

Constitution of the Eastern Band of the Cherokee Indians

BY THE PEOPLE, FOR THE PEOPLE

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**CONSTITUTION
OF THE EASTERN BAND OF CHEROKEE INDIANS**

PREAMBLE

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We, the Principal People, the Eastern Band of Cherokee Indians, acknowledging the Creator, being determined to maintain our sovereignty, hold fast to our ancestral homelands and our natural resources; and, to establish justice, ensure tranquility, promote our culture, our education, our language and our common welfare; and, to secure for ourselves and our posterity the blessings of liberty, do ordain and establish this Constitution of the Eastern Band of Cherokee Indians. Herein we acknowledge the foundation laid by the 1875 Lloyd Welch Constitution, Chapter 207 of the 1887 North Carolina State Charter and the 1986 Eastern Band of Cherokee Indians Charter and Governing Document and declare that this Constitution supersedes these and all other previous governing documents. [Exhibit 1](#)

Article I – Organization of Government

[TOC](#)

Section 1. Sovereignty. The People of the Eastern Band of Cherokee Indians bear the right to self-determination and hereby establish a government that possesses inherent powers of sovereignty and protections granted by territorial integrity.

Section 2. Branches of Government. The powers of the government shall be divided into three separate but equal branches consisting of the Legislative, Executive and Judicial.

Section 3. Separation of Powers. No official of any Branch of Government shall exercise any power granted in this Constitution to any other Branch of Government except as expressly directed or permitted by this Constitution.

Section 4. Seat of Government. The seat of government of the Eastern Band of Cherokee Indians shall be located upon Tribal trust lands. [Exhibit 2](#)

Article II – Territory and Jurisdiction

[TOC](#)

Section 1. Territory. The Territory of the Eastern Band of Cherokee Indians shall be comprised of all Tribal lands within the Qualla Boundary, and all lands held by the United States for the benefit of the Eastern Band of Cherokee Indians or its citizens, and any additional lands acquired by the Eastern Band of Cherokee Indians in fee. The Territory shall include all surface and subsurface lands and waters, submerged lands under navigable or non-navigable water, all air, water, minerals, timber, and any other natural resources.

Section 2. Jurisdiction. The Jurisdiction of the Eastern Band of Cherokee Indians shall extend to all persons, activities, and property within the Territory based upon inherent sovereignty of the Cherokee tribe. Every public highway or any other ingress into the Territory shall be accompanied by a public notice that entry is conditioned upon the acceptance of the Jurisdiction of the Eastern Band of Cherokee Indians. Any person who enters the Territory shall, by entering, be deemed to have consented to the Jurisdiction of the Eastern Band of Cherokee Indians. Every license or permit issued under the authority of the Eastern Band of Cherokee Indians or within the Territory shall include a provision submitting all parties and their assigns to the Jurisdiction of the Eastern Band of Cherokee Indians. [Exhibit 3](#)

Article III – Citizenship

[TOC](#)

The citizenship of the Eastern Band of Cherokee Indians shall consist of all persons whose names validly appear on an official membership roll used by the Eastern Band of Cherokee Indians on the date of the adoption of this Constitution. Future citizenship shall be determined as provided for by Cherokee Code. [Exhibit 4](#)

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Article IV – Legislative Branch

[TOC](#)

The Legislative powers shall be vested in the Tribal Council which shall consist of twelve Council Representatives and shall constitute the Legislative Branch of government for the Eastern Band of Cherokee Indians.

Section 1. Composition. The Tribal Council shall consist of the following: two Representatives from each of the six (6) Townships of Yellowhill, Big Cove, Birdtown, Wolfstown, Painttown; Snowbird and Cherokee County communities shall constitute one Township, for a total of twelve Tribal Council Representatives.

Section 2. Qualifications. In order to run for and/or serve as Tribal Council Representative a candidate must be a citizen of the Eastern Band of Cherokee Indians; must be at least twenty-five (25) years of age either by the date of the upcoming General Election or upon entering service; and must be an active member as described in the bylaws of the relevant community club, immediately preceding the date of filing for election.

Clause 1. Disqualifiers. No person shall ever be eligible for office or appointment of honor, profit, or trust who has been found guilty in a court of law for either aiding, abetting, counseling, or encouraging any person or persons of defrauding the Eastern Band of Cherokee Indians or any of its entities. Or they themselves have been found guilty in a court of law in defrauding the Tribe or any of its entities. Neither shall any person be eligible to such office, who has been convicted of a felony or impeached and removed from office. [Exhibit 5](#)

Section 3. Election for Tribal Council. Council Representatives shall be elected to their respective offices by the registered citizens of the Eastern Band of Cherokee Indians, who have attained the age of eighteen (18) years and are constituent citizens of the respective Townships.

Clause 1. Time of Election. The general election for Tribal Council Representatives shall be held on the first Thursday in September of 2023, following the adoption of this Constitution and every two years thereafter under such rules and regulations as may be adopted by the Board of Elections, consistent with this Constitution.

Clause 2. Selection. The successful candidate elected as a Tribal Council Representative shall be the candidate who receives a simple majority of votes cast by registered voters of each respective Township.

- a. First Election after Adoption.** In the first election after this Constitution is adopted, the two Council Representatives from each Township shall be selected as follows. The candidate that receives the most votes shall serve the full four (4) year term while the candidate that receives the next highest number of votes shall only serve a one-half term of two (2) years for the purpose of staggering terms of Representatives in each Township. [Exhibit 6](#)

Clause 3. Vacancy in Office. In case of death, resignation, removal or any cause that a Tribal Council Representative becomes unable or unfit to perform the duties to the end of his/her current term of office, he/she shall be replaced as follows within fifteen (15) days.

- a. **Replacement.** If more than twelve (12) months remain in the vacant term of office from the date of vacancy, the replacement shall be on an interim basis until the Board of Elections can hold a special election. If twelve (12) months or less remains in the vacant term of office from the date of vacancy, the interim replacement shall finish out the vacant term. Whosoever completes the vacated term shall be deemed to have served a full term of office.
- b. **Order of Succession.** The order of succession for interim replacement shall be as follows, unless the individual is unable to meet eligibility requirements for Tribal Council Representative as prescribed by this Constitution and the Board of Elections, or is unwilling to serve:
 - i. Tribal Council candidate from the most recent election receiving the next highest number of votes of the Township where the vacancy exists;
 - ii. shall remain vacant with voting privileges assigned to the second Township representative in Council until the seat is filled. [Exhibit 7](#)

Section 4. Term of Office. The Representatives elected to the Tribal Council shall hold office for a term of four (4) years, not to exceed two (2) consecutive terms for a total of eight (8) consecutive years. Representatives who have reached this limitation shall be allowed to run for office in the next General Election cycle following their departure from office.

Clause 1. First Election after Adoption. The Representative that serves the first two (2) year term is limited to a total of six (6) consecutive years. [Exhibit 8](#)

Section 5. Compensation. The Representatives serving on Tribal Council shall be compensated for their service through the budget appropriation with no pay raise to take effect until after the new budget is enacted following a General Election. [Exhibit 9](#)

Section 6. Duties. The Tribal Council is hereby authorized and empowered to adopt laws and regulations for the general government of the Tribe; govern the management of real and personal property held by the Tribe; initially assign among its citizens thereof possessory holdings in land held in trust by the United States for the benefit of the Tribe or any possessory holding that by operation of law reverts back to the Tribe; appropriate the use of tribal funds for the benefit of the tribe in accordance with an annual budget and; is hereby vested with full power to enforce compliance to such legislations as may be enacted. [Exhibit 10](#)

Section 7. Officers. All officers elected by the Tribal Council, including but not limited to; Chair, Vice-Chair shall hold office until the newly elected Representatives are sworn in. Tribal Council may remove and replace any officer by the same standard adopted for election.

Clause 1. Election of the Chair and Vice-Chair. An election of the Tribal Council Chair and Vice-Chair shall take place after the newly elected council is seated and shall be selected from among their member Representatives.

Clause 2. Vacancy of the Chair or Vice-Chair. If the conditions of Article IV Section 3 Clause 3 involve the Chair or Vice-Chair of Tribal Council, such officer shall be replaced by an election of the current seated members of Council at its next meeting when business can be transacted.

[Exhibit 11](#)

Section 8. Annual Council. The Principal Chief shall call a Special Session to elect the officers of Tribal Council on the first Monday in October after General Election. At the conclusion of electing officers, Tribal Council will convene Annual Council. No business shall be transacted unless a quorum of Council Representatives is present, with a quorum consisting of a majority of the current members of Council. [Exhibit 12](#)

Section 9. Council Actions. All Council Representatives, including the Chairman, shall be entitled to vote on all issues. All acts of Council shall be signed by the Council Chairman. All acts neither ratified nor vetoed by the Executive branch within thirty (30) calendar days of signing by the Council Chairman shall be deemed enacted. [Exhibit 13](#)

Section 10. Weighted Vote. In order to provide equal representation to all citizens of the Eastern Band of Cherokee Indians, a census survey of the Tribal citizenship, based upon the information located within the official citizenship rolls, shall be initiated by Tribal Council for the purposes of determining a census of the citizenship and of the Townships. The results of the census will determine the weight of the votes to be cast by each Tribal Council Representative and shall be conducted prior to the 2025 general election and prior to the general election each ten years thereafter to determine the number of Tribal citizens affiliated with a Township.

After the regular 2025 general tribal election and each ten years thereafter, the Tribal Council, at its first regular meeting, shall determine the total number of votes to be cast in the Tribal Council and shall allot a voting authority to each Council Representative. The voting weight allotted to each Council Representative shall be determined by computing the mathematical ratio, fraction or proportion that exists between the number of Tribal citizens who are counted in each Township and the total number of Tribal citizens. The Cherokee Supreme Court shall have sole jurisdiction to resolve any dispute pertaining to the voting weight attributed to a Tribal Council Representative. [Exhibit 14 & Exhibit 15](#)

Section 11. Veto. Any legislation of Tribal Council may be vetoed by the Executive branch. A veto shall not prevail against a two-thirds (2/3) unweighted vote of Tribal Council. [Exhibit 16](#)

Article V – Executive Branch

[TOC](#)

The Executive powers shall be vested in the Executive Officers and shall constitute the Executive Branch of government for the Eastern Band of Cherokee Indians.

Section 1. Composition. The Executive Officers of the Tribe shall consist of a Principal Chief and a Vice-Chief.

Section 2. Qualifications. In order to run for and/or serve as Principal Chief or Vice-Chief a candidate must be a citizen of the Eastern Band of Cherokee Indians; must be at least thirty-five (35) years of age either by the date of the upcoming General Election or upon entering into service; and must have legally resided on Cherokee trust lands continuously for at least two (2) years immediately preceding the date of filing for election.

Clause 1. Disqualifiers. No person shall ever be eligible for office or appointment of honor, profit, or trust who have been found guilty in a court of law for aiding, abetting, counseling, or encouraging any person or persons of defrauding the Eastern Band of Cherokee Indians or any of its entities. Neither shall any person be eligible to such office, who has been convicted of a felony. [Exhibit 17](#)

Section 3. Election for Executive office. The Principal Chief and Vice-Chief shall be elected to their respective offices by the registered voters of the Eastern Band of Cherokee Indians.

Clause 1. Time for Election. The election for Principal Chief and Vice-Chief shall be held on the first Thursday in September of 2023, following the adoption of this Constitution and every four (4) years thereafter under such rules and regulations as may be adopted by the Board of Elections.

Clause 2. Selection. Election for Principal Chief and Vice-Chief shall be the candidates who each receive a majority of votes cast by the registered voters of the Eastern Band of Cherokee Indians. [Exhibit 18](#)

Clause 3. Vacancy of Chief. In case of death, resignation, removal or any cause that the Principal Chief becomes unable or unfit to perform the duties of the current term of office, the Chief shall be replaced immediately by the Vice-Chief.

Clause 4. Vacancy of Vice-Chief. In case of death, resignation, removal or any cause that the Vice-Chief becomes unable or unfit to perform the duties of the current term of office, the Vice-Chief shall be replaced immediately by an elected member of Tribal Council, chosen by Tribal Council receiving the most unweighted votes.

Clause 5. Vacancy of Executive Branch. In the event that both Principal Chief and Vice-Chief simultaneously are unable or unfit to perform their duties, the Chair of Tribal Council shall replace the Principal Chief immediately, the Vice-Chief shall be replaced immediately by any remaining elected member of Tribal Council, chosen by Tribal Council receiving the most unweighted votes.

- a. **Disqualification of Chair.** If the Chair of Tribal Council does not meet the qualifications for the office of Principal Chief, the replacement shall be an elected member of Tribal Council who does qualify. They will be chosen by a quorum of Tribal Council receiving the most unweighted votes.

Clause 6. Interim Term. If more than twelve (12) months remain in the vacant term of office identified in the above Clauses 3, 4, or 5, the replacement shall be on an interim basis until the Board of Elections can hold a special election. If twelve (12) months or less remains in the vacant term of office identified in the above Clauses 3, 4, or 5, the replacement shall finish out the vacant term. [Exhibit 19](#)

Section 4. Term. The elected Principal Chief and Vice-Chief each shall hold office for a term of four (4) years, not to exceed two (2) consecutive terms in the same office. Office holders who have reached this limitation shall be allowed to run for the same office in four (4) years following their departure from office.

Section 5. Compensation. The Principal Chief and Vice-Chief shall receive as compensation for services such sum as shall be determined by an appropriation by Tribal Council. No change in pay shall take effect until the next elected Tribal Council are seated as a result of a General Election. In no way shall the Executive branch directly adjust or otherwise influence any elected official's compensation. [Exhibit 20](#)

Section 6. Powers and Duties. There shall be an Executive Committee, which shall consist of the Principal Chief and Vice-Chief. The Committee shall execute and carry out tribal legislation.

Clause 1. Legislation. The Principal Chief, or in his/her absence, the Vice-Chief shall ratify or veto any legislation passed by Tribal Council. Ratification or veto must take place within thirty (30) days of passage of legislation.

Clause 2. Budgets. The Executive Committee shall present a proposed budget based on projected annual revenues to Tribal Council no later than July 1 of each year.

Section 7. Fiscal Duty. No money shall be paid out except upon direction of the Principal Chief as authorized by an act of the Tribal Council. [Exhibit 21](#)

Article VI – Judicial Branch

[TOC](#)

The Judicial powers shall be vested in the Justices and Judges of the Cherokee Courts as herein provided, which shall constitute the Judicial Branch of government for the Eastern Band of Cherokee Indians. The Judicial Branch shall have sole power to interpret the Constitution, laws, treaties, customs and traditions of the Eastern Band of Cherokee Indians, and issue all legal and equitable orders, writs, and decrees in aid of its jurisdiction. [Exhibit 22](#)

Section 1. Composition. The Judicial Branch shall be comprised of one Supreme Court, one Trial Court, and such other inferior appellate courts and Trial Courts of Special Jurisdiction as may be established by law. The Supreme Court shall be known as the “Cherokee Supreme Court” and the Trial Court shall be known as the “Cherokee Trial Court.”

Clause 1. Cherokee Supreme Court. The Supreme Court shall be comprised of one Chief Justice and no less than two Associate Justices. The Cherokee Supreme Court shall always sit with an odd number of Justices.

Clause 2. Cherokee Trial Court. The Trial Court shall be comprised of one Chief Judge and no less than two Associate Judges.

Clause 3. Courts of Special Jurisdiction. The Trial Courts of Special Jurisdiction shall be comprised of Judges as assigned by the Chief Justice.

Clause 4. Temporary Adjudicators. The Court shall maintain a list of temporary justices, judges and magistrates available for assignment to particular cases or duties by the Chief Justice. [Exhibit 23](#)

Section 2. Qualifications.

Clause 1. Chief Justice. The Chief Justice shall be a United States citizen, have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association with demonstrated knowledge of Federal Indian law, and shall have no less than five (5) years of experience as a judge in a Tribal, state, or Federal court.

Clause 2. Associate Justices. The Associate Justices shall have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association with demonstrated knowledge of Federal Indian law and shall have no less than two (2) years of experience as a judge in a Tribal, state, or Federal court.

Clause 3. Chief Judge. The Chief Judge shall have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association with demonstrated knowledge of Federal Indian law and shall have no less than two (2) years of experience as a judge in a Tribal, state, or Federal court.

Clause 4. Associate Judges. The Associate Judges shall have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association and shall be members in good standing with the Cherokee Bar. [Exhibit 24](#)

Section 3. Installation.

Clause 1. Chief Justice.

a. Appointment. Recommendations for the position of Chief Justice shall be submitted to the Principal Chief by a panel consisting of the Cherokee Community Club Council Officers who are citizens of the Eastern Band of Cherokee Indians and active Justices and Judges of the Cherokee courts. The Chief Justice shall be nominated by the Principal Chief from the recommendations presented by the panel and confirmed by Tribal Council.

b. Vacancy of office or reappointment. In the event that the Chief Justice is unable to complete the current term of service or successfully completes the current term of service, Article VI, Section 3.1.a of this Constitution shall apply. [Exhibit 25](#)

Clause 2. Other Justices and Judges.

a. Appointment. Nominations for the position of Associate Justices, Chief Judge and other judges shall be submitted to the Tribal Council for confirmation by a panel consisting of the Cherokee Community Club Council Officers and the Chief Justice.

Clause 3. Temporary Adjudicators and Magistrates. Prior to assignment, temporary Justices and Judges shall be nominated by the Principal Chief and confirmed by Tribal Council. Magistrates shall be appointed exclusively by the Chief Justice.

Clause 4. Adjudicators at the time of adoption. Notwithstanding any other provision of this Constitution, any Justice or Judge of the Eastern Band of Cherokee Indians Courts who holds that office at the time this Constitution is adopted shall continue to assume all powers and duties of that office as set forth in this Constitution. [Exhibit 26](#)

Section 4. Term.

Clause 1. Supreme Court. The Chief Justice shall be appointed for a term of ten (10) years. Associate Justices shall be appointed for a term of eight (8) years.

Clause 2. Cherokee Trial Court. The Chief Judge shall be appointed for a term of ten (10) years. Associate Judges shall be appointed for a term of eight (8) years. [Exhibit 27](#)

Section 5. Compensation. The Justices and Judges shall be compensated from the Judiciary budget as administered by the Chief Justice of the Cherokee Supreme Court. No Justice or Judge shall be subjected to a reduction in compensation during a term in office.

Section 6. Powers and Duties. The Judicial Branch shall have sole power to interpret the Constitution., laws, treaties, customs and traditions of the Eastern Band of Cherokee Indians, and issue all legal and equitable orders, writs, and decrees in aid of its jurisdiction. The Chief Justice for the Judicial branch shall present a proposed Judiciary budget to Tribal Council no later than July 1 of each year and shall thereafter be empowered to administer such budget exclusively. [Exhibit 28](#)

Article VII – Grand Council

[TOC](#)

Grand Council, being a unique body in Cherokee culture and tradition, shall be an assembly of the Principal People which consists of Tribal citizens eighteen (18) years of age or older. The Cherokee Community Club Council shall convene, establish the procedures for, set the agenda for, and preside over Grand Council. [Exhibit 29](#)

Section 1. Call for Grand Council. The Cherokee Community Club Council Officers shall have the exclusive right to call a Grand Council of all eligible Tribal citizens. A public notice shall be published no later than thirty (30) days prior to the convening of Grand Council.

