

IN THE NORTHERN CHEYENNE CONSTITUTIONAL COURT
OF AND FOR THE NORTHERN CHEYENNE TRIBE
LAME DEER, MONTANA

GENE SMALL,

PLAINTIFF,

v.

NORTHERN CHEYENNE
TRIBE TRIBAL COUNCIL,

DEFENDANT.

)
) CAUSE NO. **CC 2026-001**
)

) JUDGES:
)

) STEVEN T. SMALL
) MICHAEL A. MONSON
) ADRIAN A. MILLER
)

) **FINAL ORDER**
)
)

Before the Court is a Gene Small's Motion for Declaratory Judgment and Recognition of Presidential Authority filed on October 1, 2025 ("Petition"). Eight members of the Northern Cheyenne Tribal Council (the "Council") filed a Response to Plaintiff's Motion for Declaratory Relief and Cross-Motion for Declaratory and Injunctive Relief ("Response") on October 25, 2025. Upon review of the Petition and Response, the Court finds and orders as follows:

SCOPE OF THIS PROCEEDING

In the Response, the Council has attempted to expand the scope of this proceeding to include a question as to the legitimacy of certain actions taken by the Chiefs of the Northern Cheyenne Tribe, among other questions. The only issue in front of the Court in this matter is whether the Council's proceedings to remove Gene Small as President were "in whole or part valid or invalid." Northern Cheyenne Law and Order Code (the "Code"), § 2.9.3 (2025). Any other question is not properly before this Court for several reasons.

First, the Petition was filed on October 1, 2025, and the Petition governs the scope of this proceeding. Second, the Council passed Resolution No. 2026-001 on October 17, 2025,¹ more than two weeks after the Petition was filed in this matter. A resolution passed after a Petition/Complaint is filed cannot govern the Petition. Third, the Council is attempting to bring a case against the Chiefs of the Northern Cheyenne Tribe (the "Chiefs") in this case, and the Chiefs are not a party to this case. Gene Small ("Small") is not a member of the Chiefs

¹ This Resolution is also invalid as explained below because it is signed by Howard Ontiveros as President Pro Tem, and the Council's appointment of him was unconstitutional.

and is not required to defend their actions, nor should he attempt to do so. This Court is not going to expand this proceeding beyond the scope of the Petition filed by Small. To do so would be a violation of due process.

SERVICE

The Council complains that individual members of the Council were not served with the Petition and have been barred from the Council building. It further alleges that the members did not receive a copy of the Petition until the day before the Response was due. The Council's actions in this case show otherwise. The same members who filed the Response on October 24, 2025, also filed a Motion to Dismiss or alternatively to Request Additional Time ("Motion to Dismiss") in this case on October 14, 2025. As of October 14th, at the very latest, the Council had access to the case pleadings and were fully aware of the Petition.

As noted in the Order denying the Motion to Dismiss, those same Council members refused to provide addresses or phone numbers that would have allowed the Clerk of Court to determine where to serve them. In fact, the Council members have now filed two pleadings with

this Court – the Motion to Dismiss and the Response – and refused to provide addresses or phone numbers in both. These pleadings violate the requirements of the Code. According to Section 4.2.3 of the Code, “[a]ll documents filed in any action shall” contain the name, address, and telephone number where the party may be reached.

On October 14, 2025, the Council first appeared in this action by filing its Motion to Dismiss. At that time, Council was required to include the addresses and telephone numbers of its members (or their counsel) on the initial pleading. The Council also had immediate access to the entire case file, including the Petition. Despite these obligations, the Council has twice failed to furnish the required contact information: first in its Motion to Dismiss and again in subsequent filings. The Council’s present assertion that it did not receive the Petition is therefore either inaccurate or attributable to its own non-compliance with the procedural rules governing service and appearance.² Proper service upon the Council was effected, and the Council had ample opportunity to respond; indeed, certain of its members have done so.

² Council has since filed a Notice of Defendant’s Email Addresses on November 7, 2025 providing email addresses for Defendant and requesting service be made to said email addresses.

