

Chapter Seven GOVERNMENT

Indian Tribes as Sovereign Governments

In *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831), the Cherokee tribe filed suit in the United States Supreme Court to enjoin the State of Georgia from enforcing state laws on lands granted to the tribe by treaties. Chief Justice John Marshall held that a tribe is a “state”, but not a foreign state or a state under the Constitution. Instead, an Indian tribe “may, more correctly, perhaps, be denominated domestic dependent nations ... in a state of pupilage” and that [t]heir relation to the United States resembles that of a ward to a guardian.”¹

DEFINITIONS

Indian — An Indian is an individual recognized by a federally recognized tribal government according to that government’s requirements. It may involve a blood quantum (usually 1/4) or the ability to trace your ancestry to a particular relative.

Indian Tribe — For legal purposes the definition of Indian tribe is a tribe recognized by the Federal government. A tribe may seek recognition through the administrative procedures described in 25 C.F.R. 83, congressional statute or litigation.

Indian Country — This definition concerns the territorial boundaries of Indian tribal governments and has a unique legal definition beyond the generally familiar term of “Indian Reservation.” Indian Country is defined in the Major Crimes Act (18 U.S.C. sect. 1151) to include all land, regardless of ownership, within the exterior boundaries of federally recognized Indian reservations. While this definition is found in the criminal code, it also applied to civil jurisdictional issues.

TRIBAL GOVERNMENTS

As articulated by Chief Justice John Marshall in *Worcester v. Georgia*, Indian tribal governments have inherent powers of limited sovereignty.² Tribal governments retain their inherent sovereign authority unless limited or extinguished by the Constitution, treaty, federal statute or restraints implicit in the protectorate relationship.³ A tribe’s sovereignty extends to its territory and its members.⁴ The following is a brief description of some of the categories of sovereign authority that Indian tribes possess.

Power to Establish a Form of Government

Indian tribes have the authority to choose the form of government that best suits their needs.⁵ Federally recognized Indian tribes are not required to follow the same structure described in the United States Constitution, nor are they subject to some of the limitations on federal authority described in the Constitution.⁶ For example, some tribes are theocracies, some choose their leadership by heredity and others hold elections.⁷ Most tribes have written codes and regulations and many are governed by a written constitution.

Although not required, numerous tribes have adopted constitutions pursuant to the Indian Reorganization Act of 1934 (25 U.S.C. Secs. 461, et. Seq, as amended). The authority exercised by a tribe under an IRA constitution is considered inherent and not delegated.⁸ The purpose of the IRA was to assist tribes to “modernize” their governments.⁹ The IRA allowed tribes to draft a constitution describing the tribe’s governmental powers, subject to approval by the Secretary of the Interior. (A copy of a sample IRA constitution is attached as Appendix A of this section.)

Many tribes have the same three branches of governments described in the United States Constitution. The legislative branch is represented by the “Tribal Council”; the executive branch is represented by the “Tribal Chairperson”; and the judicial branch is represented by the “Tribal Court.”

Power to Determine Membership

Tribes have the authority to grant, deny, revoke and qualify membership.¹⁰ Membership can be determined by usage, law, treaty, intertribal agreement and case law. Today, most tribes define membership through a tribal constitution or other tribal law. Tribal membership is typically implemented through a tribal roll.¹¹ Many constitutions require a minimum blood quantum for tribal membership. In some rare instances, tribal membership may be determined by a specific congressional act.¹²

Congress has the authority to define “Indian” for specific administrative acts. This definition may differ from a tribe’s definition for membership purposes.¹³ In addition, Congress has passed laws determining how some tribes must prepare their tribal rolls, and the Department of the Interior has had to define tribal membership for some tribes to resolve property disputes.¹⁴ Consequently, while tribes do have the authority to determine membership, it may be limited or impacted by Congressional action.

Tribal membership generally falls into at least one of three categories:

- ! Base enrollees
- ! Automatic eligibles
- ! Adoptees¹⁵

Generally a person may not be an enrolled member of more than one tribe — even if the person qualifies for membership in multiple tribes. If a person satisfies all membership requirements for a particular tribe, but is not on the membership roll, that person is called a “recognized” member.¹⁶

Base Enrollees

Base enrollees are the “first generation” of members under written law belonging to a specific Indian tribe. Base Enrollees must only meet a blood quantum level described in the tribe’s constitution or “fundamental membership ordinance.” In some instances, an individual must meet the blood quantum level and reside on the tribe’s reservation to qualify as a Base Enrollee. Once an individual is on the base roll, it is very difficult to remove that person. The base roll is not the current membership roll, but is a list of the individuals who belonged to the tribe when that tribe’s constitution or other chosen form of government was adopted and form the base from which all subsequent membership is determined.¹⁷