Section 2. Financing Grand Council. The Community Club Council will prepare an annual budget to be financed from the Tribal General Fund account and overseen by the Community Club Council Officers for the possible convening of Grand Council.

Section 3. Agenda. Any agenda item(s) for Grand Council must be submitted to the Cherokee Community Club Council Officers for prior approval thirty (30) days before a Grand Council is convened.

Section 4. Officers. The Cherokee Community Club Council Officers will determine the roles and responsibilities for the officers of the Grand Council and who will fill them.

Section 5. Quorum. A quorum of Grand Council shall consist of no less than thirty (30) percent of the eligible Tribal citizens.

Section 6. Results from Grand Council. Any resolutions decided upon in Grand Council shall be placed on the legislative agenda for the next meeting of Tribal Council for legislative consideration.

[Exhibit 30](#)

Article VIII – Oath of Office

[TOC](#)

The Oath of Office is a solemn promise between the elected or appointed officials and the Cherokee People for whom they are elected or appointed to represent.

Section 1. Agreement to Ethics. All elected or appointed officials of the Eastern Band of Cherokee Indians, before taking their oath of office, shall agree by signature, to conform their conduct to the Standards of Ethical Conduct as stated by the Audit and Ethics Committee.

Section 2. Oath of Office. All elected or appointed officials of the Eastern Band of Cherokee Indians before entering upon the duties of office shall take the following oath before the Chief Justice of the Cherokee Supreme Court, or his/her designee:

“I do solemnly swear (or affirm) that I will faithfully execute the duties of (the elected or appointed officials as applicable) of the Eastern Band of Cherokee Indians and will to the best of my ability, preserve, protect and defend the Constitution of the Eastern Band of Cherokee Indians and the Constitution of the United States, and laws confirmed and ratified by the Eastern Band of Cherokee Indians. I do solemnly swear (or affirm) that I have not obtained Tribal office by any undue or unlawful means, and that in all measures which may come before me I will so conduct myself in a manner most conducive to the interest and prosperity of the Eastern Band of Cherokee Indians.”

Exhibit 31

Article IX – Impeachment of Elected Officials

[TOC](#)

Any elected or appointed official of the Eastern Band of Cherokee Indians who violates their oath of office or is guilty of any offense making them ineligible to hold said office may be impeached and removed from office by a two-thirds unweighted vote of council.

Section 1. Allegations of Misconduct. Any claims of misconduct by an elected or appointed official shall be referred to the Audit and Ethics Committee who shall meet within thirty (30) days to determine whether any further action is warranted.

Section 2. Drafting of Charges. If further action is warranted, the Audit and Ethics Committee shall investigate and determine whether there is sufficient cause to draft Articles of Impeachment. If there are multiple officials to be charged, separate articles shall be drafted for each official. The Audit and Ethics Committee will present the article(s) to Tribal Council. [Exhibit 32](#)

Section 3. Acceptance of Charges. In open session where a quorum is present, Tribal Council shall hear the allegations of misconduct presented in the Articles of Impeachment. The Audit and Ethics Committee shall bring the allegations of misconduct to the floor for a majority vote on whether to accept any Article of Impeachment. Upon acceptance, a date shall be set no later than sixty (60) days from the date of ratification for a hearing on any article so ratified.

Clause 1. Limited Presence. Anyone named in an Article of Impeachment shall be permitted to be present while the Information is read into the record but shall not be permitted to be present during any discussions or vote on the article wherein they are named.

Clause 2. Ratification. The Tribal official named in an Article of Impeachment shall not be involved in, nor interfere with the process of ratification of that specific article. [Exhibit 33](#)

Section 4. Hearings. Tribal Council will hold public hearings on whether to convict the individual named in the ratified Articles of Impeachment. The ratified Articles are not a limiting factor in what the Tribal Council may consider.

Clause 1. Rights of the Accused. Persons named in ratified Articles shall have the right to defend themselves with their own attorney, present evidence, call witnesses, subpoena persons or things pursuant to the Cherokee code, and perform cross-examinations.

Clause 2. Prosecution. The Audit and Ethics Committee shall hire an attorney to prosecute the case. If during the prosecution more charges are discovered, the Articles of Impeachment may be amended.

Clause 3. Tribal Council. A quorum of Tribal Council shall convene to listen to the entire case without prejudice before rendering a verdict convicting or acquitting a defendant.

Clause 4. Duties of the Presiding Jurist. The Chief Justice of the Cherokee Supreme Court or his/her peer justice as a designee, shall preside over the hearings, rule on evidentiary and procedural objections, possess the power of contempt, and ensure the proceedings are carried out

in an ordered and unbiased manner. The Chief Justice shall not participate in the deliberations for impeachment and does not have a vote. [Exhibit 34](#)

Section 5. Judgment. Less any Council Representative who may stand accused, Tribal Council may perform their deliberations in a closed session but shall be in an open session to cast votes.

Clause 1. Conviction. To sustain a conviction, the prosecution shall prove an Article of Impeachment by clear, logical, and convincing evidence. A two-thirds (2/3) supermajority unweighted vote of the Tribal Council quorum present must be reached to convict the accused. If convicted, the official shall be immediately removed from office. The vacancy created shall be filled according to applicable provisions of this Constitution.

a. Appeal. An official convicted by Tribal Council and thereafter removed from office following impeachment cannot seek judicial review of such conviction. Tribal Council has sole authority to impeach an elected or appointed official.

Clause 2. Acquittal. If a supermajority vote is not reached on an Article, the official shall be acquitted of that Article. [Exhibit 35](#)

Section 6. Penalties. A judgment of conviction causing an official to be removed by impeachment rendered by the Tribal Council shall include a disqualification from holding future elected or appointed office of the Eastern Band of Cherokee Indians

Clause 1. Reversal of Removal and Penalties. All judgments and penalties determined by Tribal Council regarding impeachment are final and are not subject to review by any other branch of Tribal government.

Clause 2. Criminality. A judgment to remove from office by impeachment shall be final. Civil and criminal charges of the impeached official may be brought forward in a court of law.

Clause 3. Restitution. The Eastern Band of Cherokee Indians may initiate a civil action in the Judicial Branch to seek restitution of any funds or property misappropriated or wrongfully acquired by an individual removed by impeachment. [Exhibit 36](#)

Article X – Voter Recall

[TOC](#)

Voter recall is the process for the community to decide if an elected official needs to be removed from office for non or poor performance between elections.

Section 1. Initiation. A notice of intent to initiate a recall petition must be registered by a citizen of the Tribe with the Board of Elections to initiate a recall. The Board of Elections shall calculate the number of signatures required as sixty-seven percent (67%) of the voters who cast a ballot in the previous General Election for the specific office in question and assign a commencement date.

Section 2. Signature Collection. The petition must be signed by registered voters eligible to vote for the elected official being recalled and verified by the Board of Elections. Any petition to be valid must be submitted to the Board of Elections within thirty (30) days of the petition commencement date. If the petition is not timely submitted, the signatures obtained are invalidated.

Section 3. Referendum. If the petition for recall meets or exceeds the above requirements, then a Referendum for Recall shall be instituted by the Board of Elections.

Clause 1. Locking Voter Registration. While the Referendum for Recall is in process, no new voters shall be allowed to register within the district of recall.

Section 4. Special Election. The Board of Elections shall give notice to the affected voters of the purpose, time and location of the special election to be held within ninety (90) days from the date of the Board's official acceptance of the validated petition.

Section 5. Results of the Election. An affirmative vote for recall of sixty-seven (67) percent or more of the votes cast in the recall election, as certified by the Board of Elections shall be required to remove an elected official from office. The elected official shall be removed from office immediately creating a vacancy. Any vacancy so created shall be filled pursuant to the appropriate provision of this Constitution.

Section 6. Consequences. Any persons removed from office by recall shall not be disqualified from holding office in the future or employment in any governmental capacity by the Eastern Band of Cherokee Indians. [Exhibit 37](#) & [Exhibit 38](#)

Article XI – Civil Rights

[TOC](#)

The citizens of the Eastern Band of Cherokee Indians, in exercising the powers of self-government shall be protected as follows:

1. **Basic Freedoms.** The Tribe shall not make or enforce any law which infringes upon religious beliefs or prohibits the free exercise thereof, nor any law which establishes any religion or prefers one over any other, make or enforce any law prohibiting the freedom of speech or of the press, or the right of the people to peaceably assemble, and to petition for redress of grievances;
2. **Firearms.** The Tribe shall not pass any law infringing upon the right of the people to own and use firearms inconsistent with the Second Amendment to the United States Constitution;
3. **Personal Protection.** The Tribe shall not pass any laws targeting a specific person or group of people to bypass due process, bill of attainder; or pass any laws to be applied after the fact, ex post facto; [Exhibit 39](#)
4. **Search & Seizure.** The Tribe shall not violate the right of the people to be secure in the privacy of their persons, houses, media, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation, signed by a Judge, and particularly describing the place, person, house, media, vehicle, or effects to be searched, the object and scope of such search, and the person or thing to be seized, and to have these rights explained at the time of service;
5. **Criminal Trials.** The Tribe shall not compel any person in any criminal case to be a witness against him or herself, nor subject any person for the same offense to be twice put in jeopardy, nor deny to any such person the right to a speedy and public trial, and due process of law.
The Tribe shall ensure that any person accused of an offense be informed of the nature and cause of the accusation, be confronted with the witnesses against him or her, have compulsory process for obtaining witnesses in his or her favor, and have the assistance of counsel for his or her defense, whose fees may be reimbursed by the defendant as provided by law if convicted, and to have these rights explained at the time of arrest or accusation;
6. **Jury Trial.** The Tribe shall not 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, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the Eastern Band of the Cherokee Indians; [Exhibit 40](#)
7. **Bail and Punishment.** The Tribe shall not require excessive bail, impose excessive fines, nor inflict cruel and unusual punishments;
8. **Equal Protection.** The Tribe shall not deny to any person the equal protection of its laws or deprive any person of life, liberty, personal property or a possessory interest in real property without due process of law;
9. **Voting.** The Tribe shall not deny the right to vote to any citizen of the Tribe who has attained the age of eighteen (18) years or older;

- 10. Education.** The Tribe shall establish, provide for, and perpetuate an educational system that promotes, at a minimum the preservation of the Cherokee language and culture;
- 11. Reserved Powers.** Powers not granted to the Tribal government shall be reserved to the People. [Exhibit 41](#)

DRAFT

Article XII – Public Land

[TOC](#)

The Legislative Branch of the Eastern Band of Cherokee Indians shall be empowered to adopt laws and regulations for the management and control of all real property belonging to the Tribe, and no person shall be entitled to own a possessory holding in any lands belonging to the Eastern Band of Cherokee Indians, unless such person shall be a citizen of the Tribe.

Section 1. Land in Trust. All lands owned by the Tribe and held in trust by the United States for the benefit of the Eastern Band of Cherokee Indians, shall remain trust property in perpetuity. Nothing in this section shall prevent the Tribe from entering into a ‘like-kind’ exchange of trust property for other realty. [Exhibit 42 & Exhibit 43](#)

Section 2. Eminent Domain. When deemed necessary by Tribal Council, lands held by the Eastern Band of Cherokee Indians for which a possessory holding has been assigned, may be condemned only for public purposes for the benefit of the Tribe. This power of eminent domain may be exercised only after each person who has a property interest in the subject of condemnation has received proper notice, due process, and just compensation for their property interest. The Eastern Band of Cherokee Indians will not use the power of eminent domain except for public utilities, improvements, infrastructure, or prehistoric/historic cultural sites. [Exhibit 44](#)

Article XIII – Sovereign Immunity

[TOC](#)

Section 1. Sovereignty. The Eastern Band of Cherokee Indians affirms that it is a sovereign nation with all rights and privileges attendant thereto. The Eastern Band of Cherokee Indians shall be conclusively immune from any cause whatsoever as an established sovereign.

Section 2. Limited Waiver. The Eastern Band of Cherokee Indians expressly waives the Tribe’s sovereign immunity for claims brought in the Cherokee Court system seeking injunctive or declaratory relief concerning any rights guaranteed by this Constitution. [Exhibit 45](#)

DRAFT

Article XIV – Savings Clause and Transitional Provisions

[TOC](#)

Section 1. Savings Clause. All actions of the Eastern Band of Cherokee Indians 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.

Section 2. Transitional Provisions. The current members of the Tribal Council, the Principal Chief and Vice-Chief, and the Judges and Justices of the Cherokee Court system serving at the time of the adoption of this Constitution shall continue to serve in their respective offices for the duration of their present term at which time the applicable provisions of this Constitution shall control.

Section 3. Term Limit Exemption for Incumbents. The limitations placed on the terms of service by this Constitution shall not be calculated based on prior service for any incumbent holding office at the time of adoption. [Exhibit 46](#)

DRAFT

Article XV – Amendments

[TOC](#)

Section 1. Constitutional Convention. A Constitutional convention shall be held every twenty (20) years after adoption of the Constitution of the Eastern Band of Cherokee Indians. It will be attended by delegates that will include an equal number of representatives from each branch of government; Legislative, Executive, Judicial, and from the Cherokee Community Club Council. The chosen delegates must be Tribal citizens who will convene, moderate, and direct the activities of the convention. The Constitutional Convention shall meet to examine the Constitution and propose any changes to the Constitution. The Cherokee Community Club Council will prepare a budget every twenty (20) years to finance the event from the Tribal General Fund account. The convention will be publicly noticed and open to any Tribal citizen who wants to have input.

Section 2. Referendum Amendment. This Constitution may be amended by a simple majority vote of the registered voters of the Eastern Band of Cherokee Indians voting in an election called for that purpose by Tribal Council. At least thirty-three percent (33%) of those registered to vote shall vote in such election, and the amendment shall become effective after the results are certified by the Election Board. [Exhibit 47](#)

Article XVI – Adoption

[TOC](#)

Section 1. Adoption. This Constitution shall become the supreme law of the Eastern Band of Cherokee Indians when adopted by a majority vote of the registered voters of the Eastern Band of Cherokee Indians voting in an election and shall become effective after certification by the Election Board.

Section 2. Supreme Law of the Tribe. Upon adoption, this Constitution shall repeal and supersede the Charter and Governing Document of the Eastern Band of the Cherokee Indians as well as any law or precedent dependent thereon which is inconsistent with this Constitution. [Exhibit 48](#)

DRAFT

Constitution vs. Charter: Preamble

Know the difference!

Proposed Constitution

PREAMBLE

We, the Principal People, the Eastern Band of Cherokee Indians, acknowledging the Creator, being determined to maintain our sovereignty, hold fast to our ancestral homelands and our natural resources; and, to establish justice, ensure tranquility, promote our culture, our education, our language and our common welfare; and, to secure for ourselves and our posterity the blessings of liberty, do ordain and establish this Constitution of the Eastern Band of Cherokee Indians. Herein we acknowledge the foundation laid by the 1875 Lloyd Welch Constitution, Chapter 207 of the 1887 North Carolina State Charter and the 1986 Eastern Band of Cherokee Indians Charter and Governing Document and declare that this Constitution supersedes these and all other previous governing documents.

“The preamble to me means that we as a people are acknowledging who we are, a people put here by the Creator who we revere as supreme, and who has given us the sole responsibility to maintain our identity. Additionally, we were put here in this place to take care of it and manage its resources the provided us. This includes our culture, our language, the governance and care for our people all in a manner pleasing to the Creator. It acknowledges our forefathers who put their life into trying to accomplish the monumental task of establishing this Constitution for our people, the ani un wiya -the Principal People. And finally to me our preamble is our “mission statement” to the rest of the world and the people whom we exist alongside with announcing our right of existence as a separate people, and opens the door to establish our sovereignty and maintain our identity forever.” -David R. Lambert (Da-wadi)

Current Charter

Enacted and adopted May 8, 1986, by the Tribal Council of the Eastern Band of Cherokee Indians, Cherokee Council House, Cherokee, North Carolina, by Resolution No. 132 (1986), and amended by Tribal Referendum conducted October 8, 1986.

What is the difference and why does it matter?

First, according to the dictionary, the definition of a constitution is “a body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed.” In other words, a constitution is an agreement by a people on how they are willing to be governed and their rights, and the rules and principles the government will use. The charter is written by the officers of the organization, the government and describes its powers and how it will operate and govern. Our charter does not identify any rights of the people other than first descendants.

In looking at their opening statements, the proposed **Constitution of the Eastern Band of Cherokee Indians** has a preamble (see article **Preambles and Their Purpose**) where the **Charter and Governing Document** has an introduction paragraph identifying the document and how it came to be law. A similar statement can be found in the proposed Constitution in Article XVI Section 1 Adoption – “This Constitution shall become the supreme law of the Eastern Band of Cherokee Indians when adopted by a majority vote of the registered voters of the Eastern Band of Cherokee Indians voting in an election and shall become effective after certification by the Election Board.”-Lloyd Arneach Jr. Constitution Committee Chairman

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Constitution vs. Charter: Article I

Know the difference!

Proposed Constitution

Article I – Organization of Government

Section 1. Sovereignty. The People of the Eastern Band of Cherokee Indians bear the right to self-determination and hereby establish a government that possesses inherent powers of sovereignty and protections granted by territorial integrity.

Section 2. Branches of Government. The powers of the government shall be divided into three separate but equal branches consisting of the Legislative, Executive and Judicial.

Section 3. Separation of Powers. No official of any Branch of Government shall exercise any power granted in this Constitution to any other Branch of Government except as expressly directed or permitted by this Constitution.

Section 4. Seat of Government. The seat of government of the Eastern Band of Cherokee Indians shall be located upon Tribal trust lands.

Current Charter

Section 1. The officers of the Tribe shall consist of a Principal Chief, Vice-Chief and twelve members of Council ...

Section 8. The seat of government of the Eastern Band of Cherokee Indians shall be centrally located within the Qualla Boundary, North Carolina.

What does the Charter and the Constitution say about the formation of the government in general?

The first article of the proposed **Constitution of the Eastern Band of Cherokee Indians** speaks in general terms to the structure of the government. The first declaration is that the tribe is sovereign and has the authority of the tribe to govern itself. This draft of the Constitution then describes how the power of the government is to be split into three branches. It goes on to limit the authority of each branch to only what is given by the citizens through this document. Finally, the draft states that the seat of the government is to be located on trust land.

The only reference in the **Charter and Governing Document** to the formation of the government is that the seat of government is to be “centrally located within the Qualla Boundary.” The only other mention in the Charter of creating the government is the make-up of the officers, which are the Principal Chief, Vice-Chief and Tribal Council. The Charter, in total, implies that Tribal Council has most of the power to govern, relegating the Executive Committee to only enforcement of Tribal Council resolutions and day-to-day operations of the Tribe. There are no limitations on the authority of Tribal Council and no mention of a judiciary or court system. Any resolution or law passed by Tribal Council can be suspended, changed, or reversed by Tribal Council without any recourse. Anything that is not included in the Charter can be overwritten or modified by Tribal Council at any time.

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Constitution vs. Charter: Article II

Know the difference!

