

IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

SUPREME COURT
FILED

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

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

MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF BY THE NAACP LEGAL
DEFENSE & EDUCATIONAL FUND, INC. AND LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW

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The proposed amici curiae, NAACP Legal Defense & Educational Fund, Inc. (“LDF”) and the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”), respectfully move this Court for leave to participate as amici curiae and to file the accompanying amici curiae brief in the above captioned matter in support of Respondents’ Motion for Temporary Restraining Order and Preliminary Injunction and Respondents’ Third Motion for Contempt, for Court Enforcement of Order and Judgment, and for Order to Show Cause.

As the proposed amici curiae will set forth in their brief, if granted leave to submit, we respectfully urge this Court to grant Respondents’ request for a temporary restraining order and preliminary injunction and their renewed motion to enforce this Court’s July 23, 2025 Order and Opinion. This relief is needed to prevent the disenfranchisement of as many as 4,000 Creek Freedmen with pending citizenship applications currently held by the Citizenship Office pursuant to Muscogee (Creek) Nation Executive Order No. 25-05 (“Executive Order No. 25-05”). Pursuant to this Court’s unambiguous and unanimous July 23 Order, Respondents and all Creek Freedmen are equal citizens of the Muscogee (Creek) Nation (“MCN”) and must be allowed to exercise their fundamental right to vote in the upcoming May 30 MCN election. Appellant’s delay in the processing of these applications is legally indefensible and risks invalidating the results of the election itself. As this Court has recognized, the descendants of the Creek Freedmen were unequivocally granted MCN citizenship under Article 2 of the post-Civil War Treaty of 1866. This citizenship guarantees these individuals the right to vote, a right that is both fundamental and “preservative of all [other] rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). Abridging this fundamental right is a grave violation of the civil rights of the Respondents and the other descendants of the Creek Freedmen.

Executive Order No. 25-05 flouts this Court’s July 23 Order by directing the Citizenship Office to cease processing citizenship applications of the Creek Freedmen—while maintaining the “status quo” in continuing to process all other applications—effectively denying Respondents and other Creek Freedmen equal protection of MCN laws and the rights and privileges guaranteed by the 1866 Treaty and violating the separation of powers principles fundamental to the MCN Constitution. This Court has already ruled that Respondents and all other Creek Freedmen are full and equal MCN citizens. Allowing the election to proceed without their participation would render it illegitimate and invite federal scrutiny that could lead to the invalidation of election results. *See Seminole Nation of Oklahoma v. Norton*, 223 F. Supp. 2d 122, 147-148 (D.D.C. 2002) (holding that the Department of the Interior did not act “arbitrarily, capriciously, or contrary to law” in refusing to recognize Seminole Nation election results that excluded the votes of the Freedmen).

Finally, Appellant’s adherence to Executive Order No. 25-05 in the face of this Court’s clear contrary command is blatantly violative of the constitutionally guaranteed separation of powers. Allowing Executive Order No. 25-05 to stand undermines the rule of law as a whole and invites further abuses of executive power, which will work to the detriment of all MCN citizens. We urge this Court to order the aforementioned relief to prevent the further disenfranchisement of Respondents and other Creek Freedmen.

As is required by this Court’s Rules of Appellate Procedure, amici state their specific interests in this matter with more detail as follows. *See MCN Rules of Appellate Procedure (2023)*, Rule 7(B) (hereinafter “MCN RAP”). LDF is a nonprofit, non-partisan law organization established under the laws of New York to assist Black people and other people of color in the full, fair, and free exercise of their constitutional and statutory rights. Founded in 1940 under the leadership of Thurgood Marshall, LDF focuses on eliminating racial discrimination in economic

justice, education, criminal justice, and political participation. LDF has worked for 80 years to combat threats to Black people's voting rights and political representation. Beginning with *Smith v. Allwright*, LDF's Supreme Court case challenging the use of whites-only primary elections in 1944, LDF has fought to overcome barriers to the full, equal, and active participation of Black voters. *Smith v. Allwright*, 321 U.S. 629 (1944). Since its inception, LDF has been involved in a wealth of minority rights cases as counsel or as amicus curiae before state and federal courts. See, e.g., *Robinson v. Callais*, 144 S. Ct. 1171 (2024) (mem.); *Alexander v. S. Carolina State Conf. of the NAACP*, 602 U.S. 1 (2024); *Allen v. Milligan*, 599 U.S. 1 (2023); *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Abrams v. Johnson*, 521 U.S. 74 (1997); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Houston Lawyers' Ass'n v. Att'y Gen. of Tex.*, 501 U.S. 419 (1991); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *NAACP v. Hampton Cnty. Election Com'n*, 470 U.S. 166 (1985); *City of Mobile v. Bolden*, 446 U.S. 55 (1980); *E. Carroll Par. Sch. Bd. v. Marshall*, 424 U.S. 636 (1976); *Turner v. Fouche*, 396 U.S. 346 (1970); *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969); *Anderson v. Martin*, 375 U.S. 399 (1964); *Terry v. Adams*, 345 U.S. 461 (1953). LDF is committed to ensuring the fair and equal participation of all historically disenfranchised voters – across America and the tribal nations. LDF recently participated as amicus curiae in a case that challenged the unlawful dilution of Native American voting rights in federal elections. See, e.g., *Turtle Mountain Band of Chippewa Indians et al. v. Howe*, 145 S. Ct. 2876 (2025) (granting stay of decision reversing district court's finding of vote dilution of Native American voters).

