

IN THE MATTER OF:	)	CAUSE NO. C2026-079.A
	)	
MELISSA FISHER, EVA FOOTE,	)	
GWEN SPOTTED HORSE, STEFAN	)	APPELLATE JUDGE
RAININGBIRD, MELISSA	)	ADRIAN A. MILLER
LONEBEAR, NIZHONI FRIEZ,	)	
DONOVAN LIMBERHAND,	)	
HOWARD ONTIVEROS, EDINA	)	
RED STAR, KRISTI KILLSNIGHT,	)	OPINION
and RYHAL ROWLAND,	)	
	)	
Petitioners,	)	
	)	
JASON STANDING ELK, WAYLON	)	
ROGERS, LLEVANDO "COWBOY"	)	
FISHER, REUBEN ROUNDSTONE,	)	
COREY SPOTTED ELK, JOSIE	)	
"WADE" REDHAT, ROBERT	)	
SIMPSON, LYNWOOD EWING,	)	
SHARLENE EVANS, TERRANCE	)	
LIMPY, DONOVON TAYLOR,	)	
LARRY MEDICINE BULL,	)	
WESLEY SPOTTED ELK, and	)	
ROGER KILLSNIGHT.	)	
	)	
Respondents.	)	
	)	

Respondents Larry Medicine Bull, Wesley Spotted Elk, and Roger Killsnight (collectively, “Defendant Chiefs”) appeal the Trial Court’s May 8, 2026

Order Denying Motion to Dismiss (“May 8th Order”) and the Trial Court’s May 12, 2026 Order Modifying Petitioner’s Filing (“May 12th Order”). Respondents Jason Standing Elk, Waylon Rogers, Llevando “Cowboy” Fisher, Rueben Roundstone, Corey Spotted Elk, Josie “Wade” Redhat, Robert Simpson, Lynwood Ewing, Sharlene Evans, Terrance Limpy, and Donavon Taylor (collectively, “Council Defendants”) appeal the Trial Court’s May 26, 2026 Order Denying Motion to Recuse (“May 26th Order”) and the Trial Court’s May 20, 2026 Order Granting Permanent Injunctive [and] Declaratory Relief on Respondent’s Failure to Show Evidence a Lawful Vacancy Existed Ordered by This Court by Motion for Partial Summary Judgment (“May 20th Order”).

PROCEDURAL AND FACTUAL BACKGROUND

The procedural history here is lengthy and convoluted. This Court will, therefore, stick to the procedural history at issue in this Opinion. Further, since this Opinion is based upon procedural matters, the Court will refrain from a prolonged recitation of the factual background. This Court will not weigh in on the merits of the case because that decision is unnecessary and, for the reasons stated below, not yet ripe.

Plaintiffs filed their Verified Complaint and Petition for Declaratory Relief, Injunctive Relief, and Writ of Quo Warranto (the “Complaint”) on April 15, 2026, seeking an order from the Court declaring that the Declaration of the Chiefs of the

Northern Cheyenne Tribe dated September 10, 2025 (the “September 10th Declaration”) was void, among other relief. The Defendant Chiefs filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction on April 17, 2026, and a similar motion on May 6, 2026. The Trial Court denied the Motion to Dismiss in the May 8th Order. The Trial Court then issued the May 12th Order, dismissing the Defendant Chiefs from the lawsuit for lack of jurisdiction over them. No party filed a motion requesting removal of the Defendant Chiefs from the case, and the May 12th Order appears to have been issued sua sponte.

On May 13, 2026, the Council Defendants filed a Motion to Recuse. In conjunction with the Motion, Council Defendants attached an Affidavit of President Gene Small (the “Small Affidavit”). The Small Affidavit included an email that Judge Elkshoulder, the presiding judge, had sent to three individuals at the BIA entitled “Constitutional Crisis” on January 10, 2026 (the “January 10th Email”). In the January 10th Email, Judge Elkshoulder reached out to the BIA to inform them of his following opinion:

The Tribal President, Gene Small, has acted beyond the scope of constitutionally delegated executive authority by unlawfully suspending, excluding, or otherwise disabling the Tribal Council and calling for an unlawful election to replace duly elected Tribal Council members who were not legally removed from office and by interfering with the independence and lawful operations of the Tribal Court, by interfering with Judicial Procedures in the manner of allowing and authorizing Tribal Prosecutor's abuse of Prosecutorial Authority. These actions violate the Tribe's Constitution, contravene the doctrine of separation of powers, and invalidate

the fundamental checks and balances required for legitimate tribal governance.

