IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

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RHONDA K. GRAYSON and JEFFREY D. KENNEDY, Petitioners, vs. MUSCOGEE (CREEK) NATIONAL COUNCIL, Respondent.	)	Case No.: CV-2024-[illegible]

APPLICATION TO ASSUME ORIGINAL JURISDICTION AND PETITION FOR DECLARATORY RELIEF

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For the reasons set forth herein, Petitioners respectfully request this Court assume original jurisdiction, declare NCA 24-077 unconstitutional, and hold that NCA 24-077, TR 24-073, and TR 24-074 are void and unenforceable.[1] Pet'rs App. at Ex. 1.

STATEMENT OF THE CASE

Not satisfied with merely undermining the guarantor of the Nation's sovereignty—the Treaty of 1866, *see M(C)N Citizenship Board v. Grayson & Kennedy*, SC02-23-10, Resp'ts Br. at 11-14, the Nation's National Council and Principal Chief ("Chief Hill") now openly strike at the separation of powers that protects all its citizens and those subject to the MCN's jurisdiction. This Court is oath-bound to rebuff the National Council and Chief Hill's blatantly unconstitutional actions.

The Nation's government "is comprised of three, equal branches of government," it "must follow the Constitution with its inherent separation of powers," and most importantly, "the Judiciary interprets the Constitution." *In re Judge Patrick Moore*, No. SC 10-05, at 12. At least, that was the case before June 10, 2024.

On that date, the National Council without notice held an emergency session in which they abruptly amended the judicial procedures codified in Title 27 of the Code. The novel amendments passed in this extraordinary session now allow the National Council to hand-pick "Special Justices" to sit on the Supreme Court whenever there are recusals. *See* NCA 24-077 (allowing two special justices to be placed on the Supreme Court of the Muscogee (Creek) Nation in the event one or more sitting justices recuse themselves from a case) and TR 24-073 and TR 24-074 (the

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[1] Petitioners have concurrently filed an Appendix to this Application, which includes three exhibits for the Court's reference.

confirmation of two Special Justices) (collectively referred to herein as "the Special Justice Law"). Pet'rs App. at Ex.1.

This is a targeted campaign to guarantee a certain result in this critically important case, which has already garnered extensive media scrutiny. But the Freedmen will not be this action's only victim. Separation of powers is a critical protector of *everyone* subject to MCN jurisdiction. And this Court has, time and again, acted decisively to ensure no one branch of the Nation's government arrogates the powers of the other—particularly where the political branches seek to take unto themselves the power of the judiciary. The Court must do so again. Now.

BACKGROUND[2]

This Court is well aware of the descendants of Creek Freedmen's (the "Freedmen") decade-long journey to become recognized citizens of the Muscogee (Creek) Nation. At long last, the former Chief Justice of this Court and now District Judge Mouser recognized the truth: Creek Freedmen are citizens of the Nation pursuant to this Nation's sovereign commitment to the United States and its Freedmen in the Treaty of 1866 that it would extend all rights of citizens of the Nation to its Freedmen and their descendants, and any Constitutional provision stating the opposite is null and void.

The Citizenship Board appealed Judge Mouser's decision. That appeal is fully briefed. Oral argument is set for July 26, 2024. In that matter, Vice-Chief Justice McNac and Justice Harjo-Ware recused themselves from the proceedings. With the board set, and Petitioners set to defend Judge Mouser's opinion in this Court, the National Council acted to stack the deck against reaching

[2] As discussed below, original jurisdiction is appropriate when no factual development is necessary. That is the case here. The facts outlined in this section are *not* necessary for this Court to determine that the Special Justice Law is unconstitutional. Petitioners include them, however, to expose the rank power-grab the National Council, aided and abetted by Principal Chief Hill, engaged in and to highlight the risk these actors pose to all the Nation's citizens. All the Court needs to adjudicate this matter, are the Constitution, the precedent of this Court, and the text of the Special Justice Law.

the correct legal conclusion—that the Nation cannot, pursuant to its own or federal law, deny t

Freedmen citizenship. These actions, the enactment of NCA 24-077, and the confirmation of tw

Special Justices, *see* TR 24-073 & TR 24-074, are nothing less than the political branches of th

Nation handpicking *for this case* their representatives to sit on the Court.