Automatic Eligibles

Automatic Eligibles are generally individuals who have an ancestral relationship to a Base Enrollee. A tribe’s constitution or other governing documents usually specify that an individual must trace his or her lineage to someone on the base roll or be born to a tribal member. An Indian tribe may also require a specific blood quantum requirement to be eligible for membership.¹⁸

Even if a person meets the automatic eligibility requirements for enrollment in an Indian tribe, Automatic Eligibles must prove that they are members of the tribe to become a part of that tribe’s current membership roll. Thus, persons must make themselves known to the tribe, apply for membership according to that tribe’s procedures and furnish any documents required by those procedures. In some cases, the Tribal Council must vote and pass a resolution to accept someone for membership.¹⁹

Adoptees

Individuals who do not meet the tribe’s official enrollment procedures may be adopted by that tribe’s adoption qualifications. Adoption qualifications may include:

- ! specific blood quantum
- ! legal marriage to an enrolled member
- ! no membership in another tribe
- ! approval by a majority of the tribe’s qualified voters
- ! approval by a majority of the Tribal Council members²⁰

While some of these qualifications may look similar to those of Automatic Eligibles, there typically are differences. For example, the blood quantum for an Automatic Eligible may be one-quarter of that tribe’s blood, but one-quarter “Indian” blood for adoptees. In addition to the adoption qualifications, Indian Tribes generally have specific procedures for adopting members.²¹

Administrative Power

An Indian tribe has the authority to regulate the conduct of individuals within its jurisdiction. Thus, tribes have the authority to regulate commercial and business relations, the power to levy taxes, the power to dispose of non-trust property and police powers. All of these have been recognized as legitimate exercises of an Indian Tribe's sovereign authority.²²

Judicial Power

Tribes have the authority to administer justice through a tribal court. In some instances, tribal courts have extensive codes and their own "tribal bar" with specific admission procedures. In other instances, tribal courts rely on tribal traditions or less formal dispute resolution procedures. The Navajo Nation has one of the most sophisticated judicial systems. Navajo Nation courts hear more than 45,000 cases a year and publish their cases in the *Indian Law Reporter*.²³

Power to Charter Business Organizations

Tribes, like states, can charter private corporations and regulate their activity under tribal law. This authority is different from the federal corporate charters issued by the Secretary of Interior under 25 U.S.C. sect. 477 of the IRA, which among other things, permits the waiver of sovereign immunity.²⁴

Sovereign Immunity

Indian tribes may exercise sovereign immunity from lawsuit, unless Congress has expressly waived such immunity. Tribal sovereign immunity does not extend to tribal officials acting outside of their official capacity.²⁵

APPENDIX A

Outline of Sample Constitution

Typically, a tribal government in developing its constitution will provide for a definition of the tribe's:

- ! Territory and jurisdiction
- ! Membership
- ! Organization
- ! Tribal Council functions
- ! Powers of the Tribal Council
- ! Judicial system
- ! Tribal administration
- ! Elections
- ! Removal, recall and vacancy of Tribal Officials
- ! Administration of land provisions
- ! Initiatives and referendums
- ! Adoption of ordinances and resolutions

These are generally the more important constitutional provisions. There are others which are contained in the Sample Constitution that are further explained below. These provisions are intended to be samples and are not provisions required by the Bureau of Indian Affairs.

When developing a tribal constitution, a tribe may promulgate provisions that are tailored to meet its needs or requirements so long as they are not in violation of federal law. The Bureau of Indian Affairs will provide technical assistance to tribal governments in the development of constitutional provisions.

APPENDIX A — SAMPLE CONSTITUTION

PREAMBLE

We the people of the EXAMPLE Tribe, a federally recognized sovereign Indian tribe, do hereby adopt this constitution in order to:

1. Promote the common good and well-being of the Tribe.
2. Protect and preserve our culture and traditions including our language, arts and crafts, and archeological sites.
3. Protect our land, water and natural resources.
4. Promote and protect the health and welfare of our people.
5. Encourage and promote educational opportunities for members of the Tribe.
6. Foster economic development.
7. Protect the individual rights of our members.
8. Acquire additional lands for the benefit of the Tribe.
9. Promote self-government and ensure the political integrity of the Tribe.
10. Preserve, secure and exercise all the inherent sovereign rights and powers of an Indian tribe.

ARTICLE I — TERRITORY AND JURISDICTION

Section 1. Territory. The territory of the EXAMPLE Tribe shall include, to the fullest extent possible consistent with federal law, all lands, water, property, airspace, surface rights, subsurface rights and other natural resources in which the Tribe now or in the future has any interest, which are owned now or in the future by the United States for the exclusive or non-exclusive benefit of the Tribe or for individual tribal members, or which are located within the boundaries of a reservation which may be established for the Tribe, notwithstanding the issuance of any right-of-way.

