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**THE SUPREME COURT OF  
THE SISSETON-WAHPETON OYATE OF THE LAKE TRAVERSE  
RESERVATION**

DONOVAN WHITE,  
Appellant,

v.

SISSETON-WAHPETON OYATE,  
Appellee.

NO. APP-17-026-012

**DECISION AND ORDER**



13 *Per curium* (Chief Justice Thor A. Hoyte, Associate Justice Pat Donovan, Associate Justice  
14 Erin Shanley)

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16 In the matter of the appeal of White versus the Oyate, this Court held oral arguments on  
17 August 4, 2017 at 10.30 a.m. at Old Agency. Present were Appellant represented by his  
18 counsel, Alexander Vian. Appellee was present through its counsel, Debra Flute.  
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21 The facts of this case are political at their roots, but impugn questions of law to which this  
22 Court must provide certainty. Appellant was elected Tribal Vice-Chairman and sworn in to  
23 office on January 3, 2017. Per the Oyate Constitution, the Vice-Chairman position is elected  
24 "at large". *Sisseton-Wahpeton Oyate of the Lake Traverse Reservation Revised Constitution*  
25 *and Bylaws*, Article III, Sec. 1 (*last amended* Nov. 15, 2006). On March 7, 2017, through  
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**DECISION AND ORDER**  
Page 1 of 6

1 Tribal Council motion, Vice-Chairman White was suspended pending investigation of alleged  
2 malfeasance and violations of Council policy. *SWO Tribal Council Motion No. 39*, March 7,  
3 2017. On March 8, 2017, Tribal Council voted to suspend Appellant pending the outcome of a  
4 removal hearing. The charges at the removal hearing would be improper conduct and gross  
5 neglect. *SWO Tribal Council Resolution No. SWO-17-026* (March 8, 2017). The hearing was  
6 set for March 21, 2017. Appellant asked for a continuance and it was granted by Council to  
7 April 3, 2017. On March 17, 2017, Tribal Council amended its charges against Appellant to  
8 add improper conduct and gross neglect. *SWO Tribal Council Resolution No. SWO-17-028*  
9 (March 17, 2017). Notice of those charges was served upon Appellant on March 22, 2017. At  
10 the Council hearing on April 3, 2017, Appellant appeared with Council. The hearing lasted  
11 five hours, and Appellant had the chance to examine and cross-examine witnesses. At the  
12 conclusion of the hearing, Appellant was removed as Vice-Chairman by five affirmative votes  
13 of Council.  
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17 Appellant argues Chapter 55 of the Sisseton-Wahpeton Tribal Code is the controlling law and  
18 procedure for the removal of elected officials from office. *SWO Tribal Codes of Law Chapter*  
19 *55 Code of Conduct Ordinance* (enacted April 15, 2008). Appellant argues Chapter 55 is a  
20 permissible detailing of the broader provision of the tribal constitutional provisions.  
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23 We disagree with Appellant's application of Chapter 55 and can dismiss Appellant's  
24 arguments without extended discussion. Simply, the Constitution is the controlling document,  
25 and any conflicting alteration to its basic provisions are impermissible and are  
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1 unconstitutional. Chapter 55 is also internally inconsistent, where section 55-01-07, upon  
2 which Appellant relies, conflicts with sections 55-02-01 and 55-03-01. Here, we hold Chapter  
3 55, where it defines process and standards to the removal process of an elected official that  
4 are contrary to the process designated by the Constitution are stricken as unconstitutional. As  
5 the trial court noted, reading Chapter 55 as Appellant urges this Court to do would render  
6 much of the Bylaws of the Constitution meaningless. It is clear the Oyate, by means of the  
7 Tribal Constitution, provided a *political* method for removal of an *elected official*. This Court  
8 now holds and affirms the lower court opinion as to the nature of the removal process, and  
9 determines the process to be a “political proceeding.” *See Crawford v. Sisseton-Wahpeton*  
10 *Oyate Tribal Council*, SWO T. Ct. Docket # T-06-022-009 (Feb. 20, 2006) and *Renville v.*  
11 *Sisseton-Wahpeton Oyate Tribal Council*, SWO T. Ct. Docket # T-16-012-071 (Nov. 25,  
12 2015). The Oyate Constitution provides sufficient guidance in the method of removal. *See*  
13 *Sisseton-Wahpeton Oyate Constitution Article VI Sec. 1 and 2; Bylaws Sec. 4.*