Proposed Constitution

Article II – Territory and Jurisdiction

Section 1. Territory. The Territory of the Eastern Band of Cherokee Indians shall be comprised of all Tribal lands within the Qualla Boundary, and all lands held by the United States for the benefit of the Eastern Band of Cherokee Indians or its citizens, and any additional lands acquired by the Eastern Band of Cherokee Indians in fee. The Territory shall include all surface and subsurface lands and waters, submerged lands under navigable or non-navigable water, all air, water, minerals, timber, and any other natural resources.

Section 2. Jurisdiction. The Jurisdiction of the Eastern Band of Cherokee Indians shall extend to all persons, activities, and property within the Territory based upon inherent sovereignty of the Cherokee tribe. Every public highway or any other ingress into the Territory shall be accompanied by a public notice that entry is conditioned upon the acceptance of the Jurisdiction of the Eastern Band of Cherokee Indians. Any person who enters the Territory shall, by entering, be deemed to have consented to the Jurisdiction of the Eastern Band of Cherokee Indians. Every license or permit issued under the authority of the Eastern Band of Cherokee Indians or within the Territory shall include a provision submitting all parties and their assigns to the Jurisdiction of the Eastern Band of Cherokee Indians.

Current Charter

The topics of territory and jurisdiction are not covered in the Charter.

What difference does it make to include territory and jurisdiction?

The first section of the second article of the proposed **Constitution of the Eastern Band of Cherokee Indians** lays out what makes up the territory or land of the Eastern Band. Its inclusion in the Constitution is about being proactive in describing what makes up the territory of the Eastern Band so there are no misunderstandings in the future about what is covered by this Constitution and the makeup of its territory.

The inclusion of the second section may not be enforceable currently, but by acknowledging that the tribe has a jurisdiction that is defined, we are not surrendering sovereignty over the tribal territory by not explicitly stating it. Maybe at some point in the future, when other jurisdictions recognize tribal jurisdiction over people who are not tribal citizens, we can apply our laws equally to all who are within tribal territory. It should be considered the same as traveling from one state to another or from county to county, as long as people are aware that they are entering another jurisdiction their rules and laws should be applicable to everyone.

The **Charter and Governing Document** does not speak on these topics.

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Constitution vs. Charter: Article III

Know the difference!

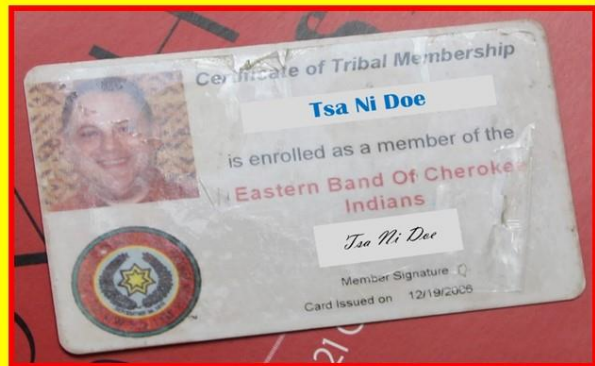
Proposed Constitution

Article III – Citizenship

The citizenship of the Eastern Band of Cherokee Indians shall consist of all persons whose names validly appear on an official membership roll used by the Eastern Band of Cherokee Indians on the date of the adoption of this Constitution. Future citizenship shall be determined as provided for by Cherokee Code.

Current Charter

The **Charter and Governing Document** does not speak on who are members of the tribe.



What is the difference between membership and citizenship?

First let us look at the phrase “enrolled member”. The dictionary defines a member as “one who belongs to a particular group”. And the word “enrolled” means someone who is “officially registered as a member...” In essence, an enrolled member of a tribe is someone officially registered as a member of the tribe. According to the Department of Interior’s website, the process of “tribal enrollment” is where “the tribes establish membership criteria...” This is what we have labeled ourselves and come to accept.

On the other hand, the definition of a citizen is “a person who is legally recognized as a member of a state, with associated rights and obligations.” Another definition, “a person owing allegiance to and entitled to the protection of a sovereign state.” And what is a “state”, “a politically organized body of people usually occupying a definite territory.” In other words, a citizen is a person who is legally recognized as a member of a politically organized body of people within a distinct territory.

As was discussed in the previous section of the proposed constitution, we define our territory and live within this territory and under this constitution, we have rights and protections granted by the constitution.

Should the Constitution include language about the qualifications for citizenship?

The requirements for citizenship are left out of this version of the constitution to allow for any future changes to the requirements that could be handled by code. As a constitutional declaration of qualifications, a constitutional amendment would be required to make any changes. Leaving these other qualifications within the realm of code, changes could be made quickly by council.

Why should we care?

Because the terms “members” or “enrolled members” imply a contractual relationship, like you would to join a club. The enrollment process has undertones of federal direction and jurisdiction. Indeed, one of the primary current criteria for enrollment in our tribe is ancestry traced from the federal Baker Roll, a U.S. government Indian census. Codifying our rights of citizenship in a constitution is a step forward legitimizing sovereignty. Membership implies a place in a hierarchy of a group, whereas citizenship implies a vested interest in a community with rights, privileges and responsibilities.

Citizenship also implies a tie to a place. In addition to the blood and genetic ties of our ancestry, citizenship also creates a tie to the Qualla Boundary or the territorial trust lands of the Eastern Band of Cherokee Indians. We all know that this is an important distinction for our people, and language in any constitution for our people should empower us.

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Constitution vs. Charter: Article IV

Know the difference!

Proposed Constitution

Article IV – Legislative Branch

The Legislative powers shall be vested in the Tribal Council which shall consist of twelve Council Representatives and shall constitute the Legislative Branch of government for the Eastern Band of Cherokee Indians.

Section 1. Composition. The Tribal Council shall consist of the following: two Representatives from each of the six (6) Townships of Yellowhill, Big Cove, Birdtown, Wolfstown, Painttown, Snowbird and Cherokee County communities shall constitute one Township, for a total of twelve Tribal Council Representatives.

Section 2. Qualifications. In order to run for and/or serve as Tribal Council Representative a candidate must be a citizen of the Eastern Band of Cherokee Indians; must be at least twenty-five (25) years of age either by the date of the upcoming General Election or upon entering into service; and must be an active member as described in the bylaws of the relevant community club, immediately preceding the date of filing for election.

Clause 1. Disqualifiers. No person shall ever be eligible for office or appointment of honor, profit, or trust who have been found guilty in a court of law for either aiding, abetting, counseling, or encouraging any person or persons of defrauding the Eastern Band of Cherokee Indians or any of its entities. Or they themselves have been found guilty in a court of law in defrauding the Tribe or any of its entities. Neither shall any person be eligible to such office, who has been convicted of a felony or impeached and removed from office.

Current Charter

Section 1. The officers of the Tribe shall consist of a Principal Chief, Vice-Chief and twelve members of Council as follows: From Yellowhill Township two members; from Big Cove Township two members; from Birdtown Township two members; from Wolfstown Township two members; from Painttown Township two members; from Cherokee and Graham Counties, constituting one Township, two members.

Section 9. In order to run for or serve as Principal Chief, Vice-Chief or Tribal Council member, a candidate must be an enrolled member of the Eastern Band. For the offices of Chief and Vice-Chief a candidate must also be at least thirty-five years of age by the date of the election and have resided on Cherokee trust lands continuously for at least two years immediately preceding the date of the election. For the Tribal Council a candidate must be at least eighteen years of age by the date of election and have resided in the township which he is to represent for at least ninety days immediately preceding the date of the election.

Section 17. No person shall ever be eligible for office or appointment of honor, profit, or trust who shall have aided, abetted, counselled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or themselves have defrauded the Tribe, or who may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band of Cherokee Indians. Neither shall any person be eligible to such office, who has been convicted of a felony.

Article IV-Legislative Branch-From Charter to proposed Constitution, there is a change in Article IV, **Section 2. Qualifications.** To be considered eligible for a Tribal Council representative seat, a candidate to run for or serve must be at least twenty-five (25) years of age by the date of the election. This change is being proposed because of the increasing complexity of legislative responsibilities dependent on knowledgeable and experienced decision makers. We, as a tribe, under most laws recognize 18 year old citizens as adults. When reaching the age of 18, they have the privileges and responsibilities of adulthood legally granted as rights to vote, join the military, move out of the home, and take on other responsibilities as adults. Our tribe is truly blessed with talented young people that are maturing in the decision-making process. There is consensus among tribal members that citizens will "mature" around the age of 25.

Neuroscientists that study brain maturity have learned that critical parts of the brain involved in decision-making begin developing during puberty and become fully developed years later at approximately age 25. In addition, it is during the ages of 18-25 that most young people are gaining life experiences by going to college, joining the military services, finding a job or even starting a family. It is during these years that life experiences mature them in decision making processes. These young people are better prepared to represent their communities at this later age of 25.

A Tribal Council representative will also be making high level financial decisions for the tribe, representing the tribe in front of other governments, and making laws that will impact the entire citizenry. It is important that a Tribal Council representative be able to relate to all ages and life situations of the people he or she will be serving during their term of office. They must be able to empathize with each of their constituents. It is believed that increasing the age qualification from 18 to 25 will allow for enough personal growth of a prospective candidate to responsibly serve their community and tribe.

Article IV is being presented in parts. More on Article IV next week!

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Constitution vs. Charter: Article IV (continued) Know the difference!

Proposed Constitution

Article IV – Legislative Branch (continued)

Section 3. Election for Tribal Council. Council Representatives shall be elected to their respective offices by the registered citizens of the Eastern Band of Cherokee Indians, who have attained the age of eighteen (18) years and are constituent citizens of the respective Townships.

Clause 1. Time of Election. The general election for Tribal Council Representatives shall be held on the first Thursday in September of 2023, following the adoption of this Constitution and every two years thereafter under such rules and regulations as may be adopted by the Board of Elections, consistent with this Constitution.

Clause 2. Selection. The successful candidate elected as a Tribal Council Representative shall be the candidate who receives a simple majority of votes cast by registered voters of each respective Township.

First Election after Adoption. In the first election after this Constitution is adopted, the two Council Representatives from each Township shall be selected as follows. The candidate that receives the most votes shall serve the full four (4) year term while the candidate that receives the next highest number of votes shall only serve a one-half term of two (2) years for the purpose of staggering terms of Representatives in each Township.

Current Charter

Section 2. The Principal Chief or Vice-Chief and members of Council shall be elected to their respective offices by the enrolled members of the Eastern Band of Cherokee Indians, who have attained the age of eighteen (18) years. All officers elected by the Council shall hold office until the first annual council held after the next tribal election and all officers shall hold office until their successors are duly qualified.

Section 3. The election for Principal Chief and Vice Chief and Tribal Council shall be held on the first Thursday in September, 1987, and every two (2) years thereafter, under such rules and regulations as may be adopted by the council.

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Article IV is being presented in parts. More on Article IV next week!

Why is there a section about the first election after adoption?

The purpose of this section is to explain staggered terms for Tribal Council. This is how it would work, the first election after this constitution is adopted would work the same as it has in the past. The difference would be how long of a term someone would serve. Normally the top 2 candidates would serve on council for 2 years where both would run for re-election. Under staggered terms the first election would be as follows; the person who received the most votes would serve a 4 year term and the person who finished second would serve a 2 year term till the next election cycle and the winner of that election would serve a 4 year term.

In the following example, the constitution would be adopted in 2023. The next General Election would be held in 2025.

In 2025, the Birdtown General Election would have 4 candidates for 2 council seats. They elect Jane Doe with 800 votes and her cousin Jim Doe with 750 votes. Under this section of the Constitution, Jane would serve 4 years, because she received the most votes and would run for re-election in 2029. Jim would serve 2 years for coming in second and be up for re-election in 2027. This would be a one-time action to facilitate the staggering of terms.

For the 2027 election, Birdtown would have 2 candidates for one seat and the winner would serve 4 years and the seat would be up for vote in 2031.

Constitution vs. Charter: Article IV (continued)

Know the difference!

Proposed Constitution

Article IV – Legislative Branch (continued)

Clause 3. Vacancy in Office. In case of death, resignation, removal, or any cause that a Tribal Council Representative becomes unable or unfit to perform the duties to the end of his/her current term of office, he/she shall be replaced as follows within fifteen (15) days:

Replacement. If more than twelve (12) months remain in the vacant term of office from the date of vacancy, the replacement shall be on an interim basis until the Board of Elections can hold a special election. If twelve months or less remains in the vacant term of office from the date of the vacancy, the interim replacement shall finish out the vacant term. Whoever completes the vacated term shall be deemed to have served a full term of office.

Order of Succession. The order of succession for interim replacement shall be as follows, unless the individual is unable to meet eligibility requirements for Tribal Council Representative as prescribed by this Constitution and the Board of Elections, or is unwilling to serve: Tribal Council candidate from the most recent election receiving the next highest number of votes of the Township where the vacancy exists; shall remain vacant with voting privileges assigned to the second Township representative in Council until the seat is filled.

Current Charter

Section 15. In case of death, resignation or disability of any member of Council a new member shall be elected by the Township under such rules and regulations as may be prescribed by Council or election rules.

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Article IV is being presented in parts. More on Article IV next week!

Why include a section about Tribal Council vacancy in the constitution?

The charter describes a vacancy as someone who either dies, resigns or is disabled. This does not speak to any other conditions that may cause a vacancy of office. Because not all conditions are covered by this section, it has been used in the past to keep special elections from taking place. As an example, if an official is impeached from office, the charter does not have a solution for that type of vacancy. The charter also does not give any timeline as to how quickly a vacancy is filled. Currently, the charter’s only solution to a vacancy in office is to have an election at some point in the future where it can be run by Council or by election rules.

The language in the constitution covers most if not all vacancy conditions with the phrase “...unable or unfit to perform the duties...”, which includes death, resignation, impeachment or any other issue. The constitution also has timelines and methods to fill a vacancy so the representation for a community is not handicapped by a vacancy. The runner-up from the last election is asked to fill the vacancy within 15 days if they are still qualified. If they cannot take the seat, the seat will remain vacant till the next election.

Depending on how much time was left for that seats term will determine the process to fill it permanently. If it was less than 12 months then the next regular election will decide the replacement. If, on the other hand there is more than a year to go for that vacated seat, a special election will be held to vote for a permanent replacement.

Constitution vs. Charter: Article IV (continued) Know the difference!

Proposed Constitution

Article IV – Legislative Branch (continued)

Section 4. Term of Office. The Representatives elected to the Tribal Council shall hold office for a term of four (4) years, not to exceed two (2) consecutive terms for a total of eight (8) consecutive years. Representatives who have reached this limitation shall be allowed to run for office in the next General Election cycle following their departure from office.

Clause 1. First Election after Adoption. The Representative that serves the first two (2) year term is limited to a total of six (6) consecutive years.

Current Charter

Section 5. The representatives elected to the Tribal Council shall hold office for terms of two years. The Principal Chief and Vice Chief shall hold office for terms of four years.

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Article IV is being presented in parts. More on Article IV next week!

Why change the term of office?

Under the charter, Tribal Council holds office for a 2 year term. If a new member of council is elected, it can take up to a year for them to become proficient as a representative, by then it is time to run for re-election. A council member only has a short amount of time in office to accomplish any goals or objectives that they may have planned for their term before they are out campaigning again. With all 12 seats in council up for vote every 2 years, it would be possible for a whole new council to be elected, making it difficult to have any continuity in the legislative process.

Increasing the term of office to 4 years allows for more time for the council members to get some experience and get their work done instead of always preparing to campaign every other year just to stay in office. The inclusion of a “term break”, not a term-limit, gives other people the chance to run for office. In politics, it is difficult to vote out an incumbent, especially if they have held office for 8 years. This is not saying the council representative has not done a good job it just gives others an opportunity to serve. By allowing the former council member to run again after taking a 2 year break gives the community a chance to re-elect someone who served before. The only exception to the 8 year limit is the first 2 year term seat after adoption of the new Constitution, if re-elected they would only serve a total of 6 years before having to take a term break.

Constitution vs. Charter: Article IV (continued) Know the difference!

Proposed Constitution

Article IV – Legislative Branch (continued)

Section 5. Compensation. The Representatives serving on Tribal Council shall be compensated for their service through the budget appropriation with no pay raise to take effect until after the new budget is enacted following a General Election.

Current Charter

Section 7. The members of the Tribal Council shall receive such compensation as shall be appropriated by the Tribal Council, with no pay raise to take effect until the next council is seated. All other officers and employees of the Tribe shall receive compensation for their services as shall be provided by the Tribal Council.

How will Representatives be compensated?

Salaries of Tribal Council are determined through Council budget appropriations. The only limitation is that any pay raise for Tribal Council will not take effect until after the new budget is enacted following a General Election. This is to prevent Tribal Council from approving a pay raise for themselves while serving their term. With the practice of re-electing many members of Council, they are giving themselves pay raises.

This type of action encourages individuals to become career politicians instead of community leaders. It requires no education, experience, or specific skill for Council members to be elected to manage Tribal budget and pass laws.

For the full-time pay Tribal Council receives, the people should be able to expect a more professional member of council. Members who are prepared for meetings, active and involved in the community and bringing projects to reality such as access to technology for all our citizens, protecting our environment and natural resources, food sustainability, diverse economic development, housing, the homeless and other developments that enhance the quality of life for all.

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Article IV is being presented in parts. More on Article IV next week!

Constitution vs. Charter: Article IV (continued) Know the difference!

Proposed Constitution

Article IV – Legislative Branch (continued)

Section 6. Duties. The Tribal Council is hereby authorized and empowered to adopt laws and regulations for the general government of the Tribe; govern the management of real and personal property held by the Tribe; initially assign among its citizens thereof possessory holdings in land held in trust by the United States for the benefit of the Tribe or any possessory holding that by operation of law reverts back to the Tribe; appropriate the use of tribal funds for the benefit of the tribe in accordance with an annual budget and; is hereby vested with full power to enforce compliance to such legislations as may be enacted.

Current Charter

Section 23. The Tribal Council is hereby fully authorized and empowered to adopt laws and regulations for the general government of the Tribe, govern the management of real and personal property held by the Tribe, and direct and assign among its members thereof, homes in the Qualla Boundary and other land held by them as a Tribe, and is hereby vested with full power to enforce obedience to such laws and regulations as may be enacted.

Article IV is being presented in parts. More on Article IV next week!

What changes to the authority of Tribal Council are proposed?

The duties listed here are generalized but important to state. The power and authority to write and pass laws for the Tribe and oversee the property that it holds for the benefit of the Tribe. They are to decide on how to use tribal funds with an annual budget. And, have the power to enforce compliance to the laws that have been passed.

What does this mean? Tribal Council can pass laws and regulations for the governing of the Tribe and tribal members. Council also has the power to govern and allocate resources the Tribe possesses. Tribal Council also has the authority to enforce compliance by issuing a charge of “contempt of council” to those not complying with ratified legislations.

What is the difference between the Charter and the Constitution? In the Constitution, Tribal Council can only do the initial assignment of possessory holdings, meaning property that is not already in someone’s name. The Charter allows council to direct and assign property at any time, with no regard to whether the property is already assigned with a tribal member's name attached to it. The other difference, spelling out how tribal funds are to be used for the benefit of the tribe through the annual budgeting process. The Charter does not give explicit instruction or authority over the use of tribal funds.

With regards to tribal property disputes, the Tribal Court system will interpret the laws to be able to issue judgements in cases of property disputes.

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Constitution vs. Charter: Article IV (continued)

Know the difference!