On June 10, 2024, the National Council held an emergency session. This emergency session was shrouded in secrecy—no notice was given to the Nation's citizens and no record of the session is available. In this emergency session, the National Council passed NCA 24-077, which grants them the power to seat "Special Justices" in the event Justices of this Court recuse themselves from a case. Pet'rs App. at Ex. 1. And it confirmed two "Special Justices"; James Jennings, TR 24-073, and Samuel Deere, TR 24-074. *Id.*

In a clear sign of what the Special Justice Law really is about (packing the Court against Petitioners' claims), the National Council did not comply with its own procedures in confirming the Special Justices. The Special Justice Law requires the Clerk of the Supreme Court to notify the Principal Chief of a recusal; *then*, for the Principal Chief to nominate a Special Justice; and only *then*, for the National Council to confirm the Special Justice by a majority vote. By definition, this procedure could not have been adhered to because the National Council confirmed the nomination of the special justices *before* it amended Title 27 to create the procedure which allowed for the seating of Special Justices. *See* Pet'rs App. at Ex. 2 (*AGENDA: Emergency Session*, MUSCOGEE (CREEK) NATIONAL COUNCIL (June 10, 2024), *available* at https://www.mcnnc.com/images/pdf2024/061024EMERGENCYSESSION.pdf (outlining the "ORDER OF BUSINESS" and placing amending Title 27 *after* the confirmation of the special justices)).

Even if the National Council did not appoint the Special Justices before it created the procedure enabling their creation, there is no possibility that any of the Special Justice Law's notice requirements were followed: notice from the Court to the Principal Chief and then notice of the Principal Chief's nomination to the National Council. The procedure to appoint a special justice was created *in the same session* as the appointments were made.

Furthermore, it is indisputable that the National Council violated its own procedures when enacting the Special Justice Law. The National Council's own rules of procedure provide:

> At the discretion of the Speaker, he/she may, for emergency purposes, poll the National Council Members in reference to meeting. Upon receiving confirmation of majority approval, the Speaker has the authority to assemble the Council to deal with the emergency situation only. No other matters may be officially addressed and/or voted upon.

Muscogee (Creek) Nat'l Council R. of Proc. § 116(L). Yet, in the Emergency Session which birthed the Special Justice Law, the National Council adopted Tribal Resolutions authorizing Chief Hill to submit a grant application (TR 24-065), grant firework sales permits (TR 24-069, TR 24-070), and to submit 2024 Cops School Violence Prevention Program grants (TR 24-071). Pet'rs App. at Ex. 2. The National Council also authorized a supplemental appropriation to the Mvskoke Nation Youth Services budget (NCA 24-078). These are just a few of the actions taken at this "Emergency" Session.

It is no surprise that Chief Hill and the National Council threw all procedure to the wayside in an Emergency Session gutting any semblance of law and order in the Nation—the National Council's and Principal Chief Hill's hostility to the Freedmen is well-known. Indeed, Principal

Chief Hill has been quite open about his disdain for Freedmen citizenship,[3] as have several of the 14-member National Council.[4]

What is more surprising is the brazenness of the political branches' attempt to adjudicate a case-in-controversy as this Court's deliberations are *currently underway*. One of the Special Justices appointed to hear this case is on the record pre-determining the outcome of *this very case*. In an interview with Mvskoke Media, when asked, "What is your opinion on the Creek Freedmen case", so-called Special Justice Jennings stated: "*My opinion on the Creek Freedmen case* is that if elected I will support and defend the Muscogee Creek Nation Constitution which states it's [citizenship] by blood." *Meet the Candidate 2023 – James Jennings*, Mvskoke Media, at 11:30-12:00 (Aug. 23, 2023), *available at* https://www.youtube.com/watch?v=WxE7EgmZYlo (emphasis added).

