

CHEROKEE COURT  
EASTERN BAND OF CHEROKEE INDIANS  
FILE NO: CV 17-168

2017 APR -6 PM 3: 58

FILED

PATRICK LAMBERT, as Principal )  
Chief of the Eastern Band of Cherokee )  
Indians, in his individual capacity, and on )  
behalf of the Eastern Band of Cherokee )  
Indians, )

Plaintiff, )

v. )

TRIBAL COUNCIL OF THE )  
EASTERN BAND OF CHEROKEE )  
INDIANS, DENNIS "BILL" TAYLOR, )  
in his official capacity, JERRY )  
BRANDON JONES, in his official )  
capacity, JOSEPH ADAM )  
WACHACHA, in his official capacity, )  
ALBERT ROSE, in his official capacity, )  
TRAVIS K. SMITH, in his official )  
capacity, ALAN B. ENSLEY in his )  
official capacity, ANITA LOSSIAH, in )  
her official capacity, and BO CROWE, in )  
his official capacity, and MARIE )  
JUNALUSKA, in her official capacity. )

Defendants. )

ORDER

THIS MATTER CAME BEFORE the undersigned Judge pursuant to Plaintiff's Verified Complaint and Plaintiff's Renewed Motion for Temporary Restraining Order on April 6, 2017 at approximately 1:00 p.m. upon the Motion filed at approximately 12:30 p.m.

And the Plaintiff being represented in open court by his attorneys, Scott Jones and Steven Cash;

And Attorney General Danny Davis being present in the courtroom and representing to

the Court that he will file a Motion to Intervene on behalf of the Eastern Band of Cherokee Indians to request the injunctive relief sought by Plaintiff, i.e. to restrain the suspension of the Principal Chief from his elected office;

And Carolyn West, counsel for The Tribal Council of the Eastern Band of Cherokee Indians, representing Defendants;

And the Court having reviewed the Verified Complaint and the Renewed Motion for a Temporary Restraining Order, together with the attached Resolution 547 passed this morning by Tribal Council;

And the Court having considered the comments made on the record at the hearing on this matter by counsel of record, as well as the comments of John Noor, the attorney for Tribal Council member Teresa McCoy, who is a plaintiff in another proceeding before this Court;

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 to suspend the Plaintiff from office pending an impeachment hearing that has been scheduled for April 20, 2017, and further requests the Court to grant injunctive relief restraining Defendants from introducing or deciding upon any other resolutions that were not properly noticed.

2. After the entry of the Order herein was filed at 10:40 a.m. denying the Temporary Restraining Order, the Tribal Council in its regular meeting adopted Resolution 547 that purports to suspend the Plaintiff from the office to which he was elected, i.e. Principal Chief of the Eastern Band of Cherokee Indians.

3. The factual grounds for the adoption of this Resolution are set forth therein, and each of these grounds was expanded upon and explicated by Ms. West as counsel for the Tribal Council in open court. These enumerated grounds allege that Plaintiff has taken actions to exceed his authority as Principal Chief and that he has impeded the work of the Tribal Council. The Resolution purports to exercise authority to suspend the Principal Chief pursuant to Tribal Council's authority to direct the management and control of real and personal property belonging to 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 Tribal Council asserts in opposition to the Motion that it has the authority to suspend the Plaintiff from his office on the basis of one (and only one) provision of law: Section 23 of the Charter and Governing Document of the Eastern Band of Cherokee Indians, which provides as follows:

“The Tribal Council is hereby fully authorized and empowered to adopt laws and regulations for the general government of the Tribe, govern the management of real and personal property held by the Tribe, and direct and assign among its members thereof, homes in the Qualla Boundary and other land held by them as a Tribe, and is hereby vested with full power to enforce obedience to such laws and regulations as may be enacted.”

The Court concludes that nothing specific in this clause gives to Tribal Council any power to suspend Plaintiff from office, but rather contains general language enabling the Council to enforce laws. Simply put, nothing contained in this provision of law empowers one branch of government, the Tribal Council, to suspend from office the head of another branch of government, the Principal Chief.

2). As set forth in the earlier Order of this Court today, 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*, a due respect for the separation of powers between branches of government has constrained courts to carefully observe the limits of judicial power.

3). The Trial Court's jurisdiction within the Judicial Branch of the Eastern Band of Cherokee Indians is set forth in the Cherokee Code and extends to cases and controversies arising under Cherokee law. It is the duty of the Cherokee Court to hear and decide these 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). A governmental crisis is now presented to this Court as a result of the actions taken by the Tribal Council today in attempting to suspend the Principal Chief from office. The Court does not lightly interpose the authority it holds to issue orders restraining officers of a coordinate political department from exercising their duties and responsibilities as they see fit. However, it is the emphatically the duty and province of this Court to say what the law is and to apply that law in cases properly brought before this Court by parties entitled to appear in court and seek relief. Where officials of the Eastern Band of Cherokee Indians undertake to act outside of their powers given by law and this question is properly brought before the Court, the Court

should not shirk from the judicial duty to hear and decide the case.

5). At this point, the ultimate merits of this case are not before the Court. Rather, the Court considers only the request for a Temporary Restraining Order as set forth in the Renewed Motion. A decision on the merits after a full hearing of all of the evidence and arguments will be reserved to a later date.

6). It is axiomatic that injunctive relief may be appropriate when irreparable injury will result if the Court fails to act. The Court finds and concludes that it is necessary to issue an order to maintain the *status quo ante* pending a future determination by the Court about the Plaintiff's entitlement to injunctive relief. These factors support a determination to prevent the suspension of the Principal Chief from taking effect pending further orders of this Court.

7). This case was filed by Plaintiff on behalf of the Eastern Band of Cherokee Indians by its Principal Chief, and a Motion to Intervene is being filed by the Attorney General of the Eastern Band of Cherokee Indians on behalf of the Tribe. As a result, the Court finds and concludes that the injunctive relief sought herein is not precluded at this time by sovereign immunity. C.C. § 1-2(i).

NOW, THEREFORE, IT IS ORDER THAT the Renewed Motion for a Temporary Restraining Order is, GRANTED IN PART and DENIED IN PART as follows:

- (1) The Motion is GRANTED IN PART in that the Defendants are expressly prohibited from taking or directing any actions to enforce Resolution 547, unless and until further orders are entered by this Court, so that the Principal Chief will not have his powers or authorities suspended as a result of the Tribal Council's actions today; and
- (2) Except as expressly granted above, the remaining relief sought is, at this time, DENIED.

A subsequent hearing on the request for a preliminary injunction will be held on Monday, April 17, 2017 at 11:30 a.m. in the Cherokee Court.

This is the 6th day of April, 2017, nunc pro tunc to the time of the adoption of the Resolution mentioned hereinabove.



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Sharon Tracey Barrett  
Temporary Associate Judge Presiding