

ARTICLE IV [ELECTIONS]

Section

1. [Election Board].
2. [Eligibility to vote].
3. [Secret ballot].
4. [Majority vote required].
5. [Run-off elections].
6. [Dates of elections].
7. [National elections].
8. Repealed.
9. [Legal residence].

Section headings are editorially supplied.

Cross References

Elections, see Title 19, § 1–101 et seq.

§ 1. [Election Board]

The Principal Chief shall appoint, subject to majority approval of The Muscogee (Creek) National Council, an Election Board comprised of five (5) citizens who shall be charged with the responsibility of conducting, as prescribed by ordinance, all regular and special elections of The Muscogee (Creek) Nation.

Cross References

Organization of Election Board and Precinct Election Committees, see Title 19, § 2–101 et seq.

Notes of Decisions

Conduct of elections 2 Construction and application 1

1. Construction and application

This Court has jurisdiction to hear the above styled case in accordance with the Muscogee (Creek) Nation Constitution. This dispute involves the citizens of the Nation and elections as held in accordance with the Muscogee (Creek) Constitution. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

The Muscogee (Creek) Nation Constitution is the Supreme Law of the Muscogee (Creek) Nation and allows for the reapportionment. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

[T]he Muscogee (Creek) Nation’s Constitution takes precedence over all laws and ordinances passed by the National Council. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

[T]his Court reminds the parties that the Indian Civil Rights Act states that: “**no tribe in exercising its powers of self-government SHALL: deny to any persons within its jurisdic-**

tion the Equal Protection of the laws.” (Emphasis added). This mandate in the Indian Civil Rights Act (“ICRA”) requires equal voting rights to all eligible tribal voters. The Equal Protection clause of the ICRA thus requires a “one man one vote” rule to be obeyed in this tribe’s electoral process. (emphasis and bold in original) *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

The Election Board of the Muscogee (Creek) Nation is constitutionally responsible for elections in accordance with the Muscogee (Creek) Nation Constitution Article 4 Section 1. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

The Election Board is also responsible for the apportionment of National Council seats. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

This Court finds that Election Board should have promulgated rules and regulations for reapportionment after the 1995 amendments to the Muscogee (Creek) Nation Constitution capping the number of National Council seats available to twenty-six (26). *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

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Note 1

The Court finds the original formula of one (1) representative per district plus one (1) representative for each 1500 citizens must yield to the Constitutional Amendment that set the maximum number of seats at 26. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

[T]he Court finds that the total enrollment of the Muscogee (Creek) Nation as of July 11th, 2007 is 63,156. This number is the number as supplied in the Citizenship Board’s Memorandum to Principal Chief A.D. Ellis and presented to this Court as Plaintiff’s Exhibit #1 minus the “undefined.” *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

The Court holds the following breakdown as supplied in the Plaintiff’s Exhibit #2 for the 2007 election as the correct number of representatives per district: Creek 3, McIntosh 3, Muskogee 2, Ofuskee 3, Okmulgee 5, Tukvptce 2, Tulsa 7, Wagoner 1, Total 26. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

Court may order payment of reasonable attorneys’ fees by tribe to successful plaintiff/candidate in judicially-resolved election-law dispute. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Court may declare a particular candidate to be the successful candidate in a particular election. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Candidate seeking to challenge candidacy of an opponent must do so pursuant to procedure established in Muscogee (Creek) NCA 81–82 § 515–517. *In re Petition for Irregularities*, 5 Okla. Trib. 345 (Musc. (Cr.) D.Ct. 1997).

District Court has exclusive jurisdiction by virtue of the election laws of the Muscogee (Creek) Nation. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

Ordinances of the Muscogee (Creek) Nation approve funding for use of electronic voting machines. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

Use of electronic voting machine is not an irregularity. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

As used in Muscogee (Creek) Nation’s Constitution, “district citizen” includes absentee citizens who have declared a home district in accord with Article IV, section 9 of that Constitution. *Thomas v. Election Board*, 1 Okla. Trib. 124 (Musc. (Cr.) D.Ct. 1987).

