

SUPREME COURT OF THE LUMBEE TRIBE OF NORTH CAROLINA

**PETITIONERS: LUMBEE TRIBAL COUNCIL AND LUMBEE TRIBAL
CHAIRPERSON**

**IN RE: IMMEDIATE EMERGENCY PETITION FOR JUDICIAL INTERPRETATION
OF ARTICLES VI. AND VIII. OF THE LUMBEE TRIBE OF NORTH CAROLINA'S
CONSTITUTION AND FOR DECLARATORY RELIEF**

2025-002
FILED
JAN 22 2025
CLERK OF COURT
LUMBEE TRIBAL COURT

2026-006

Introduction

Petitioners respectfully invoke this Court's original jurisdiction and request a definitive judicial interpretation of Article VI. and Article VIII., Section 1.b), of the Constitution of the Lumbee Tribe of North Carolina. The core question presented is narrow but fundamental: once the Lumbee Tribal Council approves an ordinance authorizing gaming in Lumbee territory, must the Chairperson certify that adopted ordinance for a referendum conducted under Article VI., and is that referendum limited to the voters' reserved power to rescind the ordinance? This petition raises a substantial constitutional question because the answer determines when a gaming ordinance may become effective, what constitutional duty the Chairperson must perform after Council passage, and how the Lumbee people exercise their reserved referendum power over ordinances that the Constitution itself deems to affect fundamental rights or interests of the Tribe.

Jurisdiction and Authority

This Court has original jurisdiction because this case arises directly under the Lumbee Constitution. Article IX. provides that the Lumbee Supreme Court has "original jurisdiction over all cases and controversies arising under the Lumbee Constitution." This petition does not request that the Court decide the wisdom of gaming, supervise political discretion, or substitute judicial judgment for the policy judgment of elected officials. It asks the Court to say what the Constitution requires after the Council has approved a gaming ordinance: whether Article VIII. requires the Chairperson to certify the adopted ordinance for referendum, and whether Article VI. defines that referendum as a vote on rescission rather than as an ordinary election to enact the ordinance in the first instance.

The controversy is ripe because the constitutional uncertainty is immediate, concrete, and presently affects the lawful conduct of tribal government. Article IX., Section 2 directs that the rule of law applied must be "the will of the Lumbee people as expressed in the Lumbee Constitution, duly adopted tribal ordinances, and Lumbee custom," and only in the absence of those sources may the Court look to federal common law. The will of the Lumbee people is therefore the controlling source of law. Where Article VIII. commands certification of gaming ordinances for referendum and Article VI. describes the referendum as a vote on whether to rescind a challenged ordinance already adopted by Council, judicial interpretation is necessary to preserve constitutional government and to prevent uncertainty over the ordinance's effectiveness. This Court's prior guidance confirms the limited and proper role of judicial review. In *Antia Hammonds Blanks v. Lumbee Tribal Council*, Case No. 2025-002, this Court recognized that political remedies such as recall, initiative, referendum, and elections ordinarily counsel judicial restraint when a petitioner seeks displacement of Council procedural judgment. That principle

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supports, rather than defeats, this petition. Petitioners do not ask the Court to displace a political remedy. They ask the Court to determine whether the Constitution itself preserves such a remedy and, if so, when that remedy must be honored.

Although federal ripeness doctrine is not controlling over this Court's interpretation of Lumbee law, the familiar formulation in *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148–49 (1967), is persuasive by analogy: courts consider the fitness of the issue for judicial decision and the hardship of withholding review. Both considerations favor immediate review here. The issue is purely constitutional, no further factual development is needed to interpret the governing provisions, and withholding review would leave the Council, the Chairperson, and the Lumbee people without authoritative guidance on the process required by their Constitution. The question is not hypothetical. It is a present controversy over the meaning of the Tribe's supreme law and the legal steps required before an ordinance of constitutional significance may bind the tribal government and the Lumbee people.

Question Presented

Whether Article VI. and Article VIII., Section 1.b), of the Lumbee Constitution require that, once the Tribal Council approves an ordinance authorizing gaming in Lumbee territory, the Chairperson must certify that ordinance for a referendum conducted under Article VI., and the Tribal Elections Board must hold that referendum within ten (10) days after the Chairperson's certification, with the referendum limited to the question whether the voters will rescind the Council-adopted ordinance.

