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IN THE CHEROKEE COURT
EASTERN BAND OF CHEROKEE INDIANS
QUALLA BOUNDARY, CHEROKEE, NORTH CAROLINA
File Number 17-CV- 167

FILED

TERESA McCOY, individually and in her official capacity as a member of the Eastern Band of Cherokee Indians Tribal Council;

Plaintiff,

vs.

BILL TAYLOR, in his official capacity as a member and Chairman of the Eastern Band of Cherokee Indians Tribal Council; BRANDON JONES, in his official capacity as a member and Vice-Chairman of the Eastern Band of Cherokee Indians Tribal Council; TRAVIS SMITH, in his official capacity as a member of the Eastern Band of Cherokee Indians Tribal Council; ALBERT ROSE, in his official capacity as a member of the Eastern Band of Cherokee Indians Tribal Council; MARIE JUNALUSKA, in her official capacity as a member of the Eastern Band of Cherokee Indians Tribal Council; ADAM WACHACHA, in his official capacity as a member of the Eastern Band of Cherokee Indians Tribal Council; BO CROWE, in his official capacity as a member of the Eastern Band of Cherokee Indians Tribal Council; ANITA LOSSIAH, in her official capacity as a member of the Eastern Band of Cherokee Indians Tribal Council; and ALAN B. ENSLEY, in his official capacity as a member of the Eastern Band of Cherokee Indians Tribal Council,

Defendants.

ORDER

THIS MATTER CAME BEFORE the undersigned Judge *ex parte* pursuant to Plaintiff's Verified Complaint and Motion for Temporary Restraining Order on April 5, 2017 at approximately 5:30 p.m.

And the Plaintiff being represented in open court by her attorney, John Noor;

And Attorney General Danny Davis being present in the courtroom but not making a general appearance at this time on behalf of Defendants;

And Carolyn West, counsel for The Tribal Council of the Eastern Band of Cherokee Indians, being present in the courtroom but not making a general appearance at this time on behalf of Defendants;

And the Court hearing this motion prior to service of the pleadings herein upon the Defendants;

And the Court having reviewed the Verified Complaint and having considered the comments made on the record at the hearing on this matter;

Based upon the foregoing, the Court notes the following with respect to the

FACTUAL ALLEGATIONS

1. The factual allegations are set forth in the Complaint. Plaintiff seeks a temporary restraining order from this Court directing the Defendants, who are all Tribal Council members, not to proceed with certain legislative actions in their official capacities. Specifically, Plaintiff seeks an TRO that restrains Defendants from doing the following:

- a. Introducing or considering any agenda items related to the impeachment of Chief Lambert or any articles of impeachment until they have complied with all provisions of the Cherokee Code and Charter;
- b. Introducing or considering any articles of impeachment or anything related to the impeachment of Chief Lambert until they have properly set Plaintiff's Petition for hearing and conducted a hearing as required by the Cherokee Code;
- c. Conducting any meetings related to Tribal Council business without notifying all Tribal Council Members of the date, time, and location of those meetings;

- d. Conducting any votes or decisions related to any issues discussed by Council Members during any meeting that occurs outside Tribal Council's regularly scheduled monthly meeting;
 - e. Conducting any secret Tribal Council meetings;
 - f. Retaining the services of any law firm or paying any tribal monies to any law firm, unless the retention and approval is properly included on the agenda of a regularly scheduled Tribal Council meeting and the vote to retain and pay such law firm is approved during a regularly scheduled Tribal Council meeting.
2. At this time, no articles of impeachment have been introduced. Plaintiff is asking the Court for the extraordinary relief of a prohibitory injunction based upon allegations of what the Tribal Council ^{might} do as legislators for the Eastern Band of Cherokee Indians.

APPLICABLE LAW

And the Court finding the following with respect to the principles of law applicable to this request for a temporary restraining order:

1). The judicial power is vested in the Judicial Branch of the Eastern Band of Cherokee Indians. C.C. §7-3. Although the Judicial Branch is independent, the judicial power is not unlimited. C.C. §7-17. Since the days of *Marbury v. Madison*¹, a due respect for the separation of powers between branches of government has constrained courts to carefully observe the limits of judicial power.

2). The Trial Court's jurisdiction within the Judicial Branch of the Eastern Band of Cherokee Indians is set forth in the Cherokee Code in pertinent part as follows:

¹ 5 U.S. (1 Cranch) 137 (1803).

“The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians, including cases in which the Eastern Band of Cherokee Indians, or its officials and employees, shall be a party... This grant of jurisdiction shall not be construed to be a waiver of sovereign immunity.” C.C. §7-2(b)(emphasis added).²

3). It is the duty of the Cherokee Court to hear and decide justiciable cases and controversies. With deep roots in the common law, the doctrine of justiciability determines whether a controversy is proper to come before a tribunal for decision or, in other words, whether it is appropriate for judicial inquiry. *See, Black’s Law Dictionary* (4th ed.), *Ballentine’s Law Dictionary* (3rd ed.). It instructs the courts, especially in dealing with cases challenging the validity of government action, to refuse to issue advisory opinions, to decline to determine political questions, and to observe the constraints of standing, ripeness and mootness. *US v. Richardson*, 418 U.S. 166 (1974).

4). Thus, before the court can reach the merits of Plaintiff’s claims and her request for injunctive relief, the court will be required to decide whether her claims appear to be justiciable, at least as it appears at this early stage of this litigation, even before the Defendants have been served with copies of the verified Complaint.

5). The political question doctrine constrains courts from deciding cases which involve a political question – i.e. where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department or a lack of judicially discoverable and manageable standards for resolving it. *Nixon v. US*, 506 U.S. 224 (1993).

6). At this early stage of the litigation, before the Defendants have even had an opportunity to appear and defend themselves with respect to the relief sought, the Court finds

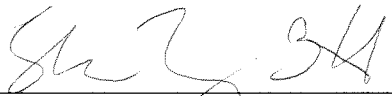
² This is very similar to the defined scope of the federal judicial power under the “cases and controversies clause.” U.S. Const. Art. III, § 2.

and concludes that there has been an insufficient showing that this matter presents to this court justiciable claims that entitle Plaintiff to the prohibitory injunction sought. It would be inappropriate, based upon the material presented before the Court at this time, for the Court to grant the extraordinary relief requested.

The Motion for a Temporary Restraining Order as requested in the verified Complaint is, at this time, DENIED.

A subsequent hearing on the request for a preliminary injunction will be held on Tuesday, April 11, 2017 at 10:00 a.m. in the Cherokee Court, unless the request for injunctive relief is withdrawn before that date and time.

This is the 5th day of April, 2017.



Sharon Tracey Barrett
Temporary Associate Judge Presiding