Section 2. Jurisdiction. Except as prohibited by federal law, the EXAMPLE tribe shall have jurisdiction over all tribal members and over all persons, subjects, property and all activities occurring within its territory as defined by this Article. Nothing in this Article shall be construed to limit the ability of the Tribe to exercise its jurisdiction, based upon its inherent sovereignty as an Indian tribe.

ARTICLE II — MEMBERSHIP

Section 1. Requirements. The membership of the EXAMPLE Tribe shall consist of:

- (b) All persons whose names appear on the official federal acknowledgment roll prepared in [date], and its supplements dated [date].

- (a) All persons who meet all of the following requirements:
- (1) born to a tribal member after [date];
 - (2) at least one-fourth (1/4) degree Indian blood [or blood degree determine by the tribe] from a federally recognized tribe or tribes; and
 - (3) applies for membership in the Tribe, in accordance with the applicable enrollment ordinance.

Section 2. Adoption into Membership. The Tribal Council shall have sole and exclusive discretionary authority to adopt other persons as members of the Tribe, Provided, That at least six (6) members of the Tribal Council vote in favor of the adoption and, Provided, That all persons adopted into membership under this section shall meet at a minimum all of the following requirements:

- (a) at least one-eighth (1/8) degree Indian blood from a federally recognized tribe or tribes;
- (b) resident of the territory of the tribe for at least three (3) continuous years;
- (c) is not a member of another tribe; and
- (d) applies for membership in the Tribe, in accordance with the applicable enrollment ordinance.

Section 3. Rights of Members. All persons accepted as members under Section 1, above, or adopted into membership under Section 2, above, shall have the same rights as tribal members in accordance with this constitution, Provided, That the Tribal Council may give preference to residents of the territory of the tribe for available land, housing, benefits and services.

Section 4. Loss of Membership.

- (a) All relinquishments of membership in the tribe shall be done in writing in accordance with the procedures established by an enrollment ordinance. The Tribal Council shall remove from the tribe's membership roll the name of any person who voluntarily relinquishes his or her membership in the Tribe in accordance with such procedures.
- (b) Any member of the Tribe who is or becomes a member of any other federally recognized Indian tribe, band or group shall be disenrolled by the Tribal Council in accordance with the procedures established by an enrollment ordinance.

Section 5. Reinstatement. Any person who relinquishes his or her membership in the Tribe, pursuant to Section 4(a), above, or who has been disenrolled from the Tribe pursuant to Section 4(b), above, shall be reinstated as a member of the Tribe by the Tribal Council if the person meets all of the following requirements:

- (a) at least five (5) years have passed since the date of their relinquishment or disenrollment;
 - (1) This five (5) year waiting period for reinstatement shall not apply to persons who were under the age of eighteen (18) at the time of their relinquishment or disenrollment.
 - (2) This five (5) year waiting period for reinstatement shall not apply to any person whose

relinquishment or disenrollment occurred prior to the adoption of this constitution.

(b) provides adequate proof to the Tribal Council that he or she has given up his or her membership in any other federally recognized Indian Tribe, band or group; and

(c) applies for reinstatement as a member of the Tribe, in accordance with the applicable enrollment ordinance.

Section 6. Appeal. Any person whose application for enrollment or reinstatement is rejected or who has been disenrolled from the Tribe, shall have the right to appeal to the Tribal Court in accordance with the applicable enrollment ordinance, Provided, That the Tribal Court shall not have jurisdiction over adoptions of persons as tribal members under Section 2, above, unless there is a claim that the provisions of the constitution have been violated.

Section 7. Membership Roll. The Tribal Council shall maintain a membership roll of all current and former tribal members.

Section 8. Enrollment Ordinance. The Tribal Council shall enact an enrollment ordinance consistent with this constitution.

ARTICLE III — ORGANIZATION OF THE GOVERNMENT

The government of the EXAMPLE Tribe shall include a Tribal Council, a Tribal Court System and a Tribal Administration. The Tribal Council shall operate in accordance with Articles IV and V. The Tribal Court System shall operate in accordance with Article VI. The Tribal Administration shall be subordinate to the Tribal Council and shall operate in accordance with Article VII.

ARTICLE IV — THE TRIBAL COUNCIL

Section 1. The Tribal Council. The governing body of the EXAMPLE Tribe shall be known as the EXAMPLE Tribal Council which shall consist of seven (7) members as listed in this Article. All Tribal Council Members shall be enrolled members of the Tribe who are selected by the eligible voters of the Tribe in accordance with this constitution and the election ordinance.

