

IN THE SUPREME COURT OF THE MUSCOGEE (CREEK) NATION

SUPREME COURT
FILED

CITIZENSHIP BOARD OF THE MUSCOGEE (CREEK) NATION)
)
)
 Appellant,)
)
 v.)
)
 RHONDA K. GRAYSON and)
 JEFFREY D. KENNEDY,)
)
 Respondents.)

OCT 27 2025

CONNIE DEARMAN
MUSCOGEE (CREEK) NATION
COURT CLERK

CASE NO.: SC-2023-10
(District Court No.: CV-2020-34)

APPELLANT CITIZENSHIP BOARD OF THE MUSCOGEE (CREEK) NATION'S RESPONSE TO RESPONDENTS' RENEWED MOTION FOR CONTEMPT AND FOR COURT ENFORCEMENT OF ORDER AND JUDGMENT AND FOR ORDER TO SHOW CAUSE

The Appellant, Citizenship Board of the Muscogee (Creek) Nation ("Citizenship Board") hereby responds to the Respondents' Renewed Motion for Contempt, and for Court Enforcement of Order and Judgment and for Order to Show Cause ("Renewed Motion") as follows:

A. BACKGROUND

1. On July 23, 2025, this Court issued its Order and Opinion in this matter. Within that Order and Opinion, the Court invalidated any reference to "by blood" citizenship within the Constitution, laws, rules, regulations, policies or procedures of the Muscogee (Creek) Nation as "UNLAWFUL and VOID AB INITIO." Order and Opinion at p. 21–22. This Court then remanded this matter to the Citizenship Board "who is directed to apply the Treaty of 1866 and issue citizenship to the Respondents...". Order and Opinion at p. 23.

2. Appellant filed a Petition for Rehearing on August 4, 2025. This Court denied Appellant's Petition for Rehearing by Order dated August 20, 2025, less than two months prior to Respondents filing of their Renewed Motion.

3. This Court's Order and Opinion did not just amend the language of the Constitution, but also required amendments and modifications to the Muscogee (Creek) Nation Code, in particular Title 7, as well as the rules and procedures of the Citizenship Board.

4. In denying Respondent's original Motion for Contempt and For Enforcement of Order and Judgment, this Court stated:

Neither this Court's *Order and Opinion*, nor its subsequent *Order Denying Petition for Rehearing* directed the Appellant to process the Respondents' citizenship applications by a date-certain, nor did it guarantee this task would be completed in time for Respondents (or other similarly situated applicants) to participate in the 2025 Muscogee (Creek) Nation election cycle. This Court understands the Respondents' excitement to participate in official Mvskoke exercises of citizenship, but it also understands that its decision represents a significant change in the Appellant's policies and procedures, and that it may take a *reasonable* amount of time to establish appropriate changes to the Appellant's internal policies in order to fairly and lawfully process Respondents' (and other similarly situated applicant's) citizenship applications. Only one (1) week has passed since this Court issued its *Order Denying Appellant's Petition for Rehearing*. This Court is not inclined to consider contempt, or other Rule 20 penalties at this time.

Order Denying Respondents' Motion for Contempt and for Enforcement of Order and Judgment dated August 28, 2025.

5. On August 28, 2025, Principal Chief David W. Hill issued Executive Order No. 25–05 which directed the Citizenship Office to continue accepting applications but not to issue citizenship or any other form of membership identification cards to Freedman descendent applicants until “all law and policy have been fully reviewed and amended to meet the qualification requirements under Article II of the Treaty of 1866.” The Principal Chief further ordered all department heads to review policies and procedures to propose necessary amendments to be

consistent with this Court's order. Necessary changes that require National Council approval would be submitted by the Principal Chief for review and approval.

6. As this Court previously found, the Citizenship Board, although a Constitutionally formed entity, is part of the Executive Branch:

The Office of the Principal Chief has been expanded and contrasted over the years with the creation, amendment, and removal of various executive offices, departments, and commissions. As a result of this fluctuating state, the National Council passed NCA 12-174 with the stated purpose of "organiz[ing] the various departments, agencies, boards, commissions, and other entities of the Executive Branch into a cabinet system in order to improve the effectiveness, efficiency, and accountability to the Citizens of the Muscogee (Creek) Nation." One such Board specifically designated by this legislation as being under the direction of the Office of the Principal Chief is the Citizenship Board of the Muscogee (Creek) Nation (See, M(C)NCA Title 16, §1-102 (L)(I) [as amended by NCA 12-174]). In addition to statutory authority, Article III, Section 1 of the Muscogee (Creek) Nation Constitution grants the Principal Chief authority to appoint all five (5) members of the Citizenship Board, subject to approval by the National Council. The Principal Chief has exercised this authority as recently as May 20, 2023, appointing Lea Ann Nix to serve on the Citizenship Board. It is clear that the Office of the Principal Chief exercises significant Constitutional and statutory oversight and control over the Citizenship Board.

