IN THE SUPREME COURT OF THE OSAGE NATION
OSAGE RESERVATION
PAWHUSKA, OKLAHOMA

CYNTHIA BOONE, EVERETT WALLER, KATHRYN RED CORN, JOSEPH CHESHEWALLA, AND STEPHANIE ERWIN, Duly Elected Minerals Council Members, Appellants/Defendants, v. OSAGE NATION OF OKLAHOMA, Appellee/Plaintiff.	Case No. SCV-2015-01 **SLIP OPINION**

David McCullough, DOERNER, SAUNDERS, DANIEL & ANDERSON, LLP, Norman, Oklahoma for Appellants

Jeff S. Jones, OFFICE OF THE OSAGE NATION ATTORNEY GENERAL, Pawhuska, Oklahoma for Appellee.

PER CURIAM.

SUMMARY AND INTRODUCTION

On its face, this appeal centers on a relatively narrow question: whether Appellants have a lawful duty to comply with the Osage Nation Ethics Law (ONEL).[1] At its core, however, this case involves an historic conflict that has divided the Osage people since 1906 when the United States Congress enacted the Osage Allotment Act. It is a conflict that goes to very heart of Osage

[1] 15 ONC § 6-101, *et seq.*

sovereignty and where the power of Osage governance should lie, who should exercise it, and who should benefit from it.

Appellants urge this Court to reverse the ruling of the Trial Court and hold that the Osage Minerals Council (OMC) is not subject to the Constitution and Laws of the Osage Nation on the theory that the Osage Mineral Estate and Minerals Council are creatures of federal statute and, as such, are only subject to federal—not Osage—law. To support this proposition, Appellants rely on the Act of June 28, 1906, 34 Stat. 539 (hereinafter the "Osage Allotment Act" or the "1906 Act"), as amended, and Pub. L. No. 108-431, 118 Stat. 2609, entitled *Reaffirmation of Certain Rights of the Osage Tribe* (hereinafter the "Reaffirmation Act" or the "2004 Act"). Appellants also cite certain provisions of the Osage Nation Constitution as authority for the proposition that the OMC is not subject to the Osage Nation Constitution.

ISSUES PRESENTED

The questions before the Court are whether the Osage Nation Trial Court (Trial Court) erred: (1) when it ruled that the Osage Nation Ethics Law applies to the Osage Minerals Council (and—by the transitive property of equalities—its members); (2) by denying Appellant's motion for summary judgment and granting Appellee's motion for summary judgment; (3) by finding the OMC is a "governmental body" under the ONEL; by ruling that application of the ONEL against the OMC does not conflict with the Constitution of the Osage Nation (Constitution) or the 1906 Act, as amended; and (4) by determining that it possessed both personal and subject matter jurisdiction to entertain the case.

SUMMARY OF HOLDINGS

For reasons set forth below, we affirm in part and reverse in part the findings of the Trial Court. Specifically, we affirm the personal and subject matter jurisdiction of the Trial Court to

entertain this matter. Further, we affirm the Trial Court's ruling that the OMC is a "governmental body" under the ONEL and that its members are subject to the Osage Nation's Ethics laws. Finally, we affirm the Trial Court's holding that the application of the ONEL against the OMC members does not conflict with the Constitution of the Osage Nation or the 1906 Act, as amended. To the extent that Paragraph 7 of the *Journal Entry of Judgment* holds that Congress may dictate "how the Osage Minerals Council is to operate," such holding is reversed for the reasons set forth in this opinion.

We remand this matter to the Trial Court to enter a final order of judgment consistent with the holdings of this Court and to close the matter.

I. FACTUAL AND PROCEDURAL HISTORY

On or around January 20, 2015, the Osage Nation Attorney General filed a complaint for declaratory judgment against five of the eight elected members of the OMC, alleging those members refused to file an affidavit required by the ONEL, which requires all elected and appointed tribal officials to "file an affidavit, sworn under oath, with the Osage Nation Trial Court listing all gifts received during the previous fiscal year, the giver, and the stated dollar amount of each gift."[2] The Attorney General's complaint, filed pursuant to 3 ONC § 5-103 (Declaratory Judgments), requested the Trial Court find that "the Osage Minerals Council must obey the laws and statutes of the Osage Nation" and OMC officials "must file the yearly affidavit with the Trial Court."[3]

The OMC is defined as a "minerals management agency" in Article XV, section 4 of the Constitution and is charged with managing the Osage Mineral Estate in accordance with the

[2] 15 ONC § 6-203(C).
[3] Compl. at 3.

1906 Act.[4] OMC members are elected by individuals owning headright shares in the Osage Mineral Estate in accordance with rules adopted by the Minerals Council pursuant to the Osage Nation Elections Code.[5]

Appellants filed a motion to dismiss, arguing that the Trial Court lacked subject matter jurisdiction and personal jurisdiction over them, and the complaint failed to state a claim upon which relief may be granted. The Trial Court denied Appellants' motion to dismiss.[6]

Appellants filed their Answer on March 23, 2015 and subsequently filed a motion for summary judgment on May 15, 2015. The Nation also filed a motion for summary judgment.[7] Each party waived oral argument and sought the Trial Court's ruling on their respective briefs.

The Trial Court granted the Nation's motion for summary judgment by journal entry dated July 30, 2015, holding the ONEL applies to the OMC and rejecting Appellants' constitutional and jurisdictional arguments in the OMC's motion for summary judgment. The Trial Court stayed enforcement of the ruling pending appeal to the Supreme Court of the Osage Nation (Court) pursuant to Code of Civil Appeals § 11. All five OMC members timely appealed the decision to the Supreme Court, which accepted the appeal and conducted oral argument on June 7, 2016.

II. STANDARD OF REVIEW

This Court's decision turns on our interpretation and application of both federal and Osage Nation law, which Appellants relied on to support their motion for summary judgment

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[4] OSAGE CONST. Art. XV § 4.

[5] *See* ONCA 15-76 § 12.1 (Feb. 24, 2016).

[6] The record does not contain the Trial Court's order denying Appellants' motion.

[7] The record does not contain the Nation's motion.

under Rule 56 of the Federal Rules of Civil Procedure.[8] Under Rule 56, summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

We hereby adopt the *de novo* standard of review for Trial Court decisions on summary judgment motions, applying the same analysis as the Trial Court. "[J]urisdictional findings and questions regarding the constitutionality of a particular statute are questions of law" which we also review *de novo*, "with no presumption of accuracy or correctness afforded to the conclusions of the Trial Court."[9]

Our analysis requires, as always, a careful review of the Osage Nation Constitution, which we interpret "by reviewing the document as a whole, considering each provision as it relates to the others and giving each word its plain meaning when read in context to avoid absurd or inconsistent results."[10] We apply a similar standard when interpreting Osage Nation law.