Section 2. President and Vice President. The Tribal Council shall include the positions of President and Vice President who must reside within the territory of the Tribe or within one hundred fifty (150) miles of the territory of the Tribe, and who must be at least twenty-five (25) years of age.

Section 3. Area Council Members. The Tribal Council shall also include four (4) Area Council Members: two (2) persons who reside in the northern area and two (2) persons who reside in the southern area. Regardless of any other law, treaty or agreement which may define the Tribe's territory, for the purpose of electing Area Council Members the Tribal Council shall, in its sole

authority, define the northern and southern area boundaries by ordinance. The Tribal Council may include in the defined areas any land that is within the territory of the Tribe or within one hundred fifty (150) miles of the territory of the Tribe. Although the Area Council Members must reside in their respective areas as defined by the Tribal Council pursuant to this Section, the Area Council Members are to be elected by all eligible voters as defined by Article VIII, Section 7. The Area Council Members must be at least twenty-one (21) years of age.

Section 4. At-large Council Member. The Tribal Council shall also include one (1) At-large Council Member who must reside within the territory of the Tribe or within one hundred fifty (150) miles of the territory of the Tribe, and who must be at least twenty-one (21) years of age.

Section 5. Terms of Office. The terms of office for all Tribal Council Members including the President and Vice President shall be four (4) years except as provided for in Article VIII, Section 3. There shall be no limitations on serving consecutive terms on the Tribal Council. All Tribal Council Members must continue to meet the residency requirements set forth above for their respective Tribal Council seats during their term of office.

Section 6. Duties of the Officers. The duties of the President and Vice President shall be established by ordinance enacted by the Tribal Council.

Section 7. Meetings of the Tribal Council.

(a) The Tribal Council shall hold a regular meeting once a month.

(b) The President or any three other members of the Tribal Council may call special meetings of the Tribal Council. Adequate notice of all special meetings shall be given to all members of the Tribal Council.

(c) At each regular or special meeting of the Tribal Council a person shall be appointed to take minutes of the meeting, and a copy of the minutes shall be preserved by the Tribal Administration.

Section 8. Quorum. Four (4) or more members of the Tribal Council shall constitute a quorum for any regular or special Tribal Council meeting. A quorum is required at all meetings in order to conduct official business of the Tribal Council. Proxy voting shall be prohibited.

Section 9. Voting. The Tribal Council shall make decisions by a majority vote of those present except as otherwise provided in this constitution or in an ordinance which requires more than a majority vote. All Tribal Council Members, including the President and Vice President, shall have the power to vote.

Section 10. Code of Ethics. The Tribal Council shall have the power to adopt a Code of Ethics governing the conduct of tribal officials. The Code of Ethics may include disciplinary procedures so long as the official in question is informed of the charges and given an opportunity to respond to those charges including the opportunity to present witnesses and other evidence in his or her

defense.

ARTICLE V — POWERS OF THE TRIBAL COUNCIL

The Tribal Council shall have all powers vested in the Tribe through its inherent sovereignty or federal law. It shall execute these powers in accordance with established customs of the Tribe and subject to the express limitations contained in this constitution or other applicable laws. These powers include but are not limited to the following:

- (a) To represent the Tribe and act in all matters that concern the welfare of the Tribe, and to make decisions not inconsistent with or contrary to this constitution;
- (b) To negotiate and enter into contracts with the federal, state, local and tribal governments, and with individuals, associations, corporations, enterprises or organizations;
- (c) To purchase or accept any land or property for the Tribe;
- (d) To enact laws regulating the use, disposition and inheritance of all property within the territory of the Tribe;
- (e) To prevent or veto the sale, disposition, lease or encumbrance of tribal lands, interests in land, tribal funds or other tribal assets;
- (f) To employ legal counsel in accordance with applicable federal laws;
- (g) To enact laws regulating the domestic relations of persons within the jurisdiction of the Tribe;
- (h) To enact a law and order code governing the conduct of persons within the jurisdiction of the Tribe in accordance with applicable laws;
- (i) To provide for the removal or exclusion of any non-member of the Tribe whose presence may be injurious to members of the Tribe, and to prescribe conditions upon which non-members may remain within the territory of the Tribe;
- (j) To levy and collect taxes, duties, fees and assessments;
- (k) To appropriate and regulate the use of tribal funds in accordance with an annual budget approved by the Tribal Council;
- (l) To regulate all business activities within the jurisdiction of the Tribe, and to manage all tribal economic affairs and enterprises;
- (m) To regulate all matters and to take all actions necessary to preserve and safeguard the health, safety, welfare and political integrity of the Tribe;
- (n) To appoint subordinate committees, commissions, boards, tribal officers and employees, and to set their compensation, tenure and duties;
- (o) To enact laws, ordinances and resolutions necessary or incidental to the exercise of its legislative powers;
- (p) To take any and all actions necessary and proper for the exercise of the foregoing powers and duties, including those powers and duties not enumerated above, and for all other powers and duties now or hereafter delegated to the Tribal Council, or vested in the Tribe by federal law or through its inherent sovereignty.