2. Conduct of elections

The plain language of Section 8–202 [Election Code, Title 19 § 8–202] clearly notified the Petitioner that his money would not be returned. It cannot get any plainer. *Tiger v. Muscogee (Creek)*

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Nation Election Board, et al. . . SC 07–04 (Muscogee (Creek) 2008)

Where a statute states in plain language on a particular matter, the Court will not place a different meaning on the words. *Tiger v. Muscogee (Creek) Nation Election Board*, et al. . . SC 07–04 (Muscogee (Creek) 2008)

While Section 8–208 [Election Code, Title 19 § 8–208] erroneously refers to the filing fee as a deposit, this section merely outlines the purposes for which the filing fee can be used. The misnomer does not authorize a refund of the filing fee. Section 8–202 itself reeferes to the fee as a non refundable filing fee. It is neither a deposit nor escrowed funds as Petitioner suggests. *Tiger v. Muscogee (Creek) Nation Election Board*, et al. . . SC 07–04 (Muscogee (Creek) 2008)

Section 8–202 [Election Code, Title 19 § 8–202] describes the step which must be taken to ask for a recount. The petition was simply a request to start the recount process not a grant of a substantive right. *Tiger v. Muscogee (Creek) Nation Election Board*, et al. . . SC 07–04 (Muscogee (Creek) 2008)

No provision of the Election Code provides a substantive right to a recount. *Tiger v. Muscogee (Creek) Nation Election Board*, et al. . . SC 07–04 (Muscogee (Creek) 2008)

Section 8–202 [Election Code, Title 19 § 8–202] refers to Section 8–203 [Election Code, Title 19 § 8–203] where in notice is clearly given of the procedures to be followed and the circumstances which could prohibit a recount. *Tiger v. Muscogee (Creek) Nation Election Board*, et al. . . SC 07–04 (Muscogee (Creek) 2008)

This Court has jurisdiction to hear the above styled case in accordance with the Muscogee (Creek) Nation Constitution. This dispute involves the citizens of the Nation and elections as held in accordance with the Muscogee (Creek) Constitution. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

Checotah (Creek) charter community’s constitutional amendment procedure, which permits bare majority to amend its constitution, is more restrictive than the Muscogee (Creek) Nation’s constitutional amendment procedure, which requires a two thirds vote, and is therefore invalid, denying Checotah citizens due process of law. *Courtwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Any voting classification restricting voting franchise of Muscogee (Creek) Nation citizens and/or citizens of any Creek Nation charter community on grounds other than residence, age, or citizenship cannot stand unless government can demonstrate that classification is necessary to promoting a compelling governmental

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interest. *Courwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Checotah (Creek) Community's restriction of right to vote in community elections to those Checotah citizens who have attended three consecutive community meetings impermissibly restricts franchise rights of such citizens in denial of equal protection of the laws. *Courwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Although Checotah (Creek) Community's constitution requires residency before a person may vote in community elections, Checotah Community has failed to delineate its community boundaries with sufficient specificity. *Courwright v. July*, 3 Okla. Trib. 132 (Muscogee (Creek) 1993).

Supreme Court of Muscogee (Creek) Nation may assume original jurisdiction over challenge to residency of candidate for National Council after party protesting candidacy has sought and been denied relief by Muscogee (Creek) Nation Election Board. *Litsey v. Cox*, 2 Okla. Trib. 307 (Muscogee (Creek) 1991).

Party challenging decision of Muscogee (Creek) Nation Election Board, upholding residency of candidate in particular National Council district, bears burden of proof regarding residency of challenged candidate. *Litsey v. Cox*, 2 Okla. Trib. 307 (Muscogee (Creek) 1991).

While Article VI, section 2(b) of the Constitution of the Muscogee (Creek) Nation provides that "each representative shall be a legal resident of his district," nothing in that Constitution or in tribal law either provides guidelines regarding the definition of residency, or precludes a candidate from establishing district residency on the day such person as a candidate. *In re Burden*, 1 Okla. 309 (Muscogee (Creek) 1989).

All citizens of the Muscogee (Creek) Nation may look to decisions of federal courts as precedents to follow in determination of free and just tribal elections. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Sections 818 and 819 of NCA 81-82 (Muscogee (Creek) Nation) unlawfully vest judicial power in the National Council, the legislative branch of the Muscogee (Creek) Nation, *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Sections 809 and 811 of NCA 81-82 (Muscogee (Creek) Nation) are valid, and provide a legal and mandatory method of challenging results of disputed elections. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Court may enjoin conduct of election where such would be pursuant to unconstitutional tribal statutes or ordinances. *Beaver v. National Council*, 1 Okla. Trib. 57 (Muscogee (Creek) 1986).

Ordinances of the Muscogee (Creek) Nation approve funding for use of electronic voting machines. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

Use of electronic voting machine is not an irregularity. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

Article IV, section 1 of Muscogee (Creek) Nation Constitution authorizes National Council to enact ordinances regulating conduct of tribal elections; tribal Election Board must abide by such ordinances. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

Where members of Muscogee (Creek) Nation are notified by mail of upcoming elections and clearly instructed to request absentee ballot should they desire to vote, tribal ordinance requiring such a request by a member in order to cast absentee ballot imposes no unconstitutional burden voters. *O.C.M.A. v. National Council*, 1 Okla. Trib. 293 (Musc. (Cr.) D.Ct. 1989).