We cannot, however, address the Osage Constitutional issue while ignoring the Osage Mineral Estate and the federal statutes bearing directly on its administration and Appellants' case in chief. For these reasons, we must also delve into the Nation's complex relationship with the United States. In doing so, we examine the 1906 Act, the Reaffirmation Act and related federal decisions. Unlike federal courts, however, we must reconcile the 1906 Act and the Osage Nation Constitution to ensure that both are given due consideration and weight.

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[8] Rule 56 of the Federal Rules of Civil Procedure was adopted by reference in 3 ONC § 1-104.

[9] *In re Gray*, SPC-08-01 at 4 (2009).

[10] *Red Corn v. Red Eagle*, SPC-2013-01 at 4 (2013).

III. HISTORICAL PRELUDE

Historically and culturally, the Osage people have always organized themselves in a manner designed to achieve balance in all aspects of life in order to produce stability and order.[11] Twice in the 19th Century (1862 and 1881) and once in the 20th (1994), the Osage organized under a constitutional form of government, each of which established separate and distinct branches of government with enumerated powers.[12]

A. The 1906 Act

Except for a very brief period between 1994 and 1997, the Osage people did not enjoy a governmental system of their own making and choosing for a century.[13] Neither could the Nation determine its own membership. Instead, the right of the Osage people to make and form their own government was usurped by the Congress of the United States pursuant to the Osage Allotment Act of 1906. The 1906 Act not only allotted Osage lands, it prescribed the form of government for the Osage Tribe by requiring the biennial election of a Principal Chief, Assistant Principal Chief, and an eight-member Tribal Council.[14] Under the 1906 Act, only those adult Osages owning a headright share in the Osage Mineral Estate were permitted to vote for members of the Osage Tribal Council.

According to its terms and legislative history, the 1906 Act was not intended as a general purpose tribal governing document. Its title is instructive: *An Act for the Division of Lands and Funds of the Osage Indians in Oklahoma Territory, and for Other Purposes*. As originally

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[11] *Standing Bear v. Whitehorn*, SCO-2015-01 (2016).

[12] *See* Jean Dennison, *Colonial Entanglement: Constituting a Twenty-First Century Osage Nation*, App. 1-3 (2012).

[13] We take judicial notice of the fact that the same tension that underlies the current dispute created the conflict that ultimately resulted in the failure of the National Council form of government.

[14] 1906 Act, 34 Stat. at 545.

enacted, the mineral and land trusts it created were to last only 25 years.[15] While the 1906 Act created the offices of Principal Chief, Assistant Principal Chief and an eight-member Tribal Council, it was not a tribal governing document in any meaningful sense as the specified duties of each were restricted almost entirely to the administration of the "the oil, gas, coal, or other minerals covered by the lands" subject to the 1906 Act (referred to as the "Osage Mineral Estate").[16]

Complications from the 1906 Act form of government expanded over time. Federal regulations promulgated pursuant to the 1906 Act precluded any Osages other than shareholders from voting or holding office in the Osage government.[17] Federal regulations also did not permit women and descendants of original allottees to vote in Osage elections until 1942.[18] With the extension of the trust period, the Tribal Council gradually expanded its role as quasi-governmental entity, obtaining access to federal programs available to other federally-recognized Indian tribes.[19] It was not until 1978 that a federal court ruled (citing to a single sentence in the 1929 amendments to the 1906 Act)[20] that the 1906 Act-based Osage Tribal Council possessed "the typical powers and authority of a tribal council."[21]

The 1906 Act had another serious shortcoming in that its definition of tribal membership was vulnerable to an interpretation that would limit the legal membership in the Osage tribe only

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[15] *Id.* at 542. The initial 25-year trust period was subsequently extended by Congress several times and, in 1978, was extended "in perpetuity." Act of October 21, 1978, Pub. L. No. 95-496, 92 Stat. 1660 (1978).

[16] *Id.* at 543. *See also* Osage Tribe Technical Corrections Act of 1984, 98 Stat. 3163 (Oct. 30, 1984) ("1984 Amendments") (defining "Osage mineral estate" as "any right, title, or interest in any oil, gas, coal, or other mineral held by the United States in trust for the benefit of the Osage Indian Tribe").

[17] 25 C.F.R. § 90.21.

[18] *See* Terry Wilson, *The Underground Reservation: Osage Oil* 176-179 (1985).

[19] *Logan v. Andrus*, 640 F.2d 269, 270 (10th Cir. 1981).

[20] Act of March 2, 1929, 45 Stat. 1478 (1929).

[21] *Logan v. Andrus*, 457 F. Supp. 1318 (N.D. Okla. 1978), *aff'd*, 640 F.2d 269 (10th Cir. 1981).

to original allottees. The effect of such interpretation would be that upon the death of the last original allottee, the Osage tribe would have no legal members and, therefore, would cease to exist.[22] By the 1970s, many headright shares had passed out of Osage hands and a significant number of Osages did not have an interest in the Osage Mineral Estate. These Osages, regardless of cultural, social, or degree of biological affiliation, could not vote in tribal elections and, thus, were barred from participation in the political affairs of the Tribe. Bureau of Indian Affairs Osage Agency records indicate that by 1990 over 75% of Osages possessed no headright share.[23]

The opaque legal status of the 1906 Act Osage Tribal Council and the ambiguous membership provision of the Act provided the impetus for enactment of the Reaffirmation Act of 2004. By its terms, it was passed by the United States Congress and signed into law specifically to address the fundamental flaws inherent in the 1906 Act-based form of Osage governance. Accordingly, Congress reaffirmed the inherent sovereign right of the Osage people to determine their own membership and form of government, "provided that the rights of any person entitled to Osage mineral estate shares are not diminished thereby."[24]

B. Osage Mineral Estate

While the Osage Allotment Act did not provide a functional framework as a governing document, it created the Osage Mineral Estate over which the present Minerals Council was delegated administrative authority pursuant to the Osage Constitution.[25] It must be noted, however, that the federal trust responsibility over the Mineral Estate did not end with enactment

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[22] 1906 Act, 34 Stat. at 540.

[23] The 1984 Amendments to the 1906 Act define "headright" as "any right of any person to share in any royalties, rents, sales, or bonuses arising from the Osage mineral estate." 98 Stat. 3163.

[24] 2004 Act, §1(b)(1), 118 Stat. at 2609.

[25] OSAGE CONST., art. 15, § 3.

of the 2004 Act. It remains in trust for the benefit of the Osage Nation, and the right of shareholders to the income derived from the Mineral Estate must be protected pursuant to both the 2004 Act and the Constitution of the Osage Nation.

