

Tribal Court of the Osage Nation
FILED

SEP 11 2008

Carol McIntire COURT CLERK
By B. Baker

IN THE TRIAL COURT OF THE OSAGE NATION
OSAGE NATION RESERVATION

In Re:)
)
PETITION OF JAMES R. GRAY,)
Principal Chief of the Osage Nation,)
Seeking Judicial Review of ONCA 08-07.)

Case No.: CIV-08-04

With Interested Parties Stated As:)
)
FAREN REVARD ANDERSON; JERRI)
JEAN BRANSTETTER; SHANNON)
EDWARDS; MARK FREEMAN;)
DEBRA LITTLETON; ARCHIE)
MASON; RAYMOND RED CORN;)
EDDY RED EAGLE, JR.; DOUG)
REVARD; ANTHONY SHACKELFORD;))
MARK SIMMS; and WILLIAM)
SUPERNAW, Members of the 1st Osage)
Nation Congress.)

ORDER AND JUDGMENT

COMES NOW on this 28th day of August, 2008 for this Court's consideration is the *Petition* filed by Petitioner James R. Gray, Principal Chief of the Osage Nation (the "Nation") seeking judicial review and interpretation of ONCA 08-07, the Independent Press Act of 2008 (the "Act") under the Constitution of the Nation. In response to the *Petition*, Archie Mason, Speaker of the Nation's Congress filed an *Amicus Curiae Brief* on the matter, in which he raised, among other things, due process concerns on behalf of the Congress. Petitioner has also filed a *Brief in Support of Petition* that outlines additional legal arguments concerning the issues in this suit. Having considered all briefs filed, the Court finds that all issues have been adequately briefed and argued by counsel, and that due process

requirements have been satisfied; no questions of fact remain to be resolved, therefore the Court is ready to rule as the only remaining issues involve questions of law.

The Court therefore issues this Order and Judgment in favor of Petitioner and FINDS as follows:

1. This Court has jurisdiction under Section 5 of Article VIII of the Nation's Constitution in that this Court has original jurisdiction, not otherwise reserved to the Osage Supreme Court, over all cases and controversies arising under the Constitution, laws, customs, and traditions of the Nation.

2. This action is appropriate under Section 1 of Article VIII of the Nation's Constitution since Petitioner is invoking the jurisdiction of the Court to interpret a law enacted by the Nation's Congress to determine whether said law is constitutional.

3. The Nation's Congress has been formally advised of this matter and has filed a brief in response. The Court is satisfied that all due process concerns have been adequately addressed.

4. The Act is a law enacted by the Nation's Congress establishing the Osage Nation press, purportedly to be independent, but with an affirmative duty established in the Act to report on activities of the government and news of interest.

5. The Act establishes an Editorial Board that imposes an obligation on Petitioner to appoint one member to the Editorial Board.

6. Section 9 of the Act recognizes that the Act may be subject to judicial scrutiny and acknowledges that any part or provision of the Act may be determined by a court to be void.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this Court has jurisdiction to issue this Order and Judgment in that Section 3 of Article V of the Nation's Constitution provides that the Nation's Constitution shall be the supreme law of the land; thus any law inconsistent with the Nation's Constitution shall be rendered invalid.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Section 1 of Article VIII of Nation's Constitution vests a power and a duty in the Nation's courts to interpret the laws of the Nation. Consequently, the Court finds that the Nation's Constitution grants the Osage Nation judiciary final authority on matters of constitutional interpretation, thereby granting the Nation's judiciary branch with the power of judicial review.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that because the Act imposes a direct action upon Petitioner – requiring him to appoint a member of the Editorial Board – the Act, places Petitioner in a position whereby he must take a direct action in reliance upon the constitutionality of the Act.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the requirement imposed upon Petitioner to enforce the Act constitutes injury transcending the hypothetical into the realm of the actual; thus the actual case or controversy requirement under Section 5 of Article VIII of the Nation's Constitution is fulfilled.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Act is in violation of Section 3(A) of Article IV of the Nation's Constitution since the Act is a law of the Nation that abridges the freedom of speech and of the press because the Act establishes a newspaper operated by an Editorial Board, whose structure is determined by the Act, and who is duty-bound to report on matters that are pre-determined and regulated by and through the Act. Thus, the Act is unconstitutional and hereby declared null, void, and unenforceable.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that no part or provision of the Act can be severed from the Act where the remaining part(s) or provision(s) can stand alone; as such, the entire Act is hereby held void.

Dated this 11 day of September, 2008.

IT IS SO ORDERED.



MARVIN E. STEPSON, JUDGE