The Lawyers' Committee is a nonpartisan, nonprofit civil rights organization, formed at the request of President John F. Kennedy in 1963, that uses legal advocacy to achieve racial justice.

For more than 60 years, the Lawyers' Committee has advocated inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of democracy real. This includes being able to enjoy unencumbered access to the ballot and the ability to elect candidates of their choice. The Lawyers' Committee litigates voting rights cases across the country, and has represented parties to many seminal voting rights cases including *Shelby County v. Holder*, 570 U.S. 529 (2013); *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016); and *League of United Latin American Citizens v. Abbott*, 809 F.Supp.3d 502 (W.D. TX. 2025). The Lawyers' Committee has also represented tribal nations in challenging the unlawful dilution of their voting power and is committed to ensuring all Native voters are able to exercise their fundamental right to vote. See, e.g., *Voting Rights Win in New Mexico: Navajo Community Gains Equal Opportunity to Elect Preferred Candidates in Second San Juan County Commission District*, LAWYERS' COMMITTEE (Mar. 25, 2024), <https://www.lawyerscommittee.org/voting-rights-win-in-new-mexico-navajo-community-gains-equal-opportunity-to-elect-preferred-candidates-in-second-san-juan-county-commission-district/>. This case is of utmost importance to the Lawyers' Committee because it threatens to deprive Creek Freedmen citizens of the ability to vote in free and fair elections which will determine their ability to participate as equal citizens in the MCN and because this threatens to damage the legitimacy of democratic institutions in the MCN.

In summary, LDF and the Lawyers' Committee have a significant interest in the Respondents obtaining their requested relief from this Court so that they, along with the other Creek Freedmen, may exercise their fundamental right to vote in accordance with the rights of citizenship guaranteed to them in the Treaty of 1866. Respondents' fight to secure their and the other Creek Freedmen's fundamental right to vote, pursuant to their legally guaranteed right to

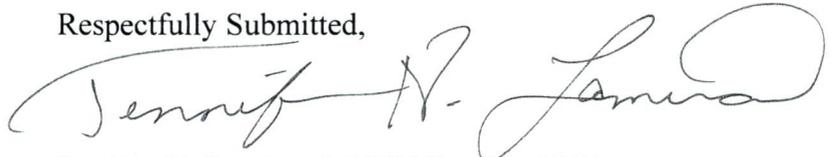
MCN citizenship, is exactly the work that LDF and the Lawyers' Committee have dedicated themselves to for decades to ensure equal rights under the law.

LDF and the Lawyers' Committee submit this timely motion in accordance with this Court's rules. Under the rules of this Court, "a person who is not a party to a case, but has some interest in the outcome of an appellate case may, upon a timely motion and with permission of the Appellate Court, submit an amicus curiae brief in support of one party to the action or to supplement the arguments of a party." *MCN RAP* at Rule 7(B). To file an amicus curiae brief, a party must "file a motion to intervene within fifteen (15) days of the entry of the initial review decision accepting the appeal." *Id.* at 7(C). In the instant case, Respondents' Motion for Temporary Restraining Order and Preliminary Injunction and Respondents' Third Motion for Contempt, for Court Enforcement of Order and Judgment, and for Order to Show Cause, upon which our motion to intervene as amici curiae is based, was filed on March 9, 2026. This motion for leave has been filed with this Court on March 17, 2026, eight days from the filing of Respondents' motion. As such, LDF and the Lawyers' Committee have submitted a timely motion to participate as amici curiae in accordance with this Court's rules.