Key language in 1906 Act states: "[T]he oil, gas, coal, or other minerals covered by the lands for the selection and division of which provision is herein made *are hereby reserved to the Osage tribe* . . . ."[26] The 1929 Amendments also reference the 1906 Act, "which reserves to *the Osage Tribe* the oil, gas, coal, or other minerals, covered by the lands for the selection and division of which provision is made in that Act is hereby amended so that the oil, gas, coal, or other minerals, covered by said lands are reserved *to the Osage Tribe*."

The 1984 Amendments define the Osage Mineral Estate as "any right, title, or interest in any oil, gas, coal, or other mineral held by the United States in trust for the benefit of the *Osage Indian Tribe.*"[27] The language is clear that the Osage Tribe is the beneficial owner of the Mineral Estate. The 2004 Act clarified that the Osage people have the right to make and form their own government, thereby creating a pathway for governmental reorganization under a new constitution.[28] In the process of reorganization the Osage people re-asserted their identity as the Osage Nation.[29] Accordingly, the 2004 Act does not create a new entity: the Osage Tribe and the Osage Nation are the same people now operating under a governmental structure of their own

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[26] *Id.* at 543. (emphasis added.)

[27] 1984 Amendments, 98 Stat. 3163. (emphasis added.)

[28] *Tillman, et al. v. Acting Eastern Oklahoma Regional Dir., Bureau of Indian Affairs*, 60 IBIA 143, 150 n. 11 (2015)

[29] The Secretary of the Interior publishes an annual list of federally-recognized Indian tribes pursuant to 25 U.S.C. § 479a-1. In this publication, the Osage Nation is listed as "The Osage Nation (previously listed as the Osage Tribe)". *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 81 Fed. Reg. 5019, 5023 (January 29, 2016). The "Osage Tribe" has not been used to identify the Osage Nation since 2008. *See, e.g.,* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 73 Fed. Reg. 18553, 18555 (April 4, 2008) ("Osage Nation, Oklahoma (formerly the Osage Tribe)"); 77 Fed. Reg. 47868, 47871 (August 10, 2012) ("The Osage Nation (previously listed as the Osage Tribe").

choosing. An Indian tribe recognized by federal law is not created or destroyed merely because of a change of name or the restructuring of its government. [30]

C. Rights of Mineral Estate Shareholders

The 1906 Act and its amendments are equally clear that royalties from the Mineral Estate are beneficially owned by individual shareholders. "[R]oyalty received from oil, gas, coal, and other mineral leases upon the lands for which selection and division are herein provided . . . shall be placed in the Treasury of the United States to the credit of *the members of the Osage tribe of Indians* as other moneys of said tribe are to be deposited under the provisions of this act, and the same shall be distributed to the *individual members of said Osage tribe according to the roll provided for herein.*"[31] The 1929 Amendment added "all royalties and bonuses arising [from the Mineral Estate] shall belong to the Osage Tribe of Indians, and shall be disbursed *to members of the Osage Tribe* or their heirs or assigns as now provided by law . . . ."[32]

Under the 1906 Act, royalties were to be paid to the individuals on the roll adopted pursuant to the 1906 Act, and as those royalties were passed down from generation to generation or otherwise transferred (however dubious those transfers may have been pre-1978) as set forth under federal law, they became the property of the recipients. These current headright holders possess an interest in the *royalties* generated by the Osage Mineral Estate, but not the Osage Mineral Estate itself.

To better understand the protection afforded the shareholders under the 2004 Act, we turn to the nature of the headright itself. A headright is defined as "any right of any person to share

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[30] *The Osage Tribe of Indians of Okla. v. United States*, 81 Fed. Cl. 340, 345-346 (2008) ("[A] tribe is not a static group. Its existence is preserved by new generations succeeding to membership. Though the membership changes, the tribe is potentially forever.")

[31] *Id.* at 544. (emphasis added.)

[32] Act of March 2, 1929, 45 Stat. 1478.

in any royalties, rents, sales, or bonuses arising from the Osage mineral estate."[33] In *West v. Oklahoma Tax Comm'n*, the United States Supreme Court stated that the subject decedent "had a vested interest in his Osage headright,"[34] presumably because if the trust expires, the headright share becomes the sole property of the shareholder.[35] Headrights have unique features: they cannot be alienated except under specific conditions;[36] they cannot be used as security for borrowing;[37] they cannot be taxed by state or local entities;[38] they cannot be passed to a trustee in bankruptcy;[39] they cannot be devised to non-Osages except as a life estate;[40] and, if a non-Osage inherits a headright share, the headright vests in the Osage Nation and the Nation must compensate the non-Osage its fair market value.[41] It is also likely that, because a non-Osage shareholder is entitled to the fair market value of his headright share when the headright reverts back to the Nation, headrights are compensable under the Fifth Amendment of the United States Constitution, which requires the government to provide "just compensation" when it takes private property and converts it into public use. Headrights, therefore, have some characteristics of a corporate share and a traditional property interest, but cannot easily be classified as either.

Shareholders' interests in the "royalties, rents, sales and bonuses" of the Osage Mineral Estate have several layers of protection. First, as a matter of law, the United States has a continuing fiduciary responsibility to the tribal trust fund[42] and to ensure that no laws or

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[33] 1984 Amendments, 98 Stat. 3163
[34] 334 U.S. 717, 727 (1948)
[35] 1906 Act, 34 Stat. at 545.
[36] 1978 Amendments, 92 Stat. at 1663.
[37] Act of February 27, 1925, 43 Stat. 1008; *Taylor v. Jones*, 51 F.2d 892, 893 (10th Cir. 1931).
[38] *Id.* at 893.
[39] *Taylor v. Tayrien*, 51 F.2d 884 (10th Cir. 1948).
[40] 1978 Amendments, 92 Stat. at 1663.
[41] *Id.*
[42] *Osage Nation v. United States*, 57 Fed. Cl. 392, 395 (2003).

regulations—federal, state, local or tribal—interfere with shareholders' rights in monies generated by the Osage Mineral Estate. That fiduciary duty also extends to enforcement of the 2004 Act's proviso that the interests of Osage shareholders are not to be diminished by any acts or omissions of the Osage Nation.

Second, federal law prohibits the Osage Nation from engaging in governmental activities that diminish shareholder rights. Whether or not the Osage Nation's acts or omissions result in diminishment must be examined on a case-by-case basis.

