

IN THE SUPREME COURT OF THE MUSCOGEE (CREEK) NATION

MUSCOGEE (CREEK) NATION
NATIONAL COUNCIL,

and

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

Petitioners,

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,

Respondents.

SUPREME COURT
FILED

DEC 21 2009

ROSANNA L. FACTOR, COURT CLERK
 MUSCOGEE (CREEK) NATION

CASE NO. 2009-10

OPINION

Mvskokvle Fvtceckv Cuko Hvlwat vkerrickv hvyakat oketv yvnke vhakv hakaten
acakkayen momen entenfvctetv, hvttvm, Mvskoke Etlvwlke telike vhakv empvtaky.

CHIEF JUSTICE JONODEV CHAUDHURI, VICE-CHIEF HOUSTON SHIRLEY, JUSTICE DENETTE MOUSER AND JUSTICE AMOS MCNAC CONCURRING. JUSTICE LEAH HARJO WARE CONCURS IN PART, AND DISSENTS IN PART.

Opinion by Justice Denette Mouser for the Court.

Upon consideration of the pleadings, letter briefs, and briefs filed in this matter, the Court finds that Petitioner's Application is not ripe for appellate review, and that the Court will not exercise original jurisdiction in this case. The Court notes that this action would have been more properly brought before the District Court, where a Special Judge would be appointed to hear it.

Therefore, it is the decision of this Court, that this matter is hereby DISMISSED.

Dated this 21st day of December, 2009.


JUSTICE DENETTE MOUSER
MVSKOKE NATION SUPREME COURT

Justice Harjo-Ware concurring in part and dissenting in part.

This case involves contests by both the Muscogee National Council and an individual Muscogee citizen, the bases of which are allegations of irregularities in the formulation and adoption of proposed constitutional amendments in violation of Muscogee Const. Art IX § 2(e) (sic) and their due process rights to have such allegations judicially reviewed. There are no procedures in the Muscogee Election Code, Title 19 §§ 1-101 et seq., or anywhere else for contests involving such allegations. It is not all surprising that no one knew quite how, when or where to bring such contests. Erring on the side of due process is absolutely essential.

Unchallenged Constitutional Amendment 114 (hereinafter A114), directs that "[a]ll litigation between tribal officers shall originate in the District Court . . .", thus I concur with the majority that the National Council contest must be heard in the District Court. In view of the fact that the district judge was the chairman of a defendant, the Constitutional Convention Commission, in my view, this Court should have appointed a special district judge as it has in at least one previous case. See *Thlopthlocco Tribal Town v. Toham*, 4 Mvs. L. Rep. 248 (2004).

A114 does not deprive this court of original jurisdiction over an individual citizen's contest involving alleged constitutional violations by an entity of the Muscogee government.

This Court has already exercised original jurisdiction to interpret this same constitutional provision, Article IX § 2(d) (sic) wherein this Court determined the Constitutional Convention Commission to be a civil office within the Muscogee government. *Begley v. The Constitutional Commission*, SC 06-04 (2008). As a part of its analysis, the *Begley* Court determined the duties of the Constitutional Convention Commission were set forth by the exact same constitutional provision at issue in this case, i.e. Article IX § 2 (e) (sic). *Begley* at p. 3. There is no reason for this Court to now refrain from the exercise of jurisdiction to determine whether those constitutional duties have been followed.

This Court has previously set forth its reasons for assumption of jurisdiction in similar constitutional interpretation cases, as follows:

This Court assumed original jurisdiction in the case because of the constitutional questions raised by the Plaintiff. This Court has continually held that:

"When there is a question as to whether the Muscogee (Creek) Nation Constitution has been followed in legislative or Executive actions, this Court has jurisdiction to interpret those actions in light of the Nation's Constitution."

Oliver v. Muscogee (Creek) National Council, SC 06-04 (2006). (Internal citations omitted.)