For the reasons set forth herein, LDF and the Lawyers' Committee respectfully request this Court grant leave to file the amici curiae brief attached hereto as Exhibit 1 in the above captioned matter. Additionally, if granted leave to file said brief, the LDF and the Lawyers' Committee stand ready, at the preference of the Court, to submit as an addendum to the brief all rules, regulations, laws, and authorities cited in the brief unless already filed with the Court. However, such an addendum would extend beyond the page limits for brief submissions within the Court's rules. Therefore, if the Court prefers to receive copies of all authorities cited in the brief, LDF and the

Lawyers' Committee respectfully request leave to submit an addendum that exceeds the page limits for submissions within the Court's rules.

Respectfully Submitted,



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EXHIBIT 1

IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

**CITIZENSHIP BD. OF THE
MUSCOGEE (CREEK) NATION**)
)

Appellant)

v.)

**RHONDA K. GRAYSON and
JEFFREY D. KENNEDY**)
)

Respondents)

**Case No.: SC 2023-10
(District Court Case No: CV-2020-34)**

**BRIEF OF *AMICI CURIAE* NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC.
AND LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW IN SUPPORT OF
RESPONDENTS' MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION AND THIRD MOTION FOR CONTEMPT, FOR COURT
ENFORCEMENT OF ORDER AND JUDGMENT, AND FOR ORDER TO SHOW
CAUSE**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF AMICI CURIAE..... 1

ARGUMENT 2

I. The Fundamental Right to Vote of the Creek Freedmen Must Not Be Infringed. 4

II. This Court Must Ensure MCN Elections Are Not Undermined by Racial Discrimination and Exclusion. 5

III. Defiance of This Court’s July 23 Order Threatens the Rule of Law and Subverts the Separation of Powers. 7

 A. The Executive Order Violates the Separation of Powers and Threatens the Rule of Law. 7

 B. The Executive Order Threatens the Ability of the MCN to Manage Its Elections. 10

CONCLUSION 11

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Abrams v. Johnson</i> , 521 U.S. 74 (1997).....	1
<i>Alexander v. S.C. State Conf. of the NAACP</i> , 602 U.S. 1 (2024).....	1
<i>Allen v. Milligan</i> , 599 U.S. 1 (2023).....	1, 5
<i>Allen v. State Bd. of Elections</i> , 393 U.S. 544 (1969).....	1
<i>Anderson v. Martin</i> , 375 U.S. 399 (1964).....	1
<i>Arizona v. Inter Tribal Council of Ariz., Inc.</i> , 570 U.S. 1 (2013).....	2
<i>Beaver v. Muscogee (Creek) Nation Council</i> , C-85-4, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).....	6
<i>Boumediene v. Bush</i> , 553 U.S. 723 (2008).....	8
<i>Bush v. Vera</i> , 517 U.S. 952 (1996).....	1
<i>Chisom v. Roemer</i> , 501 U.S. 380 (1991).....	1
<i>Citizenship Bd. of the Muscogee (Creek) Nation v. Grayson & Kennedy</i> , SC-2023-10 (Muscogee (Creek) 2025)	3, 4, 6, 9
<i>City of Mobile v. Bolden</i> , 446 U.S. 55 (1980).....	1
<i>Clinton v. City of New York</i> , 524 U.S. 417 (1998).....	7
<i>In re Constitutionality of NCA-01-115</i> , SC-01-03, 7 Okla. Trib. 366 (Muscogee (Creek) 2002)	7

<i>Cooper v. Aaron</i> , 358 U.S. 1 (1958).....	8, 9
<i>Courtwright v. July</i> , SC-93-01, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).....	6
<i>Davis v. Passman</i> , 442 U.S. 228 (1979).....	9
<i>E. Carroll Par. Sch. Bd. v. Marshall</i> , 424 U.S. 636 (1976).....	1
<i>Easley v. Cromartie</i> , 532 U.S. 234 (2001).....	1
<i>Ellis v. Nat'l Council</i> , SC-2005-03, 9 Okla. Trib. 190 (Muscogee (Creek) 2006).....	8
<i>Harjo v. Muscogee (Creek) Nation Election Bd.</i> , SC 07-50 (Muscogee (Creek) 2007).....	5
<i>Houston Lawyers' Ass'n v. Att'y Gen. of Tex.</i> , 501 U.S. 419 (1991).....	1
<i>Lane v. Wilson</i> , 307 U.S. 268 (1939).....	10
<i>League of United Latin Am. Citizens v. Abbott</i> , 809 F.Supp.3d 502 (W.D. TX. 2025)	2
<i>Maness v. Meyers</i> , 419 U.S. 449 (1975).....	8
<i>Marbury v. Madison</i> , 5 U.S. 137 (1803).....	8, 10
<i>Means v. Wilson</i> , 522 F.2d 833 (8th Cir. 1975)	5
<i>Milam v. U.S. Dep't of the Interior</i> , 10 ILR 3013 (D.D.C. Dec. 23, 1982)	10, 11
<i>NAACP v. Hampton Cnty. Election Comm'n</i> , 470 U.S. 166 (1985).....	1
<i>Nw. Austin Mun. Util. Dist. No. One v. Holder</i> , 557 U.S. 193 (2009).....	1