Third, as the agency responsible for management of the Osage Mineral Estate, the OMC has a fiduciary obligation to administer the Mineral Estate in a manner that benefits the shareholders. Common law notions of fiduciary obligations include the duty of care, duty of loyalty, duty of disclosure, and duty of good faith and fair dealings. The shareholders have the ability to elect OMC members, and—because the OMC is within the Osage Nation—the various remedies set forth in the Constitution are available to shareholders.

In sum, the right of Headright shareholders to income from mineral royalties are protected by the Fifth Amendment of the U.S. Constitution, federal statutory and case law, and the Constitution and laws of the Osage Nation.

D. <u>Reorganization under the 2004 Act</u>

Shortly after passage of the Reaffirmation Act, the Osage Tribal Council created an Osage Government Reform Commission to "establish a government that reflects the will of the Osage People."[43] By referendum on November 19, 2005, the tribal franchise was expanded to

[43] See *Tillman,* 60 IBIA at 148 (citing OTC Resolution No. 31-1032 (Feb. 25, 2005)).

"all adult tribal members," regardless of headright ownership, for future elections, including the pending referendum on the proposed Osage Constitution.[44]

A major issue with which the Reform Committee grappled, and one of the most contentious, was how to incorporate the administration of the Minerals Estate into the Constitution.[45] While many Osages who were disenfranchised by operation of the terms of the 1906 Act supported reform, a vocal group of shareholders opposed the government reform effort largely due to concerns that such reform would produce harm to the Minerals Estate and their interests therein.[46] Some such shareholders advocated for a bicameral form of government with two councils, one, elected by shareholders to administer the Minerals Estate and one elected by all Osages to handle all other matters.[47] At the end of the day, however, this notion of a bicameral system of government was rejected in favor of the three branch system of government set forth in the Nation's Constitution.

With this history in mind, we now turn to Appellants' arguments regarding whether they are subject to the Osage Constitution and the Osage Nation law in violation of the 1906 Act, as amended.

IV. ANALYSIS

A. The Osage Nation Trial Court Has Subject Matter and Personal Jurisdiction

We begin by examining the threshold question of the Trial Court's personal and subject matter jurisdiction over this case because if it is lacking, we need proceed no further.[48] The

[44] *Id.*
[45] Dennison, *supra* n. 13 at 32.
[46] *Id.*
[47] *Id.*
[48] Both parties in their briefs stipulate to the jurisdiction of the Osage Nation Supreme Court, thus discussion of the Court's jurisdiction is omitted, though affirmatively acknowledged.

obvious starting point for such jurisdictional analysis is the text of the Constitution of the Osage Nation.

The first constitutional provision pertaining to the Nation's jurisdiction is set forth in Article II, which provides:

> The jurisdiction of the Osage Nation shall extend over all persons, subjects, property, and over all activities that occur within the territory of the Osage Nation and over all Osage citizens, subjects, property, and activities outside such territory affecting the rights and laws of the Osage Nation.[49]

This broad statement of jurisdiction extends to the Nation as a whole, and is written in unequivocal language that includes both territorial and extra-territorial components with regard to both personal and subject matter jurisdiction as well as jurisdiction in relation to property and activities. Article II, section 2, thus identifies the full reach of the Congress' authority to enact, the Executive's authority to enforce, and the Judicial Branch's power to interpret the law of the Osage Nation and adjudicate disputes arising under it. To the extent the OMC argues it does not fall under the personal jurisdiction of the Osage Nation, we reject that argument as an absurd result: nothing in Article II or any other provision of the Constitution exempts the OMC from the Osage Nation's jurisdiction.

The subject matter jurisdiction of the Nation's judicial branch is more specifically set forth in Article III, which provides:

> The Judicial powers of the Osage Nation are hereby vested in one Supreme Court, in a lower Trial Court and in such inferior Courts as the Osage Nation Congress may ordain and establish for the development, maintenance, and administration of the Tribal Justice System. The Judicial Branch shall be responsible for interpreting the laws of the Osage Nation and its powers will include, but not necessarily be limited to, the trial and adjudication of certain civil and criminal

[49] OSAGE CONST., art. II, § 2.

> matters, the redress of grievances, the resolution of disputes and judicial review of certain holdings and decisions of administrative agencies and of the Trial Court.[50]

With regard to the jurisdiction of the Trial Court, the Constitution provides that:

> The Trial Court shall have original jurisdiction, not otherwise reserved to the Supreme Court, over all cases and controversies arising under the Constitution, laws, customs, and traditions of the Osage Nation. Any such case or controversy arising within the jurisdiction of the Osage Nation shall be filed in the Trial Court before it is filed in any other court, unless otherwise provided in the Constitution.[51]

Additionally, Osage Nation law reiterates the language of the Constitution in relation to the Judicial Branch's broad subject matter jurisdiction, stating that the "jurisdiction of the Osage Nation Courts shall extend over all persons, subjects, property, and all activities that occur within the territory and over all Osage citizens, subjects, property and activities outside the territory affecting the rights and laws of the Osage Nation."[52]

The language of the above-stated provisions of the Constitution are neither vague nor ambiguous - rather it is clear, unequivocal, and not given to multiple interpretations. There is no question that as a matter of constitutional law, the supreme law of the Osage Nation, the Trial Court has jurisdiction to adjudicate cases and controversies arising under the statutory laws of the Osage Nation whether civil or criminal in nature.

1. The Osage Nation Courts Have Subject Matter Jurisdiction under the Declaratory Judgments Act.

It appears, however, that the OMC's challenge to the Trial Court's jurisdiction is more nuanced, turning on the fact that the Nation filed the case as a civil complaint based on the subject OMC's members' noncompliance with the gift reporting requirements of the ONEL, but

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[50] *Id.* art. VIII, § 1.
[51] *Id.* at art. VIII, § 5.
[52] ONCA 15-09, amending 5 ONC § 1-105(A).

pled it as being in the nature of a declaratory judgment and requesting declaratory relief. We further note that the Nation candidly conceded at oral argument that, in fact, it was the Nation's intent to secure a ruling on the applicability of the ONEL to the OMC and its members. Appellants contend that under the Nation's Declaratory Judgments Act (DJA), the Trial Court only possesses subject matter jurisdiction under the DJA in the presence of an actual controversy and should have dismissed the complaint because no actual controversy was before it.

We first note that the DJA, in fact, in cases of actual controversy, does extend to the Trial Court jurisdiction to determine rights, status, or other legal relations, including the construction or validity of any statute, among other things.[53] The question, thus, is twofold: first, whether the complaint contained sufficient information to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests,"[54] sufficient to survive a 12(b)(6) motion;[55] and second, whether an actual controversy was before the court.