Proposed Constitution

Article IV – Legislative Branch (continued)

Section 7. Officers. All officers elected by the Tribal Council, including but not limited to; Chair, Vice-Chair, English and Cherokee Clerks shall hold office until the first Annual Council held after the next tribal election and all officers shall hold office until their successors are duly installed. These officers shall serve during the term of council. Tribal Council may remove and replace any officer by the same standard adopted for election.

Clause 1. Election of the Chair and Vice-Chair. An election of the Tribal Council Chair and Vice-Chair shall take place after the newly elected council is seated and shall be selected from among their member Representatives.

Clause 2. Vacancy of the Chair or Vice-Chair. If the conditions of Article IV Section 3 Clause 3 involve the Chair or Vice-Chair of Tribal Council, such officer shall be replaced by an election of the current seated members of Council at its next meeting when business can be transacted.

Current Charter

Section 11. At the convening of the Annual Council a new chairman, vice-chairman and clerk shall be elected by its members and hold office until the next Annual Council; provided, that all officers elected or appointed by the Council shall serve during the pleasure of the Council and for failure to perform their duties may be removed by said Council and others elected in their stead.

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Why is it important to have officers within the Tribal Council?

Section 7 of the proposed constitution mirrors the Charter’s Section 11 in the establishment of officers within the Tribal Council body and process for replacement. Groups without structure may be chaotic and this disorganization impedes the ability of the body to do the work of the people. The Chairperson of Tribal Council is tasked with ensuring the body’s work is conducted in an orderly fashion and that there is a process that is fair to the community and allows the representatives of each township a proper forum for representation. Rules of order must be established and applied, and there must be a member of the body to conduct the meetings and facilitate the Tribal Council in doing the job they have been elected to do. Similarly, the Vice Chairperson is elected by the body to perform these tasks in the absence of the Chairperson.

The Chairperson and Vice Chairperson are elected from among the body of the Council. There are no formal leadership criteria for serving as officers of the Tribal Council. Selection usually hinges on popularity among its members, which makes sense, since the job requires encouraging cooperation among the representatives.

The Cherokee Clerks are not elected officials and hold no power of government other than official reading aloud of the Council business documents, proposed resolutions and ordinances. These positions are typically held by members of the community and they are selected in a similar way to that of various committee members, in that they express an interest in serving as Council clerks, submit resumes, and are typically recommended by their Council representatives for the positions.

Article IV is being presented in parts. More on Article IV next week!

Constitution vs. Charter: Article IV (continued) Know the difference!

Proposed Constitution

Article IV – Legislative Branch (continued)

Section 8. Annual Council. The Principal Chief shall call a Special Session to elect the officers of Tribal Council on the first Monday in October after General Election. At the conclusion of electing officers, Tribal Council will convene Annual Council. No business shall be transacted unless a quorum of Council Representatives is present, with a quorum consisting of a majority of the current members of Council.

Current Charter

Section 10. There shall be an Annual Council held on the first Monday in October of every year, and in cases of emergency the Principal Chief may call a Special Council, but no business can be transacted in either Annual or Special Council unless a quorum of the members shall be present, with a quorum consisting of a majority of the members of Council elected at the last preceding election. The Principal Chief shall have the right to call a Grand Council of all enrolled members to attend and he shall preside over such meeting.

Why is this different from the Charter?

Traditionally, Tribal Council will conclude its business at the end of its Annual Council session prior to the new representatives taking office. The newly elected representatives would take their oaths of office then convene the next Annual Council session where they would choose the officers.

How can Tribal Council be called into session when there are no officers?

This process needs to be examined for legitimacy of any Annual Session of Tribal Council. If the previous Annual Session concluded its business, the officers are released from their duties.

How do we fix this?

After the swearing in of the Representatives, we propose that the Principal Chief call a Special Session of Council only for the members of Tribal Council to choose their next set of officers. At the conclusion of this process, the Principal Chief will close the Special Session. The newly elected officers can then call Tribal Council to Annual Session. Traditionally, this would take place on the first Monday in October

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Article IV is being presented in parts. More on Article IV next week!

Constitution vs. Charter: Article IV (continued) Know the difference!

Proposed Constitution

Article IV – Legislative Branch (continued)

Section 9. Council Actions. All Council Representatives, including the Chairman, shall be entitled to vote on all issues. All acts of Council shall be signed by the Council Chairman. All acts neither ratified nor vetoed by the Executive branch within thirty (30) calendar days of signing by the Council Chairman shall be deemed enacted.

Current Charter

Section 19. In order to provide equal representation to all members of the Eastern Band, the members of the Tribal Council shall, in their deliberations, cast votes on a weighted basis, with the weight of each vote determined by each Council member.

Section 12. All acts of Council shall be signed by the chairman and the clerks, and countersigned by the Principal Chief or Vice-Chief.

Section 13. The Principal Chief shall have the power to veto all acts of Council but his veto shall not prevail against a two-thirds vote of Council. All acts neither ratified nor vetoed by the Principal Chief within thirty (30) days shall be deemed valid legislation.

Why do acts of Council require the clerk’s signature?

The Council actions listed in the proposed Constitution are concerning how they operate as the legislative branch. It allows for all members of Tribal Council to vote, including the Council Chair. In many boards and organizations, the Chair can only vote at certain times like in cases of a tie. This section also directs that any action that comes out of Council must be signed by the Chair.

In the Charter, “all acts of Council shall be signed by the chairman and the clerks” and according to Section 11 of the Charter those are two officers of Council. In this regard, the clerk would equate to a secretary of a board. In this respect, the Charter describes the formation of a board as the governing body of the tribe and with most boards you have officers usually a chairperson, a vice-chair, a secretary and a treasurer. These officers are members of the board who are elected to these offices.

Currently, the clerks of Tribal Council are employees who handle the administrative functions of Council and not representatives as implied in the Charter. We have removed this requirement as the role of the clerk outlined in the Charter is supposed to be a representative, not a staff person keeping the minutes.

The other functions that the Charter talks about in these sections will be covered in the upcoming articles with the next being the weighted vote.

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Article IV is being presented in parts. More on Article IV next week!

Constitution vs. Charter: Article IV (continued)

Proposed Constitution

Article IV – Legislative Branch (continued)

Section 10. Weighted Vote. In order to provide equal representation to all citizens of the Eastern Band of Cherokee Indians, a census survey of the Tribal citizenship, based upon the information located within the official citizenship rolls, shall be initiated by Tribal Council for the purposes of determining a census of the citizenship and of the Townships. The results of the census will determine the weight of the votes to be cast by each Tribal Council Representative and shall be conducted prior to the 2025 general election and prior to the general election each ten years thereafter to determine the number of Tribal citizens affiliated with a Township.

After the regular 2025 general tribal election and each ten years thereafter, the Tribal Council, at its first regular meeting, shall determine the total number of votes to be cast in the Tribal Council and shall allot a voting authority to each Council Representative. The voting weight allotted to each Council Representative shall be determined by computing the mathematical ratio, fraction or proportion that exists between the number of Tribal citizens who are counted in each Township and the total number of Tribal citizens. The Cherokee Supreme Court shall have sole jurisdiction to resolve any dispute pertaining to the voting weight attributed to a Tribal Council Representative.

Current Charter

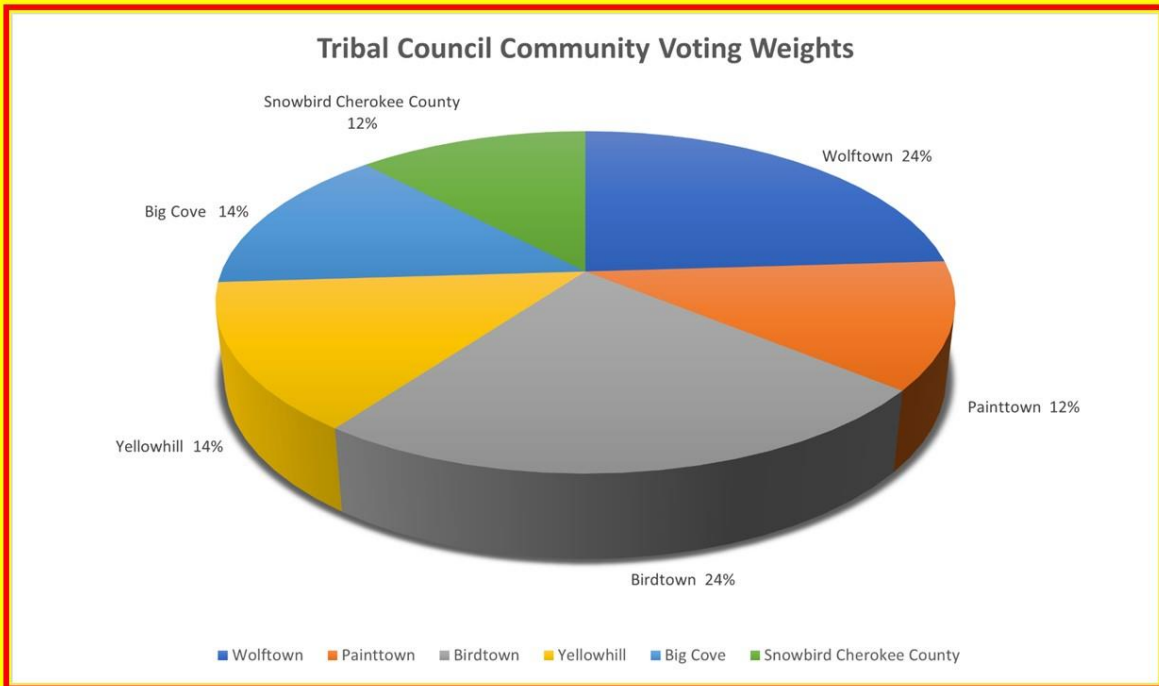
Section 19. In order to provide equal representation to all members of the Eastern Band, the members of the Tribal Council shall, in their deliberations, cast votes on a weighted basis, with the weight of each vote determined by each Council member.

A tribal census, for the purposes of determining the weight of the votes to be cast by each Tribal Council member, shall be conducted prior to the 1981 tribal election and prior to the election each ten years thereafter to determine the number of enrolled tribal members residing in each township.

After the regular 1981 tribal election and each ten years thereafter, the Tribal Council, at its first regular meeting, shall determine the total number of votes to be cast in the Tribal Council and shall allot a voting authority to each Council member. The voting weight allotted to each Council member shall be determined by computing the mathematical ratio, fraction or proportion that exists between the number of enrolled tribal members residing in each township and the total number of enrolled tribal members. All Council members, including the Chairman, shall be entitled to vote on all issues.

**Article IV is being presented in parts. More on Article IV next week!
(The Constitution is in draft form and may change based on public input)**

Know the difference!



What is a census survey?

A census is a collection of information about every person within a population. This is usually performed by going door to door to get an accurate count of people and some demographic information. In the context of this Constitution, a census survey is still a collection of information about every person, but it is conducted like a survey. It would be up to Council on how the survey should be conducted, either by phone, mail or door-to-door or any other method that will be most accurate.

What is the population that needs to be counted?

You would think this is easy to answer, everyone living in Cherokee, NC. What about the people that live in Snowbird/Robbinsville or Murphy. Ok everyone that lives on Tribal land. That same group only has small plots of livable land, what if they live in Snowbird but the land is not Tribal, they are not included in the count? If I can vote for a representative, shouldn't they be representing me? How about people that live in the five-county service area? The only people that should be counted are the ones that Council decisions would affect. Decisions that Council enacts can affect those that do not live here.

Why bother doing a census, if Council is going to do whatever they want?

This is why we need a Constitution; it describes who has authority to do things. We included the Judicial branch as a peer to the other two branches and spell out the duties it has in this specific area. The Cherokee Supreme Court is the final decision maker in deciding the weight of each representative's vote. Currently with the Charter, Council can and has in the past decided on what was accurate as far as voting weight and the count of the population that it represents with no recourse.

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Constitution vs. Charter: Article IV (continued)

Know the difference!

Proposed Constitution

Article IV – Legislative Branch (continued)

Section 11. Veto. Any legislation of Tribal Council may be vetoed by the Executive branch. A veto shall not prevail against a two-thirds (2/3) unweighted vote of Tribal Council.

Current Charter

Section 13. The Principal Chief shall have the power to veto all acts of Council but his veto shall not prevail against a two-thirds vote of Council. All acts neither ratified nor vetoed by the Principal Chief within thirty (30) days shall be deemed valid legislation.

What does unweighted vote mean?

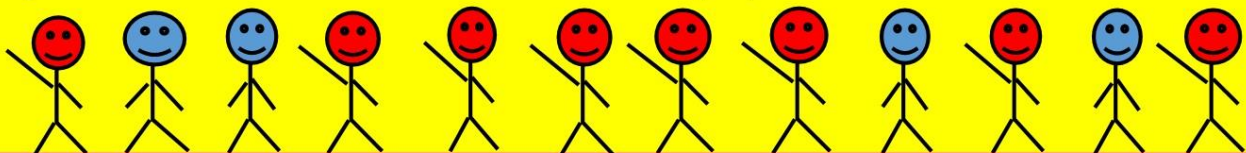
In this Constitutional proposal, an unweighted vote gives each voting member of Tribal Council the same value as any other member of Council. One person, one vote.

Why have an unweighted vote?

Currently, the Charter empowers Tribal Council’s use of the weighted vote system which gives the members variable voting strength with some having more than others. This means that it can take as few as five Council members to ratify legislation. If four of the Council members from the two largest communities vote together, controlling 48% of the weighted vote it would only take one other Tribal Council member to pass legislation. If the Chief vetoes legislation, it would only take two more Council members to override the veto for a total of seven.

On the other hand, it would take all eight members of Council that are not representing the two large communities just to pass legislation (52%). And if the Chief vetoes the legislation, it would require two more to override it or 10 members of Council.

With the unweighted vote, it will give each member of Tribal Council equal voting strength and would require any eight of the twelve Tribal Council members to reach the 2/3 majority vote to override a Chief’s veto.



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Article IV is being presented in parts. More on Article IV next week!

Constitution vs. Charter: Article V

Know the difference!

Proposed Constitution

Article V – Executive Branch

The Executive powers shall be vested in the Executive Officers and shall constitute the Executive Branch of government for the Eastern Band of Cherokee Indians.

Section 1. Composition. The Executive Officers of the Tribe shall consist of a Principal Chief and a Vice-Chief.

Section 2. Qualifications. In order to run for and/or serve as Principal Chief or Vice-Chief a candidate must be a citizen of the Eastern Band of Cherokee Indians; must be at least thirty-five (35) years of age either by the date of the upcoming General Election or upon entering into service; and must have legally resided on Cherokee trust lands continuously for at least two (2) years immediately preceding the date of filing for election.

Clause 1. Disqualifiers. No person shall ever be eligible for office or appointment of honor, profit, or trust who have been found guilty in a court of law for aiding, abetting, counseling, or encouraging any person or persons of defrauding the Eastern Band of Cherokee Indians or any of its entities. Neither shall any person be eligible to such office, who has been convicted of a felony.

Current Charter

Section 4. There shall be an Executive Committee, which shall consist of the Principal Chief and Vice-Chief.

Section 9. In order to run for or serve as Principal Chief, Vice-Chief, a candidate must be an enrolled member of the Eastern Band. For the offices of Chief and Vice-Chief a candidate must also be at least thirty-five years of age by the date of the election and have resided on Cherokee trust lands continuously for at least two years immediately preceding the date of the election.

Section 17. No person shall ever be eligible for office or appointment of honor, profit, or trust who shall have aided, abetted, counselled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or themselves have defrauded the Tribe, or who may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band of Cherokee Indians. Neither shall any person be eligible to such office, who has been convicted of a felony.

**Article V is being presented in parts.
More on Article V next week!**

In the proposed Constitution, we are establishing the branches of government. This Article is about the establishment of the Executive branch that is made up of the Principal Chief and Vice-Chief. These first couple of sections of Article five of the Constitution, section 1 and 2 are very similar to sections 4, 9 and 17 of the Charter.

Why does the Chief and Vice-Chief have to be 35 or older? Though it is not necessarily true, it is felt that more life experience could bring more wisdom to a position that can affect thousands of people and millions of dollars and the future of the People.

What does “defrauding” mean? According to the Collins Dictionary of Law, the definition of defraud is “to take away or withhold money, rights, property, etc., from a person by fraud; cheat.” If someone has been found guilty in a court of law of defrauding the Tribe, illegally taking from the Tribe, should they have the chance to be in charge? Suppose someone is convicted of bank robbery should they be allowed to run a bank?

Why include disqualifiers for office? Voters may not have all the information about candidates to make an informed decision. The reason to disqualify candidates is to “protect” the voter from possibly voting for someone who has cheated the Tribe in the past or other serious crimes that voters may not be aware.

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Constitution vs. Charter: Article V (continued)

Know the difference!

Proposed Constitution

Article V – Executive Branch

Section 3. Election for Executive office. The Principal Chief and Vice-Chief shall be elected to their respective offices by the registered voters of the Eastern Band of Cherokee Indians.

Clause 1. Time for Election. The election for Principal Chief and Vice-Chief shall be held on the first Thursday in September of 2023, following the adoption of this Constitution and every four (4) years thereafter under such rules and regulations as may be adopted by the Board of Elections.

Clause 2. Selection. Election for Principal Chief and Vice-Chief shall be the candidates who each receive a majority of votes cast by the registered voters of the Eastern Band of Cherokee Indians.

Current Charter

Section 2. The Principal Chief or Vice-Chief and members of Council shall be elected to their respective offices by the enrolled members of the Eastern Band of Cherokee Indians, who have attained the age of eighteen (18) years.

Section 3. The election for Principal Chief and Vice Chief and Tribal Council shall be held on the first Thursday in September, 1987, and every two (2) years thereafter, under such rules and regulations as may be adopted by the council.

Section 6. The Tribal Council shall establish a Board of Elections and enact election rules and regulations for the conduct of tribal elections. Election for Principal Chief and Vice-Chief must be by a majority of at-large votes cast by eligible voters.

What is a registered voter?

A registered tribal voter is someone who has taken the time to place their name and the community they wish to vote in on record. Having placed their name on the register, they have the right to vote in any upcoming tribal elections or referendums. They have indicated their willingness to participate in voting on the future of the Tribe.

What is a voter?

A voter is someone who has registered and shows up to vote. They are taking an active part in what the future of the Tribe will be. They choose council representatives, Chief and Vice-Chief, school board members and any referendums that may arise. Whether their choice wins or not, they are participating in the future of the Tribe.

Why does it matter?

An unregistered voter is someone who does not want to have a say in how Tribal government operates. A registered voter who does not vote does not care about the current direction the Tribe takes and are ok with how the Tribe governs or conducts its business. It is important that people understand that every vote matters as some elections have been decided by one vote.

The Constitution will clean up the language within the Charter that suggests election for the executive branch is to occur every two years.

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Article V is being presented in parts. More on Article V next week!

This section of the proposed Constitution was omitted from the original run of educational public service announcements. See the One Feather archive at www.theonefeather.com for rest of Article V and the entire Constitution series .

Constitution vs. Charter: Article V (Conclusion) Know the difference!

Proposed Constitution

Article V – Executive Branch

Clause 3. Vacancy of Chief. In case of death, resignation, removal or any cause that the Principal Chief becomes unable or unfit to perform the duties of the current term of office, the Chief shall be replaced immediately by the Vice-Chief.