ARTICLE VI — THE TRIBAL COURT SYSTEM

Section 1. Establishment. The judicial power of the EXAMPLE Tribe shall be vested in the Tribal Court System. The Tribal Court System shall include a Tribal Court and such other lower courts

of special jurisdiction, including forums for traditional dispute resolution, as the Tribal Council may establish by ordinance. There shall also be a Court of Appeals which shall be the court of last resort for all cases filed within the Tribal Court System.

Section 2. Jurisdiction. The judicial power of the courts shall extend to all cases and controversies within the jurisdiction of the Tribe, in law or equity, arising under this constitution, the laws or customs of the Tribe, or which are vested in the tribal courts by federal law or by virtue of the Tribe's inherent sovereignty. Any case or controversy arising within the jurisdiction of the Tribe shall be filed in the Tribal Court or other appropriate forum established by the Tribal Council before it is filed in any other court.

Section 3. Appointment of Judges. The Tribal Council shall appoint judges to serve for a term of four (4) years. There shall be one judge for the Tribal Court and either one or three judges for the Court of Appeals. No judge shall preside over a matter in the Court of Appeals if he or she presided over the same matter in the Tribal Court.

Section 4. Qualifications of Judges. The qualifications for judges shall be established by ordinance, Provided, That no additional requirements may be added during the tenure of a judge already in office, unless the additions or changes exempt the present judges during their term.

Section 5. Compensation. Judges shall receive for their services reasonable compensation that shall not be diminished during their term of office.

Section 6. Removal of Judges.

(a) A judge shall be removed by the Tribal Council for:

(1) Final conviction of a felony by any tribal, federal or state court while serving as judge.

(A) The Tribal Council may suspend a judge charged with a felony pending the outcome of the trial and any appeals, and an interim judge may be appointed for the period of the suspension.

(b) A judge may be disciplined or removed by the Tribal Council, by a vote of at least five (5) members of the Tribal Council, for:

(1) Converting tribal property or monies for personal use;

(2) Final conviction of three misdemeanors by any tribal, federal or state court while serving as judge;

(3) Unnecessary and repeated delays in hearing matters filed in the Courts; or

(4) Violation of the Judicial Code of Ethics.

(c) A judge shall be given full and fair opportunity to reply to any and all charges for which he or she may be disciplined or removed. A judge who is disciplined or removed may appeal directly to the Court of Appeals.

Section 7. Court Rules. The duties and procedures of the Tribal Court System, and all other court matters not addressed in this article of the constitution, shall be established by the Tribal Council by ordinance. The ordinance may also include a Judicial Code of Ethics governing the conduct of tribal judges.

ARTICLE VII — THE TRIBAL ADMINISTRATION

The Tribal Administration shall consist of the President and Vice President of the Tribal Council, and other persons as deemed necessary by the Tribal Council. The Tribal Administration shall oversee the administration of the Tribe's business and shall supervise the day to day operations of the Tribe. The Tribal Administration shall be subordinate to the Tribal Council.

ARTICLE VIII — ELECTIONS

Section 1. General Elections. General elections to vote for Tribal Council Members shall be held in odd numbered years on the first Saturday of May beginning in 1997. Election of Tribal Council Members shall be staggered so that no more than four Council seats shall be up for election at any one time.

Section 2. Special Elections. Special elections shall be held when called for by the Tribal Council, by this constitution, or by the voters, as provided for in this constitution or appropriate ordinances.

Section 3. The First Election. The first election of Tribal Council Members under this constitution shall be held on the first Saturday of May 1997. The incumbent President and Vice President of the Tribal Council as of the date of the adoption of this constitution shall remain in office until the general election to be held in May 1999. The incumbent Tribal Council shall select an incumbent Area Council Member from the northern area and an incumbent Area Council Member from the southern area who shall both remain in office until the general election to be held in May 1999. The remaining three (3) seats on the Tribal Council shall be declared vacant for purposes of the first election. These three (3) vacant seats shall include one (1) seat from the northern area, one (1) seat from the southern area, and one (1) seat at-large. The candidates receiving the highest number of votes for each vacant council seat in the first election in 1997 shall be declared the winners and shall serve four year terms until the general election to be held in May 2001. The first election shall be held in accordance with all other applicable provisions of this constitution and applicable ordinances.

