

Update #112

The views, opinions and commentary in this update are those of Congressman Red Corn. They are his alone, and do not necessarily represent the views and opinions of the Osage Nation Congress.

An affront to the Congress, and to the Constitution

Yesterday, by wholly improper and unconstitutional use of the executive line item veto, the Principal Chief of the Osage Nation arrogated the power of the Osage Nation Congress and openly violated the doctrine of Separation of Powers. His actions should not, and cannot stand.

What happened?

In the ongoing court battle over reservation status and the taxation of individuals living and working on the Osage reservation, funding was sought in the amount of \$1 million. Exercising caution, the Osage Nation Congress passed a “Special Litigation Appropriation Bill” (ONCA 09-02), setting aside the entire \$1,000,000 but appropriated only \$498,000 for fiscal year 2009, holding \$502,000 in reserve to be released by Congressional resolution.

The follow-up resolution, ONCR 10-04, passed on the last day of the last special session, released \$115,000 of the reserved \$502,000 with the following language:

*“For the purpose of litigating *Osage Nation v. Thomas E. Kemp, Jr., Chairman of the Oklahoma Tax Commission: Jerry Johnson, Vice-Chairman of the Oklahoma Tax Commission, and Constance Irby, Secretary-Member of the Oklahoma Tax Commission, 4:01=cv-00516-JHP_FHM*, reserve funds in the sum of one hundred and fifteen thousand dollars (\$115,000) appropriated by ONCA 09-02 are hereby released to the Executive Branch;*

Using the line item veto, the Principal Chief struck the words

“in the sum of one hundred and fifteen thousand dollars (\$115,000)”

making the passage now read

*“For the purpose of litigating *Osage Nation v. Thomas E. Kemp, Jr., Chairman of the Oklahoma Tax Commission: Jerry Johnson, Vice-Chairman of the Oklahoma Tax Commission, and Constance Irby, Secretary-Member of the Oklahoma Tax Commission, 4:01=cv-00516-JHP_FHM*, reserve funds appropriated by ONCA 09-02 are hereby released to the Executive Branch;*

The result? If left unchallenged, the Principal Chief of the Osage Nation, James R. Gray, by line item veto, *increased* the amount of this appropriation to the Executive branch by

\$387,000.

Article VII, Section 11 of the Osage Constitution states that

“The Principal Chief may veto bills by the Osage Nation Congress. The Principal Chief may, by veto, strike or reduce items in appropriations bills. The Principal Chief shall return any vetoed bills, with a statement of the objection(s), to the Osage Nation Congress.”

Of course the key phrase is “strike or reduce”. “Strike”, as found in legal dictionaries, means to “to remove or delete something” or “to remove or delete from a legal document”. “Reduce” is self-explanatory to most folks, with the apparent exception of the Executive Branch of the Osage Nation.

As exercised by the Principal Chief, yesterday’s line item veto had the exact opposite effect by increasing, not reducing, the appropriation. This is a direct violation of the Osage Nation Constitution.

Some defense, albeit political, might have been raised had the Congress refused to properly fund ongoing tribal litigation. That is not the case. Using the very figures provided by the Executive Branch, Congress voted to fund all projected costs of litigation through the current phase just completed at the 10th Circuit in Denver.

Options

By its actions the Executive branch has blatantly ignored the limitations of its power and the express intent of the Osage Nation Congress. Speaking as one Congressperson, all options available to the Congress should be considered under these circumstances.

Testing constitutional limits is to be expected in a new government. What is unexpected – and unacceptable - is high-stepping over them with nary a thought to the damage and distress such actions have on a young democracy.

As always, please share your opinions and thoughts with me at your convenience.

With respect,

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