In addition to mandamus cases¹ and numerous other constitutional interpretation cases,² this Court has exercised original jurisdiction in various other kinds of cases.³ In my opinion, given

¹ *Cox v. Crow & Foster*, 4 Mvs. L. Rep. 66-68 (1991); *Cox v. McIntosh*, 4 Mvs. L. Rep. 88 (1991); *SW, CW, CW, & RW v. Frye*, 4 Mvs. L. Rep. 137 (1991); *MCN v. CP, BRP & CP*, 4 Mvs. L. Rep. 147 (1995).

² *Cox v. Childers*, 4 Mvs. L. Rep. 71 (1991) (Interpretation of Muscogee Const. Art. V § 6(a).); *Fife v. Muscogee (Creek) Nation Health Systems Board*, 4 Mvs. L. Rep. 135 (1995) (Supreme Court exercise of original jurisdiction due to the impact on citizens, magnitude of constitutional questions and in the interest of judicial economy.); *Fife v. Muscogee (Creek) Nation Health Systems Board*, 4 Mvs. L. Rep. 142 (1995) (temporary restraining order.); *Fife v. Muscogee (Creek) Nation Health Systems Board*, 4 Mvs. L. Rep. 144 (1995) (Interpreting statutory appointment authority.); *In the Matter of the Constitutionality of NCA 01-115*, 4 Mvs. L. Rep. 215 (2002) (Supreme Court exercise of original jurisdiction due to the time sensitive nature of the issues raised and the Supreme Court being the final arbiter of cases and controversies involving constitutional provisions.); *Oliver v. Muscogee (Creek) National Council*, SC 06-04 (2006) (Interpretation of Muscogee Const. Art. VII § 2.); *Ellis v. National Council*, SC 05-03/05 (2006) (Interpreting the constitutional roles of the executive and legislature); *Begley v. Constitution Commission*, SC06-04 (2008) (Interpretation of Muscogee Const. Art. IX § 2(d) (sic)).

the peculiar circumstances of this case, this Court should have exercised original jurisdiction over the individual citizen's contest and therefore dissent to the majority's dismissal of his part of the case.



JUSTICE LEAH HARJO-WARE

³ *Litsey v. Cox*, 4 Mvs. L. Rep 86 (1991) and *Litsey v. Cox*, 4 Mvs. L. Rep. 87 (1991) (Affirming an Election Board decision qualifying a candidate.); *Fife v. Muscogee (Creek) Nation Health Systems Board*, 4 Mvs. L. Rep. 149 (1995) (Determining entitlement to attorneys' fees.); *Ellis v. National Council*, SC 06-07 (2007) (Holding the National Council in contempt.).

IN THE SUPREME COURT OF THE MUSCOGEE (CREEK) NATION

MUSCOGEE (CREEK) NATION
NATIONAL COUNCIL,

and

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

Petitioners,

v.

CASE NO. 2009-10

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

Respondents.

CERTIFICATE OF MAILING/DELIVERY

I, Connie Dearman, Deputy Court Clerk for the Supreme Court of the Muscogee (Creek) Nation, do hereby certify that on this 21st day of December, 2009, that I faxed and mailed a true and correct copy of the foregoing Supreme Court's Opinion with proper postage prepaid to the following:

Muscogee (Creek) Nation Election Board
 Nettie Harjo, Manager
 P. O. Box 580
 Okmulgee, OK 74447

Muscogee (Creek) Nation
 Attorney General Roger Wiley
 P. O. Box 580
 Okmulgee, OK 74447

Muscogee (Creek) Nation
 Constitution Convention Commission
 c/o Judge Patrick Moore
 P. O. Box 652
 Okmulgee, OK 74447

Timothy Posey
 Hall, Estill, et al.
 320 S. Boston Ave., Ste. 400
 Tulsa, OK 74103

Stacy L. Leeds
Leeds Legal Counsel and Consulting
11177 Hwy 10
Tahlequah, Ok 74464

Yonne Tiger
Muscogee (Creek) National Council
In-House Attorney
P. O. Box 158
Okmulgee, OK 74447

Zeke Fletcher
Rosette & Associates, P.C.
112 East Allegan Street, Suite 600
Lansing, Michigan 48933

Rod Weimer
114 N. Grand
Okmulgee, OK 74447



Connie Dearman, Deputy Court Clerk