

IN THE DISTRICT COURT OF THE MUSCOGEE (CREEK) NATION,  
OKMULGEE, DISTRICT

DISTRICT COURT  
2009 DEC 28 P 3:09

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MUSCOGEE (CREEK) NATION  
NATIONAL COUNCIL,

and

ROBERT TREPP, an individual  
Muscogee (Creek) tribal citizen, and  
DOES 1-10, inclusive,

Plaintiffs,

v.

MUSCOGEE (CREEK) ELECTION  
BOARD, A.D. ELLIS, in his capacity as  
Principal Chief of the Muscogee (Creek)  
Nation, and MUSCOGEE (CREEK)  
CONSTITUTIONAL CONVENTION  
COMMISSION,

Defendants.

CV-09-21

**SUMMONS AND COMPLAINT**

Date: December 23, 2009

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## **PETITION**

The Plaintiffs, the Muscogee (Creek) National Council and Mr. Robert Trepp, a Muscogee (Creek) Citizen, for their claim for relief against the Defendants, Muscogee (Creek) Nation Election Board, Principal Chief A.D. Ellis, in his capacity as Principal Chief of the Muscogee (Creek) Nation, and the Muscogee (Creek) Constitutional Convention Commission, state:

## **JURISDICTION AND VENUE**

1. Plaintiff Trepp (et. al and John Does to be named) is a citizen of the Muscogee (Creek) Nation who participated in the Convention and voted at the Special Election. Plaintiff, Muscogee (Creek) Nation National Council, is the legislative body made up of officers that have taken an oath to faithfully uphold the constitution and laws of the Nation.

2. Defendants Muscogee (Creek) Nation Election Board ("Board"), Principal Chief A.D. Ellis, in his capacity as Principal Chief of the Muscogee (Creek) Nation ("Principal Chief"), and the Muscogee (Creek) Constitutional Convention Commission ("Commission") are officers and entities of the Muscogee (Creek) Nation government.

3. Defendants' activities alleged herein occurred and are continuing to occur within the political and territorial boundaries of the Muscogee (Creek) Nation in the function of Muscogee (Creek) Nation governance.

## **FACTUAL BACKGROUND**

4. Paragraphs 1 through 3 are incorporated by reference.

5. The Muscogee (Creek) Nation ("MCN" or "Nation") conducted a Constitutional Convention ("Convention") on November 7-8, 2008.

6. The Convention resulted in the passage of several proposed constitutional amendments leading to the General and Special Elections that were conducted by the Muscogee (Creek) Nation Election Board on November 7, 2009.

7. The Board certified the results of the Special Election on Tuesday, November 17, 2009 despite the fact that the Board had actual knowledge of timely filed challenges to the election with both the Board and the Supreme Court on November 13, 2009.

8. The Muscogee (Creek) Nation Constitutional Convention Commission is an entity vested with the "administrative responsibility and authority" to conduct any Constitution Conventions pursuant to Article IX, Section 2 of the Constitution.

9. The Commission promulgated Rules and Regulations detailing the Convention process on September 22, 2008.

10. Neither the Constitution nor the Rules and Regulations permit or grant the Commission with authority to unilaterally change the language of any proposed amendments, or to make revisions, or alterations to the language of the amendments as adopted by tribal voters at the Convention.

11. The Rules and Regulations limit the Commission's power to "make changes as to style, form and grammar."

12. The Commission lacks the power to make substantive revisions to the language adopted at the Convention.

13. The Commission issued a release dated December 2, 2008 that lists 14 amendments that were "adopted by the Convention and certified by the Constitutional Convention Commission, December 1, 2008."

14. Only 12 of the 14 proposed constitutional amendments were presented to

voters at the Special Election.

15. Amendment A78 was not presented for a vote of the people at the Special Election, but was adopted at the Convention with the language.

“This Constitution is hereby Amended to state and require that all increases in National Council members’ compensation must be approved by a vote of the people.”

16. Amendment A99 was not presented for a vote of the people at the Special Election but was adopted at the Convention with the language:

“This Constitution is hereby Amended to state and require that conviction of a felony in a court of competent jurisdiction shall cause the immediate removal from office of any elected or appointed official.”

17. Amendment A67 provides for a reduction in the total number of National Council seats and fundamentally changes the structure for voting on National Council seats, and repeals the section of the Constitution that requires each tribal citizen to hold legal residence in a district in order to vote for the district representative(s).

18. Amendment A67, as presented on the ballot, differs significantly from the language adopted during the Convention and circulated in the Muscogee (Creek) Nation Constitutional Convention Release dated December 2, 2008.

19. Version 1 of Amendment A67 as adopted at the Convention and certified and released by the Commission states:

[A]ll legislative power herein vested in the Muscogee (Creek) National Council which shall consist of one (1) House with two (2) Representatives from each district, and further, that the number of National Council Representatives shall be set at a maximum of 16 members and additional seats may not be added without constitutional amendment.