Factual Background

1. On April 16, 2026, the Tribal Council, in CLLO-2026-0416-2, recognized the need for a clear governance framework for gaming, which was deemed essential for promoting economic development, fostering self-sufficiency, and strengthening the Tribal government. Additionally, it was crucial for funding essential governmental services, including public safety, education, housing, healthcare, and infrastructure.
2. On June 25, 2026, during an emergency meeting of the Tribal Council, a motion was adopted. The motion adopted stated, "[i]n light of the unclear language contained in our Constitution and for similar reasons, I move we direct the General Counsel to take any/all steps, based on his best professional judgment, to explore any/all legal pathways that would allow this Nation's 575th federally recognized Tribe – the Lumbee Tribe of NC – in pursuit of its sovereign and earned right to pursue Hospitality and Entertainment opportunities, to include gaming."
3. On July 16, 2026, the Tribal Council's Constitution and Ordinance Committee announced that, should the Lumbee Tribe move forward with deliberation of any gaming-related authorization or consideration, it would hold public hearings and/or similar functions; create an electronic mechanism for Tribal citizens to submit feedback; provide other

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appropriate means for Tribal citizens to provide input; and conduct meaningful consultation with Tribal citizens to solicit their feedback.

4. The Tribal Council's Constitution and Ordinance Committee held a public meeting on July 27, 2026, and actively debated a gaming ordinance which would authorize gaming on Tribal lands.
5. On August 4, 2026, the same committee passed a resolution titled, "Economic and Community Development Priority Designation – Hospitality and Entertainment, to Include Gaming," which formally declared that "pursuit of the Tribe's sovereign and inherent right to pursue hospitality and entertainment opportunities, to include gaming, would support substantial economic development opportunities and is hereby designated as the Tribe's top economic and community development priority."
6. On the same day, the committee passed an amendment to CLLO-2005-0002, which would authorize the Tribal Council to establish polling sites throughout the Lumbee territory, no less than five (5), when one or more measures are to appear on the ballot.
7. Additionally, the committee passed an amendment to CLLO-2005-0002, which would provide maximum opportunity for eligible voters to participate in an election where a reduced number of polling sites are to be used or when a ballot contains only measures through a change in procedures which would allow voters to cast their ballot at any polling site throughout the Lumbee territory.
8. The Tribal Elections Board has scheduled a general election to be held on November 17, 2026.
9. The petitioners are the Tribal Council and Chairperson, who seek a judicial interpretation of their respective constitutional obligations after Council approval of an ordinance authorizing gaming in Lumbee territory.
10. The Lumbee Constitution establishes a government of distributed powers and reserves undelegated powers to the general membership of the Tribe.
11. Article VI. governs referendum authority reserved for the general membership and describes that referendum power as a means to challenge and rescind an ordinance already adopted by the Tribal Council.
12. Article VI. says:

Article VI. Referendum.

1. The power to conduct a referendum on any tribal ordinance adopted by the Tribal Council is specifically reserved for the general membership of the Lumbee Tribe of North Carolina.

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2. A minimum of ten (10) percent of the eligible voters may initiate a referendum by submitting to the Tribal Elections Board a petition bearing the following:

- i). their signatures, names, addresses, and enrollment numbers;
- ii). the terms of the challenged tribal ordinance adopted by the Tribal Council; and
- iii). the designation of three signatories as a Petitioner's Committee.

3. Upon certification of the signatures of the petition and within no more than five (5) days of its receipt, the Tribal Elections Board shall serve a copy of the petition bearing the challenged tribal ordinance upon the Tribal Council, which shall reconsider its adoption of the challenged ordinance and take a vote thereon at its next regularly scheduled meeting, but no more than thirty (30) days after its receipt from the Tribal Elections Board.

4. The Tribal Elections Board shall notify all members of the Petitioner's Committee of the Tribal Council's action on the challenged tribal ordinance within five (5) days of such action.

5. If the challenged tribal ordinance is not rescinded or substantively altered by the Tribal Council, the Petitioner's Committee shall have thirty (30) days from their receipt of notice of Tribal Council action to collect additional signatures upon their petition for a referendum on the challenged tribal ordinance.

6. The Tribal Elections Board shall conduct a referendum upon the challenged tribal ordinance within ten (10) days of the resubmission of the petition seeking a referendum on the challenged ordinance, provided that the petition is signed by twenty (20) percent of eligible voters.

7. If at least thirty (30) percent of the eligible voters participate in the referendum election and a majority of those voting vote in favor of rescinding the challenged ordinance, the Tribal Elections Board shall declare the ordinance rescinded.

13. Article VIII, Section 1.b), mandates that the Tribal Chairperson certify any ordinance authorizing gaming in Lumbee territory for a referendum within ten (10) days of Council passage.