The above shows exactly the threat this law poses. It is small-town corruption applied to a newly expanded (post-*McGirt*) legal jurisdiction with the power to jail human beings and/or strip them of their property. It is a case study in why the separation of powers is paramount to the just and orderly functioning of a society. The Court must take the opportunity to protect its citizens—

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[3] Chief Hill's involvement in the creation of the Special Justice Law cannot be ignored—he could have vetoed the Special Justice Law. And he nominated the Special Justices which were appointed. He was, undoubtedly, involved every step of the way. And his involvement is damning, particularly because of his continued crusade to bar Freedmen from the Nation's citizenship rolls as evidenced by his September 28, 2023 Facebook post wherein he stated "Yesterday, MCN District Court Judge Mouser issued a ruling in the case of Grayson v. Citizenship Board…We strongly disagree with Judge Mouser's conclusion in this case…: *See* Pet'rs App. at Ex. 3.

[4] *Meet the Candidate, 2021 Election*, MVSKOKE MEDIA at 17:42 (Aug. 23, 2021), *available at* https://www.youtube.com/watch?v=BYadS46tkpk (Second Speaker Thomasene Yahola-Osborn, when asked where she stands on the Freedmen issue, stated: "You know, at this time, I do not support it [admitting Freedmen into the Nation.]"); *Meet the Candidate*, MVSKOKE MEDIA at 18:25 (August 17, 2023), *available at* https://www.youtube.com/watch?v=OL15i_NbAI8&list=PLzAYLb8-60fO_KecpaLEaBUkeCxEvRpFp&index=7 (Council Member Dode Barnett, when asked what her views were on Freedmen Citizenship, stated: "My viewpoint is that I support the Constitution and the Constitution says that citizenship is by Creek blood. A lot of freedmen are Creek by blood… Obviously, we can't explore those right now, because there is a lawsuit. But our Constitution says citizenship is Creek by blood."); 2023 *MCN Nation Council Okmulgee District Debate*, MVSKOKE MEDIA at 12:08 (October 20, 2023), *available at* https://www.youtube.com/watch?v=T3CgxcuntB4 (Representative Robyn Whitecloud, when asked what her views are concerning Judge Mouser's decision, stated that "I, too, would uphold the Constitution. Any individual that wants to become an enrolled Creek citizen has to go by our regulations and our rules which is you have to prove your lineage by blood. So that's what I would uphold.").

and everyone now subject to the laws, courts, and jurisdiction of the MCN post-*McGirt*—from the political branches' unconstitutional arrogation of judicial power.

ARGUMENT[5]

The Special Justice Law is a direct assault on the separation of powers, the Constitution, and this Court's independence. For these reasons, the Court must assume original jurisdiction over this dispute and overturn the Special Justice Law.

I. The Special Justice Law Violates the Constitution and Assails the Structure of the Nation's Government.

A. The Special Justice Law Conflicts with the Plain Text of the Constitution.

"The judicial power of the Muscogee (Creek) Nation shall be vested in one Supreme Court . . . ." M(C)N Const., Art. VII § 1. And "[t]he Supreme Court shall be composed of seven (7) members . . . whose term shall be for six (6) years beginning July 1." *Id.* at § 2. The framers of the current MCN Constitution required Justices receive a minimum of a six-year term: Justices would not, like these Special Justices, be selected for how they would rule on individual cases but for their general knowledge and wisdom, they would be insulated from outside pressure and would have time to grow into the role.

Section 2 of Article VII of the Constitution then outlines the requirements for the composition of the Supreme Court:

> The requirement for a six member Court is equal to the requirement for Court members to serve six-year terms. . . . Any statutory mechanism creating a bypass to these requirements would be constitutionally suspect.

