

**Supreme Court
of the
Nanticoke Lenni-Lenape Tribal Nation**

Decision 2017-05-31

Determination on the Necessity of a Constitutional Amendment to Alter Tribal Enrollment Blood
Quantum Requirements

PRINCIPAL JUSTICE NORWOOD delivered the unanimous opinion of the Court.
JUSTICE STREET, JUSTICE JACKSON, JUSTICE MAISONAVE approving.

At Issue:

On May 21, 2017, Chief Mark Gould requested that the Supreme Court provide a ruling on whether a proposed bill altering the blood quantum requirement for enrollment in certain situations would require a Constitutional amendment or if it was within the powers of the Tribal Council to alter the requirement as a matter of law.

Jurisdiction and Acceptance:

According to Article IV, Section 4 of the Constitution, the Court is authorized to interpret the Constitution, statutes, and official policies of the Nation. SDC 2014-02-17 *Clarification of the Legal Requirements for Considering Applications for Enrolled Citizenship* provides precedent for the Court to rule in matters of clarifying law and policy at the request of another branch of government. With all Supreme Court Justices deliberating, it was unanimously determined by the Court that the request of the Chief is a matter that is under the Court's jurisdiction and is deemed appropriate for the Court's consideration and has been accepted as such.

Background:

During the report of the Committee on Tribal Citizenship at the April 3, 2017, Council meeting, Co-Chief Lewis Pierce indicated frustration that there were applicants who were known to be tribal family by blood, were active within the culture of the tribe, but had been determined not to meet the currently mandated one quarter blood quantum requirement. Both the Tribal Council and Confederation Council had discussed this issue in the past, with the Confederation Council looking at ways to ensure the continuation of the tribes into the future when confronted with the issue of how blood quantum requirements could ultimately reduce the number of enrolled citizens to a point that the governments could not function and the tribes could become extinct.

The use of a blood quantum measurement to determine eligibility for inclusion in a tribe is not an indigenous tradition, but was imposed by non-Native assumptions about race and ethnicity which were foreign to indigenous practices, values, and worldview. The use of a blood quantum measurement was adopted by tribes in order to maintain eligibility for certain protections and benefits provided by the federal and state governments, and their closely related affiliates. Such imposed non-Native standards imposed various blood quantum minimums over time in their legal definition of "Indian" in various laws and policies and many tribes complied with this alien standard as a matter of survival in a national environment hostile to traditional indigenous notions of tribal identity.

The use of a blood quantum measurement is a challenge for many tribes. For those with small populations, regular intermarriage to preserve blood quantum can result in serious health risks; additionally, if enrolled citizens have children with non-tribal individuals, in a tribe that maintains a blood quantum requirement for enrollment - blood quantum percentages can drop to a point that a tribe can effectively become extinct. There are also cases in which tribal offspring may have only indigenous ancestry, but that ancestry can be from several different tribal heritages, resulting in the person not having enough blood quantum from any one of his or her ancestral tribes to enroll in any tribe. The blood quantum standard imposes on Native Nations a measure for citizenship that is not employed by the states or the country. However, historically, the use of blood quantum as a standard has provided some tribes the ability to conform to external expectations of racial identity.

In response to the challenges of the blood quantum standard, some tribes employ the use of a lineal descent standard, allowing for those who are descended from a base roll of ancestors to qualify for enrollment. Today, there exist various formulations of the blood quantum and lineal descent standards in use by many tribes. While some social expectation may still anticipate blood quantum as a standard, the Federal Government no longer requires this standard for the federal acknowledgment of a tribe, and now uses a "blood descent" requirement (see United States 25 CFR Part 83). Today, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the American Declaration on the Rights of Indigenous Peoples (ADRIP) both reinforce the right of the Nation to have its own enrollment standards without external interference by the federal government (see UNDRIP Article 33.1 and ADRIP Article VIII). Additionally, The Confederation does not require a blood quantum standard as expressed in Council Resolution CCR:2011-12-30 *Mutual Affirmation of the Citizens of Each Confederation Member Tribe as American Indian*, which affirms that each of the confederated tribes maintains, for the purpose of enrollment, "...a requirement of proven blood descent from the historically documented and interrelated core Nanticoke and/or Lenape families of the member tribes" and that "...the citizens of each of the member tribes are determined to be Indian by blood descent by each of the other confederation member tribes."