<i>Okla. City Muscogee (Creek) Ass'n v. Muscogee Nat'l Council</i> , No. CV 89-08, 1 Okla. Trib. 293	8
<i>Rice v. Cayetano</i> , 528 U.S. 495 (2000).....	6
<i>Robinson v. Callais</i> , 144 S. Ct. 1171 (2024).....	1
<i>Seminole Nation of Okla. v. Norton</i> , 223 F. Supp. 2d 122 (D.D.C. 2002).....	10
<i>Shaw v. Hunt</i> , 517 U.S. 899 (1996).....	1
<i>Shelby Cnty. v. Holder</i> , 570 U.S. 529 (2013).....	1, 2
<i>Singleton v. Allen</i> , 782 F. Supp. 3d 1092 (N.D. Ala. 2025).....	10
<i>Smith v. Allwright</i> , 321 U.S. 649 (1944).....	1
<i>Terry v. Adams</i> , 345 U.S. 461 (1953).....	1
<i>In the Matter of the Constitutionality of NCA 24-077</i> , SC-2024-05 (Muscogee (Creek) Apr. 22, 2025)	8
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986).....	1
<i>Turner v. Fouche</i> , 396 U.S. 346 (1970).....	1
<i>Turtle Mountain Band of Chippewa Indians et al. v. Howe</i> , 145 S. Ct. 2876 (2025).....	1
<i>Veasey v. Abbott</i> , 830 F.3d 216 (5th Cir. 2016)	2
<i>Wesberry v. Sanders</i> , 376 U.S. 1 (1964).....	4
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886).....	4

Statutes

Indian C.R. Act of 1968, 25 U.S.C. §§ 1302(a)(8).....4

Indian Citizenship Act of 1924, 8 U.S.C. § 14015

Other Authorities

Exec. Order No. 25-05, *To Establish the Framework for Incorporating the Qualification Requirements in Article II of The Treaty of 1866* (Aug. 28, 2025).....3

Muscogee (Creek) Const. art. IV, § 2.....4

Muscogee (Creek) Const. art. VII, § 1.....7

Muscogee (Creek) Const. Preamble, Annotation, n.14

Treaty Between the Unites States of America and the Creek Nation of Indians (Aug. 11, 1866).....4

U.S. Const. amend. XV5

Voting Rights Win in New Mexico: Navajo Community Gains Equal Opportunity to Elect Preferred Candidates in Second San Juan County Commission District, LAWYERS' COMMITTEE (Mar. 25, 2024).....2

INTEREST OF AMICI CURIAE

Founded in 1940 by Thurgood Marshall, the NAACP Legal Defense & Educational Fund, Inc. (“LDF”) is the nation’s first and foremost civil rights law organization. LDF’s mission is to ensure the full, fair, and free exercise of constitutional and statutory rights for all Americans, and to break down barriers that prevent African Americans from realizing their basic civil and human rights. Beginning with *Smith v. Allwright*, 321 U.S. 649 (1944), LDF has represented Black voters in most of the precedent-setting cases involving efforts to enforce or defend the constitutional right to vote and the Voting Rights Act of 1965. *See, e.g., Robinson v. Callais*, 144 S. Ct. 1171 (2024) (mem.); *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024); *Allen v. Milligan*, 599 U.S. 1 (2023); *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Abrams v. Johnson*, 521 U.S. 74 (1997); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Hunt*, 517 U.S. 899 (1996); *Houston Lawyers’ Ass’n v. Att’y Gen. of Tex.*, 501 U.S. 419 (1991); *Chisom v. Roemer*, 501 U.S. 380 (1991); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *NAACP v. Hampton Cnty. Election Comm’n*, 470 U.S. 166 (1985); *City of Mobile v. Bolden*, 446 U.S. 55 (1980); *E. Carroll Par. Sch. Bd. v. Marshall*, 424 U.S. 636 (1976); *Turner v. Fouche*, 396 U.S. 346 (1970); *Allen v. State Bd. of Elections*, 393 U.S. 544 (1969); *Anderson v. Martin*, 375 U.S. 399 (1964); *Terry v. Adams*, 345 U.S. 461 (1953). LDF has also advocated on behalf of the voting rights of indigenous Americans who have historically faced systemic disenfranchisement and high barriers to electoral participation. *See, e.g., Turtle Mountain Band of Chippewa Indians et al. v. Howe*, 145 S. Ct. 2876 (2025) (granting stay of decision reversing district court’s finding of vote dilution of Native American voters). These struggles are intertwined.