Order Denying Motion for Leave to File Brief of Amicus Curiae dated October 27, 2023 at p. 1-2.

7. Since Executive Order No. 25-05 was entered, the Office of the Principal Chief and Attorney General's Office have prepared proposed code amendments to be circulated to the Citizenship Board for review and comment. Independently of that work, the Citizenship Office has reviewed its internal rules and regulations and formulated proposed amendments. However, amendments to the Citizenship Board's policies and procedures cannot be enacted until the National Council acts on the proposed amendments to Title 7 to ensure that said policies and

procedures comply with the code amendments.

8. Further, any change to the Citizenship Board's rules and regulations are subject to the Board's rulemaking authority as set forth in Title 7 which states:

§2-109. Rulemaking Authority

- A. Rulemaking authority.** The Citizenship Board shall have the authority to prescribe, promulgate, and enforce, without National Council approval, such written rules and regulations as may be necessary to administer and enforce this Title, including without limitation rules and regulations for internal operational procedures, for review of citizenship applications, for hearings and appeals and for such other purposes as shall be reasonably necessary for the efficient performance of its duties, or as may be required or permitted by law; provided that said rules and regulations may not be inconsistent with this Title. Said rules shall be discussed in at least one public hearing, after notice and advertised in the Muscogee Nation News, prior to adoption by the Citizenship Board.
- B. Filing requirements for regulations.** No rule or regulation of the Citizenship Board shall be of any force or effect until and unless a certified copy of said rule or regulation bearing the signature of the Citizenship Board shall have been published in the Muscogee Nation News, filed for record in the office of the National Council Secretary, and filed for record in the Office of the Clerk of the Muscogee (Creek) Nation Courts.

Title 7 MCN Code §2-109 (A) & (B). It is clear from these code provisions that in addition to the National Council passing code amendments in an ordinance signed by the Principal Chief, the Citizenship Board must then promulgate rules consistent with the code amendments, and discuss those proposed amendments in at least one public meeting after notice and advertisement posted in the Nation's newspaper. Those rules that are then approved by the Citizenship Board must be published in the Muscogee Nation News and filed with the National Council Secretary and Court Clerk prior to taking force and effect.

B. STANDARD FOR INDIRECT CONTEMPT

This Court articulated the standards for indirect contempt of court as follows:

Thus, this Court finds indirect civil contempt to consist of willful disobedience of any process or order lawfully issued or made by the Court, or resistance willfully offered by any person to the execution of a lawful order or process of the Court. For a Court of the Muscogee (Creek) Nation to hold someone in indirect civil contempt, the Court must determine by clear and convincing evidence that 1) the allegedly violated Order was valid and lawful; 2) the order was clear, definite, and unambiguous; and 3) the alleged violators had the ability to comply with the Order. Willful is defined as “acts which are intentional, conscious, and directed towards achieving a purpose.” (Black’s Law Dictionary, 8th Ed.).

Ellis v. Muscogee (Creek) Nation National Council, SC 06-07 – Opinion and Order of Citation for Contempt at p. 11. This Court further found that “the penalties for any case of indirect civil contempt shall be: a) Court ordered corrective action, and or; b) Public Censure, and or; c) fine of not less than \$1,000.00, and or; d) imprisonment of not more than 12 months.” Ellis, supra at 22. MCN RAP 20(C) also gives this Court contempt authority over parties for failure to comply with an order of the Court.

C. ARGUMENT AND AUTHORITY

1. THE CITIZENSHIP BOARD IS NOT IN CONTEMPT OF COURT

The Citizenship Board has not willfully disobeyed this Court’s Order and Opinion in this case. The Citizenship Board does not argue that the Court’s order in this case was valid and lawful, nor that the Order was not clear, definite, and unambiguous. Rather, the Citizenship Board asserts that it has not yet had the ability to comply with the Order and is, therefore, not in contempt.

Implicit in this Court's Order finding that all provisions of the Muscogee (Creek) Nation's Constitution, code, rules, regulations, policies and procedures referencing "by blood citizenship" are unlawful and *void ab initio* was the required revision of the Constitution, code, rules, regulations, policies, and procedures that had been enacted since 1979. Although the Citizenship Board has the Constitutional duty to certify citizenship, it does so within the framework of Title 7 of the MCN Code, as well as its own rules and regulations. The Citizenship Board is unable to act independently to modify the statutory framework of the Citizenship code – that work requires action by the National Council and Principal Chief. Until code amendments are passed, the Citizenship Board is unable to promulgate new rules because those rules "may not be inconsistent with this Title". Title 7 MCN Code §2-109(A). Likewise, the Citizenship Board is not free to ignore a valid Executive Order of the Principal Chief aimed at an orderly process to amend 46 years' worth of law and procedure. Although the Citizenship Board has the constitutional authority to certify citizenship and keep the citizenship roll, it is statutorily part of the Executive Branch -- its duty being the execution of the citizenship laws. Title 16 MCN Code §1-102(L)(I) (as amended by NCA 12-174).