14. Article VIII. says:

Article VIII. Tribal Chairperson.

1. All executive powers, including implementation of and compliance with annual budgets, of the Lumbee Tribe of North Carolina shall reside in a Tribal Chairperson, who shall cause all

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laws of the Tribe to be faithfully executed. Specifically, the Tribal Chairperson shall:

- a). deliver to the general membership an annual State of the Tribe Address during the first week of July, which Address shall include a proposed budget for the upcoming fiscal year;
- b). within ten (10) days of its passage by the Tribal Council, certify for referendum by the general voting membership any tribal ordinance that affects fundamental rights or interests of the Lumbee Tribe of North Carolina. Any ordinance imposing a tax or authorizing gaming in Lumbee territory shall be deemed to affect fundamental rights or interests of the Tribe. No ordinance certified as requiring a referendum shall be effective unless and until such ordinance is approved by a majority of those voting in the referendum, such referendum to be conducted in accordance with Article V. [scrivener's error]. of the Constitution;

- 15. A dispute has arisen over the constitutional process that must follow once the Council passes a gaming ordinance. Specifically, there's disagreement about whether the ordinance proceeds to Article VI. referendum limited to rescission, or whether Article VIII. creates a separate majority-approval election.
- 16. Within ten (10) days after Council passage of an ordinance authorizing gaming, the Chairperson must certify that ordinance for referendum. Once the Chairperson certifies the ordinance, the Tribal Elections Board must conduct the referendum within ten (10) days of that certification. Article VIII. further provides that no ordinance certified as requiring a referendum is effective unless and until approved by a majority of those voting in the referendum, and that the referendum must be conducted in accordance with Article VI.
- 17. Ambiguity arises because of Article VIII. uses the phrase "approved by a majority of those voting in the referendum," while Article VI. states that the referendum concerns a "challenged tribal ordinance adopted by the Tribal Council" and provides that the ordinance is rescinded only if at least thirty percent of eligible voters participate and a majority of those voting vote in favor of rescission. Petitioners contend that these provisions must be harmonized by treating the referendum as a post-adoption rescission vote, with the Tribal Elections Board required to conduct the referendum within ten (10) days after the Chairperson certifies the ordinance for referendum.
- 18. Without judicial interpretation, tribal officials and tribal citizens face uncertainty about whether a Council-approved gaming ordinance becomes effective only after the Article VI. rescission process is completed and the ordinance has not been rescinded.

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Argument

I. Article VIII. Section 1.b), Contains an Obvious Scrivener's Error Referring to Article V. Instead of Article VI.

Article VIII. b). has an obvious scrivener's error. The last sentence reads, as worded in the Constitution made available on the Lumbee Tribe of North Carolina's website, "[n]o ordinance certified as requiring a referendum shall be effective unless and until such ordinance is approved by a majority of those voting in the referendum, such referendum to be conducted in accordance with Article V. [scrivener's error] of the Constitution." The clear and unambiguous mistaken numerical cross-reference to Article V. which deals with initiative, appears to be a transcription error. It would be absurd to conclude that the drafters would use the term "referendum" four (4) times in Section 1.b) and then refer the reader to the initiative section of the Constitution. Article VI. is the only section of the Constitution titled "referendum." Although not controlling, federal courts have found comparable cross-reference errors. See *United States v. Coatoam*, 245 F.3d 553 (6th Cir. 2001) (holding that a statute's reference to the wrong subsection, created when a related provision was renumbered by amendment but the cross-reference was never updated, was a scrivener's error.) Moreover, Petitioners have historical tribal records in its archives to substantiate that "version 7" of the Lumbee Tribe's Constitution was reviewed and debated by the then Tribal Council on October 27, 2001, which had the proper referendum constitutional section cited in VIII. 1.b). That version, based on the archival records, was used to present to the tribal citizens on November 6, 2001, when the Constitution was initially ratified/adopted by Lumbee citizens.

II. The Petition Presents a Substantial Constitutional Question

This petition presents a substantial constitutional question because it asks the Court to interpret the Tribe's highest law on a matter that determines when a Council-approved gaming ordinance may become effective, when the Chairperson must certify the ordinance, when the Tribal Elections Board must hold the referendum, and how the people's reserved referendum power operates. The question is real, contested, and outcome-determinative. If Article VIII. requires a different kind of majority-approval election, then the Chairperson and Elections Board must proceed one way. If Article VIII. incorporates Article VI.'s rescission framework, then the ordinance must be treated as Council-adopted but constitutionally suspended unless and until the Chairperson certifies the ordinance, the Tribal Elections Board conducts the referendum within ten (10) days after certification, and the voters are afforded the opportunity to rescind it and do not do so under Article VI. That question goes to the source of lawful authority itself.