The removal or incapacitation of the Tribal Council without constitutional or judicial authorization is void ab initio, as the Tribal Council was not legally removed in accordance with the Amended Constitution and Bylaws of the Northern Cheyenne Tribe. Any executive actions taken in the absence of a lawfully constituted Tribal Council lack legal foundation and are subject to invalidation, including all legislation that has been presented to the Department of Interior for Approval and Annotation.

Further, executive interference with the Tribal Court eliminates lawful avenues for review and remedies, exacerbating the constitutional breach and denying due process.

In the next paragraph, Judge Elkshouder “demand[ed]” the “immediate reinstatement of the Tribal Council, cessation of all executive interference with the Tribal Court, and restoration of constitution order . . .” Judge Elkshouder also referenced the potential of future litigation on these exact issues. Lest there be any confusion as to whether Judge Elkshouder was sending the email in his personal or professional capacity, he noted in the body of the email that he is the “Chief Judge of the Tribe’s Judicial Branch” and signed the email as “Curtis Elkshouder, Jr., Chief Judge.”

In the May 20th Order, the Tribal Court did not address the Motion to Recuse. Judge Elkshouder obviously did not recuse himself and, instead, issued a final order in the case. The Trial Court then issued the post-judgment May 26th Order, denying recusal based upon an interpretation of the rules that would require

a supporting affidavit from a party (and only a party) when a motion to recuse is brought.

Plaintiffs filed a Motion for Partial Summary Judgment on May 13, 2026, and a Supplemental Filing in Support of Partial Summary Judgment on May 14, 2026. The Trial Court held a contempt hearing on May 15, 2026. On May 18, 2026, Council Defendants filed a Response to the Court's May 12, 2026 Order, which ordered them to produce evidence of a lawful vacancy. Council Defendants did not have a chance to file a response to Plaintiffs' Motion and Supplement Filing for Partial Summary Judgment before the Trial Court ruled on it.

The Trial Court subsequently issued its May 20th Order, which constitutes a final order in this matter. The May 20th Order grants summary judgment in Plaintiffs' favor, among other relief. This Court issued a Stay of the May 20th Order on June 1, 2026, pending final decision on appeal. All parties subsequently filed their briefs.

OPINION AND ORDER

This Court reiterates that this Opinion is based upon the procedural history of this case, and it is not a determination of the merits. Accordingly, the Court will refrain from offering any discussion on whether Plaintiffs or Defendants should ultimately prevail in this matter.

A. The May 8th Order and May 12th Order – Jurisdiction.

In the May 8th Order, the Trial Court denied the Defendant Chiefs' Motion to Dismiss, finding that the Trial Court did not lack subject matter jurisdiction. The Trial Court found in the May 8th Order that it has jurisdiction under Section 2.2.4(E) of the Northern Cheyenne Law and Order Code (the "Code"), which provides for jurisdiction over "tribal customs and traditions, provided that the content of relevant customs and traditions must be proven and may be rebutted by testimony from qualified persons or the submission of authoritative written materials." This Court agrees.

It appears that the September 10th Declaration, which is the subject matter of this litigation, is based upon the Defendant Chiefs' belief that have authority based upon tribal customs and traditions to issue such a declaration. Again, this Court makes no determination as to the legitimacy of that declaration. But since the claimed authority for the September 10th Declaration is rooted in tribal customs and traditions, then the Tribal Court clearly has jurisdiction to determine the validity of it under Section 2.2.4(E). Thus, the May 8th Order is correct.