[5] The arguments below are ripe for this Court's assumption of original jurisdiction. If this Court shirks its duty to the Nation and declines original jurisdiction, Petitioners preserve their right to challenge the National Council's unlawful actions beyond the grounds enumerated herein. These grounds for relief may include, but are not limited to, the Nation's violations of their substantive and procedural due process rights (rooted in the M(C)NA's incorporation of the Indian Civil Rights Act as opposed to Constitutional matters which *are* ripe for this Court's *immediate* review).

Ellis v. Checotah Muscogee Creek Indian Cmty., SC-10-01 at 16 (Muscogee (Creek) 2013) (Deere, J., concurring). The National Council eschewed this constitutional requirement in crafting NCA 24-077 as under the Special Justice Law, "Special justices shall only serve until the conclusion of the case for which they have been appointed." *Id.* at Title 27, § 3-103(3).

Accordingly, these "Special Justices" are not Justices as defined in our Constitution and therefore their slightest involvement in this or any matter will render the proceedings "*coram non judice*" or "before a person not a judge . . . ." *Burnham v. Superior Court of California*, 495 U.S. 604, 608-09 (1990) (Scalia, J., concurring). Any proceeding before such a person is "not a *judicial* proceeding because lawful judicial authority was not present and could therefore not yield a *judgment*." *Id.*

Indeed, other jurisdictions' judiciaries held unconstitutional similar legislatively enacted stop-gap measures which violated their constitution's plain text. *E.g.*, *Saunders v. State*, 371 So. 3d 604, 618 (Miss. 2023). For instance, Mississippi's constitution required judges to be elected by the people and to be seated for four years. *Id.* Mississippi's legislature crafted a special judge provision which allowed their Supreme Court's "Chief Justice to appoint four additional (and unelected) circuit judges to the existing Seventh Circuit Court District . . . for a term ending" three and a half years after appointment. *Id.* "[R]eading the plain language of the statute[.]" the Mississippi Supreme Court found that "the new . . . judges are just unelected circuit judges, appointed . . . to serve three-and-a-half years instead of four." *Id.* at 618. The Court struck the legislation as unconstitutional. *Id.*

Of note, the special judges in *Saunders* were to be appointed by Mississippi's Chief Justice. In contrast to the Special Justice Law, appointment by the Chief Justice at least arguably lessens the separation of powers concerns because the judiciary was still in charge of the appointments of

the lower-court judges. That is not the case here, where the *political branches* hand-picked a *Supreme Court Justice's* replacement. The Special Justice Law presents graver separation of powers concerns (discussed *infra*) than in *Saunders*. This Court should, accordingly, look to *Saunders* as highly persuasive and extend to the Nation's citizens the same defense of their Constitution.

B. The Special Justice Law is a Breach of the Separation of Powers.

The National Council, abetted by Chief Hill, is attacking the structure of this Nation's system of governance, and in so doing, uproot some of the oldest traditions of the Nation. As this Court recognized:

> In fact, long before 1787, when the Federalists and Anti-Federalists in the Constitutional Convention of the newly formed United States of America debated the issue of having separate branches of government, the Muscogee people had already established, centuries before, an effective, functioning government with "checks and balances." Decisions of the Muscogee people regarding national issues, such as treating with other nations, or war, or peace, could not be made just by one mekko.

Alexander. 2003 WL 24314194, at *3; *see also* 27 MCNA § 1-103(A) ("In all cases, the Muscogee (Creek) Nation Courts shall apply the Constitution and duly enacted laws of the Muscogee (Creek) Nation, *the common law of the Muscogee people as established by customs and usage*, and the Treaties and Agreements between the Muscogee (Creek) Nation and the United States." (emphasis added)).