The Lawyers’ Committee for Civil Rights Under Law is a nonpartisan, nonprofit civil rights organization, formed at the request of President John F. Kennedy in 1963, that uses legal advocacy

to achieve racial justice. For more than 60 years, the Lawyers' Committee has advocated inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of democracy real. This includes being able to enjoy unencumbered access to the ballot and the ability to elect candidates of their choice. The Lawyers' Committee litigates voting rights cases across the country, and has represented parties to many seminal voting rights cases including *Shelby County v. Holder*, 570 U.S. 529 (2013); *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013); *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016); and *League of United Latin American Citizens v. Abbott*, 809 F.Supp.3d 502 (W.D. TX. 2025). The Lawyers' Committee has also represented tribal nations in challenging the unlawful dilution of their voting power and is committed to ensuring all Native voters are able to exercise their fundamental right to vote. *See, e.g., Voting Rights Win in New Mexico: Navajo Community Gains Equal Opportunity to Elect Preferred Candidates in Second San Juan County Commission District*, LAWYERS' COMMITTEE (Mar. 25, 2024), <https://www.lawyerscommittee.org/voting-rights-win-in-new-mexico-navajo-community-gains-equal-opportunity-to-elect-preferred-candidates-in-second-san-juan-county-commission-district/>. This case is of utmost importance to the Lawyers' Committee because it threatens to deprive Black Creek Freedmen citizens of the ability to vote in free and fair elections which will determine their ability to participate as equal citizens in the Muscogee (Creek) Nation and because this threatens to damage the legitimacy of democratic institutions in the Muscogee (Creek) Nation.

ARGUMENT

In its July 23, 2025 Order and Opinion in this case (the "July 23 Order"), this Court recognized that the Creek Freedmen, including Respondents, are entitled to full citizenship as members of the Muscogee (Creek) Nation ("MCN"). *See Citizenship Bd. of the Muscogee (Creek) Nation v. Grayson & Kennedy*, SC-2023-10, at 23 (Muscogee (Creek) 2025) ("July 23 Op."). This

Court also recognized that the Treaty of 1866, which establishes that right, stands supreme over provisions of the MCN Constitution that are inconsistent with it. *Id.* Attendant to the right of citizenship is the right of the Creek Freedmen to vote and have their voices heard in the democratic process. Executive Order No. 25-05, issued on August 28, 2025 (“Executive Order No. 25-05”), defies the July 23 Order. *See* Exec. Order No. 25-05, *To Establish the Framework for Incorporating the Qualification Requirements in Article II of The Treaty of 1866* (Aug. 28, 2025). Executive Order No. 25-05 purports to simply delay implementation of the July 23 Order to allow MCN laws and regulations to be amended to conform with its requirements. But the Executive Order’s effect—and the effect of Appellant’s submission to it—is to continue to enforce the provisions of the MCN Constitution this Court has already invalidated, which deny the Creek Freedmen the rights of citizenship to which they are entitled, including the right to vote in MCN elections. The scheduling of a special election (the “May Election”) to make critical changes to the MCN Constitution that will affect all MCN citizens—while continuing to exclude the Creek Freedmen from participation—has raised the stakes of Appellant’s defiance.

This Court must not allow its orders to be disregarded and the rights of the Creek Freedmen to be violated. *Amici* urge the Court to grant Respondents’ Motion for Temporary Restraining Order and Preliminary Injunction and Third Motion for Contempt, for Court Enforcement of Order and Judgment, and for Order to Show Cause. This Court should require the immediate processing of all pending citizenship applications for the Creek Freedmen and impose any additional relief necessary to ensure they can vote and have their votes counted in the May Election and any other elections going forward.

I. The Fundamental Right to Vote of the Creek Freedmen Must Not Be Infringed.

The right to vote has long been recognized as a “fundamental political right...preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). “Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). This principle is equally fundamental to the sovereignty of tribal nations. For nearly two hundred years, tribal nations have been recognized as “distinct independent political communities...qualified to exercise many of the powers and prerogatives of self-government.” MCN Const. Preamble, Annotation, n.1, at 2 (citing *Worcester v. State of Ga.*, 31 U.S. 515 (1832)). The unique self-governing nature of these nations depends on robust and inclusive participation by all eligible citizens.