Borrowing from legal authority interpreting the Federal Rules of Civil Procedure, which Osage law incorporates by reference, we note that to survive a motion to dismiss for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face."[56] This means that a plaintiff's factual allegations "must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."[57] "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are therefore

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[53] *Id.*

[54] *See Conley v. Gibson*, 355 U.S. 41, 47 (1957) (abrogated on other grounds by *Bell Atlantic Corp. v. Twomley*, 550 U.S. 544 (2007).)

[55] *See Bell Atlantic*, 550 U.S. 544 (2007).

[56] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic,* 550 U.S. at 570.)

[57] *Twombly*, 550 U.S. at 555–56 (citations omitted).

insufficient to withstand a motion to dismiss.[58] However, a complaint need only contain "a short and plain statement of the claim" to give the defendant fair notice of the claim and the grounds upon which it rests.[59] A motion to dismiss under Rule 12(b)(6) does not test a plaintiff's ultimate likelihood of success on the merits; rather, it tests whether a plaintiff has properly stated a claim.[60]

In reviewing the complaint in the instant matter, we note that it recites a number of facts to support its prayer for relief in the form of a declaratory judgment that the ONEL applies to members of the Minerals Council. The facts averred in the complaint include a statement that: 1) the subject OMC members did not file the requisite affidavits under the ONEL; 2) that the Office of the Attorney General sent a notice to the members of the OMC advising each member of the requirement for the filing of an affidavit; and 3) as of the date of the filing the five subject OMC members had not filed the requisite affidavits. Additionally, the complaint not only cites to the ONEL, but also quotes the specific language from the statute. It further contains averments concerning the applicability of the ONEL to members of the OMC and the meaning of the term "governmental body" as that term is defined.

It might perhaps have been technically cleaner had the Attorney General simply brought the claim as a civil enforcement action against the five subject OMC members pursuant to Section 4 of the ONEL, which provides for sanctions and penalties for statutory non-compliance. Had the Nation proceeded directly, however, the same issues would have been presented, the same defenses would likely have been asserted, and substantially the same processes would have been followed, though perhaps styled somewhat differently. The most significant difference

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[58] *Iqbal*, 556 U.S. at 678.

[59] Fed. R. Civ. Proc. 8(a)(2); *accord Erickson v. Pardus*, 551 U.S. 89, 93 (2007).

[60] *See Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (abrogated on other grounds by 457 U.S. 800 (1982).

would have been that the five subject OMC members would have been formally charged with ethics violations and would have been facing potentially serious penalties and sanctions if found culpable, including the possibility of a civil fine assessment, a removal proceeding, and possible disqualification from elective office in the Nation as well as potential damage to each members' reputation and standing in the community. We do not know whether the Attorney General's Office had these potential ramifications in mind when it chose to proceed in the manner that it did, but the applicability of the ONEL to OMC members is a threshold question warranting strong consideration prior to the initiation of a civil enforcement action against elected officials of the Nation.

Regardless, the complaint, in fact, provides a sufficient factual basis, accepted as true, to state a claim to relief that is plausible on its face - in this case a declaration that the ONEL applies or does not apply to members of the OMC. The fact, which we accept as true for purposes of this analysis,[61] that the five subject OMC members not only failed to comply with the ONEL reporting requirement after being given notice by the Nation represents an act of omission sufficient to evidence the presence of an actual controversy, which, in turn, is sufficient to confer subject matter jurisdiction on the Trial Court under the DJA. We, thus, reject Appellants' contention that that no actual controversy was before the Trial Court.

2. The Osage Nation Courts Possess Personal Jurisdiction over the Appellants.

Having confirmed that subject matter jurisdiction in this case lay properly in the Trial Court, we turn now to the question of its personal jurisdiction in relation to the OMC members. In challenging the Trial Court's personal jurisdiction, Appellants assert that the OMC is not a

[61] A court considering such a motion presumes that the complaint's factual allegations are true and construes them liberally in the plaintiff's favor. See, e.g., *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 131, 135 (D.D.C.2000).

"governmental body" within the meaning of the ONEL and, therefore, the ONEL is unenforceable against its members. For the reasons stated below, we reject that argument and hold that the OMC is a "governmental body" and its members are "officials" subject to the ONEL. Accordingly, the Osage Nation Courts possess personal jurisdiction over the Appellants.

The Constitution provides for the creation of a minerals management agency – the Osage Minerals Council – and provides that its members will be elected by shareholders in the Mineral Estate. Rather than designating the OMC as a fourth branch of the Nation's government, the Constitution designates the OMC as "an independent agency within the Osage Nation established for the sole purpose of continuing its previous duties to administer and develop the Osage Minerals Estate in accordance with the Osage Allotment Act of 1906, as amended, with no legislative authority for the Osage Nation government."[62] We interpret this latter phrase as intended to clarify the subordinate status of the OMC by specifically repudiating any notion that it possesses legislative powers that might conflict with or usurp the legislative powers vested in the Nation's Legislative Branch, specifically that of the Osage Nation Congress.

Appellants' theories in the instant case sound in the context of this clash of ideas surrounding the Nation's government reform initiative and the present day status of the OMC vis-à-vis the Nation. The notion that the OMC is somehow separate and apart from the Nation or that it has some quasi-federal status shielding its members from the reach of the Nation's laws, however, contravenes the plain, unequivocal language of the Constitution ***creating*** the OMC as an independent agency ***within*** the Osage Nation. Although as a matter of constitutional law, the OMC has been delegated certain functions and duties in relation to the administration of the

[62] OSAGE CONST. Art. XV § 4.

Nation's Mineral Estate, it has no existence, power, or authority outside of the context of the constitutional framework of the Osage Nation.

We reject Appellants' contention that the OMC is not properly characterized a governmental body because such characterization offends the 1906 Act. As previously noted, it is the Constitution of the Osage Nation, not the 1906 Act, which creates the OMC and defines it as an independent minerals management agency of the Nation. It is the Constitution that delegates the OMC its authority for the administration and control of the Mineral Estate and sets forth its functions, which include the approval of leases, promulgation of rules and regulations, and the responsibility to protect the shareholders' right to income from mineral royalties.[63]

As discussed above, the OMC is not a direct successor to the Osage Tribal Council established by the 1906 Act: that form of government ceased to exist upon the ratification of the Osage Constitution following a reform effort specifically authorized by the Congress of the United States.[64] The argument that the OMC is a direct successor in interest to the Osage Tribal Council is unequivocally contradicted by the fact that the Constitution provides that the Tribe "shall hereafter be referred to as The Osage Nation, formerly known as the Osage Tribe of Indians of Oklahoma,"[65] making clear that it is the Nation not the OMC that succeeds the Osage Tribal Council as the form of government of the Osage People.

