

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Horace Gary Wade, Jr., Samuel Mitchell Beck,)	
Michael Wayne Harris, Brandy Harris Wilson,)	C/A No: 0-98-2584-17
Geneva George Gunton, David Trent Troxel,)	
Fred Calvin George, Marcus E. Sanders,)	
Deborah Harris Crisco, E. Fred Sanders,)	
Heyward Jackson Canty, Jr., Rodrick Neil Beck,)	
F. William Harris, Thomas W. Triminal, Bob)	
Triminal, Clare Sanders Wilson, individually and)	
ex. rel. The Catawba Indian Nation)	ORDER ON CROSS MOTIONS
)	
)	FOR SUMMARY JUDGMENT
Plaintiffs,)	
v.)	
)	
Gilbert Blue, Evans M. George, Carson T. blue,)	
Claude Ayers, Dewey Adams, Foxx E. Ayers,)	
and Wanda George Warren.)	
)	[ENTERED October 11, 2000]
Defendants)	

For the reasons stated in the memorandum opinion filed on this date, this court grants in part and denies in part the cross motions for summary judgment filed in this action which seek, in relevant part, declaratory judgment as to the meaning of the Catawba Land Claims Settlement Act, which is codified at 25 U.S.C. § 945 *et. seq.* (“Federal Act”) and related injunctive relief.

While the court issues extensive declaratory relief as set forth below, the court declines to enter injunctive relief at this for the reasons discussed in the accompanying memorandum opinion. *See* Memorandum Opinion at 58-59. The denial of injunctive relief is without prejudice to a renewed motion as set forth in the conclusion to this order.

DECLARATORY RELIEF

This court issues the following declarations as to the proper interpretation of the Catawba Land Claims Settlement Act, 25 U.S.C. § 941 *et. seq.*

1. Statutory time frame for adoption of new tribal constitution. The plain language of the Federal Act requires that a draft constitution be distributed “[w]ithin 180 days *after the effective date*” of the statute and that an election be conducted between thirty and ninety days thereafter to adopt or reject the new constitution. 25 U.S.C. § 941 (g)(b) (emphasis added). There is no statutory basis for disregarding the plain language of this section in favor of an interpretation which would delay distribution of a draft constitution and vote thereon until after completion of the final base membership roll (“Roll”). *See generally* 25 U.S.C. § 941 e (requirements for preparation of base membership roll).

While the Secretary of the Interior is vested with authority to extend certain internal deadlines relating to distribution of a draft constitution (25 U.S.C. § 941 (g)(e)), his authority does not allow any extension which would delay the date for adoption of a new constitution beyond the outside time limit of two years set by 25 U.S.C. § 941 f(a). Any extension of time by the Secretary beyond two years was, therefore, improper. Further, any extension based on an interpretation of the Federal Act to require completion of the Roll before a vote could be taken on the draft constitution was also improper because it disregarded the plain language of the statute without any compelling basis for doing so. In any case, the Secretary of the Interior has disavowed interpretive authority as to this section of the statute. There is, therefore, no reason to delay adoption of a new constitution based on any interpretation previously offered by the Secretary of the Interior.

No other argument has been preferred which would justify ignoring the plain language of the statute. Thus, a draft constitution should be distributed within 180 days of the effective date of the state and an initial vote should have been taken within thirty to ninety days thereafter. 25 U.S.C. § 941 g(b).

As discussed below, however, serious questions exist as to the possible “hold over” status of those persons now “serving” as members of the Executive Committee *infra* § 4. Because any order to immediately distribute a draft of a new constitution would be directed to persons whose authority to prepare the draft is subject to challenge, the court will not order such relief at this time, allowing a short period of time to resolve any problems relating to the authority and composition of the Executive Committee.

2. Who may vote in elections to adopt new constitution.

The definition of the term “Member” in the Federal Act (25 U.S.C. § 941 a(6)) determines, in part, who may vote in the election to adopt a new constitution. See 25 U.S.C. § 941 g(b). This definition uses the conjunction “or” envisioning that the person entitled to vote in any election to adopt a new constitution will be derived from the roll of “individuals who are currently members of the Tribe” if the vote is conducted before completion of the final base membership roll under 25 U.S.C. § 941 e. By contrast, the Members eligible to vote would derive from the list of “individuals who are enrolled in accordance with this subchapter [25 U.S.C. § 941]” if the new Roll is final at the time the vote is held. The “currently” in the first half of the definition necessarily refers to the roll as it existed on the date of the enactment of the Federal Act. The “existing” constitution reference in § 941 g(b) adds a minimum age to the voter requirement, regardless of which roll is used.