As this Court recognized in its July 23 Order, the Treaty of 1866 guaranteed the Creek Freedmen all the rights and privileges of MCN citizens and equal protection under MCN law and process. July 23 Op. Under the Treaty of 1866, the MCN was bound to abolish slavery and extend the protection and privileges of MCN law to the Creek Freedmen and their descendants. Article 2 of the Treaty of 1866 grants to the Creek Freedmen and their descendants “all the rights and privileges of native citizens” of the MCN and directs that MCN “laws...give equal protection to all such persons,” regardless of “race or color.”

The rights attendant to citizenship include the right to vote in MCN elections. The MCN Constitution provides that “[e]very citizen of the Muscogee (Creek) Nation, regardless of religion, creed, or sex, shall be eligible to vote in the tribal elections.” MCN Const. art. IV, § 2. The right to vote must be extended to all such citizens equally. MCN Const. Preamble, Annotation, n.1 at 1 (explaining that the Constitution guarantees “equal voting rights to all eligible tribal voters”); *see also* Indian C.R. Act of 1968 (ICRA), 25 U.S.C. §§ 1302(a)(8) (providing that “[n]o Indian tribe in exercising powers of self-government shall...deny to any persons within its jurisdiction the

Equal Protection of the Laws”); *cf. Harjo v. Muscogee (Creek) Nation Election Bd.*, SC 07-50 (Muscogee (Creek) 2007) (Equal Protection clause of ICRA requires “one man one vote” rule to be followed in all tribe electoral processes).

II. This Court Must Ensure MCN Elections Are Not Undermined by Racial Discrimination and Exclusion.

Our nation’s history of racial discrimination has taken its starkest form in race-based denial of the right to vote. “Shortly after the Civil War, Congress passed and the States ratified the Fifteenth Amendment In the century that followed, however, the Amendment proved little more than a parchment promise. Jim Crow laws like literacy tests, poll taxes, and ‘good-morals’ requirements abounded, ‘render[ing] the right to vote illusory for blacks.’” *Milligan*, 599 U.S. at 10 (quoting *South Carolina v. Katzenbach*, 383 U.S. 301, 312-313 (1966)). Today, a century and a half after Black Americans gained the right to vote, *see* U.S. Const. amend. XV, and a century after the Indian Citizenship Act of 1924 guaranteed Native Americans the right to vote in State and Federal elections, *see* 8 U.S.C. § 1401; *Means v. Wilson*, 522 F.2d 833, 838-839 (8th Cir. 1975), our nation’s multi-racial democracy remains a work in progress.

Appellants’ denial of as many as four thousand Creek Freedmen’s citizenship applications is an unacceptable step backward in the nation’s journey toward a full democracy. That this blatant violation of Respondents’ right to full citizenship in defiance of the July 23 Order comes on the eve of critical tribal elections to amend the MCN Constitution is unfortunately reminiscent of the discrimination Black Americans have long faced when seeking to exercise their rights as citizens. It is profoundly out of step with bedrock democratic principles. Excluding these eligible citizens from critical elections that will affect them and their families--just as they affect other MCN

citizens--will render the election results illegitimate. *Cf. Rice v. Cayetano*, 528 U.S. 495, 517 (2000).

The MCN has a distinguished tradition of protecting civil liberties. This Court upheld this commitment when it struck down Article III, Section 2's "by blood" citizenship requirement as violative of the Treaty of 1866, and thus, of the U.S. Constitution's Supremacy Clause. In doing so, this Court recognized that permitting the exclusion of the Creek Freedmen from the MCN citizenry would "elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right." *See* July 23 Op., at 22 n.51 (citing *McGirt v. Oklahoma*, 591 U.S. 894, 938 (2020)). This holding aligned with this Court's longstanding practice of safeguarding civil liberties. *See, e.g., Courtwright v. July*, SC-93-01, 3 Okla. Trib. 132, 141 (Muscogee (Creek) 1993) (striking down a chartered community voting requirement that restricted the right to vote to individuals who had attended at least three community meetings, because it infringed on MCN citizens' "inalienable rights to equal protection and due process of the laws"); *Beaver v. Muscogee (Creek) Nation Council*, C-85-4, 1 Okla. Trib. 57 (Muscogee (Creek) 1986) (upholding the results of a runoff election and invalidating the National Council's attempt to override them). This Court should reaffirm that tradition and ensure that all branches of the MCN government uphold the rights of the Creek Freedmen.

