts. See, e.g., *Chloris Lowe, Jr. et al. v. HCN Legislature*
12 *Members et al.*, SU 00-17 (HCN S. Ct., Mar. 13, 2001) at 6; *Marx Advert. Agency, Inc. v. Ho-*
13 *Chunk Nation et al.*, SU 04-07 (HCN S. Ct., Apr. 4, 2004) at 11; *Greg Littlejohn v. HCN*
14 *Election Bd. et al.*, SU 03-07 (HCN S. Ct., July 11, 2003) (Butterfield, J. dissenting) at 5; *George*
15 *Lewis v. HCN Election Board et al.*, SU 06-07 (HCN S. Ct., Mar. 12, 2007) at 7.

16 The plain language of the CONSTITUTION indicates “[r]emoval of any person who is not
17 eligible for membership from the Membership Roll shall be done in accordance with the
18 Membership Code, provided, that such removal is approved by at least two-thirds (2/3) vote of
19 the General Council.” CONST., ART. II, § 5. The CONSTITUTION further states that “[a]ll actions
20 of the General Council shall be binding.” *Id.*, ART. IV, § 3(f). By recognizing the foregoing, the
21 Court recognizes the binding force of the General Council’s action and interprets the action as a
22 political question best left to the assembled electorate of the Nation. CONST., ART. II, § 5.
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1 The Supreme Court has previously indicated that it is “mindful . . . of the need to respect
2 the checks and balances written in the . . . CONSTITUTION.” *Lewis*, SU 06-07 at 7. The Supreme
3 Court has also stated that the “HCN courts are *extremely* reluctant to interfere with the political
4 decision of the General Council.” *Jacob Lonetree et al. v. Robert Funmaker et al.*, SU 00-16
5 (HCN S. Ct., Mar. 16, 2004) at 8 (emphasis added). The CONSTITUTION reserved decision-
6 making on this subject to a coordinate branch of government, and the Court feels that it is
7 prudent to not interfere. Ms. Littlegeorge correctly argued that the “General Council is the final
8 arbiter of questions like the issue before this Court” *Plaintiff’s Br.* (Apr. 6, 2010) at 3.
9 Specifically, she argued that the General Council already took action in 2009, and ultimately
10 decided to not remove Ms. Littlegeorge from enrollment with the Ho-Chunk Nation. *Admin.*
11 *Record* at 6. The CONSTITUTION does not expressly afford the Committee any right of appellate
12 review of the General Council action, granting this right instead only to the affected member.
13 CONST., ART., II, § 6. The Office of Tribal Enrollment alleges that the TRIBAL ENROLLMENT
14 AND MEMBERSHIP CODE authorizes them to “rehear” disenrollment actions. *Admin. Record* at 7.
15 However, the CONSTITUTION does not; as previously indicated, the General Council has the sole
16 authority to decide membership.
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20 **BASED UPON THE FOREGOING**, the Court shall not affirm the Committee’s *Order*,
21 as the General Council’s action represents a binding political question. Therefore, the Court
22 shall not comment upon the asserted defenses of *res judicata*, doctrine of laches, hearsay, or
23 injunctive relief against the Committee or against the General Council.⁷
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26 ⁷ Ms. Littlegeorge requested that the Court enjoin the General Council from any future removal proceedings. The
27 Court declines to do so on the basis of ripeness. The principle of ripeness lies within the concept of justiciability,
28 and essentially concerns the issue of timeliness. The Court should “refrain from determining a hypothetical cause of
action since a concrete case or controversy would not exist.” *Chloris Lowe, Jr. et al. v. HCN Legislature Members
Elliot Garvin et al.*, CV 00-104 (HCN Tr. Ct., Nov. 3, 2000) at 11-12 (citing *United Public Workers v. Mitchell*, 330
U.S. 75, 89-90 (1947)). The General Council is not a party to this action, and the plaintiff has no knowledge as to
when in the future the General Council may or may not act on a potential removal. Therefore, Ms. Littlegeorge

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

13 **IT IS SO ORDERED** this 8th day of September 2010, by the Ho-Chunk Nation Trial
14 Court located in Black River Falls, WI within the sovereign lands of the Ho-Chunk Nation.

17 _____
18 Honorable Amanda L. Rockman
19 Associate Trial Court Judge

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28 failed to allege a ripe cause of action, and the Court shall not address the aforementioned injunction for a failure to present a justiciable case or controversy.

Ho-Chunk Nation Court System
P.O. Box 70
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(715) 284-2722 or 800-434-4070