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17 Appellant would have us layer judicial remedies created from case law from foreign courts to  
18 provide layers of protection and safeguard. We will not create any such remedies or apply  
19 remedies from foreign courts. The Constitution of the Oyate speaks for itself on the issue of  
20 removal of an elected official, and Chapter 55 of the tribal code cannot withstand scrutiny  
21 where it attempts to modify the plain language of the Constitution and must be nullified.  
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24 This Court agrees with the lower court in that Sisseton-Wahpeton Oyate courts do have the  
25 authority to determine if due process requirements have been met. *See Renville and Crawford.*  
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1 Supra. Appellant would have this Court, through application of the Indian Civil Rights Act of  
2 1966 and subsequent amendments, apply a due process standard gleaned from federal case  
3 law. If this were a case of ICRA application, we would be inclined to agree. However, as  
4 discussed above, we hold Chapter 55 as applied to the process for removal of a public official  
5 to be unconstitutional. Moreover, due process in this matter is not determined for the Oyate by  
6 any foreign court, and this Court is not an inferior court to those cited by Appellant as  
7 controlling, or persuasive.  
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10 This Court holds the Oyate Constitution's process for removal of an elected official provides  
11 sufficient due process. The process due to an elected official requires notice, the right to put  
12 on his case and cross-examine witnesses, and a tribunal through which a decision is rendered.  
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15 This Court understands Appellant's chief complaint to be the tribunal was "biased." As stated  
16 and *held* above, the process of removal is a *political* process and is applied to *elected* officials.  
17 This Court's role, and the role of the lower court, is only to ensure the "rules" were followed.  
18 No evidence to the contrary was presented. That alone is the beginning and end of the  
19 discussion and no court can be brought into a political battle. The courts of the Oyate exist  
20 only to interpret and apply the laws of the Oyate.  
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23 Appellant also challenges the charges themselves. At oral argument, and without prompting,  
24 Appellant offers up the federal impeachment procedures in analogy and acknowledges the  
25 crimes described as impeachable offenses are definable by the body bringing the articles of  
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1 impeachment. The provisions of the Oyate Constitution are not without parallel. The  
2 Constitution does not itself define improper conduct and gross neglect. Where Chapter 55 of  
3 the tribal code would attempt to define either term is impermissible, it is left to the body  
4 bringing the charges to determine if the actions of the elected official subject to the removal  
5 procedure warrant being charged as improper conduct or gross neglect. To determine anything  
6 more would place the unelected courts of the Oyate into political disputes. We will not do  
7 that. Again, and without reservation, the courts of the Oyate exercise their powers given to  
8 them by the Oyate itself to interpret the rules, and nothing more. That is the proper role of the  
9 courts in our system.  
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12 ORDER

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14 1) Chapter 55 of the Sisseton-Wahpeton Oyate Tribal Code is unconstitutional as applicable  
15 to the removal process for elected officials as described in the Sisseton-Wahpeton Oyate  
16 Constitution and Bylaws;  
17 2) The removal process for elected officials in the Sisseton-Wahpeton Oyate Constitution and  
18 Bylaws is a “political process” and the role of the courts of the Oyate are limited;  
19 3) The removal process for elected officials in the Sisseton-Wahpeton Oyate Constitution and  
20 Bylaws has sufficient due process protections;  
21 4) The lower court is AFFIRMED and this matter is DISMISSED.  
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1 SO ORDERED this 16th day of August, 2017.

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7 Thor A. Hoyte  
8 Chief Justice  
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