Directly contrary to this Court's July 23 Order, the Executive Order threatens to deny the Creek Freedmen's descendants their right to vote in the upcoming elections—a right guaranteed to all MCN citizens by MCN's Constitution and Treaty of 1866 and by federal statute. Allowing the Executive Order to deny the Creek Freedmen their fundamental right to vote through obstruction and administrative delay is both contrary to law and to this Court's clear precedents. This Court should reaffirm the MCN's commitment to inclusive democratic governance by

ensuring that all eligible Creek Freedmen may participate freely and equally in upcoming elections.

III. Defiance of This Court's July 23 Order Threatens the Rule of Law and Subverts the Separation of Powers.

The Executive Order both threatens the most fundamental of rights of the Creek Freedmen and undermines the rule of law. The Executive Order seeks to defy this Court, jeopardizes the constitutional order, and threatens rather than affirms the self-determination of the MCN. Intra-governmental compliance with court orders is essential to a well-functioning democracy. Executive branch officials are not free to disregard the rulings of the judicial branch, nor may they continue implementing laws or constitutional provisions that the judicial branch has held to be unenforceable. Yet Executive Order No. 25-05 does precisely that. By functionally requiring continued implementation of the “by blood” provisions of Article III, Section 2 of the MCN Constitution, Executive Order No. 25-05 ignores the role of the courts and violates separation of powers principles central to the MCN constitutional order, which ensure that the Nation is governed by the rule of law. Indeed, “[l]iberty is always at stake when one or more of the branches seek to transgress the separation of powers.” *Clinton v. City of New York*, 524 U.S. 417, 450 (1998).

A. The Executive Order Violates the Separation of Powers and Threatens the Rule of Law.

The laws of MCN recognize the essential importance of respecting the separation of powers. The Constitution of the MCN is “is patterned after the United States Constitution and recognizes the separation of powers among the three branches of the Nation's government.” *In re Constitutionality of NCA-01-115*, SC-01-03, 7 Okla. Trib. 366 (Muscogee (Creek) 2002). The Constitution details that “judicial power of the Muscogee (Creek) Nation shall be vested in one Supreme Court . . . and in such inferior courts[.]” MCN Const. art. VII, § 1. This power includes

the “judicial interpretation of the Constitution of The Muscogee (Creek) Nation and Ordinances of The Muscogee (Creek) Nation,” which “is vested only in the Judicial Branch[.]” *Okla. City Muscogee (Creek) Ass’n v. Muscogee Nat’l Council*, No. CV 89-08, 1 Okla. Trib. 293, 305 (Muscogee (Cr.) D.Ct. (1989)). As this Court has recognized:

The Muscogee (Creek) Nation Constitution is the epitome of what makes the Muscogee Nation great; a document that has withstood the test of time, trials and tribulations, forced assimilation, statehood and eventual rebirth. Through it all, this Nation's Constitution with the Separation of Powers doctrine embodied in it has emerged virtually unscathed in thought and spirit.

Ellis v. Nat’l Council, SC-2005-03, 9 Okla. Trib. 190 (Muscogee (Creek) 2006). “[T]o give ‘unbridled authority’ to a specific branch at the expense of the others ‘would be a crime against [the] Great Nation.’” *In the Matter of the Constitutionality of NCA 24-077*, SC-2024-05, at 7, (Muscogee (Creek) Apr. 22, 2025) (citation omitted).

Animating the separation of powers doctrine is a recognition of the dangers of unchecked governmental power, particularly when considering infringements on the judiciary’s power by the political branches. *See, e.g., Boumediene v. Bush*, 553 U.S. 723, 727 (2008) (acknowledging that if “the political branches may switch the Constitution on or off at will [it] would lead to a regime in which they, not this Court, say ‘what the law is.’”) (citing *Marbury v. Madison*, 5 U.S. 137, 177 (1803)). If individual rights and liberties are to be secured against governmental excesses, it is a “basic proposition that all orders and judgments of courts must be complied with promptly.” *Maness v. Meyers*, 419 U.S. 449, 458 (1975). If the political branches of the government can selectively choose which judicial holdings to follow, the legitimacy of the law and its ability to safeguard the citizenry from injustice is thrown into question. This type of disregard poses an existential threat to democracy itself. *See Cooper v. Aaron*, 358 U.S. 1, 18-19 (1958) (holding that a state governor could not impede a court order, and warning that, “[i]f the legislatures of the several states may, at will, annul the judgments of the courts of the United States, and destroy the

rights acquired under those judgments, the constitution itself becomes a solemn mockery”)) (quoting *United States v. Peters*, 9 U.S. 115, 136 (1809)). The drafters of the U.S. Constitution likewise acknowledged that the separation of powers “is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part.” See THE FEDERALIST NO. 51 (James Madison). It is only through upholding these checks and balances that “the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.” *Id.* Though the powers vested in the Executive may be many, he is not “above the law. No officer of the law may set that law at defiance with impunity.” *Davis v. Passman*, 442 U.S. 228, 246 (1979) (citation omitted).