The May 12th Order, however, contradicts the May 8th Order. After finding that it had subject matter jurisdiction, the Trial Court then determined that it was improper to include Defendant Chiefs in the case because those parties are not explicitly referred to in the Constitution of the Northern Cheyenne Tribe. In short,

the Trial Court found that it did not have jurisdiction over Defendant Chiefs, although no party had challenged the inclusion of them as parties. The Trial Court was correct that it has subject matter jurisdiction over tribal customs and traditions, and it was incorrect that an absence of express language regarding the Traditional Chiefs in the Constitution somehow stripped it of jurisdiction over those parties. Notably, if the Trial Court does not have jurisdiction over Defendant Chiefs, then it cannot determine the legitimacy of any act of those defendants, including the September 10th Declaration. Obviously, that is not the case.

The May 12th Order, dismissing Defendant Chiefs from this case, was based upon an incorrect interpretation of jurisdiction. Defendant Chiefs are necessary parties to this matter under Section 4.2.9 of the Code, and a final decision cannot be issued unless they have the full ability to participate. Notably, Plaintiffs knew that the Defendant Chiefs were necessary parties because Plaintiffs named them in the Complaint. Given the fact that there was not a single party here who requested their removal from this case, the May 12th Order makes little sense.

B. The May 26th Order – Failure to Recuse.

In the May 26th Order, decided after the final order, Judge Elkshoulder refused to recuse himself because Council Defendants submitted an affidavit from someone who was not a party to the case – President Small. As a procedural matter, the Motion to Recuse should have been decided before a final order was

issued. When a judge is asked to recuse themselves, they should first determine whether recusal is warranted before proceeding with any other determinations in the case. Any order entered after a recusal motion is subject to reversal if the judge should have recused. Unfortunately, that is exactly what happened here.

Rule 7 of the Northern Cheyenne Rule of Tribal Court states that a party has a right to move for disqualification of a judge either within 10 days following the party's initial appearance, with their initial pleading, or "with a showing of cause during any proceeding of the court up to the opening session of the final hearing." As an initial matter, Plaintiffs' claim that the Motion to Recuse was untimely is incorrect. Although Council Defendants did not bring it within the 10-day period under the rule, they brought it prior to the final hearing and for cause. If a party shows cause, the only time limit is before "the opening session of the final hearing." Thus, the Motion to Recuse was timely.

A motion brought under Rule 7 must follow the procedure in Title V, Rule 23 of the Revised Rules of Criminal Procedure. Rule 23 provides that "[u]pon the filing of an affidavit of bias and prejudice setting forth satisfactory proof of facts establishing, that by reasons of bias or prejudice of the Judge to whom the case is assigned, the defendant cannot have a fair trial, the Judge shall disqualify him/herself." There is nothing in Rule 23 that requires that the affidavit be an affidavit of a party, despite what the Court found in its May 26th Order. An

affidavit from a third party carries no less legitimacy than an affidavit of a party to show bias, and the plain language of the rule simply does not require a party affidavit. The Small Affidavit satisfied the requirements of Rule 23.

Here, it is not the Small Affidavit itself that shows bias. It is the attachment to the affidavit – Judge Elkshoulder’s January 10th email to the BIA. Thus, this Court need not rely upon anything that President Small stated in his affidavit for evidence of bias. Judge Elkshoulder’s own words are sufficient. Any reasonable review of the January 10th Email leads to the conclusion that Judge Elkshoulder was biased. In his email (which predates this litigation), Judge Elkshoulder already determined that the September 10th Declaration and the subsequent special election was unconstitutional. Those are the very same issues that the Trial Court was asked to decide in this matter, and Judge Elkshoulder noted himself that litigation was likely to follow. The fact that Judge Elkshoulder predetermined the legal matters and attempted to order the BIA to ignore the actions at issue is, under any definition, a showing of bias. Not only did Judge Elkshoulder decide this case before it was filed, but he tried to use his authority as Chief Judge to remedy the acts that he determined to be unconstitutional.