Therefore, while the constitution election should not be delayed to allow for a completion of the 25 U.S.C. § 941 e Roll, the status of the Roll is critical to determining who may vote in any election open to “Members” of the Tribe. Elections held before finalization of the Roll look to the tribal roll as it existed at the time of enactment of the Federal Act. Elections held after finalization of the Roll look to the new Roll as establishing who is a “Member”.

3. Completion of the Roll. The Secretary of the Interior had no authority to extend any deadlines relating to completion of the final base membership roll. That Roll was to be completed and final publication made within a year of enactment of the Federal Act. See 25 U.S.C. § 941 e. There is no statutory provision authorizing delay of any related deadline. Any delay was, therefore, in violation of the statute although the statute provide no express remedy for any delay.¹

4. Election of the Executive Committee Members. The Federal Act imposes an outside time limit on the terms of the Executive Committee, by requiring that an election be held within a specified time after a new

¹While the court notes that this statutory deadline has long since passed, the summary judgement motions do not seek any particular relief as to the delay. In any case, the present record suggests that there is no further action to be taken by any party to this litigation to advance the final [completion] of the roll.

constitution is adopted 25 U.S.C. § 941 g(d) (requiring elections of officers within 120 days after adoption of a new constitution) & § 941 f(b)(1) (“Until an election of tribal officers under the new constitution, the Executive Committee shall [hold specified powers and perform specified duties]”). Neither these nor any other provision of the Federal Act or any incorporated statutory document can, however, be read to set a *minimum* term.

Thus, the Federal act does nothing to extend the terms of office established by the tribal constitution. That constitution is expressly made controlling by the Federal Act. See 25 U.S.C. § 941 a(3) (defining Executive Committee as “the Tribe’s executive officers as selected by the Tribe in accordance with its constitution.”) & § 941 (f)(b)(1) (“Until the Tribe has adopted a constitution, the existing constitution shall remain in effect...”) The terms of these officers is, therefore, controlled by the tribal constitution.

While the Secretary of the Interior, through the Bureau of Indian Affairs (collectively “BIA”), previously provided letters which can be read to interpret the Federal Act to preclude interim elections, the BIA disavowed this interpretation of the relevant letters in its first brief in this action. The BIA subsequently disavowed any authority to address this issue in its second brief, in which the BIA now characterized the issue an “internal tribal affair”. This characterization comports with the conclusion of the tribal constitution, not the Federal Act, set the terms office of the current Executive Committee.

Therefore, neither the Federal Act nor any prior interpretation by the BIA may be relied on to modify the terms or composition of the Executive Committee. The terms of the office as set by the tribal constitution remain controlling. However, because a dispute exists as to whether the Tribe itself has modified the terms or composition of the Executive Committee as set forth in the tribal constitution, this court will defer ruling until the General Council has had an opportunity to address the issues and if necessary, brief the authority of *this court* (as opposed to the state courts) to enter injunctive relief and to interpret the tribal constitution. See 25 U.S.C. § 941 b(a)(2) and § 941 e (ratifying and confirming companion state legislation); S.C. Code Ann § 941 27-16-80 (Law Coop. Supp. 2000) (jurisdictional provisions of companion state legislation).

5. Powers of Executive Committee. The transitional government established by the Federal Act is grounded in the Tribe's constitution as it existed on the date of enactment of the Federal Act. 25 U.S.C. § 941 f (b) (“[u]ntil the Tribe has adopted a constitution, the existing tribal constitution shall remain in effect and the Executive Committee is recognized as the provisional and transitional governing body of the Tribe.”) The Act defines Executive Committee with reference to the constitution and also defines the “General Council” as the governing body of the Tribe.²

The Federal Act does provide the Executive Committee with limited additional powers beyond those found in the tribal constitution. These added powers generally relate either directly to implementation of the Federal Act or to the Tribe's interactions with the federal government. See 25 U.S.C. § 941 f(b) (“the Executive Committee shall “*represent the Tribe....in its implementation of this subchapter*; and ... [shall] have full *authority to enter into contracts, grant agreements and other arrangements with any Federal department or agency*; and[shall] have full authority to administer or operate any program under such contracts or agreements.” –emphasis added). These additional powers supercede any contrary limitation in the tribal constitution. In other respects, however, the tribal constitution controls.