Clause 4. Vacancy of Vice-Chief. In case of death, resignation, removal or any cause that the Vice-Chief becomes unable or unfit to perform the duties of the current term of office, the Vice-Chief shall be replaced immediately by an elected member of Tribal Council, chosen by Tribal Council receiving the most unweighted votes.

Clause 5. Vacancy of Executive Branch. In the event that both Principal Chief and Vice-Chief simultaneously are unable or unfit to perform their duties, the Chair of Tribal Council shall replace the Principal Chief immediately, the Vice-Chief shall be replaced immediately by any remaining elected member of Tribal Council, chosen by Tribal Council receiving the most unweighted votes.

a. Disqualification of Chair. If the Chair of Tribal Council does not meet the qualifications for the office of Principal Chief, the replacement shall be an elected member of Tribal Council who does qualify. They will be chosen by a quorum of Tribal Council receiving the most unweighted votes.

Clause 6. Interim Term. If more than twelve (12) months remain in the vacant term of office identified in the above Clauses 3, 4, or 5, the replacement shall be on an interim basis until the Board of Elections can hold a special election. At the end of the interim term, the person serving can return to their previous position. If twelve (12) months or less remains in the vacant term of office identified in the above Clauses 3, 4, or 5, the replacement shall finish out the vacant term.

Current Charter

Section 14. In the case of death, resignation or disability of the Principal Chief, the Vice-Chief shall become the Principal Chief and shall serve the balance of the elected term of office until removal or disability or his successor is elected. In case of death, resignation or disability of the Vice-Chief, the Council may elect a successor who shall serve until removal or disability or his successor is elected. In the event the offices of both Principal Chief and Vice-Chief become vacant simultaneously, the Chairman of the Council shall become Principal Chief and shall serve the balance of the elected term of office and the Council shall elect a Vice-Chief who shall serve the balance of the elected term. If the Chairman does not meet the qualifications for the office of Principal Chief, the vacancy shall be filled by an election under rules established by the Council.

What does “interim basis” mean? It is another way of saying on a temporary basis. It was felt that if there were more than a year left in the term of office, someone could fill in on a temporary basis until a special election could be held for people to vote for a permanent replacement. If there was less than a year left, a planned election was coming and another special election did not seem necessary.

What would make someone unfit or unable to perform their duties? Someone who is unfit is a person who is not suited for the office or ill-equipped to perform their duties. Someone who is unable is either incapacitated

Why is there a disqualification of chair? The Constitution states that the Principal Chief must be at least 35 years of age. Tribal Council allows for younger members to serve.

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Constitution vs. Charter: Article V (continued)

Know the difference!

Proposed Constitution

Article V – Executive Branch

Section 4. Term. The elected Principal Chief and Vice-Chief each shall hold office for a term of four (4) years, not to exceed two (2) consecutive terms in the same office. Office holders who have reached this limitation shall be allowed to run for the same office in four (4) years following their departure from office.

Section 5. Compensation. The Principal Chief and Vice-Chief shall receive as compensation for services such sum as shall be determined by an appropriation by Tribal Council. No change in pay shall take effect until the next elected Tribal Council are seated as a result of a General Election. In no way shall the Executive branch directly adjust or otherwise influence any elected official’s compensation.

Current Charter

Section 5. The representatives elected to the Tribal Council shall hold office for terms of two years. The Principal Chief and Vice Chief shall hold office for terms of four years.

Section 7. The Principal Chief shall receive as compensation for his services such sum as shall be appropriated by the Tribal Council, not to exceed one pay raise per annum. The Vice-Chief shall receive such sum as shall be fixed by the Tribal Council, not to exceed one pay raise per annum. Both the Principal Chief and Vice-Chief shall receive such traveling expenses as may be authorized by the Tribal Council. The members of the Tribal Council shall receive such compensation as shall be appropriated by the Tribal Council, with no pay raise to take effect until the next council is seated. All other officers and employees of the Tribe shall receive compensation for their services as shall be provided by the Tribal Council.

Why implement term limits?

Term limits will provide better opportunity for those who may have a different perspective on leadership within the government to gain a seat. Incumbents (those that are in office campaigning for re-election) are usually difficult to vote out of office regardless of their performance because they are constantly in the public eye during their terms. Term limits puts the brakes on anyone who decide to make holding office a career instead of a position of public trust. Term limits are a way to keep those who are in power from potentially using their power stay in power. However, in this Constitution, we are not employing term limits but term breaks.

When is a term limit not a term limit? What is a “term break”?

A term limit is setting a mark and saying you cannot do anymore than this. We are proposing a term break, after 2 consecutive terms, you will sit out a term. After sitting out a term, you are allowed to run for office again. In short, a person could serve in an office for 8 years straight, take 4 years off and run again.

Show us the money!

Tribal Council has the sole authority to set budgets and salaries for elected officials. Since the Legislative branch has the duty to appropriate funds and pass laws, council has to pass legislation to set the salaries for elected officials. Salary raises for elected officials can occur once every 2 years. This is to allow for the voters a chance to voice their opinion, when selecting a candidate in the upcoming election, about any salary increases before they can go into effect.

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Article V is being presented in parts.

Constitution vs. Charter: Article V (conclusion)

Know the difference!

Proposed Constitution

Article V – Executive Branch

Section 6. Powers and Duties. There shall be an Executive Committee, which shall consist of the Principal Chief and Vice-Chief. The Committee shall execute and carry out tribal legislation.

Clause 1. Legislation. The Principal Chief, or in his/her absence, the Vice-Chief shall ratify or veto any legislation passed by Tribal Council. Ratification or veto must take place within thirty (30) days of passage of legislation.

Clause 2. Budgets. The Executive Committee shall present a proposed budget based on projected annual revenues to Tribal Council no later than July 1 of each year.

Section 7. Fiscal Duty. No money shall be paid out except upon direction of the Principal Chief as authorized by an act of the Tribal Council.

Current Charter

Section 4. There shall be an Executive Committee, which shall consist of the Principal Chief and Vice-Chief. The committee shall execute and carry out tribal laws and administer the daily operations of the Tribe.

Section 13. The Principal Chief shall have the power to veto all acts of Council but his veto shall not prevail against a two-thirds vote of Council. All acts neither ratified nor vetoed by the Principal Chief within thirty (30) days shall be deemed valid legislation.

Section 20. No money shall be paid out except upon warrant of the Principal Chief as authorized by an act of the Council.

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What is an executive committee?

In the case of the Eastern Band of Cherokee Indians, the Executive Committee is the two elected heads of the Executive Branch. They are the only two elected officials in the Executive Branch. In decisions not requiring emergency action, where the Principal Chief, or in his/her absence, the Vice Chief, would have to make the sole decisions for the Tribe, the Tribe wishes there to be consensus between these two elected heads of the Executive Branch for day-to-day operational decisions. For example, the Executive Committee meets regularly to review budgetary items like personnel and some financial decisions. It is the Executive Committee who is charged with the responsibility for enforcing law created by Tribal Council and executing actions initiated by Tribal Council.

Where does the buck stop and who holds the purse-strings?

The Tribal government operates on a budget of hundreds of millions of dollars each year. The Tribal Council, through laws they created, direct the Executive Committee to present a detailed plan as to how they will use the money generated by the Tribe’s investments, sales income, and grants. This is done every year at a specific time. Every year, the Executive Branch assesses program income and spending, formulates a plan for the next fiscal year’s spending, and presents it to the Legislative Branch. The Tribal annual budget is then reviewed and voted in or out just like any other legislation. Tribal Council, through approval of the budget presented by the Executive Branch, is where Tribal dollars or bucks stop. The Principal Chief takes the Tribal Council approved budget and then conducts the business of the Tribe as he executes the wishes of the Tribal Council in the spending of funds.

Constitution vs. Charter: Article VI-Preamble Know the difference!

Proposed Constitution

Article VI – Judicial Branch

The Judicial powers shall be vested in the Justices and Judges of the Cherokee Courts as herein provided, which shall constitute the Judicial Branch of government for the Eastern Band of Cherokee Indians. The Judicial Branch shall have sole power to interpret the Constitution, laws, treaties, customs and traditions of the Eastern Band of Cherokee Indians, and issue all legal and equitable orders, writs, and decrees in aid of its jurisdiction.

Current Charter does not establish a Judicial Branch of government.

What is the difference between the Constitutional Judicial Branch and what we currently have?

A little background on the current governance structure, the Charter is the top document describing how the tribal government will operate. Any changes to the Charter would require a voter referendum. Below the Charter are the codes. Tribal code are laws written and passed by Council, ratified by the Chief. Anything in code can be altered or removed by Council since it was created by Council.

The current court system was created by code not by the Charter. This would mean that at any time Tribal Council could change any part of the court system and how it operates. The “Judicial Branch”, created by code is subject to Tribal Council with the only protection that any amendment to the code would require a two-thirds vote by Tribal Council. If certain members of Council with the most weight voted together, seven council members could change the judicial code. The court system could be viewed as another tribal program subject to Tribal Council instead of an equal or peer.

This puts the “Judicial Branch” in a difficult spot. If a case comes before the court involving Tribal Council how impartial can the court act if at any time Council can rewrite what the court can do.

The Constitution makes the Judicial Branch an equal to the Legislative and Executive branches. The Constitution describes the authority of the Judicial Branch as the interpreter of the Constitution, laws and other legal matters and has the duty to issue orders and decrees. Each branch needs to be able to operate within its realm without fear of reprisal from the other branches.

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Constitution vs. Charter: Article VI (continued) Know the difference!

Proposed Constitution

Article VI – Judicial Branch

Section 1. Composition. The Judicial Branch shall be comprised of one Supreme Court, one Trial Court, and such other inferior appellate courts and Trial Courts of Special Jurisdiction as may be established by law. The Supreme Court shall be known as the “Cherokee Supreme Court” and the Trial Court shall be known as the “Cherokee Trial Court.”

Clause 1. Cherokee Supreme Court. The Supreme Court shall be comprised of one Chief Justice and no less than two Associate Justices. The Cherokee Supreme Court shall always sit with an odd number of Justices.

Clause 2. Cherokee Trial Court. The Trial Court shall be comprised of one Chief Judge and no less than two Associate Judges.

Clause 3. Courts of Special Jurisdiction. The Trial Courts of Special Jurisdiction shall be comprised of Judges as assigned by the Chief Justice.

Clause 4. Temporary Adjudicators. The Court shall maintain a list of temporary justices, judges and magistrates available for assignment to particular cases or duties by the Chief Justice.

Current Code Chapter 7 – Judicial Ordinance

Sec. 7-1. - Composition of the Judicial Branch.

(a) The Judicial Branch shall be comprised of one Supreme Court, one Trial Court, and such other Trial Courts of Special Jurisdiction as established by law. The Supreme Court shall be known as the "Cherokee Supreme Court" and the Trial Court shall be known as the "Cherokee Court." Trial Courts of Special Jurisdiction shall be established by the Tribal Council and named according to their function (e.g., Cherokee Juvenile Court).

(b) The Supreme Court shall be comprised of one Chief Justice and two Associate Justices. The Trial Court shall be comprised of one Chief Judge and two Associate Judges, and other Associate Judges of the Trial Courts of Special Jurisdiction.

(c) This subsection will be referenced in a future article.

(d) The Court shall maintain a list of temporary justices, judges and magistrates available for assignment to particular cases or duties by the Chief Justice. Prior to assignment by the Chief Justice, temporary justices, judges or magistrates must be nominated and confirmed in accordance with subsection (c) of this section.

What’s the difference?

Even though these two documents, for the most part state the same thing, the Constitution creates the Judicial branch as a peer of the other two branches of government. The code establishes the “Judicial Branch” as a tribal program.

What is a “Trial Court of Special Jurisdiction”?

These are unique courts created for specific reasons like “Drug Court”, its primary concern are cases involving drugs. Or, “Juvenile Court” handling cases that involve minors. These courts have special jurisdictions and processes available to them that a regular court does not. These courts can have different rules and procedures that make it possible not to need a lawyer. These courts can be more focused on these specific issues and more responsive to what the case requires.

Why have a list of temporary judges?

Having a list of temporary justices, judges and magistrates saves time in case a situation comes up that someone needs to be replaced. Keeping a list of temporary people who can fill those roles will save time when a justice or judge are not able to participate in a case, either through illness or a relationship to either party. They will have already gone through the process of being selected for the role, sworn in just not sitting on the bench on a regular basis.

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**A Judicial Branch is not established by the current Charter.
The Judiciary only exists via ordinance in the Cherokee Code**

Constitution vs. Charter: Article VI (continued) Know the difference!

Proposed Constitution

Article VI – Judicial Branch

Section 2. Qualifications.

Clause 1. Chief Justice. The Chief Justice shall be a United States citizen, have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association with demonstrated knowledge of Federal Indian law, and shall have no less than five (5) years of experience as a judge in a Tribal, state or Federal court.

Clause 2. Associate Justices. The Associate Justices shall have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association with demonstrated knowledge of Federal Indian law, and shall have no less than two (2) years of experience as a judge in a Tribal, state or Federal court.

Clause 3. Chief Judge. The Chief Judge shall have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association with demonstrated knowledge of Federal Indian law, and shall have no less than two (2) years of experience as a judge in a Tribal, state or Federal court.

Clause 4. Associate Judges. The Associate Judges shall have acquired a Juris Doctor degree from a school accredited at the time of graduation by the American Bar Association and shall be members in good standing with the Cherokee Bar.

Current Code Chapter 7 – Judicial Ordinance

Sec. 7-8. - Judicial qualifications.

- (a) The Chief Justice of the Supreme Court and the Chief Judge of the Trial Court shall be attorneys licensed by the North Carolina State Bar and members in good standing of the practicing bar of the Eastern Band of Cherokee Indians. No person shall serve as a justice or judge who has ever been convicted of a felony or other crime of moral turpitude in any jurisdiction, convicted of any crime involving embezzlement, fraud, bribery or theft against the Eastern Band of Cherokee Indians, removed by impeachment from any office, or resigned from any office while under official investigation for impeachment.
- (b) All persons appointed as associate justices of the Cherokee Supreme Court and as associate judges of the Cherokee Tribal Court shall also be attorneys licensed by and in good standing with the North Carolina State Bar. This subsection shall not apply to persons appointed and confirmed before the effective date of this amendment.

Why does the Chief Justice not have to be a citizen of the EBCI?

The possible candidate pool to be Chief Justice would be severely limited to only a handful with the requirements placed on the position. It would be a great thing that only Eastern Band citizens could be Chief Justice and in charge of the Judicial Branch but the reality is you may only have a couple of people that would meet the requirements and be interested in the job. If the Constitution made this limitation and no one fit the bill, what other option do you have? The only way to change the requirement would be to make a Constitutional amendment which would require time. By not putting in the limitation requiring citizenship, a larger pool of potential candidates would be available to select the best person for the job. The selection process can give more weight to Eastern Band citizens over those that are not but not keep the choices limited.

Why is there a requirement to have a law degree for the justices/judges?

A Juris Doctor degree, or a Doctor of Law is a professional doctorate obtained by completing law school. This is someone who has been trained for entry into a practice and be able to take the bar exam. A person with J.D. degree has studied real law and how to apply it not just academic or theoretical studies.

Why do the Justices and Chief Judge need to have experience and knowledge of Federal Indian law?

Federal Indian law is a specialty area of law dealing with the relationship between a tribe and the Federal government. There are statutes, regulations, treaties and court decisions that go back for more than 200 hundred years that can contradict itself and the unique concept that a tribe is a sovereign nation. Requiring this experience in the higher seats of the Judicial Branch will ensure that these people are familiar with the special position a tribe holds when dealing with cases that come before the court.

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**A Judicial Branch is not established by the current Charter.
The Judiciary only exists via ordinance in the Cherokee Code**

Constitution vs. Charter: Article VI (continued) Know the difference!

Proposed Constitution

Article VI – Judicial Branch

Section 3. Installation.

Clause 1. Chief Justice.

a. Appointment. Recommendations for the position of Chief Justice shall be submitted to the Principal Chief by a panel consisting of the Cherokee Community Club Council Officers who are citizens of the Eastern Band of Cherokee Indians and active Justices and Judges of the Cherokee courts. The Chief Justice shall be nominated by the Principal Chief from the recommendations presented by the panel and confirmed by Tribal Council.

b. Vacancy of office or reappointment. In the event that the Chief Justice is unable to complete the current term of service or successfully completes the current term of service, Article VI, Section 3.1.a of this Constitution shall apply.

Current Code Chapter 7 – Judicial Ordinance

Sec. 7-1. – Composition of the Judicial Branch.

(c) All Justices and Judges shall be appointed upon nomination by the Principal Chief, and confirmation by the Tribal Council.

What’s the point of the panel?

The purpose of the panel will be to decide as to which of the candidates are most likely to have the desired knowledge, experience, and compatibility to perform the duties of Chief Justice. The panel will act like a hiring committee in weeding out people who do not meet the qualifications or do not have the public’s trust. The panel will not actually hire anyone. They will make a recommendation to the Chief’s office concerning a nominee. If the Chief rejects the panel’s recommendation, he cannot name someone else unless the panel sends multiple nominees. The Chief sends his nomination to Tribal Council, who have the final say by either confirming or denying a nominee.

This process was conceived in the hope of reducing the chances of installing unqualified or lesser qualified candidates as a Chief Justice. Being enrolled does not automatically make a nominee the top candidate. It would be up to the panel to decide if the nominee is the best qualified for the job.

Why include the Community Club Council officers?

The inclusion of the Community Club Council officers, who are members of the Eastern Band of Cherokee Indians, will add more community input into the selection process. The make-up of the panel would have subject matter experts, the judges and justices who can determine who has valid, sought after credentials. Their role is to add into the selection equation the community’s perception of trust in a candidate. Candidates who may have a good background in law and experience as a judge, may not have the confidence of the tribal members regarding being a fair and impartial Chief Justice. This part of the process should alleviate the need to have an election. The process of electing someone causes them to think and function politically and in this position, we need someone who is more than just popular and can get elected. They need to be knowledgeable about the job and have the potential to be successful at it.

How do we keep favoritism from occurring?

You can’t. But by including different groups of people in the process of selecting a Chief Justice, we hope to make it more difficult for anyone to install someone because of “favoritism” or the “good ole’ boy” system. It will be up to those in the different areas of the selection process to make it work.

The Constitution will not spell out in detail how processes will occur. It lays out a framework of authorities and duties of certain groups or roles. It will be up to the justices to lay out how they will perform their functions. It is our hope that the justices appointed to these positions of honor will ensure that the processes will be for the benefit of the tribe and safeguard the public trust. The justices will be best suited to describe how to perform the functions that are described in the Constitution and can amend them as needed to ensure the spirit of the Constitution can be carried out.

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A Judicial Branch is not established by the current Charter. The Judiciary only exists via ordinance in the Cherokee Code

Constitution vs. Charter: Article VI

Know the difference!

Article VI – Judicial Branch

Section 3. Installation.

Clause 2. Other Justices and Judges.

Appointment. Nominations for the position of Associate Justices, Chief Judge and other judges shall be submitted to the Tribal Council for confirmation by a panel consisting of the Cherokee Community Club Council Officers and the Chief Justice.