Plaintiffs’ arguments that Judge Elkshoulder’s later email retracting his January 10th Email creates a “no harm, no foul” situation is disingenuous. Whether the January 10th Email was retracted or not, Judge Elkshoulder felt strongly enough

about the underlying legal issues that he sent it. The bias shown in that email cannot be undone, particularly when it is a predetermination of the very legal issues that the judge must subsequently decide. Judge Elkshoulder should have recused himself without a party requesting it, and he certainly should have done so once Council Defendants filed their motion. Defendants here could not receive a fair trial or any fair proceeding given the bias shown in the January 10th Email, and the May 26th Order should have granted the recusal request.

C. May 20th Order – Summary Judgment.

Among other things, the Court's May 20th Order granted summary judgment to Plaintiffs. That Order must be reversed for the reasons stated above: Judge Elkshoulder should have recused himself before issuing any decision. The May 20th Order, where Judge Elkshoulder ruled exactly as he outlined that he would in the January 10th Email, cannot be upheld. This is not the fault of any party in this case. And this is not a determination that the merits of the May 20th Order are, ultimately, correct or incorrect. It is simply the inevitable outcome when an order is issued by a judge who lacks neutrality.

Moreover, the May 20th Order must also be reversed because none of the Defendants had an opportunity to respond to Plaintiffs' Motions for Partial Summary Judgment (the initial motion and the supplemental filing). As explained, the Defendant Chiefs are necessary parties to this litigation because the claims are

based upon their September 10th Declaration. Defendant Chiefs must have an opportunity to respond to any dispositive motion after being reinstated as parties. Further, Council Defendants also did not have an opportunity to respond to the Summary Judgment Motions. The Trial Court ruled, granting summary judgment to Plaintiffs, before allowing Council Defendants a chance to respond.

Under Section 4.2.4(C) of the Code, “the adverse party shall have ten (10) days after receipt of the motion and brief within which to serve and file a response brief.” The language is mandatory – the adverse party shall have that period to file a response. A court cannot rule on a motion (absent some true emergency) without allowing the adverse party an opportunity to respond. That is particularly important when it is a dispositive motion. Here, Plaintiffs filed their first motion on May 13th and a supplemental filing in support on May 14th. The Trial Court granted summary judgment seven days after the first filing and six days after the second. This period was insufficient; Council Defendants still had four remaining days to file a response brief.

Plaintiffs argue that Council Defendants had a chance to respond because they filed a response to the Court’s May 12th Order. Nothing in the Code waives a party’s right to respond to a motion simply because the party filed a response to a court order on similar issues. Notably, the May 20th Order was issued eight days after the May 12th Order. Again, Council Defendants were allowed ten days after

the filing of the motion to respond, and that time cannot be shortened simply because they chose to respond sooner to a court order. Due process requires that Defendants, all Defendants, have an opportunity to respond to a dispositive motion before the Court rules. Defendants did not waive that right by responding to an earlier court order as they were required to do.

This Court will not determine the remaining issues brought on appeal, including the arguments on the merits. There is no need. A final determination is properly in front of the Trial Court after: (1) a new judge has been assigned, (2) Chief Defendants are reinstated as parties, and (3) all Defendants have an opportunity to respond to Plaintiffs' request for summary judgment. The new judge might decide the case on summary judgment or determine that a trial must be held because this case is not suitable for summary judgment. Whatever the outcome, it must come after all parties have had a chance to make their arguments and present their evidence in front of an impartial judge.

For the reasons set forth herein, the May 8th Order is **AFFIRMED**. The May 12th Order is **REVERSED**, and the Trial Court is ordered to reinstate the Defendant Chiefs as parties in this matter. The May 26th Order is **REVERSED**. Judge Elkshoulder is recused from this matter, and the Trial Court is required on remand to assign it to a different judge. The May 20th Order is **REVERSED**, and this case is **REMANDED** to the Trial Court for either determination of summary

judgment after all parties have responded or to set a trial in this matter, whichever the Trial Court deems appropriate.

DATED this 16th day of July, 2026.

/s/ Adrian A. Miller
APPELLATE JUDGE
NORTHERN CHEYENNE TRIBE

NORTHERN CHEYENNE COURT
CERTIFIED COPY
CLERK OF COURT:
BY: [Signature]
DATED: 7/26/2026