Section 4. Election Board. The Tribal Council shall appoint an Election Board to conduct all elections including all special elections. The Election Board shall consist of one (1) tribal member from the northern area, one (1) tribal member from the southern area, one (1) tribal member age 55 or older, one (1) tribal member between the ages of 35 and 54, and one (1) tribal member between the ages of 18 and 34, Provided, That all members of the Election Board shall be at least 18 years of age, and Provided, further that an Election Board member shall not be eligible to run for a seat on the Tribal Council. All Election Board Members shall serve for a specific term of office as established by the election ordinance. The Election Board may appoint clerks, poll workers and others to assist the Election Board with conducting the election.

Section 5. Nominations. For all elections of Tribal Council Members the Election Board shall conduct a nomination meeting of eligible voters to nominate tribal members as candidates for Tribal Council seats. The Election Board may schedule the nomination meeting before the day scheduled for the election, or on the day of the election, Provided, That the Election Board shall mail to all eligible tribal voters advance notice of both the date of the nomination meeting and the date of the election at least thirty (30) days prior to the nomination meeting. At the nomination meeting, all eligible voters, as defined in Section 7 of this Article, may submit nominations for any vacant seat. A person may not be nominated as a candidate for more than one seat.

Section 6. Qualifications for Tribal Council. Persons nominated to run for Tribal Council seats must be enrolled tribal members who meet the age requirements set forth in Article IV on or before the date of the election, and they must meet the residency requirements set forth in Article IV for at least one year prior to the date of the election. No person may run for a Tribal Council seat who has served twelve (12) or more consecutive months in any federal, state or tribal jail or prison.

Section 7. Eligible Voters. All tribal members who are eighteen (18) years or older and who reside within the territory of the Tribe or within one hundred fifty (150) miles of the territory of the Tribe shall be eligible to vote.

Section 8. Ballots. All voting at regular and special elections shall be done by secret written ballot.

Section 9. Absentee Ballots. Absentee voting shall not be permitted.

Section 10. Election Results. The Election Board shall certify the results of an election within three (3) days after the election day. The candidate receiving the highest number of votes for each available seat shall be declared the winner.

Section 11. Tie Votes. Tie votes between two or more candidates shall be decided in a special runoff election. All eligible voters shall be entitled to vote in any runoff election. If a runoff election ends in another tie, the outcome shall be decided by the drawing of straws by the candidates tied for that office. The Election Board shall certify the results of any runoff election within three (3) days after the runoff election day.

Section 12. Challenges. Any tribal member may challenge the results of any election by presenting his or her challenge to the Tribal Court within five (5) days after the election results are certified. The Tribal Court shall decide all election challenges within ten (10) days from the date the challenge is filed. Any appeals shall be filed with the Court of Appeals within five (5) days of the issuance of the Tribal Court decision, and the Court of Appeals shall decide the appeal within ten (10) days. If the Tribal Court or Court of Appeals invalidates the election results, a new election shall be held within sixty (60) days.

Section 13. Oath of Office. The oath of office for each newly elected Tribal Council Member shall be administered by the Election Board within thirty (30) days after the Election Board declares the winner of a seat, unless a challenge is filed and in that case within thirty (30) days after a final

decision by the Tribal Court or Court of Appeals. If a challenge is filed but it does not relate to all of the elected seats, the oath of office shall be administered to the newly elected Tribal Council Members whose seats have not been challenged within thirty (30) days after the Election Board declares the winners. Each incumbent Tribal Council Member shall remain in office until the oath of office is administered to the newly elected Tribal Council Member for his or her seat. Upon expiration of the incumbent's term of office, he or she shall transfer all tribal records within his or her control to the newly elected Tribal Council Member.

Section 14. Election Ordinance. The Tribal Council shall enact an election ordinance consistent with this constitution which covers all necessary procedures for all elections.

ARTICLE IX — REMOVAL, RECALL AND VACANCY

Section 1. Removal.

(a) The Tribal Council shall remove a Council Member for:

(1) Final conviction of a felony by any tribal, federal or state court while serving on the Tribal Council.

(A) The Tribal Council may suspend a Council Member charged with a felony pending the outcome of the trial and any appeals.

(b) The Tribal Council may discipline or remove a Council Member, by a vote of at least five (5) members of the Tribal Council, for:

(1) Converting tribal property or monies for personal use;

2) Failing to attend four (4) regular or special meetings consecutively without good cause;

(3) Final conviction of three misdemeanors by any tribal, federal or state court while serving on the Tribal Council; or

(4) Violation of the Code of Ethics.

(c) In all proceedings under Section 1(a) or 1(b) above, the Tribal Council Member in question shall be afforded full due process rights including a written statement of the charges, the right to respond to those charges and the right to present witnesses and other evidence in his or her defense. The decision of the Tribal Council shall be final and shall be appealable to the Tribal Court only if a claim is made that the tribal constitution has been violated or due process rights not afforded. A Council Member removed from office must wait at least five (5) years from the official date of removal to run for office again.