Appellants also conveniently omit the concerted effort the 31st Osage Tribal Council itself exercised to transition to a self-determined form of government. The 31st Osage Tribal Council certified the adoption of the Osage Nation Constitution and declared it to be the "the

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[63] *Id.*
[64] *Tillman,* 60 IBIA at 152 (affirming the 2004 act "removed the 1906 Act's requisite governmental form").
[65] OSAGE CONST. art. I.

fundamental law of the newly named Osage Nation."[66] Appellants' assertion that the Osage Tribe is a separate legal entity from the Osage Nation fails to recognize the Osage Tribal Council's role in facilitating the Nation's reorganization under the 2006 Constitution and its efforts to transition from a federally-prescribed government to the form adopted by the Osage People. Appellants' steadfast adherence to a form of government unilaterally forced upon the Nation against its will by the federal government is not supported by law or fact.[67]

The Interior Board of Indian Appeals (IBIA) soundly rejected the argument that "in enacting the [2004 Act], Congress intended only to authorize the Osage Tribe to establish a tribal government for matters not involving the mineral estate, and intended to preserve the form of government for the mineral estate prescribed by § 9 of the 1906 Act."[68] Instead, the IBIA held that Congress "did not exclude the mineral estate from the authority prescribed for the Osage Tribe by the 1906 Act." As a creature of constitutional rather than statutory law, there is no question that the OMC occupies an important place within the Nation's governmental structure

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[66] *Tillman,* 60 IBIA at 148 (citing Osage Tribal Council Resolution 31-1531 (March 15, 2006)); *see also* OSAGE CONST. Art. XXIV § 2 (Certificate of Adoption).

[67] Appellants' position perpetuates the long-held belief that Osages without headrights "have irreparable conflicts of interest with the Shareholders when it comes to the administration of the Mineral Estate—both groups stand to gain more from keeping control of Minerals Estate away from the other." *Letter from William Grimm to Michael Black* at 5 (April 28, 2010). We remind Appellants that the most egregious offenses against Osage headright holders, which resulted in the deaths of entire generations of Osages and in the historical trauma we experience to this day—were committed by non-Indian business men and non-Indian "guardians." Non-Indian spouses and in-laws continued to obtain Osage headrights until the 1906 Act was amended in 1978—72 years later—to clarify how headrights are transferred whether by bequest or sale. *See* Act of October 21, 1978, sec. 5(b)(7), 92 Stat. 1660. In the 1980s, a report issued by a Department of Interior commission raised significant problems with federal management of mineral royalties. Linowes Commission, *Fiscal Accountability of the Nation's Energy Resources* (Jan. 1982). In 2014, the Office of the Inspector General issued a report citing continued problems with managing the Mineral Estate that led to lower royalties to headright holders. *Office of the Inspector General*, Report No. CR-EV-BIA-0002-2013 (Oct. 2014). The mistrust and skepticism by Osage headright holders is well-earned, though misdirected. It is not Osages without headrights that have caused the greatest losses to the Mineral Estate and its shareholders.

[68] *Tillman,* 60 IBIA at 153.

to which considerable deference must be accorded, but its place is within the Nation not outside of it.

B. The ONEL Can Be Enforced Against OMC Members

Pursuant to the 2004 Act and at considerable effort, expense and the assistance of the federal government, in 2006 the Osage People ratified the present Osage Nation Constitution and created the governmental structure that exists today. Under its auspices, the Osage Nation Congress enacted the Ethics Law and the Attorney General asserts that that law is applicable to the OMC though the Appellants disagree.

In making their case for reversal, Appellants do not cite to this Court any specific federal statute that expressly prohibits the action of the Osage Nation in requiring compliance with the Ethics Law. At the outset, Appellants assert that the Ethics Act does not apply to them because they are an independent agency.[69] While it is true the OMC is defined in the Osage Constitution as an independent agency,[70] the fact that an agency within a government is defined as "independent" does not mean that the agency is not bound by the generally applicable laws of the government of which it is a part. "Independent" is not synonymous with "unaccountable," as Appellants would appear to define the status of the OMC in its relation to the Osage Nation.

Article X of the Constitution sets forth a Code of Ethics. Section 10 specifically mandates the Osage Nation Congress to enact provisions for violations of Article X, which by virtue of Section 1, extends to all elected or appointed tribal officials and employees of the Nation, including Independent Boards and Commissions as well as all political sub-divisions. Nothing in Article X suggests that the OMC and its members are in any way exempt from its

[69] App. Br. at 2.
[70] OSAGE CONST., art. XV § 4 par. 3.

reach. Pursuant to its mandate under Article X, Section 10, the Osage Congress enacted the ONEL to provide sanctions for a breach thereof. The ONEL further provides a disclosure requirement through which elected and appointed tribal officials are to file sworn affidavits disclosing gifts received during the previous fiscal year and the value of such gift.[71]

Appellants contend that the Article XV Ethics Code and subsequent ONEL do not reach them. We disagree. In the section titled "Declaration of Rights," the Constitution provides that "[t]he Osage Nation Government shall not create any law or ordinance pertaining to the mineral royalties from the Osage Mineral Estate that acts in conflict with Federal law and regulations." This is a constitutional constraint on the power of the Osage Congress to enact laws pertaining to mineral royalties from the Mineral Estate or to enact laws inconsistent with applicable federal laws and regulations, but it does not otherwise the constrain the legislative power of the Congress.

Laws of general applicability to Osage Nation elected and appointed officials, consistent with the provisions of the Constitution and pertinent federal laws and regulations are well within the authority of the Congress, which as we have previously discussed, is also responsible for the protection of the Osage Mineral Estate. The power of the Congress to enact an ethics law is without question and its power to extend the reach of the statute to the OMC is consistent with the status of OMC members as elected officials of the Nation. In fact, it is arguable that failure to extend the reach of the ONEL to the OMC would constitute an abdication of the Congress' duty to protect the Osage Minerals Estate.

[71] We presume without holding, as the issue is not presently before us, that the disclosure requirement pertains to gifts given tribal officials in their capacity as tribal officials or in the course of their official duties.

On the other hand, we reject Paragraph 7 of the Trial Court's Journal Entry of Judgment, which holds that "the Constitution states the Nation cannot interfere with the minerals owners but can establish rules on how the Osage Minerals Council is to operate." Obviously, the Nation cannot interfere with the *rights* of shareholders to the income from the Osage Mineral Estate, but the Trial Court's finding that the Nation can dictate "how the Osage Minerals Council is to operate" goes too far. Osage Constitution Art. XV, Sec. 4, Para. 3, states "[A]s an independent agency within the Osage Nation, the Osage Minerals Council may promulgate its own rules and regulations as long as such rules and regulations are not inconsistent with the laws neither of the Osage Nation nor with the rules and regulations established by the United States Congress in the 1906 Allotment Act."