As used in Muscogee (Creek) Nation's Constitution, "district citizen" includes absentee citizens who have declared a home district in accord with Article IV, section 9 of that Constitution. *Thomas v. Election Board*, 1 Okla. Trib. 124 (Musc. (Cr.) D.Ct. 1989).

§ 2. [Eligibility to vote]

Every citizen of The Muscogee (Creek) Nation, regardless of religion, creed, or sex, shall be eligible to vote in the tribal elections provided that (a) they are registered voters for elections; (b) they are at least eighteen (18) years of age at the date of election, with the registrant providing sufficient proof of age to the Election Board; and (c) they hold citizenship.

Cross References

Citizenship, see Const. Art. III, § 1 et seq.

Procedure for determining eligibility, see Title 19, § 7-302.

Registration, see Title 19, § 4-101 et seq.

Notes of Decisions

Reapportionment 1

1. Reapportionment

[T]his Court reminds the parties that the Indian Civil Rights Act states that: “**no tribe in exercising its powers of self-government SHALL deny to any persons within its jurisdiction the Equal Protection of the laws.**” (Emphasis added). This mandate in the Indian Civil Rights Act (“ICRA”) requires equal voting rights to all eligible tribal voters. The Equal Protection clause of the ICRA thus requires a “one man one vote” rule to be obeyed in this tribe’s electoral process. (emphasis and bold in original) *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

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This Court finds that Election Board should have promulgated rules and regulations for reapportionment after the 1995 amendments to

the Muscogee (Creek) Nation Constitution capping the number of National Council seats available to twenty-six (26). *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

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§ 3. [Secret ballot]

All elections shall be by secret ballot.

Cross References

Disclosure of vote prohibited, see Title 19, § 7–202.
Voting, see Title 19, § 7–301 et seq.

§ 4. [Majority vote required]

No candidate for office shall be considered elected:

- (a) Unless the candidate receives a majority of the votes cast, or
- (b) When a candidate is unopposed for office he/she shall be automatically declared the winner.

[Amended by NCA 91–18.]

Historical and Statutory Notes

1991 Amendments

The 1991 amendment was passed by referendum on Dec. 7, 1991, by a vote of 3,720 to 555.

Cross References

Certification, see Title 19, § 8–101 et seq.

§ 5. [Run-off elections]

If there is any office in which a candidate does not receive the required majority of the votes, a run-off election shall be held between the two candidates receiving the highest number of votes in that particular election.

§ 6. [Dates of elections]

Election dates for offices of The Muscogee (Creek) Nation shall be no more than four (4) years apart.

§ 7. [National elections]

All citizens shall be allowed to vote for the Principal Chief and any such national office that shall be created.

Notes of Decisions**Conduct of elections 1****1. Conduct of elections**

The plain language of Section 8–202 [Election Code, Title 19 § 8–202] clearly notified the Petitioner that his money would not be returned. It cannot get any plainer. *Tiger v. Muscogee (Creek) Nation Election Board*, et al. . . SC 07–04 (Muscogee (Creek) 2008)

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§ 8. [Repealed by 2009, Amendment 67 [A67], eff. Nov. 7, 2009]**Historical and Statutory Notes**

The repealed section, relating to eligible voters in district elections, was repealed by 2009, [A67], passed by referendum on Nov. 7, 2009 by a vote of 1,292 to 1,128.

Notes of Decisions**Burden of proof 1****1. Burden of proof**

This Court has jurisdiction to hear the above styled case in accordance with the Muscogee (Creek) Nation Constitution. This dispute involves the citizens of the Nation and elections as

held in accordance with the Muscogee (Creek) Constitution. *Harjo v. Muscogee (Creek) Nation Election Board*, SC 07–50 (Muscogee (Creek) 2007)

Burden of proof is on petition to show an irregularity that is sufficient to change the ultimate result with mathematical certainty and that mathematical certainty exists when person

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Repealed

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“A” receives more votes than person “B”. *In re Petition for Irregularities*, 5 Okla. Trib. 341 (Musc. (Cr.) D.Ct. 1997).

Candidate bringing protest before District Court of Muscogee (Creek) Nation bears burden

of proof regarding allegations in protest petition. *In re Williams*, 3 Okla. Trib. 311 (Musc. (Cr.) D.Ct. 1993).

§ 9. [Legal residence]

All citizens having legal residences outside the herein defined jurisdiction of The Muscogee (Creek) Nation shall declare a home district within the Muscogee (Creek) Nation which shall be recognized as his legal residence for purposes of voting in tribal elections.

Cross References

Change of residence to another district, see Title 19, § 4–114.

Districts, see Const. Art. VI, § 1.

Political jurisdiction, see Const. Art. I, § 2.