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**OPINIONS OF THE ATTORNEY GENERAL
OF THE OSAGE NATION
ONAG-2020-01¹**

QUESTION SUBMITTED BY: The Honorable Angela Pratt, Speaker of the Osage Nation Congress.

This Office has received your request for an Official Attorney General opinion regarding Congress's authority to remove disqualification from an official previously judged disqualified by Congress.

I. QUESTION AND SHORT ANSWER

Does the Osage Nation Congress have the power to remove the disqualification to hold office issued to John D. Red Eagle on January 21, 2014 by the 3rd Osage Nation Congress after a Motion for Removal and subsequent trial, effectively re-instating his eligibility to hold and enjoy any office of honor, trust or profit in the Osage Nation?

No, the Osage People did not grant the Osage Nation Congress such authority and instead reserved all sovereign powers not enumerated, including the power to remove a disqualification issued in a judgment pursuant to a removal trial, to themselves.

II. DISCUSSION

In writing this opinion, we are guided by the unique Osage value "to do one's best," and

¹ NOTICE: This opinion is subject to formal revision before official publication. Readers are requested to notify the Office of the Attorney General using the header information, or at AttorneyGeneralOffice@osagenation-nsn.gov, of any typographical or other formal errors, so that corrections may be made prior to official publication.

the fundamental values mandated by our Nation's Constitution, "Justice, Fairness, Compassion and Respect for and Protection of Child, Elder, All Fellow Beings, and Self." *Osage Const. pmb.* In interpreting the Osage Nation Constitution, "we must evaluate constitutional provisions 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 the context to avoid absurd or inconsistent results." *Red Corn v. Red Eagle*, SPC-2013-01, p. 4.

The Declaration of Rights establishes "all government of right originates with the Osage People, is founded upon their will only, and is instituted solely for the whole of the good." *Osage Const.* at Art. IV, Section 1. The Constitution's Oath of Office requires all elected officials to swear (or affirm) to "always place the interest of all Osages above any special or personal interests." *Id.* at Art. IX. The Oath of Office also requires elected officials to "always uphold and defend the Constitution." *Id.* The Constitution must be construed in terms of community, not individualism. *Standing Bear v. Whitehorn*, SCO-2015-01 at 6 (2015). And, Congress is required to address issues in a manner that benefits the Nation as a whole. *Id.* The Osages emphasized the long-term survival of the group and not the survival of individuals in their own right. Frances La Fleshe, *The Osage and the Invisible World: From the Works of Frances La Fleshe*, 34 (Garrick Baily ed., 1995).

The Osage Nation system of government is one of checks and balances, ensuring a system of fairness where the political power is not concentrated in one particular branch. The enumerated powers in the Osage Nation Constitution allow one branch of government to check the actions of another, such as veto power and calling of special sessions. In addition to this inter-branch system of checks and balances, the Osage People function as a check on all branches of government, such as recall and referendum.

A. Removal Powers of Congress

The Osage Nation Congress is vested with the power to remove elected and appointed officials. *ON Const. Art. VI, § 18*. In conducting removal proceedings, Congress must comply with the provision of Article XII of the Osage Nation Constitution. *Id.* Article XII of the Constitution provides the grounds for removal and rules and procedures for removal. *ON Const. Art. XII*. Article XII also permits Congress to “prescribe additional rules and procedures that are necessary to implement the provisions of [Article XII]”. *Id.*

“Removal under Article XII of the Constitution is delegated exclusively to the Osage Nation Congress. Its removal power, however, is not boundless.” *Red Corn v. Red Eagle*, SPC-2013-01, p. 3. Congress’s powers of removal are expressly limited by the terms of the Constitution. Article XII expressly states that the judgment in a removal proceeding “*shall not extend further* than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit in the Osage Nation, but shall not prevent proceedings in the courts on the same or related charges” (emphasis added).

The power to withdraw, nullify, amend, or retract a judgment issued after a Motion for Removal, Select Committee of Inquiry, Removal Trial, and finding of guilt, is not expressly delegated to Congress by the Constitution in Article XII, nor is it necessary to implement the provisions of Article XII. “When the Constitution designates a remedy, whether directly, such as the recall process, or indirectly, such as by directing Congress to adopt a law, that remedy cannot be supplanted by another process by inference alone...” *Red Corn*, SPC-2013-01, p. 10. To infer Congress can undo a judgment on removal by another act of Congress is outside of the bounds of the Constitution and necessarily renders the Article XII removal process meaningless if it can be undone at the pleasure of Congress by a simple vote.

B. The People’s Reservation of Powers

All powers not enumerated in the Constitution, were consciously and expressly reserved

by and for the Osage People. See *ON Const. Art. XVIII*. The Osage People did not vest Congress with the Constitutional authority to revise or remove prior removal judgments. See generally *ON Const. Arts. VI and XII*. Necessarily then, that power rests with the Osage People. Forgiveness, if any is to be given, must flow directly from the Osage People.² Because the Constitutional provisions vesting Congress with the power to remove elected and appointed officials, and disqualify said officials from holding office, do not authorize Congress to later remove a disqualification, the Osage People have reserved the power to forgive to themselves.

III. CONCLUSION

It is, therefore, the official opinion of the Attorney General:

The Osage Nation Congress does not have the power to remove the disqualifications issued in the judgment after a Motion for Removal and a subsequent removal trial. The exclusive Congressional power for removal is limited by the Constitution to removal from office and disqualification to hold and enjoy any office of honor, trust or profit in the Osage Nation. It does not extend beyond those two provisions. The power to revise or modify a prior removal judgment to nullify the disqualification of an official was not invested in the Osage Nation Congress, and therefore, rests with the Osage People.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Clint Patterson', is written over a horizontal line.

Clint Patterson,
Attorney General

² While the Office of the Attorney General takes no position on to the appropriateness of forgiveness, or the precise method to accomplish it, the Office notes such forgiveness might be achieved through Constitutional Amendment, citizen referendum, or as otherwise permitted under the laws of the Osage Nation.