It is thus clear that Article XV confers upon the OMC the authority to administer the Mineral Estate pursuant to its own rules and regulations. The Constitution does not confer upon the Congress an overlapping or overriding authority to perform the same duty. While we find that Congress does have the authority to extend laws of general applicability to the OMC and its members, we find no similar authority for the Congress to "establish rules on how the Osage Minerals Council is to operate." Accordingly, we reverse Paragraph 7 of the Journal Entry of Judgment as unconstitutional.

To be clear, we hold that Congress possesses the authority to both promulgate and extend the provisions of the ONEL to members of the OMC by virtue of Article X, Section 2 of the Constitution. In fact, Article X, Section 10 compels the Congress to enact legislation implementing Article X. Accordingly, we find nothing improper in Congress' decision to include within the ONEL a definition of "governmental body" which includes "any branch, entity, enterprise, authority, division, department, office, commission, council, board, bureau,

committee, legislative body, agency, and task force of the Executive Branch, including the Osage Nation Minerals Council, Legislative Branch, or Judicial Branch of the Osage Nation."[72] That the OMC is not *the* governing body of the Osage Nation does not make it any less of a governing body for purposes of compliance with the ONEL.

We, therefore, reject Appellants' assertions that enforcement of the ONEL against them conflicts with federal law and regulations as well as the Nation's Constitution.

C. The 2004 Amendments do not prohibit the Osage Nation government from adopting a form of government different than the 1906 Osage Tribal Council mandate

The responsibility for protecting the shareholders' right to income from mineral royalties is not exclusive to the OMC: the protection of the shareholders' right to income from mineral royalties extends to the Nation as whole by operation of both federal law pursuant to the Reaffirmation Act and the Constitution. Such responsibility, thus, likewise extends to each Branch of government of the Osage Nation. While the inclusion of provisions for the establishment of the OMC within the Constitution is obviously intended as a means to protect the shareholders' right to income from mineral royalties, a plain reading of the Constitution makes it equally obvious that the OMC exists as an independent agency within the Osage Nation.

The argument that the OMC is cloaked with the imprimatur of federal law and, thus, occupies a position outside of the Osage Nation, cannot stand as a matter of law in the wake of the Reaffirmation Act, which specifically repealed Article 9 of the 1906 Act and reaffirmed the right of the Osage People to make and form their own government.[73] The advocacy of such proposition merely serves to perpetuate the conflict arising from the effect of the 1906 Act of dividing the Osage Nation into two groups: one of haves and one of have-nots and depriving the

[72] 15 ONC § 6-103(O).
[73] 2004 Act §1(b)(2), 118 Stat. 2609.

"have-nots" of any participation in Osage political affairs. This rift colored and clouded the social and political affairs of the Osage since enactment of the 1906 Act, which perpetrated a great injustice by depriving the Osage Nation of its inherent sovereignty and right of self-determination. Moreover, this aspect of the 1906 Act is an anomaly in the context of modern federal Indian policy, hearkening to a darker era when federal Indian policy was being crafted as a means to destroy tribal governments and assimilate tribal members.[74]

In fact, in 1997, the Federal Court of Appeals for the Tenth Circuit in a dispute brought by non-shareholders, confirmed the holding in an earlier suit that the 1906 Act operated to remove from the Osage the right to make and form its own government.[75] In 2010, the Tenth Circuit, again construing the 1906 Act, determined that it effected the disestablishment of the Osage Reservation.[76]

By the turn of the 21st Century, the disenfranchisement of a significant majority of the Osage people coupled with the potentially dire legal implications as to the continued status of the Osage Tribe upon the death of the last Osage allottee,[77] prompted determined political action to rectify the situation and restore to the Osage people the right of self-determination.

To resolve this political discrepancy, the United States Congress enacted the Osage Reaffirmation Act in 2004, clarifying and reaffirming the inherent right of the Osage Nation to make and form its own government and determine its own membership.[78] Section 1(b)(1) of the

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[74] See Alex Skibine, *The Cautionary Tale of the Osage Indian Nation Attempt to Survive Its Wealth*, 9-SUM Kan. J.L. & Pub. Pol'y 815 n. 2 (2000).

[75] *Fletcher v. United States*, 116 F.3d 1315 (10th Cir. 1997) (citing *Logan*, 640 F.2d 269 (10th Cir. 1981)).

[76] *Osage Nation v. Irby*, 597 F.3d 1117 (10th Cir. 2010).

[77] *See* Skibine, *supra* n. 75 at 819-820.

[78] 2004 Act, §1(b)(2), 118 Stat. at 2609.

Reaffirmation Act pertains to Osage membership and addresses three crucial issues. First, it clarifies Section 1 of the 1906 Allotment Act by redefining legal membership:

> Congress hereby clarifies that the term 'legal membership' in section 1 of the [1906 Act] means the persons eligible for allotments of Osage Reservation lands and a [] share of the Osage mineral estate as provided in that Act, *not membership in the Osage Tribe for all purposes*. (emphasis added).

This language operates to clarify that Section 1 of the 1906 Act was not intended to define Osage membership for all purposes, but rather to identify those persons who were eligible to receive allottments and a headright share. Under the Osage Constitution, descendants of these original allottees are eligible for membership in the Nation whether or not they possess a headright share, but the Constitution restricts voting for OMC members to headright shareholders. The 1906 roll thus remains important for purposes of determining who was eligible to receive a share of the mineral estate and, by virtue of the Constitution, in determining who is eligible for membership in the Nation, but not as a means for restricting the Nation's membership only to headright shareholders.

Next, Section 1 "reaffirms the inherent sovereign right of the Osage Tribe to determine its own membership," a fundamental right enjoyed by every other federally-recognized Indian tribe in the United States and one confirmed by the United States Supreme Court.[79] Cognizant of the concerns of Osage shareholders, Section 1 further provides that their shares in the Osage mineral estate will not be diminished. The Osage Constitution was drafted in careful alignment with this provision of the Reaffirmation Act.

[79] *See generally*, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *United States v. Wheeler*, 435 U.S. 313 (1978); *Williams v. Lee*, 358 U.S. 217 (1959).