There are questions of national significance to be answered by the elected officials of the Nation, not the Citizenship Board. Policy questions such as:

- How are blood citizens versus Freedman citizens to be distinguished?
- Are they to be distinguished?
- What are the cards to say?
- What criteria guides the Citizenship Board in determining tribal membership pursuant to the Treaty of 1866?

Only after amendments to Title 7 are passed, can the Citizenship Board amend their rules and regulations accordingly to issue Respondents their citizenship cards. The Board

respectfully suggests that a reasonable timeframe in which to accomplish changes to 46 years of law, rules, regulations, and policies is more than two months since the Court's final ruling in this case. Because the Citizenship Board has not yet had the ability to comply with this Court's Order, it is not in contempt.

2. CHIEF HILL IS NOT IN CONTEMPT OF THE ORDER AND OPINION

Respondents make the unprecedented request to hold Chief Hill, a non-party in this action, in contempt of the July 23, 2025, Order and Opinion. The Court should not grant that request for several reasons. First, Respondents do not provide the Court with any legal authority supporting the position that, under facts and circumstances similar to the instant matter, a non-party should be held in contempt of a court order not directed at the non-party. Second, even if a valid argument exists that Chief Hill is also subject to the order, Respondents cannot establish that Chief Hill, along with the Board, has willfully disobeyed the directives in the Order. On the contrary, proposed amendments to Title 7 (the Citizenship Code) to implement the Court's Order have been developed through Chief Hill's office and the Attorney General's office. Those proposed amendments are currently being reviewed by the Citizenship Board before being forwarded to the National Council's office to go through the normal legislative process.

Respondents' motion does not provide this Court with legal authority supporting the position that Chief Hill, as a non-party, can be held in contempt. The lead case cited by Respondents, Schrunk v. J & T Servs., Case No. 19-cv-1137-SRN-DTS, is a U.S. District Court case involving the issue of whether an owner and manager of a limited liability company could be held in contempt of a discovery court order despite being a non-party in the case. The *Schrunk* case, and the other cases cited by Respondent, do not involve facts nowhere close to the facts involved in this case where a Tribal Chief, a non-party, is acting under independent constitutional

authority to move forward with legislation that would dramatically alter provisions of a Code that has been in place for 45 years.

Respondents' position that Chief Hill's actions are intended to "obstruct" the Order's directives are based on a faulty premise that Respondents and other Creek Freedmen are automatically entitled to citizenship without, among other things, meeting the qualification standards outlined in Article II of the 1866 Treaty. In Section 2.01 of Executive Order 25-05, Chief Hill has made it clear that, in compliance with this Court's Order, the Nation must undertake the appropriate actions to review and amend law and policy so that any Freedmen applicant can be determined "to meet the qualification requirements under Article II of the Treaty of 1866." This Court's Order made it clear that Article II must be applied as part of the process when considering Freedmen applications for citizenship. The evidentiary standard that must be applied by the Citizenship Board when considering applications for citizenship must be "prescribed by ordinance" enacted under Nation law, per Section 1 of Article III of the Nation's Constitution. The legislative processes to amend Title 7 to provide the new evidentiary standards that must be applied when considering citizenship applications, including those for Freedmen, are currently underway. The legislative process takes time. Chief Hill is actively involved with moving the Title 7 amendments through the necessary steps to get the proposed amendments before the National Council. Respondents cannot establish that Chief Hill is acting in willful disobedience of the Court's Order.

3. THE CITIZENSHIP BOARD IS ENTITLED TO AN EVIDENTIARY HEARING BEFORE ANY FINDING OF CONTEMPT

If the Court does not summarily reject Respondent's Renewed Motion, the Citizenship Board requests an evidentiary hearing to show cause as to why it is not in contempt of Court. Basic tenets of due process require notice and an opportunity to be heard. "The fundamental requisite of due process of law is the opportunity to be heard." Grannis v. Ordean, 234 U.S.

385,394 (1914). This Court has previously conducted non-jury evidentiary hearings on issues of indirect contempt of Supreme Court orders. Ellis, *supra* at p. 4.

D. CONCLUSION

Respondents' Renewed Motion should be summarily denied by this Court because the Citizenship Board has not yet had the ability to comply with this Court's Order and, therefore, is not in contempt. In the alternative, if this Court considers contempt proceedings against the Appellant, the Citizenship Board is entitled to an evidentiary hearing to prove that it is not in contempt of this Court's Order.



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CERTIFICATE OF SERVICE

This is to certify that on the 27th day of October, 2025, I caused to be placed into the United States Mail with postage properly affixed thereto a true and correct file-stamped copy of the foregoing Appellant Citizenship Board Of The Muscogee (Creek) Nation's Response To Respondents' Renewed Motion For Contempt And For Court Enforcement Of Order And Judgment And For Order To Show Cause to the following:

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