Section 2. Recall.

(a) Any adult tribal member may initiate recall proceedings against any Tribal Council Member by filing a written request with the Election Board, Provided, That a recall proceeding may not be

initiated against any Tribal Council Member whose term expires within six (6) months.

(b) After receipt of the written request, the Election Board shall issue official petition forms to the tribal member who initiated the recall. The tribal member shall have sixty (60) days to collect the signatures from thirty percent (30%) of the eligible voters of the Tribe.

(c) Individual petitions shall be circulated for each Tribal Council Member who is subject to recall. A maximum of three (3) Tribal Council Members may be recalled at a time.

(d) The Election Board shall verify the signatures on a recall petition within ten (10) days of receipt of the petition. If the tribal member seeking recall has collected the required number of signatures in the allotted time then the Election Board shall hold a recall meeting within sixty (60) days of the receipt of the petition. Notice of the recall meeting shall be mailed to eligible tribal voters at least thirty (30) days prior to the recall meeting. The person initiating the recall and the person subject to recall shall be given a reasonable opportunity to speak and present evidence at the recall meeting.

(e) A majority vote by secret written ballot of the eligible voters attending the recall meeting shall determine the success or failure of the recall petition(s), Provided, That at least thirty (30%) of the eligible voters actually vote at the recall meeting.

(f) The recall meeting shall be held in accordance with the provisions of an election ordinance which shall include a section on recall procedures.

Section 3. Vacancies.

(a) If a Tribal Council Member should die, resign, or be removed or recalled from office, the Tribal Council shall declare the position vacant. The Tribal Council shall fill a vacancy by special election unless less than six (6) months remain in the term, in which case the Tribal Council shall leave the position vacant. The person who fills a vacant position shall only serve out the term of the person whom he or she is replacing.

(b) All resignations from the Tribal Council shall be done in writing.

ARTICLE X — LAND

The Tribal Council shall have the authority to establish land policies, adopt a land use ordinance and to otherwise regulate land within the territory of the Tribe in accordance with applicable law.

ARTICLE XI — INITIATIVE AND REFERENDUM

Section 1. Initiative. The Tribal Council shall submit any proposed ordinance or resolution, except those regarding land, housing or the adoption of tribal members under Article II, Section 2, to popular initiative upon petition of at least thirty percent (30%) of the eligible voters of the Tribe, or upon the request of the majority of the members of the Tribal Council. The initiative election shall be held within sixty (60) days after receipt of the qualifying number of petition signatures or

the Tribal Council request. The vote of the majority of the eligible voters in such initiative shall decide whether the proposed ordinance or resolution shall thereafter be in effect, Provided, That at least thirty percent (30%) of the eligible voters shall vote in such initiative.

Section 2. Referendum. The Tribal Council shall submit any enacted ordinance, resolution or other official action of the Tribal Council, except those regarding land, housing or the adoption of tribal members under Article II, Section 2, to popular referendum upon petition of at least thirty percent (30%) of the eligible voters of the Tribe or upon the request of the majority of the members of the Tribal Council. The referendum election shall be held within sixty (60) days after the receipt of the qualifying number of petition signatures or the Tribal Council request. The vote of the majority of the eligible voters in such referendum shall decide whether the enacted ordinance, resolution or other official action shall thereafter be in effect, Provided, That at least thirty percent (30%) of the eligible voters shall vote in such referendum.

Section 3. Procedures. Initiative and referendum elections shall be conducted by the Election Board and shall be held in accordance with the provisions of an election ordinance which shall include a section on initiative and referendum procedures.

ARTICLE XII — ORDINANCES AND RESOLUTIONS

Section 1. Resolutions. All final decisions on matters of temporary interest where a formal expression is needed shall be embodied in a resolution, noted in the minutes, and shall be available for inspection by members of the Tribe during normal business hours.

Section 2. Ordinances. All final decisions on matters of permanent interest shall be embodied in ordinances. Such enactments shall be available for inspection by members of the Tribe during normal business hours.

ARTICLE XIII — SOVEREIGN IMMUNITY

The EXAMPLE Tribe shall be immune from suit except to the extent that the Tribal Council expressly waives the Tribe's sovereign immunity, or as provided by this constitution.

ARTICLE XIV — BILL OF RIGHTS

The EXAMPLE Tribe, in exercising its powers of self-government shall not:

(a) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for redress of grievances;

(b) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and person or thing to be seized;

- (c) subject any person for the same offense to be twice put in jeopardy;
- (d) compel any person in any criminal case to be a witness against himself;
- (e) take any private property for a public use without just compensation;
- (f) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense and to have these rights explained at the time of arrest;
- (g) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;
- (h) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (i) pass any bill of attainder or *ex post facto* law; or
- (j) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

ARTICLE XV — GENERAL MEETINGS

The Tribal Council shall call at least one (1) general meeting per year of all the eligible voters of the Tribe to identify and discuss important tribal matters.