Clause 3. Temporary Adjudicators and Magistrates. Prior to assignment, temporary Justices and Judges shall be nominated by the Principal Chief and confirmed by Tribal Council. Magistrates shall be appointed exclusively by the Chief Justice.

Clause 4. Adjudicators at the time of adoption. Notwithstanding any other provision of this Constitution, any Justice or Judge of the Eastern Band of Cherokee Indians Courts who holds that office at the time this Constitution is adopted shall continue to assume all powers and duties of that office as set forth in this Constitution.

THE JUDICIAL BRANCH IS NOT PART OF THE EBCI CHARTER

Current Code

Chapter 7 – Judicial Code

Sec. 7-1. – Composition of the Judicial Branch.

(c) All Justices and Judges shall be appointed upon nomination by the Principal Chief, and confirmation by the Tribal Council.

Why is the Principal Chief not involved in the appointment of the other justices and judges?

Because it is not necessary for the Principal Chief to be involved with appointing other justices and judges. Each branch must function as separate but equal in powers of governance and shouldn't be compromised by interference by another branch, like Executive.

Why is the panel not involved in the process for selection of temporary justices and judges?

The nomination panel's responsibility is to carefully review and investigate the potential candidates for positions in the court and the process must be thorough and deliberate. When temporary justices and judges are needed, they can immediately be called to preside in the courts without delay by the selection process. Those serving in this capacity have previously been nominated by the Principal Chief and confirmed by Tribal Council and available for appointment.

Why are the magistrates appointed by the Chief Justice only?

The magistrates are appointed by the Chief Justice as staff members to assist with the administration of the Court system. Magistrates do not make legal decisions which interpret the laws.

Why does the proposed Constitution allow for the current members of the bench to keep their seat?

As with any major change in the operation of a government, it is critical that the Judicial Branch remains as stable as possible, in particular, during periods in changes of administration or change in governance. It is important to retain current members of the bench for historical reasons and continuity of power.

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Article VI is being presented in parts.

Constitution vs. Charter: Article VI

Know the difference!

Article VI – Judicial Branch

Section 4. Term.

Clause 1. Supreme Court. The Chief Justice shall be appointed for a term of ten (10) years. Associate Justices shall be appointed for a term of eight (8) years.

Clause 2. Cherokee Trial Court. The Chief Judge shall be appointed for a term of ten (10) years. Associate Judges shall be appointed for a term of eight (8) years.

THE JUDICIAL BRANCH IS NOT PART OF THE EBCI CHARTER

Current Code

Chapter 7 – Judicial Code

Sec. 7-6. - Terms of office.

The Chief Justice, the Chief Judge, and Associate Judges for Trial Courts of Special Jurisdiction shall each serve terms of six years, or until their successors have been sworn into office, and shall be eligible for reappointment. Associate Justices of the Supreme Court and Associate Judges of the Trial Court shall serve terms of four years, or until their successors have been sworn into office, and shall be eligible for reappointment.

Why are term lengths eight and ten years for justices on the Supreme Court and trial courts?

We believe the pool of possible candidates to serve in these positions will be limited for the foreseeable future so it would be a good thing not to remove these qualified people from being able to serve. It would be up to the selection panel to limit people from serving instead of setting limits that cannot be adjusted or waived by setting it as a Constitutional mandate. With the inclusion of the Community Club Council onto the panel, the panel can make the determination of forwarding a name for consideration or not when the justices re-apply for their positions.

Regarding the specific term length of ten years, we have three primary reasons. First, the Principal Chief can serve for a maximum of eight years. To apply a further check on executive power, judicial term lengths of ten years prevent a Principal Chief from nominating two Chief Justices during their term, except for in extraordinary circumstances such as resignation or removal.

Second, ten-year terms can lessen the politics of the court. With shorter terms, justices may feel pressured to ‘campaign’ for re-confirmation, currying favor with the present Principal Chief or selection committee. Campaigning is made less effective by a longer term, however, as the Principal Chief will no longer be in office by the time of Supreme Court re-confirmation. In short, longer terms leads to greater integrity for the decisions of the Court.

Third and finally, we believe longer terms will create greater judicial consistency. In the case of six- and four-year terms, decisions may fluctuate drastically from one Court to the next. Longer terms create a manageable transition period, as some justices rotate out or are re-confirmed, allowing the Court more time to adjust to a changing ideological makeup.

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Article VI is being presented in parts.

Constitution vs. Charter: Article VI (continued) Know the difference!

Proposed Constitution

Article VI – Judicial Branch

Section 5. Compensation. The Justices and Judges shall be compensated from the Judiciary budget as administered by the Chief Justice of the Cherokee Supreme Court. No Justice or Judge shall be subjected to a reduction in compensation during a term in office.

Section 6. Powers and Duties. The Judicial Branch shall have sole power to interpret the Constitution, laws, treaties, customs and traditions of the Eastern Band of Cherokee Indians, and issue all legal and equitable orders, writs, and decrees in aid of its jurisdiction. The Chief Justice for the Judicial branch shall present a proposed Judiciary budget to Tribal Council no later than July 1 of each year and shall thereafter be empowered to administer such budget exclusively.

**A Judicial Branch is not established by the current Charter.
The Judiciary only exists via ordinance in the Cherokee Code.**

Current Code Chapter 7 – Judicial Ordinance

Sec. 7-7. - Compensation.

The Justices and Judges shall be paid reasonable compensation as established by law which shall not be decreased during a term of office. The Chief Justice of the Supreme Court shall be paid an annual salary. The Associate Justices of the Supreme Court shall be paid on a per case basis. The Chief Judge and Associate Judges of the Trial Court shall be paid an annual salary. Associate Judges for Trial Courts of Special Jurisdiction shall be paid on a per case basis.

Why are salary reductions for judges and justices not allowed while serving?

It could lead to possible court tampering by using the threat of salary manipulation to influence their choices or decisions. This is also a protection for them to be treated the same as a regular employee who cannot have their wages reduced. And like employees, their pay can remain the same or increased based on an annual performance review.

Why should the Judicial budget be administered exclusively by the Chief Justice?

The Chief Justice is the administrative executive for the Judicial branch, like the Principal Chief and the Executive branch and held accountable on how the budget is used. As the chief executive for the Judicial branch, the Chief Justice will make decisions as to the budget needs and make approvals on expenditures. The Chief Justice should be the subject matter expert and know best on how their budget should be used, it should not be left to the other branches to allow or disapprove how the budget is used. The Executive, Legislative and Judicial are peer branches and each has their own budgets and processes in place to detail their spending.

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Constitution vs. Charter: Article VII

Know the difference!

PROPOSED CONSTITUTION

Article VII – Grand Council

Grand Council, being a unique body in Cherokee culture and tradition, shall be an assembly of the Principal People which consists of Tribal citizens eighteen (18) years of age or older. The Cherokee Community Club Council shall convene, establish the procedures for, set the agenda for, and preside over Grand Council.

CURRENT CHARTER

Section 10. The Principal Chief shall have the right to call a Grand Council of all enrolled members to attend and he shall preside over such meeting.

Why is the Grand Council included in the Constitution?

There is a varied history on Grand Council, who was in charge? What authority did it hold? How did it work? The way previous Grand Councils have been conducted in the past has differed each time. Rather than try to fit all the previous versions of Grand Council into one, it was decided to solidify what we believe Grand Council should be.

We felt that Grand Council should be a council of the people, not of politics. The people who can participate should include everyone eligible to vote in Tribal elections, not just registered voters. Grand Council should not be run or controlled by any branch of government, the Executive, Judicial or Legislative branches but by the Cherokee Community Club Council (CCCC). The closest organization to being of the people is the CCCC since its members are unpaid elected officers who volunteer to serve on the community clubs.

The CCCC shall decide if a matter should be brought up for the people to consider. They can take requests for Grand Council back to the clubs to consider if it should be called to take up the requested issue and when it should occur.

By placing Grand Council in the Constitution, it should be beyond the politics of the government and direct manipulations of any branch. This should be about the people meeting together to be able to freely discuss and debate issues that may affect the whole Tribe.

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Article 7 is being presented in parts. More next week!

Constitution vs. Charter: Article VII (conclusion) Know the difference!

Why is a public notice needed and why no later than 30 days?

A public notice is how to inform the people of an upcoming Grand Council. The notice should include a date, time, location, agenda, or, for those unable to attend physically, how to participate remotely. It would be especially helpful if the notice included how to find more details about the issues that will be presented at Grand Council and why Grand Council is needed.

The notice needs to be published in enough time prior to Grand Council to give everyone a chance to become familiar with the issue and plan to participate. If they need to arrange for time off and maybe make travel plans if they do not live in the area, they will have enough time to make the needed arrangements. And 30 days is a short amount of time if the issue needs to be addressed quickly.

Why is financing included?

Once the Community Club Council calls for a Grand Council expenses like sending out the notices to the tribal community will be incurred. The cost of the notices and delivery to all eligible citizens will not be cheap. Then there's the cost of supplies for the meeting, the meeting venue and other expenses that maybe needed to host a Grand Council. The Community Club Council will not have the funds it will take to hold Grand Council and depending on either the Legislative or Executive branch to have the extra funds needed is not realistic. By placing the requirement to budget for Grand Council in the General Fund line item, the money can be set aside and used as needed.

Why is the quorum at 30%?

The quorum (the required number of eligible citizens to be present) needs to be high enough that a significant portion of the tribe is represented, but not so high that it will never be attained. For example, if there are 8,000 eligible citizens then the number of people that would need to be present is 2,400. And if a majority of those voted for something that would mean at least 1,201 people. 2,400 people to show up at a Grand Council is a high number to achieve but they are supposed to represent the will of the People and the entirety of the tribal citizens.

What's the point of any resolution from Grand Council?

Grand Council does not hold any authority to pass or enact laws; that authority lies with the Legislative branch. If two separate bodies hold the same authority, then who's in charge? What Grand Council will do is act like a referendum where there can be debate and a resolution voted on by the People. It will then go before Tribal Council so that they may act upon it. Tribal Council has the right to pass, kill or table it like any other resolution, except unlike other resolutions this comes with the weight of many members of the tribe who felt strongly enough to participate and pass the resolution. It would be in the best interest of Tribal Council to seriously consider passage of resolutions submitted by Grand Council, as denying it could be detrimental to their future political standing.

Proposed Constitution

Article VII – Grand Council

Section 1. Call for Grand Council. The Cherokee Community Club Council Officers shall have the exclusive right to call a Grand Council of all eligible Tribal citizens. A public notice shall be published no later than thirty (30) days prior to the convening of Grand Council.

Section 2. Financing Grand Council. The Community Club Council will prepare an annual budget to be financed from the Tribal General Fund account and overseen by the Community Club Council Officers for the possible convening of Grand Council.

Section 3. Agenda. Any agenda item(s) for Grand Council must be submitted to the Cherokee Community Club Council Officers for prior approval thirty (30) days before a Grand Council is convened.

Section 4. Officers. The Cherokee Community Club Council Officers will determine the roles and responsibilities for the officers of the Grand Council and who will fill them.

Section 5. Quorum. A quorum of Grand Council shall consist of no less than thirty (30) percent of the eligible Tribal citizens.

Section 6. Results from Grand Council. Any resolutions decided upon in Grand Council shall be placed on the legislative agenda for the next meeting of Tribal Council for legislative consideration.



Nothing exists in either the Charter or Cherokee Code of Ordinances referring to Grand Council with the exception of Section 10 of the Charter.

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Constitution vs. Charter: Article VIII Know the difference!

PROPOSED CONSTITUTION

Article VIII – Oath of Office

The Oath of Office is a solemn promise between the elected or appointed officials and the Cherokee People for whom they are elected or appointed to represent.

Section 1. Agreement to Ethics. All elected or appointed officials of the Eastern Band of Cherokee Indians, before taking their oath of office, shall agree by signature, to conform their conduct to the Standards of Ethical Conduct as stated by the Audit and Ethics Committee.

Section 2. Oath of Office. All elected or appointed officials of the Eastern Band of Cherokee Indians before entering upon the duties of office shall take the following oath before the Chief Justice of the Cherokee Supreme Court, or his/her designee:

“I do solemnly swear (or affirm) that I will faithfully execute the duties of (the elected or appointed officials as applicable) of the Eastern Band of Cherokee Indians and will to the best of my ability, preserve, protect and defend the Constitution of the Eastern Band of Cherokee Indians and the Constitution of the United States, and laws confirmed and ratified by the Eastern Band of Cherokee Indians. I do solemnly swear (or affirm) that I have not obtained Tribal office by any undue or unlawful means, and that in all measures which may come before me I will so conduct myself in a manner most conducive to the interest and prosperity of the Eastern Band of Cherokee Indians.”

CURRENT CHARTER

Section 18. The Principal Chief, Vice-Chief and members of Council before entering on the duties of office shall take the following oath before some officer authorized to administer oaths: "I do solemnly swear (or affirm) that I will faithfully execute the duties of the office of _____ of the Eastern Band of Cherokees and will to the best of my ability, preserve, protect and defend the charter and governing document and laws confirmed and ratified by the enrolled members of the Eastern Band of Cherokee Indians. I do solemnly swear (or affirm) that I have not obtained my election or appointment to Tribal office by bribery or any undue or unlawful means or fraud, and that in all measures which may come before me I will so conduct myself as in my judgment shall appear most conducive to the interest and prosperity of the Eastern Band of Cherokees."

Is there anything in the Cherokee Code that details a tribal ethics policy?

I am glad you asked. For a more comprehensive look at tribal ethics policies, go to Cherokee Code Chapter 117, Article IV, Section 45. If you don't have a copy of the Code laying around the house, the internet address for the Cherokee Code may be found at www.municode.com. Keep in mind that the proposed constitution would replace the governing document, which is the Charter. While Cherokee Code might need to be modified based on new language in the constitution, much of the detailed instruction as to execution of the constitution would remain in place via the Cherokee Code.

What good is an oath?

An oath is a promise that is given verbally. The oath is an acknowledgement or evidence of understanding the scope of duty and responsibility that a elected or appointed official of the tribe has accepted. Much like the constitution, the oath of office is a binding contract between the official and those who elected them. They are making a promise to do their job, abide by the Tribal and U.S. Constitutions and follow any laws that are passed.

What does “undue” mean?

The word undue is a synonym for inappropriate. And while “unlawful” is fairly objective, “undue” is subjective. What this means, it's kind of easy to tell if someone is “unlawful” since the laws apply to everyone, and everyone knows what that is. “Undue” is based on someone’s moral perspective, their belief system as to what is right and wrong.

If someone steals something, that would be unlawful, and there are laws in place to prevent this from happening and describes what is stealing. But if someone asks you to do something for them in return you may get a favor. It may not be unlawful, but it could be seen as inappropriate by others.

What happens if a person violates the oath?

If anyone violates their oath of office, they are subject to discipline that is described in the constitution, subjecting the offender to a possible impeachment. A complaint would need to be submitted to the Audit and Ethics committee. This might be made by any tribal member. It would be the duty of the Audit and Ethics Committee to investigate and substantiate that the official did violate their oath and would make recommendations on next steps. We'll talk more about the process of investigation and consequences in the next section.

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Constitution vs. Charter: Article IX Know the difference!

Proposed Constitution

Article IX – Impeachment of Elected Officials

Any elected or appointed official of the Eastern Band of Cherokee Indians who violates their oath of office or is guilty of any offense making them ineligible to hold said office may be impeached and removed from office by a two-thirds unweighted vote of council.

Section 1. Allegations of Misconduct. Any claims of misconduct by an elected or appointed official shall be referred to the Audit and Ethics Committee who shall meet within thirty (30) days to determine whether any further action is warranted.

Section 2. Drafting of Charges. If further action is warranted, the Audit and Ethics Committee shall investigate and determine whether there is sufficient cause to draft Articles of Impeachment. If there are multiple officials to be charged, separate articles shall be drafted for each official. The Audit and Ethics Committee will present the article (s) to Tribal Council.

Current Charter

Section 22. Any officer of the Eastern Band of Cherokee Indians who violates his oath of office, or is guilty of any offense making him ineligible to hold said office may be impeached by a two-thirds vote of council.

Why 2/3 unweighted vote?

The unweighted two-third vote requirement of Tribal Council ensures that no less than eight members of council will be needed to impeach. It will not matter which communities the council members represent. Rather than playing to only certain members of council, it will be an issue of how each member feels about the information presented in the trial and whether the evidence and articles meet the criteria to impeach.

Why does the Audit & Ethics Committee do the initial investigation of claims?

The Audit and Ethics Committee have the tools and personnel in place to perform needed investigations. If any of the officials to be investigated were a member of Tribal Council, it would be highly suspect to allow them to be part of the investigation. A separation of duties, where an impeachment is concerned, is needed between the trial duties and those of Tribal Council to promote an environment conducive to a fair trial. If the same people are doing the investigation, prosecution, and serving as the judge and jury, how can it be called a fair trial?

Tribal Council’s involvement happens after a resolution listing the Articles of Impeachment are presented for council to accept. The listing resolution is not to decide on the validity of the charges. That is what the trial is about. It’s about the processes having been followed and everything being in order to begin the impeachment trial. The Audit and Ethics Committee will be there to present information about the resolution and answer questions about the actions they performed for the investigation. They are not there to present evidence or give opinions. That will be done during the trial.

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More on Article IX next week!

Constitution vs. Charter: Article IX Know the difference!

Proposed Constitution

Article IX – Impeachment of Elected Officials

Section 3. Acceptance of Charges. In open session where a quorum is present, Tribal Council shall hear the allegations of misconduct presented in the Articles of Impeachment. The Audit and Ethics Committee shall bring the allegations of misconduct to the floor for a majority vote on whether to accept any Article of Impeachment. Upon acceptance, a date shall be set no later than sixty (60) days from the date of ratification for a hearing on any article so ratified.

Clause 1. Limited Presence. Anyone named in an Article of Impeachment shall be permitted to be present while the information is read into the record but shall not be permitted to be present during any discussions or vote on the article wherein they are named.

Clause 2. Ratification. The Tribal official named in an Article of Impeachment shall not be involved in, nor interfere with the process of ratification of that specific article.

Current Charter

Section 22. Any officer of the Eastern Band of Cherokee Indians who violates his oath of office, or is guilty of any offense making him ineligible to hold said office may be impeached by a two-thirds vote of council.

What is the difference between the acceptance of charges vote and an impeachment vote?

Before the impeachment trial can be held there has to be charges. The committee presents those charges to Tribal Council for them to agree that a trial should be held. The vote for acceptance is an acknowledgement that the process and policies that pertain to impeachment have been followed and a resolution listing the charges have been drafted. This vote is not about the guilt or innocence of the charged but whether everything is in order to move onto the next phase.

Why can the accused be present for the reading but not for the discussion or vote?

This is included to remove undue influence that the charged may create by being present when council is holding debate amongst themselves. They should be able to debate freely without worrying about what is said and how it would affect their relationship with the person.

Why would it be an issue if someone interfered with the process of ratification?

The ratification is the official acceptance of Articles of Impeachment. This not the trial phase of an impeachment, this is where the charges have been drawn up after an investigation has been performed. If it is felt there is enough substance to the charges of misconduct, a resolution is drafted listing in detail the charges.