Finally, as its name illustrates, the Reaffirmation Act reaffirms the inherent sovereign right of the Osage Tribe to determine its own form of government:

> Notwithstanding section 9 of the Act entitled, ''An Act for the division of lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes'', approved June 28, 1906 (34 Stat. 539), Congress hereby reaffirms the inherent sovereign right of the Osage Tribe to determine its own form of government.[80]

Statutory phrases that begin with the term "notwithstanding" signal congressional awareness of existing statutory framework and a corresponding determination on the part of Congress to alter that existing statutory framework.[81] Congress was well aware of the provisions of the 1906 Act and the injustices associated with it. Congress enacted the Reaffirmation Act to right a longstanding wrong and to reaffirm the inherent sovereignty of the Osage people. The most fundamental attribute of sovereignty is the right of a people to make and form their own government. This principle is reflected in the United States Constitution pursuant to the Indian Commerce Clause as interpreted by the U.S. Supreme Court from the early 19th Century.[82]

Appellants, citing to a report of the Congressional Research Service on trends in statutory construction,[83] ask this Court to ignore the clear intent of the United States Congress to repeal Section 9 of the 1906 Act, a provision that infringes upon the inherent rights enjoyed by all federally-recognized Indian tribes, and to restore the fundamental right of Osages to make and form their own government. We decline the invitation.

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[80] 2004 Act, §1(b)(2), 118 Stat. at 2609

[81] *See Shoshone Indian Tribe of the Wind River Reservation v. United States*, 51 Fed. Cl. 60 (2001), citing to *Ridgway*, (The statutory phrase "notwithstanding any other provision of law" appears to the court, as it does to plaintiffs, fully adequate to signal congressional awareness of the statutory framework, specifically 28 U.S.C. § 2501, and a corresponding determination on the part of Congress to preserve claims "notwithstanding" that framework.).

[82] U.S. CONST. Art. I, § 8; s*ee Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Talton v. Mayes*, 163 U.S. 376 (1896); *United States v. Wheeler*, 435 U.S. 313 (1978).

[83] CRS Report for Congress, Statutory Interpretation: General Principles and Recent Trends, pp. 35-36

D. The Osage Nation Constitution and the Osage Nation Ethics Law, as applied to the Osage Minerals Council and its members, do not diminish the rights of shareholders

Royalties from the Osage Mineral Estate are initially deposited into a tribal trust fund account where they stay for at least one quarter of a calendar year before being transferred to individual headright owners.[84] The funds distributed from the tribal trust fund are "net of a small portion retained for the Osage Tribal operations and a portion paid for the Oklahoma gross receipts tax."[85] For a shareholder's right to be diminished requires some intervening act between deposit into the tribal trust fund and distribution to the shareholder. Diminishment may occur when headright distributions are significantly less than their fair market value due to factors such as excessive salaries, contractual arrangements, fraud, waste, or some other activity that may or may not be in the shareholders' best interests. This requires more than speculation or conclusory allegations to assert a cause of action.

To the extent Appellants argue that Article XV violates the 2004 Act by diminishing the rights of shareholders, we hold that it does not. The creation and identification of an independent minerals management agency within the Osage Nation does not, in and of itself, diminish the rights of shareholders. Appellants have not provided anything beyond speculation to support its argument that shareholders' rights to "royalties, rents, sales, or bonuses arising from the Osage mineral estate" are diminished.

In essence, Appellants ask this Court to strike down as invalid Article XV of the Osage Constitution. Article XXI (Severability) provides "If any provision in the Osage Nation Constitution shall, in the future, be declared invalid or unconstitutional by the Osage Nation Judiciary, the invalid portions shall be severed and the remaining provisions shall remain in full

[84] *Osage Tribe,* 81 Fed. Cl. at 348.
[85] *Osage Nation*, 57 Fed. Cl. at 395.

force and effect." We decline to exercise that authority and hold that Article XV is consistent with both the 1906 Act and the other provisions of the Osage Constitution.

We similarly find that Appellants have failed to establish that shareholder rights are diminished because Appellants are required to comply with the ONEL. Appellants have not provided any evidence indicating the manner in which shareholders' rights to "royalties, rents, sales, or bonuses arising from the Osage mineral estate" were negatively impacted by the Attorney General's complaint or by their compliance with the ONEL. We note that paragraph 8 of the Trial Court's Judgment states "The Osage Minerals Council is not diminished by the Ethics Law." While technically true, the correct inquiry is whether shareholder rights are diminished, not whether the OMC as a body is diminished. To avoid confusion, we reverse as to paragraph 8 as well.

It is true that failure to comply with the ONEL could lead to an enforcement action and result in the sanctions set forth in the ONEL, but nothing in the law requires such sanctions to be borne by the shareholders. Even if an OMC member was removed from office, the shareholders choose the successor – not the Osage Congress and not the Principal Chief. Moreover, the purpose of an Ethics Law is to prevent corruption within the government; if the OMC were outside the scope of the Ethics Law, shareholders would have little recourse against a member of the OMC whose actions negatively impact their headright interests. Neither would the Nation have any means to carry out its responsibility to protect the interests of shareholders under Article XV, Section 4. Accordingly, we find that application of the ONEL to members of the OMC is consistent with the Nation's Constitution and does not conflict with any federal statutory law.

V. CONCLUSION

The Osage Minerals Council occupies an important position within the Nation and it has been granted as a matter of Constitutional law considerable authority and autonomy in relation to the administration and development of the Minerals Estate. Unlike its federal counterparts, the members of the OMC are elected by the shareholders, rather than appointed by a chief executive, subject to legislative confirmation. This alone affords significant protection of the OMC's independence in the exercise of its constitutionally delegated authority. Agency independence, however, does not mean that the OMC is separate and apart from the Nation nor free of accountability. Neither is it outside the reach of the Nation's laws. No government official of the Osage Nation whether elected, appointed, or simply employed by the Nation is above the law or outside its reach.

This Court will not strike down the hard won effort of the Osage people to make and form their own government and determine its own membership nor will it adopt an interpretation that undermines the stated intent of the Congress to reaffirm these fundamental rights. The ultimate purpose of all these efforts was to unify the Osage Nation under one system of government, thereby righting a longstanding wrong.

For the foregoing reasons, we hold that the Osage Minerals Council is a governing body; Osage Mineral Council members are officials of the Osage Nation, and all are subject to the Osage Constitution and the Osage Nation Ethics Law. Accordingly, the Osage Nation Trial Court's grant of summary judgment was proper for the reasons we stated and is AFFIRMED in part and REVERSED in part as to paragraphs 7 and 8 in the Journal Entry of Judgment. This matter is remanded to the Osage Nation Trial Court to enter an order of judgment in accordance with the holdings set forth in this opinion and close this matter.

SO ORDERED on September 9, 2016.

/s/ Meredith D. Drent
Chief Justice

/s/ Elizabeth Lohah Homer
Associate Justice

/s/ N. Drew Pierce
Associate Justice