III. Judicial Interpretation Is Necessary to Protect Tribal Self-Governance and Election Integrity

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Judicial interpretation is necessary because uncertainty over the constitutional process threatens both orderly government and democratic legitimacy. A gaming ordinance is treated by Article VIII. as affecting fundamental rights or interests of the Tribe. The Constitution therefore requires more than ordinary enactment. It requires Council passage, Chairperson certification within ten days after passage, and a referendum conducted by the Tribal Elections Board within ten (10) days after the Chairperson's certification. The practical question is how that referendum operates. Petitioners submit that Article VI. answers the question: the referendum permits the voters to decide whether to rescind the Council-adopted ordinance, not whether to enact the ordinance from the beginning. A definitive ruling will allow the Council, Chairperson, Elections Board, and Lumbee voters to discharge their constitutional roles without confusion.

IV. The Court Should Apply Constitutional Interpretation Principles Consistent with Tribal Law, Custom, and the Text

The Court should begin with the constitutional text and read Article VI. and Article VIII. together, not in isolation. Article VIII. identifies gaming ordinances as measures that must be certified for referendum and states that the referendum must be conducted in accordance with Article VI. Article VI., in turn, supplies the only referendum procedure in the Constitution and repeatedly describes the subject of that referendum as a challenged ordinance already adopted by the Tribal Council. The provisions can be harmonized only by recognizing that Council approval comes first, Chairperson certification follows, and the voters then decide whether to rescind the adopted ordinance. This construction gives effect to the Council's legislative role, the Chairperson's certification duty, and the people's reserved referendum power.

V. Once the Council Approves a Gaming Ordinance, Article VIII. Requires Certification for a Referendum Conducted Under Article VI., and Article VI. Limits the Referendum to Whether the Ordinance Should Be Rescinded

The better reading of Articles VI. and VIII. is that a gaming ordinance first must be adopted by the Tribal Council and then must be submitted to the voters through the referendum process described in Article VI. Article VIII., Section 1.b), supplies the first trigger: within ten (10) days after passage by the Council, the Chairperson must certify for referendum any ordinance authorizing gaming in Lumbee territory because the Constitution deems such an ordinance to affect fundamental rights or interests of the Tribe. Once the Chairperson certifies the ordinance, the Tribal Elections Board must conduct the referendum within ten (10) days after certification. Article VI. then supplies the procedure and the legal effect of the referendum. Read together, the provisions do not create a separate ordinary election asking voters to enact the ordinance in the first instance. Rather, they create a post-adoption constitutional check allowing the eligible voters to rescind the Council-adopted ordinance.

That interpretation gives effect to every operative phrase. Article VIII. states that a gaming ordinance is not effective unless and until approved by a majority of those voting in the referendum, but it also commands that the referendum be conducted "in accordance with Article

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VI.” Article VI. repeatedly describes the measure before the voters as a “challenged tribal ordinance adopted by the Tribal Council” and provides that, if the required voter participation threshold is met and a majority vote “in favor of rescinding the challenged ordinance,” the Tribal Elections Board shall declare the ordinance rescinded. The Constitution therefore frames the referendum as a review of an ordinance already adopted by Council, not as an initial legislative enactment by popular vote.

Because Article VIII. independently mandates certification of gaming ordinances for referendum, the Chairperson’s certification supplies the constitutional trigger that would otherwise be supplied under Article VI. by a qualifying referendum petition. Article VIII. does not require citizens to gather signatures before a gaming ordinance goes to referendum; instead, it identifies gaming ordinances as categorically affecting fundamental tribal rights or interests and requires referendum review as a matter of constitutional command. Accordingly, when Article VIII. directs that the referendum be conducted “in accordance with Article VI.,” the procedural timetable in Article VI. should apply from the date of Chairperson certification. The Tribal Elections Board therefore must conduct the referendum within ten (10) days after certification, just as Article VI. requires the Board to conduct a referendum within ten (10) days after the referendum process is triggered.

The Court should therefore harmonize the phrase “approved by a majority of those voting in the referendum” in Article VIII. with the rescission language of Article VI. For a gaming ordinance, voter approval occurs when the voters are given the constitutionally reserved opportunity to rescind the ordinance and do not rescind it under Article VI.’s requirements. Stated differently, once Council adopts a gaming ordinance and the Chairperson certifies it for referendum, the ordinance remains constitutionally suspended until the Tribal Elections Board conducts an Article VI. referendum within ten (10) days after certification and that referendum is completed. If the referendum produces the required participation and a majority votes to rescind, the ordinance is rescinded. If the voters do not rescind it under Article VI., the referendum condition has been satisfied, and the ordinance may become effective according to law.