An official could use their knowledge and influence to delay or block the process from proceeding as it should. If there is enough evidence to bring a resolution, then it needs to be dealt with quickly and equitably. The longer it festers, the more anxious the people will get, creating more doubt and mistrust with Tribal Council and whether everything is on the up and up.

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Constitution vs. Charter: Article IX (continued)

Know the difference!

Proposed Constitution

Article IX – Impeachment of Elected Officials

Section 4. Hearings. Tribal Council will hold public hearings on whether to convict the individual named in the ratified Articles of Impeachment. The ratified Articles are not a limiting factor in what the Tribal Council may consider.

Clause 1. Rights of the Accused. Persons named in ratified Articles shall have the right to defend themselves with their own attorney, present evidence, call witnesses, subpoena persons or things pursuant to the Cherokee code, and perform cross-examinations.

Clause 2. Prosecution. The Audit and Ethics Committee shall hire an attorney to prosecute the case. If during the prosecution more charges are discovered, the Articles of Impeachment may be amended.

Clause 3. Tribal Council. A quorum of Tribal Council shall convene to listen to the entire case without prejudice before rendering a verdict convicting or acquitting a defendant.

Clause 4. Duties of the Presiding Jurist. The Chief Justice of the Cherokee Supreme Court or his/her peer justice as a designee, shall preside over the hearings, rule on evidentiary and procedural objections, possess the power of contempt, and ensure the proceedings are carried out in an ordered and unbiased manner. The Chief Justice shall not participate in the deliberations for impeachment and does not have a vote.

Current Charter: Section 22. Any officer of the Eastern Band of Cherokee Indians who violates his oath of office, or is guilty of any offense making him ineligible to hold said office may be impeached by a two-thirds vote of council.

Why is the Chief Justice involved?

The Chief Justice or any of the justices from the Cherokee Supreme Court should serve as the judge for these kinds of proceedings. They are in place to make sure the laws are followed, and the trial is held in such a way that no one's rights are circumvented. Impeachment trials have to be done right the first time, as reputations are in the balance and can never be repaired if missteps happen along the way. How evidence is presented, what is allowed to be heard, and how to run a trial are not part of Tribal Council's duties so putting a jurist in place is the most logical course of action.

Why does the Ethics Committee hire the prosecuting attorney?

The Audit & Ethics Committee has gathered enough evidence to draft the Articles of Impeachment, they are most familiar with what the charges are and how they go to tell the story of improper activity. By hiring a prosecutor to tell the story of wrongdoing by someone in a trusted position with knowledge and experience in court room proceedings, the likelihood of a successful prosecution is increased. It would be improper if the judge or jury hire the prosecuting attorney, there would be a conflict of interest and the jury could not be impartial if they're hiring the attorney.

What does "without prejudice" mean?

"Without prejudice" means that the jurors will not have a predetermined decision on the outcome of the trial. The members of Tribal Council shall listen to the case with an open mind, avoiding any preconceived ideas on the guilt or innocence of the accused.

What is a peer justice?

A peer justice is an Associate Justice that sits on the Cherokee Supreme Court with the Chief Justice. If the Chief Justice is unable to oversee the impeachment trial, then one of the other justices that serve on the Supreme Court can fill that role. The purpose is to provide the opportunity for a fair and unbiased hearing and that everyone's rights and protections are maintained.

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Constitution vs. Charter: Article IX (continued)

Know the difference!

Proposed Constitution

Article IX – Impeachment of Elected Officials

Section 5. Judgment. Less any Council Representative who may stand accused, Tribal Council may perform their deliberations in a closed session but shall be in an open session to cast votes.

Clause 1. Conviction. To sustain a conviction, the prosecution shall prove an Article of Impeachment by clear, logical and convincing evidence. A two-thirds (2/3) supermajority unweighted vote of the Tribal Council quorum present must be reached to convict the accused. If convicted, the official shall be immediately removed from office. The vacancy created shall be filled according to applicable provisions of this Constitution.

a. Appeal. An official convicted by Tribal Council and thereafter removed from office following impeachment cannot seek judicial review of such conviction. Tribal Council has sole authority to impeach an elected or appointed official.

Clause 2. Acquittal. If a supermajority vote is not reached on an Article, the official shall be acquitted of that Article.

Current Charter: Section 22. Any officer of the Eastern Band of Cherokee Indians who violates his oath of office, or is guilty of any offense making him ineligible to hold said office may be impeached by a two-thirds vote of council.

Why should the deliberations happen behind closed doors?

If this was a court case, the jury would deliberate in private on the merits of the case. An impeachment is not a court case but a political one, should the deliberations still be held in private? The idea is to allow the “jury”, in this case Tribal Council to make arguments with the other members without the fear of retaliation. This may also encourage members to freely express their views to each other without the scrutiny of the public. As elected officials, they may not speak openly if they are more concerned about getting re-elected. They still have to vote in public, but the process that was used to get to their decision is private.

What does it mean to be acquitted?

An acquittal means not enough people voted to convict. It is not a declaration of innocence; it just means that the arguments to convict were not persuasive enough to convince a majority of the members of council. There may be evidence for impeachment, but it takes the majority to agree that a specific charge meets their personal definition of an impeachable offense.

How many articles of impeachment does a person need to be convicted of to be removed from office?

It only takes a conviction on one count to be impeached no matter the type of charge. Each person must weigh each individual charge on its own merits. Impeachment is about the behavior of an individual not meeting the expectations of the office they hold. It is the courts that will determine if the actions are criminal or not and if any punishment should be applied. Once a person is convicted, they are immediately removed from office.

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More on Article IX next week!

Constitution vs. Charter: Article IX Know the difference!

Proposed Constitution

Article IX

Section 6. Penalties. A judgment of conviction causing an official to be removed by impeachment rendered by the Tribal Council shall include a disqualification from holding future elected or appointed office of the Eastern Band of Cherokee Indians.

Clause 1. Reversal of Removal and Penalties. All judgments and penalties determined by Tribal Council regarding impeachment are final and are not subject to review by any other branch of Tribal government.

Clause 2. Criminality. A judgment to remove from office by impeachment shall be final. Civil and criminal charges of the impeached official may be brought forward in a court of law.

Clause 3. Restitution. The Eastern Band of Cherokee Indians may initiate a civil action in the Judicial Branch to seek restitution of any funds or property misappropriated or wrongfully acquired by an individual removed by impeachment.

Current Charter: Section 22. Any officer of the Eastern Band of Cherokee Indians who violates his oath of office, or is guilty of any offense making him ineligible to hold said office may be impeached by a two-thirds vote of council.

Why are Tribal Council judgments final in an impeachment trial?

Elected officials are subject to impeachment since they are not employees, however the citizens of the Tribe may vote them out at the next election. The alternative is impeachment through the Constitution as the way elected or appointed officials are held accountable for their actions while in office as it is a political process. As a political function, there is no other political group that can supersede the authority of Tribal Council.

What does criminality mean?

As an example, if someone is impeached on charges of embezzlement in office, it does not protect them from criminal proceedings of the same charge. Impeachment is not a criminal process but political.

What is restitution?

Restitution is the restoration of something stolen. If someone is convicted of impeachment it usually involves money. Even after being impeached, the tribe can still file a claim in Tribal Court to recover funds and/or property that were illegally taken. Being impeached does not stop any civil or criminal cases from occurring including the recovery of monies and/or items.

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Constitution vs. Charter: Article X

Proposed Constitution

Article X – Voter Recall

Voter recall is the process for the community to decide if an elected official needs to be removed from office for non or poor performance between elections.

Section 1. Initiation. A notice of intent to initiate a recall petition must be registered by a citizen of the Tribe with the Board of Elections to initiate a recall. The Board of Elections shall calculate the number of signatures required as sixty-seven percent (67%) of the voters who cast a ballot in the previous General Election for the specific office in question and assign a commencement date.

Section 2. Signature Collection. The petition must be signed by registered voters eligible to vote for the elected official being recalled and verified by the Board of Elections. Any petition to be valid must be submitted to the Board of Elections within thirty (30) days of the petition commencement date. If the petition is not timely submitted, the signatures obtained are invalidated.

Section 3. Referendum. If the petition for recall meets or exceeds the above requirements, then a Referendum for Recall shall be instituted by the Board of Elections.

Clause 1. Locking Voter Registration. While the Referendum for Recall is in process, no new voters shall be allowed to register within the district of recall.

Section 4. Special Election. The Board of Elections shall give notice to the affected voters of the purpose, time, and location of the special election to be held within ninety (90) days from the date of the Board's official acceptance of the validated petition.

Section 5. Results of the Election. An affirmative vote for recall of sixty-seven (67) percent or more of the votes cast in the recall election, as certified by the Board of Elections shall be required to remove an elected official from office. The elected official shall be removed from office immediately creating a vacancy. Any vacancy so created shall be filled pursuant to the appropriate provision of this Constitution.

Section 6. Consequences. Any persons removed from office by recall shall not be disqualified from holding office in the future or employment in any governmental capacity by the Eastern Band of Cherokee Indians.

Know the difference!

The Charter and Cherokee Code do not have provisions for voter recall.

What is a voter recall?

When the community does not feel like it is being properly represented, they should have a way to un-elect officials from office. Rather than waiting till the end of the term, which could be years since the shortest term is four years, voter recall is a process to remove an elected official from office.

When elected officials are not doing the job the voters elected them to do but are not doing anything to get them impeached, a procedure needs to be in place to remove them from office before their term is completed. This process of voting for removal from office is called Voter Recall.

Why does a petition have to be registered?

This is how the Board of Elections is made aware of the intent to petition for a recall and put certain processes in motion like verifying the count of voters and identifying what voters are eligible to participate. Registering also gives the Board a chance to educate the petitioner on what the expectations are for a successful petition. It will also give the Board a chance to notify the official who is the subject of the petition. This is to give them a chance to campaign for their office, to change how the public perceives the job they're doing. This also starts the timer for the petition, if the target of recall is doing such a bad job, it should not take long to collect the required number of signatures.

What do the numbers mean?

The number of signatures is meant to be high enough that someone who is upset about the outcome of an election cannot use this to overturn an election by getting their supporters to call for a recall. For example, if the second-place candidate from the General Election only received 75 votes of the 300 votes cast, it would take 201 people to sign a petition to request a recall election. This means they would need an additional 126 people who voted for the other candidate in the last General Election to agree that a recall needs to be held.

If there's enough people to participate in the recall election, 201 in our example and the majority vote for recall, at least 101, then the recall is effective.

Why is the percentage so high?

Recall should not be done on a whim or bad feelings of a group of people about the results of an election. The percentage for recall needs to be more than those that supported a losing candidate, and it needs to include those that voted for the winning candidate. The number needed to be successful at any level needs to be more than family and friends of a candidate. The percentage for a successful recall needs to be enough of the community to be representative of what they want.

Why aren't there more consequences to a voter recall?

Anyone recalled has not committed any crimes or done anything wrong to be impeached. It's a matter of opinion of whether they are doing a poor job, which is not illegal. Therefore, voter recall removes them from office and does not penalize them from running for office again in the future.

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Constitution vs. Charter: Article XI Know the difference!

Don't we already have these rights?

These "rights" are not necessarily protected by the U.S. Constitution and the Bill of Rights, according to the U.S. Supreme Court "tribal internal affairs concerning tribal members' individual rights were not covered by the Fifth Amendment." "Indian tribes were exempt from many of the constitutional protections governing the actions of state and federal governments." So, in 1968 the U.S. passed the Indian Civil Rights Act of 1968 which limited what tribal governments in exercising their right to self-government could do. Most of the ICRA makes many of the same protections as the Bill of Rights but it was felt that it should be described in our own document as to what protections from the tribal government are applicable for its citizens. If our Constitution does not contradict what is found in ICRA, we can establish our own protections.

What does it mean, "establishes any religion or prefers one over any other"?

The tribe will not create any law that picks one religion over any other or sets a religion as a standard above any other or the separation of church and state. When the government sanctions a particular religion because 'this is what or how people should be worshipping', that makes a state religion. If the people in power start using their power and authority to make everyone else follow a belief system, that goes completely against the idea of freedom of religion. Religion is a personal choice and should be based on each person's belief system.

History is full of well-meaning people trying to convert or save people one way or another. But when it becomes ok by the government to force their religion on people who do not have the same beliefs it does not go well for the potential convert. Remember, this is how boarding schools were allowed to operate.

What is a bill of attainder?

This is a law created to single out a person or a specific group of people for punishment without due process. For example, the tribe might create a law that names a family, Shmitzel, of being a detriment to the welfare of the tribe and immediately removed from Tribal lands. This is an example of a bill of attainder, since anyone with that name is guilty and removed without due process or a court hearing.

What does ex post facto mean?

Literally, it means "from a thing done afterward". In other words, laws cannot be created to punish people after an offense has been committed. As an example, the tribe could pass a law that makes it illegal to own a blowgun. This would mean everyone who had legally bought or made their blowguns are now committing a crime, even though the law was not in effect when they purchased it.

Proposed Constitution

Article XI – Civil Rights

The citizens of the Eastern Band of Cherokee Indians, in exercising the powers of self-government shall be protected as follows:

- 1. Basic Freedoms.** The Tribe shall not make or enforce any law which infringes upon religious beliefs or prohibits the free exercise thereof, nor any law which establishes any religion or prefers one over any other, make or enforce any law prohibiting the freedom of speech or of the press, or the right of the people to peaceably assemble, and to petition for redress of grievances;
- 2. Firearms.** The Tribe shall not pass any law infringing upon the right of the people to own and use firearms inconsistent with the Second Amendment to the United States Constitution;
- 3. Personal Protection.** The Tribe shall not pass any laws targeting a specific person or group of people to bypass due process, bill of attainder; or pass any laws to be applied after the fact, ex post facto.



The Charter has no language providing basic civil rights for its citizens other than the right to vote.

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Constitution vs. Charter: Article XI (continued) Know the difference!

Why do we need search and seizure protection?

Among the most basic human rights is that of privacy. What I do, as long as it is lawful, it is my own business. It is my right to share or not. It is not the right of the state or government to inspect my private affairs or property without my permission if they have no legitimate cause, spelled out in our governing law, to inspect me or my property.

The fourth right includes a list of what is protected from unreasonable searches and seizures. We have included media which can include thumb drives, papers, computers or anything else that can convey information. We've also included vehicles protected by this right.

The fourth right includes having these rights explained to the person being served.

This does not prevent law enforcement from making a search or seizure without a prior approved warrant, signed by a judge. There are exceptions allowed to this right where the situation made the unwarranted actions imperative, again there has to be a probable cause prior to the action taken that can be reported back to the court as to why the exception to the fourth civil right was needed.

What does it mean to be put "twice in jeopardy"?

This protection keeps people from being prosecuted repeatedly for the same crime if the person has been acquitted of a specific crime. This is only applicable to crimes where the tribe is the prosecuting party. What this means, if the government takes someone to court for a crime, they need to be sure to get it right the first time, because if the defendant is found innocent of the charges, the government cannot come back later with more evidence to try the person again.

Why might a jury trial be preferred over a trial by judge?

A trial by judge is usually faster since a judge is familiar with the processes and procedures that can take place during a trial. A judge trial is usually decided based on facts and laws, but it comes down to convincing one person whose job has them being a part of many trials.

A jury trial usually involves people who are not in a courtroom on a professional basis. The objective of a jury trial is to convince a group of people who are not familiar with laws and procedures how you are not guilty of a crime.

Proposed Constitution

Article XI-Civil Rights

4. Search & Seizure. The Tribe shall not violate the right of the people to be secure in the privacy of their persons, houses, media, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation, signed by a Judge, and particularly describing the place, person, house, media, vehicle, or effects to be searched, the object and scope of such search, and the person or thing to be seized, and to have these rights explained at the time of service;

5. Criminal Trials. The Tribe shall not compel any person in any criminal case to be a witness against him or herself, nor subject any person for the same offense to be twice put in jeopardy, nor deny to any such person the right to a speedy and public trial, and due process of law. The Tribe shall ensure that any person accused of an offense be informed of the nature and cause of the accusation, be confronted with the witnesses against him or her, have compulsory process for obtaining witnesses in his or her favor, and have the assistance of counsel for his or her defense, whose fees may be reimbursed by the defendant as provided by law if convicted, and to have these rights explained at the time of arrest or accusation;

6. Jury Trial. The Tribe shall not 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, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the Eastern Band of the Cherokee Indians.



The Charter has no language providing basic civil rights for its citizens other than the right to vote.

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Constitution vs. Charter: Article XI (continued)

What is an excessive bail or cruel and unusual punishment?

The reason there are no specific values to these restrictions is related to how the times and the values of society change over the course time. What might have seemed cruel and unusual 30 years ago may not be as harsh in today’s society. The courts can make the determination as to what is considered cruel or excessive and make any modifications to those decisions as times change. Thus, these adjectives that describe the upper extreme of punishment are subjective and open to interpretation.

Why include the voting right in the Constitution?

Voting is a powerful tool that is wielded by the public. It is through the process of voting that can determine the future of the Tribe and how it treats its citizens. Voting rights of tribal citizens must be protected.

In this age where voter rights seem to be under attack to protect the interest of those in power, it is important that these rights are protected. By placing the right to vote in the Constitution, it will be protected from any laws that may be brought forth to restrict who can vote. Rights granted by the Constitution cannot be changed without going through the process of a Constitutional Amendment. Resolutions and ordinances cannot change what is found in a constitution.

What does the education right mean?

We will make sure that we have an education system which will include classes in Cherokee language and culture at a minimum. It is important as a people that we continue to teach our language and heritage so that what makes us Cherokee will continue to be taught to future generations.

How does the reserved power and the People work?

The Constitution describes who has what authority and the duties that they are entrusted with. It also spells out the rights and protections that are guaranteed for the People. When we talk about the People, we are referring to the collective body of the tribe, the ones who agree to be governed by this Constitution. What we don’t agree to is the implication that anything that is not spelled out in this document does not automatically imply that the government can assume those authorities. Anything that may come up in the future that is not described in this Constitution may be reserved to the People to decide what to do. This may take the form of referendums where the People vote on a pending piece of legislation that may become binding without the approval of Tribal Council and may only be altered by another referendum.

Proposed Constitution Article XI – Civil Rights

- 7. Bail and Punishment.** The Tribe shall not require excessive bail, impose excessive fines, nor inflict cruel and unusual punishments;
- 8. Equal Protection.** The Tribe shall not deny to any person the equal protection of its laws or deprive any person of life, liberty, personal property or a possessory interest in real property without due process of law;
- 9. Voting.** The Tribe shall not deny the right to vote to any citizen of the Tribe who has attained the age of eighteen (18) years or older;
- 10. Education.** The Tribe shall establish, provide for, and perpetuate an educational system that promotes, at a minimum the preservation of the Cherokee language and culture;
- 11. Reserved Powers.** Powers not granted to the Tribal government shall be reserved to the People.



The Charter has no language providing basic civil rights for its citizens other than the right to vote.

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Constitution vs. Charter: Article XII

Proposed Constitution

Article XII – Public Land

The Legislative Branch of the Eastern Band of Cherokee Indians shall be empowered to adopt laws and regulations for the management and control of all real property belonging to the Tribe, and no person shall be entitled to own a possessory holding in any lands belonging to the Eastern Band of Cherokee Indians, unless such person shall be a citizen of the Tribe.