ANALYSIS AND ORDER

Small alleges that the Council unconstitutionally appointed a President Pro Tem, Howard Ontiveros (“Ontiveros”), and then unconstitutionally removed him. The Council admits that it appointed Ontiveros as President Pro Tem, but the Council claims that it had no choice because Vice President Littlemouth, Sr. sided with President Small in ongoing disputes among the Council, preventing them from moving forward with meetings. The Council cites Robert’s Rules of Order for their authority to appoint Ontiveros as President Pro Tem. Notably, the appointment of Ontiveros happened before the Council held the removal proceeding for Small and before it voted to remove him as President.

The removal of an officer or councilmen is governed by Article VII of the Northern Cheyenne Constitution (the “Constitution”). This article also governs officer vacancies. According to Section 4(a) of Article VII, “[i]f the office of President is vacant, the Vice President shall serve as acting President in the interim. If the offices of both President and Vice President are vacant simultaneously, the Tribal Council shall appoint from within its own number an acting President who shall serve in the

interim.” The Constitution is clear. The only scenario which allows the Council to appoint a President Pro Tem is when both the office of President and Vice President are vacant. Here, when the Council appointed Ontiveros as President Pro Tem, neither office was vacant. The Council had no authority to appoint Ontiveros and its actions in doing so were unconstitutional.

It is particularly concerning that the Council decided to appoint a President Pro Tem for the purpose of removing the actual President. Small was President at the time the Council acted to appoint Ontiveros. Vice President Littlemouth, Sr. was also the Vice President at that time. The express provisions of the Constitution cannot be overridden by Robert’s Rules of Order simply because the Council is frustrated with the elected President and Vice President. The Council had no authority to appoint Ontiveros as President Pro Tem under Article VII, Section 4(a) of the Constitution. Accordingly, the Council’s appointment of Ontiveros as President Pro Tem was invalid.

Any resolution signed by Ontiveros as President Pro Tem is also invalid. This includes Resolution No. DOI-174 (2025), which set the removal hearing on the complaint against Small. Since the Resolution

setting the hearing was invalid, the hearing against Small was similarly invalid. However, the Court will also review the hearing for purposes of clarity.

At the September 11, 2025 hearing, Ontiveros voted with seven other Council members to remove Small as President. As noted above, Ontiveros was appointed as President Pro Tem prior to this hearing, even though there was no vacancy in the office of President. Thus, at the hearing, the President Pro Tem bizarrely voted to remove the actual President. According to Article VII, Section 2 of the Constitution, removal of an officer requires a vote of 2/3 members of the Council, after affording the accused member a fair opportunity to be heard in his own defense. Since the appointment of Ontiveros as President Pro Tem was invalid, he had no authority to vote at that hearing. Accordingly, the Council did not have the 2/3 votes needed to remove Small.

Of course, the hearing itself was also invalid as noted above because Ontiveros had no authority to sign the Resolution setting the hearing. This Court does not understand how Small could possibly have had an opportunity to be heard in his own defense at a removal hearing when the Council had already replaced him with a President Pro Tem.

That same President Pro Tem then voted against Small at the hearing, which was set to determine whether Small was to be removed as President. In short, the Council held a hearing where two tribal Presidents ostensibly existed at the same time, with one voting against the other to remove him. The procedures that the Council followed for the removal hearing were not only unconstitutional, but they were also nonsensical.

Accordingly, the Court **FINDS AND ORDERS** as follows:

- Resolution No. DOI-174 (2025) setting the removal hearing for Small was unconstitutional and invalid.
- The removal hearing, the Hearing Officer Findings, and the Council's vote to removal Small were unconstitutional and invalid.
- Any other Resolution signed by Ontiveros as President Pro Tem is also invalid, including Resolution No. DOI-177 (2025) and Resolution No. DOI-001 (2026).
- Small remains President of the Northern Cheyenne Tribe and has the right to exercise all presidential authority allowed by the Constitution and the Code.

Dated this 20th day of November, 2025.

/s/ Steven T. Small

Steven T. Small
CHIEF APPELLATE JUDGE

/s/ Michael A. Monson

Michael A. Monson
ASSOCIATE JUDGE

/s/ Adrian A. Miller

Adrian A. Miller
ASSOCIATE JUDGE