ARTICLE XVI — AMENDMENTS

This constitution may be amended by a majority vote of the qualified voters of the Tribe voting at an election called for that purpose by the Secretary of the Interior, Provided, That at least thirty percent (30%) of those entitled to vote shall vote in such election; but no amendment shall become effective until approved by the Secretary of the Interior or until deemed approved by the Secretary by operation of law. It shall be the duty of the Secretary of the Interior to call and hold an election on any proposed amendment at the request of the Tribal Council, or upon presentation of a petition signed by at least thirty percent (30%) of the qualified voters of the Tribe.

ARTICLE XVII — SAVINGS CLAUSE

All enactments of the Tribe adopted before the effective date of this constitution shall continue in full force and effect to the extent that they are consistent with this constitution.

ARTICLE XVIII — ADOPTION OF CONSTITUTION

This constitution, when adopted by a majority vote of the registered voters of the EXAMPLE Tribe, voting at a special election authorized by the Secretary of the Interior in which at least thirty

percent (30%) of those registered in accordance with Secretarial regulations to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and, if approved by the Secretary of the Interior or by operation of law, shall be effective from the date of such approval.

Endnotes

1. 30 U.S. (5 Pet.) At 17.
2. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).
3. *Felix S. Cohen's Handbook of Federal Indian Law*, 1982 ed. (1982), The Mitchie Co., Charlottesville, VA, pp. 246-257.
4. *Felix S. Cohen's Handbook of Federal Indian Law*, 1982 ed. (1982), The Mitchie Co., Charlottesville, VA, pp. 246-257.
5. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 62-63 (1978).
6. See generally, *Felix S. Cohen's Handbook of Federal Indian Law*, 1982 ed. (1982), The Mitchie Co., Charlottesville, VA, pp. 247.
7. See generally, *The Rights of Indians and Tribes* (1992) by Stephen L. Pevar, Southern Illinois University Press, Carbondale, IL, pp. 82-83.
8. See *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 152-54 (1980).
9. See generally, *The Rights of Indians and Tribes* (1992) by Stephen L. Pevar, Southern Illinois University Press, Carbondale, IL, pp. 82-83.
10. See generally, *The Rights of Indians and Tribes* (1992) by Stephen L. Pevar, Southern Illinois University Press, Carbondale, IL, pp. 85.
11. See generally, *Felix S. Cohen's Handbook of Federal Indian Law*, 1982 ed. (1982), The Mitchie Co., Charlottesville, VA, pp. 20-27.
12. See generally, *Advanced Tribal Enrollment* (2001), Falmouth Institute, Fairfax, VA, Chap. 2.
13. See generally, *Felix S. Cohen's Handbook of Federal Indian Law*, 1982 ed. (1982), The Mitchie Co., Charlottesville, VA, pp. 23-27.
14. See generally, *Felix S. Cohen's Handbook of Federal Indian Law*, 1982 ed. (1982), The Mitchie Co., Charlottesville, VA, pp. 20-27.
15. See generally, *Advanced Tribal Enrollment* (2001), Falmouth Institute, Fairfax, VA, Chap. 2.
16. See generally, *Advanced Tribal Enrollment* (2001), Falmouth Institute, Fairfax, VA, Chap. 2.

17. See generally, *Advanced Tribal Enrollment* (2001), Falmouth Institute, Fairfax, VA, Chap. 2.
18. See generally, *Advanced Tribal Enrollment* (2001), Falmouth Institute, Fairfax, VA, Chap. 2.
19. See generally, *Advanced Tribal Enrollment* (2001), Falmouth Institute, Fairfax, VA, Chap. 2.
20. See generally, *Advanced Tribal Enrollment* (2001), Falmouth Institute, Fairfax, VA, Chap. 2.
21. See generally, *Advanced Tribal Enrollment* (2001), Falmouth Institute, Fairfax, VA, Chap. 2.
22. *Indians Tribes as Sovereign Governments* (1988) AIRI Press, Oakland, CA, p. 37.
23. See generally, *The Rights of Indians and Tribes* (1992) by Stephen L. Pevar, Southern Illinois University Press, Carbondale, IL, pp. 96-98.
24. *Indians Tribes as Sovereign Governments* (1988) AIRI Press, Oakland, CA, pp. 38-39.
25. *American Indian Law in a Nutshell*, 2nd ed. (1988) by William C. Canby, Jr., West Group Publishing Co., St. Paul, MN, pp. 79-83.