Section 1. Land in Trust. All lands owned by the Tribe and held in trust by the United States for the benefit of the Eastern Band of Cherokee Indians, shall remain trust property in perpetuity. Nothing in this section shall prevent the Tribe from entering into a ‘like-kind’ exchange of trust property for other realty.

Charter

Section 16. The Council of the Eastern Band of Cherokee Indians shall direct the management and control of all property, either real or personal, belonging to the Tribe, but no person shall be entitled to the enjoyment of any lands belonging to the Eastern Band of Cherokee Indians as a tribe, or any profits accruing therefrom, or any monies which may belong to the Tribe, unless such person shall be an enrolled member of the Tribe, and in case any money, derived from any source whatsoever, belonging to the Eastern Band of Cherokees, shall be distributed among the members thereof, the same shall be distributed per capita among the members entitled thereto.

The first generation of an enrolled member of the Eastern Band of Cherokee Indians shall enjoy all property, both real and personal, that is held in said enrolled member's possession at their death. First generation shall include all children born to or adopted by an enrolled member.

What does it mean for the management and control of all real property?

Real property is property that is immovable typically meaning land. The Constitution is authorizing the Legislative branch, Tribal Council, to create laws and regulations on how Tribal land is managed and controlled. Tribal Council can pass laws about how property is managed like eviction laws and leases. Tribal Council can also pass laws about zoning or how property can be used.

Why are land exchanges included in the Constitution?

A situation may arise where a land swap may be beneficial for the tribe. Rather than lock the tribe into a position where trust land cannot be used, an exception is provided. If there is a potential to gain a more desired plot of land to bring into trust in an exchange for trust land that does not have any potential use or development, the Constitution allows for this to occur.

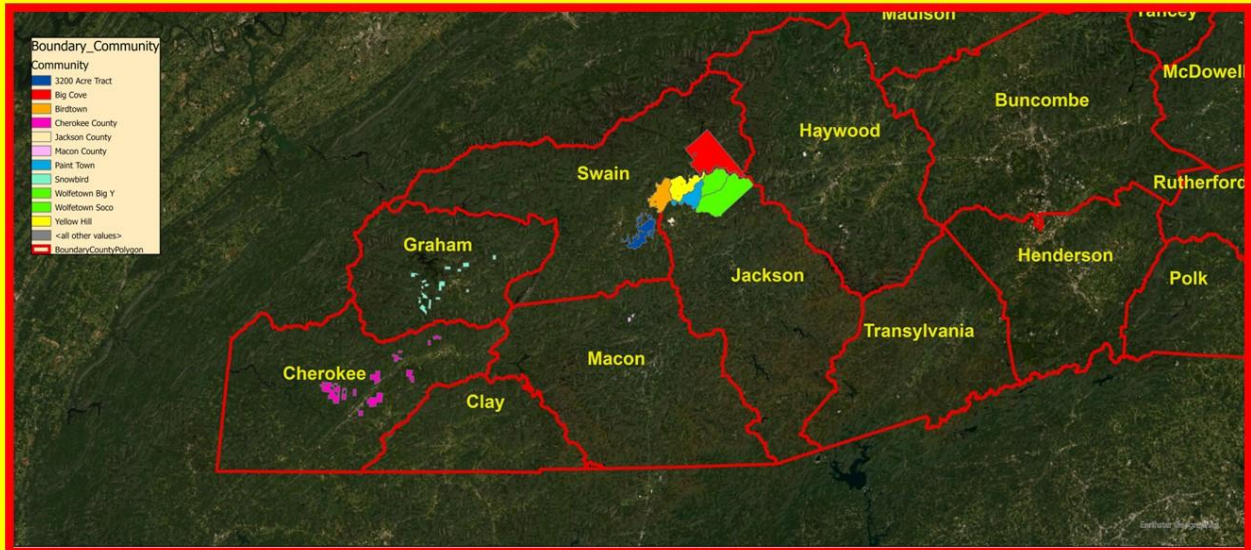
Who are the first generation and why are they not included in the Constitution?

The Charter describes first generation (aka first descendants) as children whose parent was enrolled but are not qualified to be enrolled themselves including those adopted by an enrolled member. This constitution is an agreement between the government and the citizens of the tribe. Article 3 describes who citizens are, people whose name is on the membership roll and that can only happen as described by enrollment law.

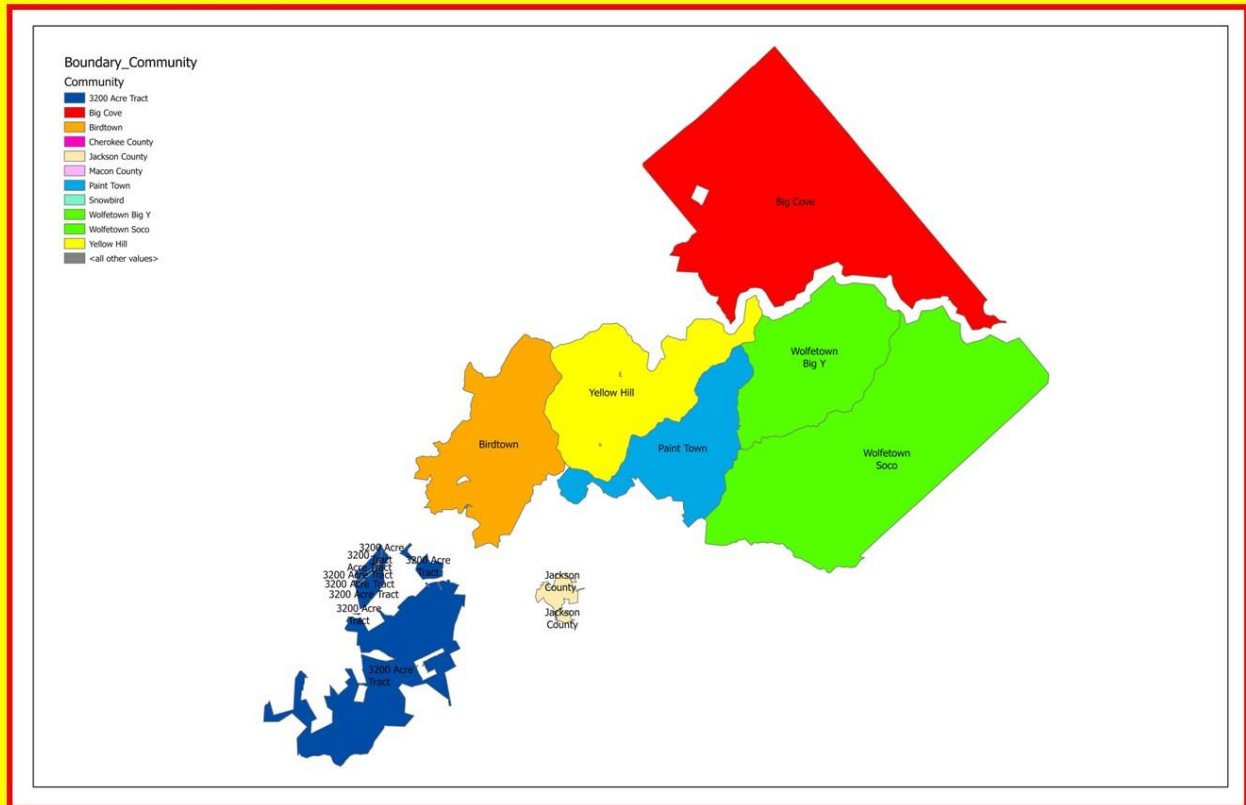
The provision for first generation (first descendant) was not included in the Constitution to prevent non-citizens from getting the possessory title for tribal land and the potential to signing it away. Keeping land possession limited to those that are enrolled means that the Constitution and its rights and protections will cover them and the property.

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Qualla Boundary location in



Qualla Boundary Communities



Maps courtesy of EBCI GIS/Tribal Realty

Constitution vs. Charter: Article XII (continued) Know the difference!

Proposed Constitution

Article XII-Public Land

Section 2. Eminent Domain. When deemed necessary by Tribal Council, lands held by the Eastern Band of Cherokee Indians for which a possessory holding has been assigned, may be condemned only for public purposes for the benefit of the Tribe. This power of eminent domain may be exercised only after each person who has a property interest in the subject of condemnation has received proper notice, due process, and just compensation for their property interest. The Eastern Band of Cherokee Indians will not use the power of eminent domain except for public utilities, improvements, infrastructure, or prehistoric/historic cultural sites.

Charter

Section 24. Whenever it may become necessary, in the opinion of the council to appropriate to public purposes for the benefit of the Tribe any of the lands owned by the Eastern Band of Cherokee Indians, and occupied by any individual Indian or Indians of the Tribe, the Council may condemn such land for the aforesaid purposes only by paying to the occupant of such land the value of such improvements and betterments as he may have placed or caused to be placed thereon, and the value of such improvements or betterments shall be assessed by a jury of not less than six competent persons, who are members of the Tribe, under such laws and regulations as may be prescribed by the Council. The Eastern Band of Cherokee Indians will not use eminent domain under this section or any other Tribal or Federal laws to take an individual Tribal member's possessory holding except for bridges, roads, power lines, schools, hospitals, or sewer and water lines. Each Tribal member shall receive proper notice, proper hearings, and proper compensation for their lands.

What does it mean for property to be condemned for eminent domain?

The Tribal government has the right to take private land for public use with fair compensation. This is called eminent domain. Condemnation is the legal process in which private land is acquired for public use. The term "condemnation" does not necessarily mean that a property is unlivable, it just means that a legal process is occurring for the Tribal government to take possession of the property. So, for the Tribe to take a possessory holding it first must be condemned. The legal process of condemnation includes making the possessory holder(s) aware that the process has started, allow for court hearings if needed and reach an agreeable compensation with the landowners.

Do I have any recourse if Tribal Council condemns my property?

If you receive a notice of condemnation for your property from the Tribe, you have the right to fight the condemnation in Tribal Court. Due process, a fair hearing within the judicial system is a protection listed in the Constitution to prevent the Tribal government from taking possessory holdings. In a hearing, it is the job of the government to convince the court why condemning your property is in the best interest of the public and not for specific individuals. In the Constitution, beneficial reasons for public use must fit into a category like utilities, improvements, infrastructure, or a prehistoric or historic cultural site.

What are some examples of property taken for public use?

Public use could be a number of things like water, sewer and power lines. Other uses for eminent domain can include the building of access roads or widening of public roads, building bridges or community buildings, etc. In rare cases, an archaeological site of cultural significance could be taken by the Tribe through eminent domain for its protection.

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Constitution vs. Charter: Article XIII

Know the difference!

Proposed Constitution

Article XIII – Sovereign Immunity

Section 1. Sovereignty. The Eastern Band of Cherokee Indians affirms that it is a sovereign nation with all rights and privileges attendant thereto. The Eastern Band of Cherokee Indians shall be conclusively immune from any cause whatsoever as an established sovereign.

Section 2. Limited Waiver. The Eastern Band of Cherokee Indians expressly waives the Tribe’s sovereign immunity for claims brought in the Cherokee Court system seeking injunctive or declaratory relief concerning any rights guaranteed by this Constitution.

SOVEREIGNTY AND IMMUNITY ARE NOT DISCUSSED IN THE CHARTER.

What does it mean to be a sovereign nation?

According to the U.S. Supreme Court and Chief Justice John Marshall, tribes were “distinct independent political communities.” They remain subject to the paternalistic powers of the United States and possess internal governmental power over all affairs within the tribe but lack external authorities to engage in relationships with foreign nations.

State governments do not possess authority over tribes and the powers to “expand” or “contract” tribal sovereign authority rests solely within the power of the federal government. Thus, states are restricted from interfering with the tribes in their self-governance, while the U.S. congress reserves the power to change the scope and definition of tribal sovereignty. Therefore, federal and state governments are required to engage in government-to-government relationships with all federally recognized tribes.

The only other authority that can modify what the tribe’s self-governance is the tribe itself. In the case for the Eastern Band, this Constitution identifies the Legislative branch or Tribal Council as having that authority.

What does it mean to be immune from any cause?

Tribal sovereign immunity protects tribes from lawsuits for damages and requests for injunctive relief. They are also immune from subpoena enforcement to produce tribal witnesses or documents. What does this mean? Tribal governments are considered sovereign entities in the eyes of the state and federal government. They define when sovereign immunity is waived.

How does the limited waiver work?

The Tribal Government may be taken to Court for issues related to the rights provided by this Constitution. Otherwise, the tribe is immune from judicial actions unless it is expressly waived for specific situations and conditions.

As an example, a citizen wants to stop the tribe from taking their property for a remote control racetrack to be built. In this case, an injunction can be filed with Cherokee Court to stop the process until the case is heard and a verdict reached since the protection from eminent domain is guaranteed in the Constitution. But if a vendor who has not been paid by the tribe decided to file a lawsuit, they could not get relief through the court system unless the vendor had a waiver provision included in their contract.

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Constitution vs. Charter: Article XIV

Know the difference!

Proposed Constitution

Article XIV – Savings Clause and Transitional Provisions

Section 1. Savings Clause. All actions of the Eastern Band of Cherokee Indians 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.

Section 2. Transitional Provisions. The current members of the Tribal Council, the Principal Chief and Vice-Chief, and the Judges and Justices of the Cherokee Court system serving at the time of the adoption of this Constitution shall continue to serve in their respective offices for the duration of their present term at which time the applicable provisions of this Constitution shall control.

Section 3. Term Limit Exemption for Incumbents. The limitations placed on the terms of service by this Constitution shall not be calculated based on prior service for any incumbent holding office at the time of adoption.

What is the point of Section 1?

This Constitution is not meant to undermine or eliminate all current laws. It will not create a situation where the previous laws found in the Cherokee Code are eliminated, just those provisions that do not conform to the Constitution. In those cases, the Constitution would override the Cherokee Code, but only for that specific situation. Most of the current laws will not be affected by the changes that would be introduced with the new Constitution.

Why include Section 2?

This is to limit any disruption that may occur with the adoption of the Constitution concerning those positions identified in the Constitution. This is a 1-time issue that may affect officials that have not yet completed their current term of office at the time this Constitution is adopted. At the time they took office they swore an oath to serve in the office for a certain amount of time. After the term has been completed, the appropriate section of this Constitution will go into effect.

Why are we not counting previous terms of service?

Officials who are in office when the Constitution is adopted will continue to do so till they have reached the end of their current term as described by the Charter or Cherokee Code. With adoption of the Constitution, new terms of office will be set, and those officials installed will do so using the oath found in this Constitution. Their previous time in office will not be counted towards their term limits.

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Constitution vs. Charter: Article XV

Proposed Constitution

Article XV – Amendments

Section 1. Constitutional Convention. A Constitutional convention shall be held every twenty (20) years after adoption of the Constitution of the Eastern Band of Cherokee Indians. It will be attended by delegates that will include an equal number of representatives from each branch of government; Legislative, Executive, Judicial, and from the Cherokee Community Club Council. The chosen delegates must be Tribal citizens who will convene, moderate, and direct the activities of the convention. The Constitutional Convention shall meet to examine the Constitution and propose any changes to the Constitution. The Cherokee Community Club Council will prepare a budget every twenty (20) years to finance the event from the Tribal General Fund account. The convention will be publicly noticed and open to any Tribal citizen who wants to have input.

Section 2. Referendum Amendment. This Constitution may be amended by a simple majority vote of the registered voters of the Eastern Band of Cherokee Indians voting in an election called for that purpose by Tribal Council. At least thirty-three percent (33%) of those registered to vote shall vote in such election, and the amendment shall become effective after the results are certified by the Election Board.

Why do we need a Constitutional Convention?

This constitution is to be a foundational document, one that our society will use to provide consistent governance. Ancestral values should always guide in the creation of a constitution. As generations pass, the needs and societal norms will evolve based on the sensibilities of the majority. A constitution should reflect the values of the society that will be governed by it.

Why 20 years?

It is generally accepted that a generation is 20 years. The constitution should be studied and reviewed at least once a generation to confirm it is still valid and applicable to the current society and the immediate future. What was not acceptable 20 years ago may be acceptable today.

Why are the delegates chosen from 4 groups?

To ensure the governed and the government are represented, delegates at the Constitutional Convention will include representatives from the 3 branches of government and the people. The representatives will be members of the branch of government and members of the Cherokee Community Club Council. The Constitution establishes the branches of government and their authority. The Constitution also describes the rights and protections of the people. Any proposal to change the Constitution may affect any or all 4 groups. A representative from each group will be present to debate the merits of those changes.

Why is the minimum set to 33% of the registered voters to amend?

Historically, not enough registered voters turn out for referendum elections to be representative of the people. Therefore, setting the minimum number of voters to be 1 who represents 3 or 33% is high enough to be reflective of the Tribal population. It should not be so high as to be unachievable. If a third of the Tribal registered voters do show up and the threshold is achieved, the result should be representative of how most of the Tribe feels.

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Constitution vs. Charter: Article XVI

Know the difference!

Article XVI – Adoption

Section 1. Adoption. This Constitution shall become the supreme law of the Eastern Band of Cherokee Indians when adopted by a majority vote of the registered voters of the Eastern Band of Cherokee Indians voting in an election and shall become effective after certification by the Election Board.

Section 2. Supreme Law of the Tribe. Upon adoption, this Constitution shall repeal and supersede the Charter and Governing Document of the Eastern Band of the Cherokee Indians as well as any law or precedent dependent thereon which is inconsistent with this Constitution.

Charter

Enacted and adopted May 8, 1986, by the Tribal Council of the Eastern Band of Cherokee Indians, Cherokee Council House, Cherokee, North Carolina, by Resolution No. 132 (1986), and amended by Tribal Referendum conducted October 8, 1986.

How soon could the Constitution take effect?

The Constitution could become effective as soon as the Tribal Election Board certifies the results of the referendum vote. A delayed effective date could be added to the referendum question. Under our current law, a resolution for referendum must be presented to Tribal Council to change, repeal, or replace the Charter, and this referendum may only be considered either by petition of the people or through a Tribal Council member submitting the resolution. Whoever submits the resolution for the replacement of the Charter may also ask, through the referendum process, whether the people would want to delay the effective date of the Constitution, should it be adopted, in order to allow time for the Cherokee Code to be aligned with the Constitution for a smoother transition to the new governing document.

How will the Cherokee Code be affected by the Constitution?

Any language in the Code that might conflict with the Constitution must be addressed on a case-by-case basis.

For example, Sec. 117-11 of the Cherokee Code states that the minimum age to be eligible to serve as a Council Member is 18 years old. The Constitution requires that a person must be at least 25 years old. This part of the Cherokee Code will need to be modified to agree with the Constitution since the Constitution will be the supreme law of the Tribe.

There will be sections of the Cherokee Code that refer to the Charter. These sections will need to change to reflect the new governing document, the Constitution. The process to locate and propose changing the language and references in the Cherokee Code must take place when the Constitution is passed.

Why not let the Tribal Council “adopt” the Constitution into law?

The Constitution will be an agreement created by those to be governed on how they shall be governed. It must be passed by the people since they are part of the agreement. The Charter was not initially established by the people. It was constructed by the legislators of the Tribe and the people allowed it to replace a tribal constitution. It does not clearly define the rights of the people. The Charter establishes the rights of government. The Constitution must reestablish the rights of the people. The final authority in the Constitution must be the people.

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