Executive Order No. 25-05 threatens these principles. Although the Executive Order purports to provide for orderly implementation of the July 23 Order, its clear intent and its plain effect is to frustrate its implementation and delay action on Respondents’ and other Creek Freedmen’s citizenship applications indefinitely, depriving them of the right to vote in the May Election. Executive Order No. 25-05 is thus both in blatant violation of this Court’s unanimous and unambiguous determination that Respondents and all other descendants of the Creek Freedmen *are in fact already* citizens of the MCN under established law, while also violating the separation of powers between the judiciary and the executive as established by the MCN Constitution. See July 23 Op. at 21-22. The continued refusal to administratively process the Creek Freedmen’s pending citizenship applications and Appellant’s failure to file the required status reports lays bare that they have no intention of complying with this Court’s July 23 Order. The Court’s order “nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race.” *Lane v. Wilson*,

307 U.S. 268, 275 (1939). This Court cannot permit such gamesmanship on the part of the Appellant. *See Singleton v. Allen*, 782 F. Supp. 3d 1092, 1352-1353 (N.D. Ala. 2025) (explaining that “federal courts have long held that an attempt to evade a court order is not legitimate”) (collecting cases).

Preserving the authority of the judiciary to interpret the laws and ensure compliance with its rulings by the political branches is critical in safeguarding the rights of historically marginalized groups. Executive action that undermines the judiciary’s function in protecting minorities and upholding guarantees of the law not only tramples upon individual rights but debases the notion that MCN is “a government of laws, and not of men,” *Marbury*, 5 U.S. at 163, and threatens the liberty of all MCN citizens.

B. The Executive Order Threatens the Ability of the MCN to Manage Its Elections.

The lawless action of Appellants not only threatens the voting rights of Respondents but also the MCN’s sovereign prerogative to conduct its own elections. Proceeding with an election rendered illegitimate by the unlawful exclusion of the Creek Freedmen will invite federal scrutiny, undermining federal sovereignty. Under almost perfectly analogous circumstances, federal authorities have stepped in and invalidated tribal elections conducted in violation of the voting rights of Freedmen granted citizenship under post-Civil War treaties. In *Seminole Nation of Oklahoma v. Norton*, the Seminole Nation passed constitutional amendments designed to exclude Creek Freedmen descendants from citizenship and then held elections without counting their ballots. Because of this, the U.S. Department of the Interior refused to recognize the election results. A U.S. District Court upheld the Department of the Interior’s refusal, recognizing the “oppressive action on the Nation’s part against its own minority members.” *Seminole Nation of Okla. v. Norton*, 223 F. Supp. 2d 122, 137, 147-148 (D.D.C. 2002). Likewise, in *Milam v. United*

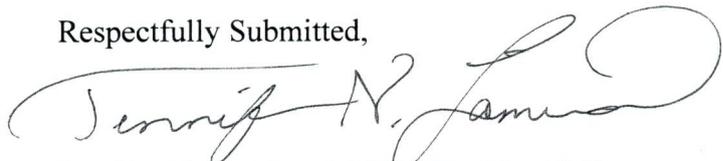
States Department of the Interior, the court confirmed that the Secretary of the Interior “is charged not only with the duty to protect the rights of the tribe, but also the rights of individual members,” whether the infringement comes “by non-members or by members of the tribe.” *Milam v. U.S. Dep’t of the Interior*, 10 ILR 3013, 3015, 3017 (D.D.C. Dec. 23, 1982).

Allowing the May Election to go forward while the MCN continues to deny formal recognition of citizenship to Respondents and other Creek Freedmen whose applications have been arbitrarily delayed—individuals this Court has unanimously and unambiguously held are entitled to MCN citizenship on an equal footing with other citizens—will result in an illegitimate election the results of which are vulnerable to challenge. This Court can and should take whatever steps are necessary to ensure that the MCN can conduct elections without federal intervention by enjoining elections that exclude the Creek Freedmen in violation of the July 23 Order, or by otherwise providing that all MCN citizens—including Creek Freedmen with pending citizenship applications—can vote freely and equally in upcoming elections.

CONCLUSION

For the foregoing reasons, this Court should grant Respondents’ Motion for Temporary Restraining Order and Preliminary Injunction and Third Motion for Contempt, for Court Enforcement of Order and Judgment, and for Order to Show Cause.

Respectfully Submitted,



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