The Nation's prescient custom of separation of powers manifests itself in the Constitution by its establishment of three equal branches of government: the National Council who legislates, the Principal Chief who executes the laws, and the judiciary who interprets the laws. *See* M(C)N Const. Arts. V (establishing the Executive Branch), VI (establishing the legislative branch), VII (establishing the Supreme Court); *In the Matter of the Extended Term of Off. Of Dist. Ct. Judge*

Patrick Moore, No. SC 10-05, at 12 (Muscogee (Creek) 2011) (The Nation's government "is comprised of three, equal branches of government," it "must follow the Constitution with its inherent separation of powers," and "the Judiciary interprets the Constitution."). Indeed, there is no doubt the separation of powers still has a role to play in our government: "The 1867 Constitution formally incorporated the separation of powers doctrine, dividing tribal government into three branches of government. This separation of powers continues under the present Constitution." *Alexander*, No. SC-02-01, 2003 WL 24314194, at *3.

This Court's predecessors acted decisively to less threatening attempts to interfere with this delicate balance of power and the Judiciary's ability to act independently. "This Court has previously held that where NCA 82-30 required the Supreme Court to grant a jury trial when requested by a party, this law infringed upon the inherent powers of the Court to enforce its orders, and maintain orderly administration of justice, and was, therefore, unconstitutional." *M(C)N Election Board*, SC 09-10 at *5 n.4. (citing *Ellis v. Muscogee Creek Nation National Council*, SC 06-07 (Muscogee (Creek) 2007)). When the National Council determined that tribal judges must be one-quarter Creek by blood, and adhering to that determination would cause vacancies on the Court, this Court, writing *sua sponte*,[6] ordered that "each Justice of the Supreme Court of the . . . Nation shall and do retain their position and authority and shall continue to serve as Justice until their successor is duly qualified" because "[t]he power and authority of this Court will not be

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[6] That the Court, *sua sponte*, addressed the unconstitutionality of the legislation in *In re Supreme Court of Muscogee (Creek) Nation* is instructive. There was no lower court action. In essence, the Court took original jurisdiction on that matter *on its own*. That is the extent to which this Court has defended itself from just such political actions in the past.

This comports with a previous communication from the Court to Petitioners, in which the Court refused to assume original jurisdiction in the Freedmen matter because original jurisdiction is properly reserved for "matters . . . in which time may be of the essence, or disputes between the Nation's three (3) branches of government." *Grayson & Kennedy v. Citizenship Board of the Muscogee (Creek) Nation*, Unassigned, at *3 (Mar. 9, 2021) (citations omitted). With oral arguments looming in the Freedmen matter, and with most of this Court's actions imperiled, haste and inter-branch conflict are satisfied. This Court could strike down this law *without any action from Petitioners* because the National Council's actions are an assault on *this Court*.

decreased, nor will this Court be diminished by any other branch of the tribal government by its failure to perform its duties and obligations under the Constitution." *In re Supreme Court of Muscogee (Creek) Nation*, 1 Okla. Trib. 89, 91 (Muscogee (Creek) 1986). And when the National Council required that at least four Justices be in concurrence in all cases, even if the court had less than six seated justices, the Court found that "[s]uch a legislative requirement would unduly interfere with this Court's internal decision-making process and would be unconstitutional." *M(C)N Election Board*, SC 09-10, *5 n.4.

Here, the threat to the Court's internal deliberation process—and its very independence as a branch of government—is much greater, and "any attempt to control the Supreme Court under the guise of legislation [can]not be tolerated." *Id.* The National Council and Chief Hill cannot hand-pick lackeys to replace recused Justices of this Court. These euphemistically styled "Special Justices" will take the place of a Supreme Court Justice and do all the duties of a Justice. NCA 24-77 (at 27 MCNA § 3-103(B)). There is no indication in the Special Justice Law that Special Justices are to be construed as anything but a replacement for a recused Justice as "Special Justices shall be appointed to ensure that seven (7) *justices* hear the case." *Id.* (emphasis added). Accordingly, the "Special Justice" will participate in oral argument and participate in internal court deliberations regarding the case to which they are appointed. They may even end up drafting the Court's opinion. And, most concerningly, they will determine the outcome of all cases decided by narrow majorities. The Special Justice Law is nothing less than the National Council hand-picking on a case-by-case basis representatives of its desired outcome onto every case with a recusal. "Such a legislative requirement would unduly interfere with this Court's internal decision-making process and [is] unconstitutional." *M(C)N Election Board*. SC 09-10 at *5 n.4.