20. The relevant portions of Version 2 of A67 as presented to the tribal voters and placed on the ballot states:

[A]ll legislative power herein shall be vested in the Muscogee (Creek)

National Council which shall consist of one (1) House with two (2) Representatives from each district elected. **Each eligible voter of the Muscogee (Creek) Nation shall be allowed to vote for each and every National Council Representative. There shall be no district residency requirements for eligible voters.** And further that the number of National Council Representatives shall be set at a maximum of 16 members and additional seats may not be added without constitutional amendment.

\* \* \*

**And shall the below referenced language of Article IV, § 8 be repealed:**

**Article IV, § 8: Only those citizens having legal residence in a district shall be allowed to vote in an election for that district. (emphasis added)**

21. Amendment A59 amends the Constitution by reserving the right to Creek citizens, to propose laws, and to enact or reject laws at the polls independent of the National Council, as follows:

The citizens of the Muscogee (Creek) Nation reserve to themselves the power to propose laws, and to enact or reject the same at the polls independent of the National Council, and also reserve power at their own option to approve or reject at the polls any act of the National Council. The First Power reserved by the citizens of the Muscogee (Creek) Nation is the initiative, and eight (8) percent of voters who voted in the last General Election for the office of the Principal Chief shall have the right to propose any legislative measure, and every such initiative Petition shall include the full text of the measure so proposed. Initiative Petitions shall be filed with the Secretary of the Nation addressed to the Principal Chief, who shall submit the same to the citizen voters at a Special Election unless there is a General Election within 90 days. The National Council shall make suitable provisions for carrying into effect the provision of this Amendment. The veto power of the Principal Chief shall not extend to measure voted on by the People. Measures referred to the People by initiative shall take effect and be in force when approved by a majority of the votes cast and not otherwise.

22. Amendment A113, similarly, reserves power to tribal citizens to propose and enact laws by initiative, and to reject acts of the National Council by referendum.

23. Pursuant to the dictates of A113, Section 2, an initiative or referendum can be "certified" after receiving the signatures of one hundred (100) qualified tribal voters.

24. If the initiative is certified, then a Petition can be circulated and if at least fifteen (15) percent of the tribal "electorate" (which is undefined) signs the Petition, the initiative/referendum will be presented for a vote.

25. The requirement under A59 is that eight (8) percent of voters who voted in last General Election are needed to propose an initiative.

26. Under A113, Section 6, a law enacted through the initiative process becomes effective ninety (90) days after certification.

27. Under A59 any initiated law immediately is effective after a majority approves the initiative.

28. Pursuant to A113, the National Council may amend any initiated law at any time, and may repeal any initiated law two (2) years after enactment.

29. A59 is silent on the issue of whether the National Council may amend any initiated law or whether the National Council may repeal initiated laws.

#### **FIRST CLAIM FOR RELIEF – VIOLATION OF DUE PROCESS OF LAW**

30. Paragraphs 1 through 29 are incorporated by reference.

31. Pursuant to Article IX, Section 2 of the Muscogee (Creek) Nation Constitution, a Constitutional Convention was held in November 2008 wherein eligible voters considered certain amendments to the Constitution.

32. As a result of Defendants' failure to abide by the Muscogee (Creek) Nation Constitution, a constitutional amendment that was not legally adopted by the Convention was presented to voters at the Special Election and subsequently approved

resulting in an illegal change to the Constitution. As a result, Plaintiffs have been damaged and are entitled to relief to reverse the effect of the Special Election and halt the implementation of such constitutional amendment.

33. The Commission does not have the authority to provide amendments to the Election Board for a Special Election that have not been adopted by the majority vote of the convention, nor does the Commission have the authority to make substantive changes to proposed amendments. Rule 4.1 allows the Commission to make "changes as to style, form and grammar" only.

34. The Defendants' activities in ignoring the Constitution, respecting the Convention process, and failing to properly submit amendments to the voters will continue to injure Plaintiffs.

**SECOND CLAIM FOR RELIEF – DEPRIVATION OF CIVIL RIGHTS and  
VIOLATION OF DUE PROCESS OF LAW**

35. Paragraphs 1 through 34 are incorporated by reference.

36. Pursuant to Article IX, Section 2 of the Muscogee (Creek) Nation Constitution, a Constitutional Convention was held wherein eligible voters considered certain amendments to the Constitution.

37. As a result of Defendants' failure to abide by Muscogee (Creek) Nation laws, constitutional amendments that were legally approved by the Convention were not presented to voters at a Special Election. As a result, Plaintiffs have been denied the right to vote on amendments to the Constitution that are required to be timely presented for consideration.

38. Rule 4.1 of the Commission's Rules and Regulations governed proposals and required a majority vote of the Constitution Convention members for any proposed

amendment to be submitted to the citizens at a Constitution Amendment Election. Because the new/changed language was never adopted by a majority vote convention members, it was improperly placed on the ballot at the Special Election.