This reading also preserves the constitutional balance between representative lawmaking and direct voter control. The Council retains its legislative role by debating and adopting the ordinance in the first instance. The Chairperson performs the constitutional duty to certify gaming ordinances for referendum. The voters then exercise the reserved Article VI. power to decide whether the adopted ordinance should be rescinded. No branch is displaced, no constitutional phrase is rendered meaningless, and the will of the Lumbee people remains the final safeguard on ordinances that the Constitution itself treats as affecting fundamental tribal rights or interests.

In summary, the Constitution sets up a precise sequence:

1. The Tribal Council enacts the ordinance using its delegated legislative authority;
2. The Chairperson certifies the ordinance to face the electorate; and,

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3. The Lumbee citizens exercise their ultimate veto power – the power to rescind what has already passed.

Requested Relief

Petitioners respectfully request that this Court:

1. Accept original jurisdiction because the petition presents a substantial constitutional question arising under the Lumbee Constitution;
2. Declare this an extraordinary case warranting immediate judicial resolution because the absence of an authoritative interpretation prevents the Petitioners and the Tribal Elections Board from knowing how to discharge their constitutional duties;
3. Allow a five (5) calendar day period for any interested party/person, to include the Petitioners, to file any brief regarding this petition from the time of filing;
4. If the Court determines that a hearing is necessary, schedule such hearing within five (5) calendar days of the date that any briefs can be submitted;
5. Issue a ruling on this petition within fifteen (15) calendar days of the date this immediate emergency petition is filed with the Court so that an Article VI. referendum election can be held as soon as practical, as determined by the Tribal Council;
6. Declare that when the Council approves an ordinance authorizing gaming in Lumbee territory, Article VIII. requires the Chairperson to certify that adopted ordinance for referendum within the constitutionally required period;
7. Declare that for an ordinance authorizing gaming in Lumbee territory, the Chairperson's certification under Article VIII., Section 1.b), supplies the referendum trigger, and the Tribal Elections Board must conduct the referendum within ten (10) days after that certification, in accordance with Article VI.;
8. Declare that Article VI. referendum is limited to whether the voters will rescind the Council-adopted ordinance, that the ordinance remains constitutionally suspended until the Tribal Elections Board conducts and completes that referendum within ten (10) days after the Chairperson's certification, and that the ordinance may become effective only if it is not rescinded under Article VI.'s participation and majority-vote requirements;
9. Direct the Council, Chairperson, Tribal Elections Board, and any affected tribal body to proceed consistently with the Court's interpretation; and
10. Grant all further relief that is just, proper, and consistent with Lumbee law, Lumbee custom, and the Tribe's inherent sovereignty.

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Conclusion

For these reasons, Petitioners respectfully request that this Court accept jurisdiction and resolve the substantial constitutional question presented. In November 2001, the Lumbee people adopted a constitution that distributes governmental power, reserves referendum authority to the general membership, assigns the Chairperson a mandatory certification role for gaming ordinances, and requires referendum review for ordinances authorizing gaming in Lumbee territory. The most faithful reading of Articles VI. and VIII. is that Council approval comes first; the Chairperson must then certify the ordinance for an Article VI. referendum; the Chairperson's certification supplies the referendum trigger for gaming ordinances; the Tribal Elections Board must hold that referendum within ten (10) days after certification; and the voters' referendum power is limited to deciding whether to rescind the Council-adopted ordinance. Clear judicial interpretation is necessary now so that the Council, the Chairperson, the Tribal Elections Board, and the Lumbee people may proceed under the rule of Lumbee constitutional law.

Respectfully submitted,

MALCOLM.JOSHUA

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August 7, 2026

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Verification

I, Albert A. Baker, declare under penalty of tribal law that the factual statements in this Petition are true and correct to the best of my knowledge, information, and belief. My digital signature is the equivalent of my wet signature.

Executed on: 08.07.2026

Albert A. Baker

Albert A. Baker
Speaker

I, John L. Lowery, declare under penalty of tribal law that the factual statements in this Petition are true and correct to the best of my knowledge, information, and belief. My digital signature is the equivalent of my wet signature.

Executed on: 08/07/2026

John L. Lowery

John L. Lowery
Chairperson