This grotesquery is a tangible reality in the Freedmen case. But it will rear its head in other matters as well. Recall, recusals are commonplace in the MCN judiciary. *See supra* (noting that 78% of the Supreme Court's cases were decided with less than a full panel). This power-grab imperils the rights of all the Nation's citizens and all citizens of Northeast Oklahoma subject to MCN jurisdiction.

For instance, say a recusal occurs in a case resolving a contractual dispute where one side is a wealthy business-owner? National Council members may suddenly be recipients of campaign donations from the wealthier party in the hopes that the litigant can buy a seat on the Court to hear his or her case. Or what if a recusal occurs in an unpopular person's appeal of their criminal conviction in the expanded jurisdiction post-*McGirt*? His or her appeal will be adjudicated by politically appointed members of the Court appointed just for his or her case. The list goes on. Suffice it to say, at minimum, a breathtaking appearance of impropriety will consume most of this Court's actions going forward if this law is allowed to stand.

This Court must exercise its rightful place in the Nation's constitutional order and protect its independence. Not just for the sake of the Freedmen, but for the sake of all the Nation's citizens who rely upon this body to mete out justice.

II. The Nation Explicitly Waived Sovereign Immunity for Just the Type of Relief Petitioners Seek.

The Nation unequivocally and expressly waived sovereign immunity in cases limited to injunctive, declaratory, or equitable relief:

> The sovereign immunity of the . . . Nation is hereby waived in all actions limited to injunctive, declaratory or equitable relief; . . . The waiver of sovereign immunity in actions for injunctive, declaratory or equitable relief shall not be construed as granting a waiver for the purpose of obtaining any equitable relief requiring payment from, delivery of, or otherwise affecting funds in the Treasury of the Muscogee (Creek) Nation. . . ."

MCNA 27 §1-102(D). This action does not affect "funds in the Treasury". *Id.* Plaintiffs seek only that this Court declare that the Special Justice Law unconstitutional and void.

III. This Court Must Assume Original Jurisdiction.

This conflict over the Special Justice Law is an exemplar for when original jurisdiction is appropriate. The Court must "assume[] original jurisdiction in the case because of the constitutional questions raised by the Plaintiff[s]. This Court has continually held that '[w]hen there is a question as to whether the Muscogee (Creek) Nation Constitution has been followed in Legislative or Executive actions, this Court has jurisdiction to interpret those actions in light of the Nation's Constitution.'" *Oliver v. Nat'l Council*, No. SC-2006-04, 2006 WL 6122767, at *2 (Muscogee (Creek) Sept. 22, 2006); *see also id.* (citing *Alexander v. Gouge & Huff*, 4 Mvs. L. Rep. 226, 8 Okla. Trib. 1, 5 (Muscogee (Creek) 2003); *Ellis v. Muscogee (Creek) Nation National Council*, No. SC 05-03/05, 9 Okla. Trib. 190, 195-96 (Muscogee (Creek) 2006)).

This matter easily satisfies the two-element test for when the Court assumes original jurisdiction. *First*, "important public policy considerations must indicate that assumption of original jurisdiction would benefit the pursuit of justice . . . ." *Muscogee (Creek) Nation Nat'l Council v. Muscogee (Creek) Election Board*, No. SC 09-10, at *9 (hereinafter *M(C)N Election Board*"). And *second*, "these public policy considerations must outweigh the benefits of lower court review." *Id.* at 9-10.

A. Public Policy Considerations Mandate the Assumption of Original Jurisdiction.

"As a practical matter, as long as this case remains unresolved, a perceived cloud over" one-third of this Nation's government—the judiciary—remains. *Id.* at 10. If the Special Justice Law lingers, the "pursuit of justice" at the highest levels of the Nation will be rightfully called into question. The Nation's public policy is deeply impacted by this assault on the separation of

powers; as noted in *M(C)N Election Board*, "the day-to-day operations of the government requires certainty as to the specific language of the Constitution under which it operates." *Id.* Here, if a Special Justice participates in any proceeding, there will be justifiable doubt regarding the legitimacy of any of that Supreme Court's rulings.