Both the original (1975) version of the constitution and the proffered “amended” version filed by the defendants delegate only limited powers to the Executive Committee but provide other powers can be delegated by action of the General Council. There currently exist significant disputes as to which version of the constitution is the valid constitution, what powers the General Council has delegated to the Executive Committee, whether those General Council meetings which have been conducted were properly conducted, and whether the Executive Committee has improperly precluded the General Council from meeting. The latter two issues could call into question even the validity of the exercise of power delegated through votes taken during General Council

²“Executive Committee” is defined as “the body of the Tribe composed of the Tribe's executive officers as selected by the Tribe in accordance with its constitution. 25 U.S.C. § 941 a(3). “General Council” is defined as “the membership of the Tribe *convened as the Tribe's governing body* for the purpose of conducting tribal business pursuant to the Tribe's constitution. 25 U.S.C”. § 941 a(5) (emphasis added.)

meetings.³ The above referenced disputes as to interpretation of the tribal constitution and actions involving General Council meeting present disputes involving internal affairs of the Tribe as to which it is not clear whether this court as opposed to state court, has jurisdiction.

For reasons stated above, this court will not enter declaratory judgment at this time as to the exercise of any specific power by the Executive Committee. Nonetheless, the court will declare that the Executive Committee is an entity with only limited powers, those being the powers delegated to by the Tribe, through its constitution and valid actions of its General Council, and those powers which are expressly and specifically granted by the Federal Act. The burden, therefore, is on the Executive Committee to demonstrate a valid source for any power it exercises. Its plenary authority to act on behalf of the Tribe is not to be presumed. Indeed, even where the Federal Act authorizes the Executive Committee to represent the Tribe in its dealings with the federal government, that authority does not relieve the Executive Committee from its duties to the Tribe to confer and obtain their consent.⁴

CONCLUSION

WHEREFORE, the court declares the law as set forth above, granting in part and denying in part the cross motions for summary judgment. Within fifteen days of the filing date of this order, the parties shall report to this court as to whether a General Council meeting has been scheduled and the date and location of such meeting. If

³The validity of a delegation of powers to the Executive Committee might, for instance, be challenged based on improprieties in the conduct of any meetings in which the initial delegation of authority was made. Continued authority might be challenged, even if the initial delegation of power was valid, if the General Council has been prevented from revoking the power by the Executive Committee's refusal to conduct General Council meetings or refusal to allow matters to reach a vote. A representative body cannot, on the other hand, claim to derive its power from authority delegated by the electorate and, on the other, prevent the electorate from deciding whether to rescind delegated power.

⁴The relevant statutory provisions (25 U.S.C. § 941 f(b)(1)(B)(i) & (ii)) appear to be intended primarily to allow the federal agencies involved to look to a single source in their negotiations and to be able to presume that the Executive Committee has the authority to bind the Tribe vis-a-vis the government. Thus, the agreements entered between the Executive Committee and the federal government would not appear to be subject to challenge even if not properly authorized by the General Council per the terms of the tribal constitution. This is not, however, to say that the General Council could not seek to enjoin or otherwise seek relief as between the members of the Tribe and the Executive Committee for actions taken in contravention of the constitution. Such matters are not, however, resolved by this order.

no meeting is timely scheduled or if there are questions as to the conduct of such meeting, either party may move this court for further relief.

Any such motion shall be accompanied by a memorandum addressing the authority of this court (as opposed to state court) to resolve disputes involving internal tribal affairs and to issue injunction relief as to the same relief requested. Responsive briefs shall be filed within fifteen days after service of any motion for further review.

In the event any party determines to file a related action in state court, they shall so advise this court. At that time this court will determine if some or all issues before this court should be stayed in favor of the state court action. The mere pendency of a state court action will not, however, be deemed an abandonment of this action to the extent it raises federal claims or to the extent questions as to jurisdiction remain in dispute.

IT IS SO ORDERED.

/S/

Joseph Anderson Jr
United States District Judge

October 10, 2000
Columbia, South Carolina