The Tribal Council decided to find ways to address the issue of culturally active tribal family no longer being able to qualify for enrollment. A Tribal Council bill, proposed as "Tribal Law No. 2017-03-18 TRIBAL ENROLLMENT ACT OF 2017," was drafted and published as a possible solution to the issue. Because the Council desired input from the tribal citizenry, a two week comment period was established, and then expanded to seven weeks. According to the explanation added to the bill, the proposed terms clarify "...the enrollment policy of the Nation. It allows for certain close blood relations of enrolled citizens to meet the descendancy requirement for enrollment based upon lineal descent from the base roll without regard to blood quantum, while still requiring that those with no recent generational connection to the Nation meet a minimal blood quantum of twenty-five percent. The intent is to ensure that the descendants of those who are enrolled in the Nation may also enroll, while still preserving a blood quantum status in regard to first generation applicants who may only have a distant historical connection to the ancestors of the Nation." During the May 20, 2017 Citizenship Meeting, the Council also indicated that it was planning to schedule a discussion period on the details of the issue and the proposed, and potentially altered, bill and its findings from the comment period.

The Tribal Council has regularly exercised its constitutional authority under Article IV, Section Three, to pass laws and establish policies.

Analysis:

In deliberating this matter, the Court determined that only the parameters of the Constitution may be considered in determining the Court's position, not whether any individual Justice, or the Court at large, agrees with or disagrees with the content of the proposed law.

Article II, Section Two of the Constitution states that “mandatory descent requirements and all other criteria for citizenship as set forth in the laws adopted under this Constitution,” which clearly shows that the body that has authority to pass laws determining what that criteria for enrollment shall be. According to Article IV, Section 3, the Tribal Council has the authority to “propose, enact, and enforce tribal law.”

The Constitution further states, in Article II, Section Three, that the limit of the Tribal Council’s power in making enrollment law is that Council “shall have no power to change or establish substantive requirements for membership in addition to those established in this Article without following the procedure for amending the Tribal Constitution.” This refers to changing what is clearly outlined in the Constitution or substantially adding to it, but does not limit the power of the Council to establish specific criteria within the constitutionally indicated parameters. Article II has no mention or measure of blood quantum as pertaining to enrollment at all; therefore, the matter of blood quantum as a criterion for enrollment is a matter of law under the jurisdiction of the Tribal Council and not a Constitutional matter. Additionally, Article II, Section Two states, “Enrolled citizenship is limited to those individuals who are the descendants of the historic core tribal families of the Nanticoke of the Delmarva Peninsula and the Lenni-Lenape of Southern New Jersey and Northern Delaware as indicated in the Tribal Base Rolls,” expressing that the limit of the scope of the Tribal Council in that the criteria must always be that enrollment requires descent from Nanticoke-Lenape core families. There is no constitutional prescription of what the blood quantum of that descent must be.

The only place blood quantum is mentioned in Article III is not regarding enrollment but only refers to adoptees. Section Two (a) of the article, which is regarding the various requirements for adoption, states “(a) The biological child of an enrolled tribal citizen in good standing, who does not meet blood quantum requirements for enrollment, is eligible to be adopted by the tribe at the discretion of the Tribe.” This provides for the possibility of a blood quantum standard, but does not require one. While the proposed law would impact the application of this section (such child may become eligible for enrollment under Article II), it does not violate the specifics of this section (it does not render such child as ineligible for adoption nor does it fully remove a blood quantum standard but only how and when one may be applied).

Furthermore, three of the four Justices deliberating were serving on the Tribal Council when the Constitution was written and adopted. They noted that the matter of blood quantum was discussed and intentionally left out of the wording of Article II in order to leave the specific requirements beyond Nanticoke-Lenape descent as a matter of laws to be passed under the Constitution. The wording was approved unanimously by the council and passed after three readings three votes of the tribal enrolled citizenship.

It should also be noted that the United States Bureau of Indian Affairs Federal Acknowledgment Process and other federal benefits, at the time of the tribal blood quantum being set to one quarter blood, had a history of requiring such a blood quantum minimum, which may have impacted the decision of the Nation. As previously stated, the federal acknowledgment regulations no longer have such a requirement [see Part 83 of Title 25 of the United States Code of Federal Regulations (25 CFR Part 83), *Federal Acknowledgment of American Indian Tribes*].

It should also be noted that the greater issue at hand is procedural and goes to the heart of the functioning of the tribal government. The Constitution allows the Tribal Council to pass laws under the Constitution. Amendments are required only if the proposal of the Tribal Council requires a constitutional change. Limiting the Tribal Council’s powers in a manner not specified in the Constitution can be a debilitating hindrance to effective tribal governance.

Ruling:

The Constitution mandates that enrolled citizens must be descended from the Nanticoke-Lenape ancestors of the tribal base roll and does not allow for changes to the requirements specifically stated in the Constitution without an amendment. The issue of blood quantum as it pertains to enrollment is neither mandated or specified in the Constitutional. The scope of the proposed action of the Tribal Council does not violate Constitutional limits to the Council's authority. It is the unanimous opinion of this Court that the Constitution grants authority to the Tribal Council to pass laws pertaining to tribal enrollment, including matters of blood quantum requirement, without the need for a constitutional amendment.

It is so ordered.