Absences on this Court are in no way a rare occurrence and this law will call into question most of this Court's work. In a May 2013 opinion, this Court astutely observed that "[p]rior to the instant appeal being filed, . . . [o]nly nineteen opinions (28%) were delivered by a six-justice Court [the Court's contemporaneous full capacity]." *Ellis v. Checotah Muscogee Creek Indian Cmt'y*, SC 10-01 at *5 (Muscogee (Creek) May 2, 2013). The National Council, through the Special Justice law, has effectively guaranteed itself the ability to direct the vast majority of this Court's jurisprudence in a direction which the majority of the National Council desires.

These dire public policy considerations are particularly analogous to another instance in which this Court assumed original jurisdiction. In *In re District Judge*, due to an act of the National Council. the Nation had no district judge seated. 2 Okla. Trib. 54, 56 (Muscogee (Creek) 1990). This Court assumed original jurisdiction because the District Court "is an integral part of the system of the Muscogee (Creek) Nation government . . . ." *Id.* While the District Courts are indeed integral to the Nation's government, this Court is critical to the functional operation of a tripartite government—in fact, the only judicial body mandated by the Constitution. Muscogee (Creek) Const. Art. VII § 1 ("The judicial power of the . . . Nation shall be vested in one Supreme Court . . . and in such inferior court as the National Council *may from time to time* ordain. (emphasis added)).

As shown below, unlawfully seated Justices render all this Court's actions invalid. To be clear, this law nullifies the validity of the majority of the work of an entire branch of the Nation's

government and will cause a ripple of unconscionable delays of justice throughout the jurisdiction—whose expansion through McGirt impacts more than a million people.

In its monomaniacal quest to ensure the Black Creek Freedmen descendants would not receive justice in this judicial body, it attacked this Nation's separation of powers in an *emergency session*. *See* Pet'rs App. at Ex. 2. Public policy requires this Court to assume original jurisdiction and put this unlawful power-grab in the dustbin of this Nation's history where it belongs.

B. Public Policy Outweighs the Non-Existent Benefits of Lower Court Review.

As discussed above, the legitimacy of this Court's decisions is paramount to the effective governance of the Nation. And importantly, there is no need for lower court review.

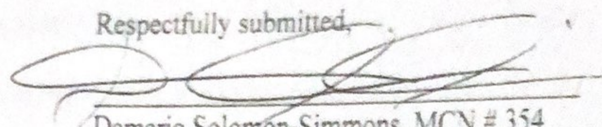
The Court applies *de novo* review to all questions of law and this Court has the final say on all constitutional questions. *MCN Nat'l Council v. MCN Election Board*, No. SC 09-10, at 11 (Muscogee (Creek) 2010) ("As this Court reviews all lower court rulings on issues of law *de novo*, all dispositive constitutional law issues are ultimately decided by this Court.") *id.* at 6 ("[T]his Court is the final arbiter of cases and controversies concerning constitutional provisions." *MCN Nat'l Council*, No. SC 09-10, at 6).

This matter raises only questions of constitutional law. There is no record to create and there are no factual questions to ask. All this Court must do is look at the text and structure of the Constitution, review its own precedent, and then compare that to text of the Special Justice law, NCA 24-077, and the commissions of the Special Justices, TR 24-073 & TR 24-074. With public policy so heavily favoring original jurisdiction and no countervailing benefits of lower court review, this Court is obliged to assume original jurisdiction and right this egregious attack on the Court's independence.

CONCLUSION & PRAYER FOR RELIEF

For the reasons stated above, Petitioners respectfully request that the Court assume original jurisdiction, declare NCA 24-077 unconstitutional, and hold that NCA 24-077, TR 24-073, and TR 24-074 are void and unenforceable.

Respectfully submitted,



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