39. The Defendants' activities in ignoring the Constitution, respecting the Convention process, and failing to present constitutional amendments to the voters continue to injure Plaintiffs.

### **THIRD CLAIM FOR RELIEF – VIOLATION OF DUE PROCESS**

40. Paragraphs 1 through 39 are incorporated by reference.

41. Pursuant to Article II, Section 2 of the Muscogee (Creek) Nation Constitution, noting in the Nation's Constitution may abridge the rights and privileges afforded to individual citizens of the Nation as citizens of the United States and the state of Oklahoma.

42. Defendant Election Board violated Title 19 of the MCNA by certifying the results of the Special Election despite having actual knowledge of challenges filed with the Board and with the Supreme Court.

43. Defendants denied Plaintiffs' due process by failing to provide an opportunity to be heard prior to certification. Plaintiff Trepp timely filed election challenges with the Board consistent with Title 19 of the MCNA, and Plaintiffs timely filed challenges with the Supreme Court yet the Special Election was certified prior to and without a hearing or opportunity to be heard.

### **FOURTH CLAIM FOR RELIEF – VIOLATION OF EQUAL PROTECTION**

44. Paragraphs 1 through 43 are incorporated by reference.

45. Pursuant to Article II, Section 2 of the Muscogee (Creek) Nation Constitution, nothing in the Nation's Constitution may abridge the rights and privileges afforded to individual citizens of the Nation as citizens of the United States and the state of Oklahoma.

46. Defendants denied Plaintiffs' equal protection of the laws as A67 violates the rights afforded under Article II, § 2 of the Nation's Constitution as apportionment is no longer based upon tribal population in each district and violates federal law.

**FIFTH CLAIM FOR RELIEF – VIOLATION OF FEDERAL LAW**

47. Paragraphs 1 through 46 are incorporated by reference.

48. The Indian Civil Rights Act of 1968, specifically 25 U.S.C. § 1302(8), provides that no Indian tribe in exercising powers of self-government shall "deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law."

49. Plaintiffs' were denied protections under federal law because the tribal apportionment is no longer based upon tribal population in each district, and every tribal citizen can vote for district representatives even if they do not have legal residence in such district.

**SIXTH CLAIM FOR RELIEF – INJUNCTIVE RELIEF**

50. Paragraphs 1 through 49 are incorporated by reference.

51. Plaintiffs request that Defendants be enjoined from further violating Plaintiffs' rights by the implementation of constitutional amendments.

52. Plaintiffs' request that the Court issue an Order requiring Defendants to reverse certification and call a new Special Election where all amendments properly adopted during the Convention be submitted to the voters.

53. Defendants are estopped and barred by their conduct from claiming that Plaintiffs' claims were not timely brought.

**SEVENTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT**

54. Paragraphs 1 through 53 are incorporated by reference.

55. Plaintiff Convention Commission did not follow its own duly prescribed rules and regulations as the presentation to the voters was improper as to the amendments complained of herein.

56. Declaratory judgment stating adoption of amendments is void and should be presented to the people in a manner consistent with the law.

**EIGHTH CLAIM FOR RELIEF – DECLARATORY JUDGMENT**

57. Paragraphs 1 through 56 are incorporated by reference.

58. Plaintiff Election Board did not follow the duly prescribed procedures under Title 19 as the challenges were not processed and heard by the Nation's District Court.

59. Declaratory judgment stating the Election Board violated Title 19 and must adhere to and follow duly-enacted statutes regarding hearing election challenges in a manner consistent with the law.

WHEREFORE, Plaintiffs pray for the declaratory judgment against Defendants as requested herein, an order granting injunctive relief enjoining Defendants from further

implementation of the challenged amendments, an order declaring the certification of the challenged amendments enacted at the Special Election reversed, and such other relief as the Court may deem proper.

SUBMITTED THIS 28th DAY OF DECEMBER, 2009.

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OKMULGEE, DISTRICT

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ROBERT TREPP, an individual  
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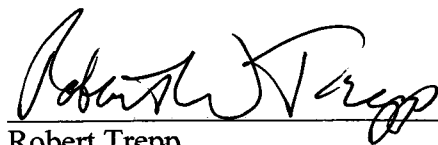
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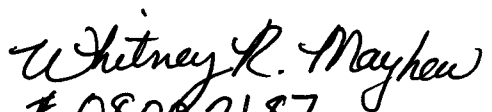
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VERIFICATION

I, Robert Trepp, the undersigned, being of lawful age and sound mind, being first duly sworn upon oath, state that I am one of the above-named Plaintiffs, that I have read the Petition for Summons and Complaint set forth above, and know the contents thereof, and that the matters and things stated therein are true and correct to the best of my knowledge and belief.

  
Robert Trepp

SUBSCRIBED AND SWORN before me this 23<sup>rd</sup> day of Dec., 2009.

  
# 08003187  
Exp. 3-18-2012