



### RECONSIDERATION OF NCA 10-050

I, the undersigned, certify that the foregoing "Reconsideration of NCA 10-050" is a true extract from the March 27, 2010, Regular Session Journal of the Muscogee (Creek) National Council.

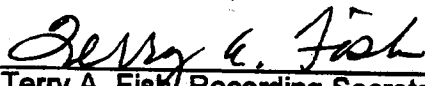
**AND THAT,** NCA 10-050 entitled, A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 26, § 3-102, ENTITLED "Special District Judge", was presented to the National Council acting as a Council as a Whole and was approved in Regular Session on March 27, 2010, National Council by a vote of 21 in favor, 0 against, 0 abstention (one Representative out of seat at time of casting of vote).

**AND THAT,** Said legislation was returned as a Veto with objections by the Principal Chief on April 9, 2010 and said objections have been entered at large in the Journal of the Muscogee (Creek) National Council;

**AND THAT,** The National Council taking action reconsider the Bill to **OVER-RIDE** the Veto at the Quarterly Session on April 24, 2010, in accordance with the Constitution, Article VI, Section 6(a), requires a (2/3) vote of the full membership, which consists of Twenty-six members;


**AND THAT,** The record of vote reflects there were Twenty-Four present with a vote of 18 in favor, 6 against, 0 abstention;

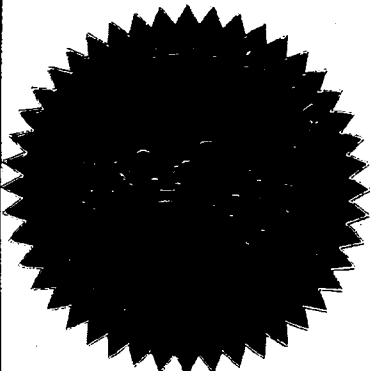
**THEREFORE, BE IT KNOWN,** under Article VI., Section 6. (a) of the Muscogee (Creek) Nation Constitution, NCA 10-050 is hereby recorded as a "VETO OVER-RIDE" on this 26<sup>th</sup> day of April; 2010.

  
\_\_\_\_\_  
Terry A. Fish, Recording Secretary  
National Council  
Muscogee (Creek) Nation

### CERTIFICATION OF APPROVAL

**IN WITNESS WHEREOF,** I, the Presiding Officer of the Muscogee (Creek) National Council have hereto attached my signature this 26<sup>th</sup> day of March 2010.

  
\_\_\_\_\_  
Roger Barnett, Speaker  
National Council  
Muscogee (Creek) Nation



# VETO OVERRIDE



NCA 10-050

CLASSIFICATION: #26. JUDICIAL BRANCH/COURTS

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 26, § 3-102, ENTITLED "Special District Judge"

Be it enacted by the National Council of the Muscogee (Creek) Nation:

**SECTION ONE. AMENDMENT.** This amendment shall be codified in Title 26, Chapter 3, of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2003 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval.

**SECTION TWO. AMENDMENT.** MCNCA Title 26, § 3-102, is hereby amended to read as follows:

§ 3-102. Special District Judge; Vacancies in District or Supreme Court

~~Effective September 30, 1994, the Muscogee (Creek) Nation Judicial officers may appoint a~~ A Special District Judge shall be appointed using the following method and procedure:

A. If illness, conflict of interest, disqualification, recusal or other considerations prevent the District Court Judge from presiding over a specific case or matter, then the Supreme Court shall appoint a Special Judge for that specific case, no later than thirty (30) days after the receipt of a written request stating the reason preventing the Judge from hearing the case.

B. If illness, conflict of interest, disqualification or other considerations prevent a judge or justice from hearing cases for an extended period of time (not including any vacancy created by expiration of the term of a District Court Judge or a Supreme Court Justice), then a Written notice by a Supreme Court Justice or District Judge must be made to the Chief Justice of the Supreme Court detailing with specifics the necessity for appointing a Special District Judge may be appointed after following the process of nomination by the Principal Chief and confirmation by the National Council pursuant to § 3-101 of this Subchapter.

C. Any appointment of the Supreme Court that appoints a Special Judge for more than one case, matter, civil action, or otherwise without following the same process of nomination by the Principal Chief and confirmation by the National Council pursuant to § 3-101 of this Subchapter is null and void.

D. The Any Special Judge appointed Chief Justice shall be select from the a members of the Muscogee (Creek) Nation Bar a member in good standing or shall be a Muscogee (Creek) citizen to serve as Special District Judge who is a member of the Muscogee (Creek) Nation Bar.


~~A majority of the Supreme Court Justices must approve the appointment in a written order detailing the specific duties of the Special District Judge and setting out a time limitation for the appointment.~~

E. The process for filling vacancies of judges contained in Title 27, App. 1, Rule 15A of this Code (Judicial Procedures) is hereby null and void and this Subsection shall control any and all appointments of any Special Judge.

**SECTION THREE. EFFECTIVE DATE.** This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

**ENACTED** by the Muscogee (Creek) National Council on this 27<sup>th</sup> day of March 2010.

**IN WITNESS WHEREOF**, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.

  
\_\_\_\_\_  
Roger Barnett, Speaker  
National Council  
Muscogee (Creek) Nation

**CERTIFICATION**

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of twenty-six members with Twenty-Three members attending this meeting on the 27<sup>th</sup> day of March 2010, and that the above is in conformity with the provisions therein adopted by a vote of 21 in favor, 0 against, 0 abstention (one Representative out of seat at time of casting of vote, and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.

  
\_\_\_\_\_  
Terry A. Fish, Recording Secretary  
Muscogee (Creek) National Council

**APPROVAL**

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature this \_\_\_\_\_ day of \_\_\_\_\_, 2010, to the above Law, NCA 10-050 authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

\_\_\_\_\_  
A. D. Ellis, Principal Chief  
Muscogee (Creek) Nation



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APR 09 2010

National Council Office

*Muscogee (Creek) Nation*

PRINCIPAL CHIEF

*A.D. Ellis*

SECOND CHIEF

*Alfred Berryhill*

OFFICE OF THE PRINCIPAL CHIEF

PO Box 580

(HWY 75, Loop 56)

Okmulgee, OK 74447

918.732.7600

April 9, 2010

Muscogee (Creek) National Council  
Honorable Speaker Barnett

Dear Speaker Barnett:

I am returning NCA 10-050 herewith:

**A MESSAGE OF THE PRINCIPAL CHIEF RETURNING NCA 10-050 TO THE  
NATIONAL COUNCIL AS A VETO WITH OBJECTIONS**

In accordance with the Constitution of the Muscogee (Creek) Nation, I, A.D. Ellis, Principal Chief of the Muscogee (Creek) Nation, do hereby return NCA 10-050, entitled "**A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 26, § 3-102, ENTITLED 'Special District Judge'**" as a VETO with the following objections:

**OBJECTION ONE:** The proposed NCA 10-050 violates the principle of separation of powers, since it attempts to improperly inject the opinions and influence of the Legislative and Executive Branch into the function of the Judicial Branch of the Muscogee (Creek) Nation, which is an independent and co-equal branch of the tribal government.

**OBJECTION TWO:** By way of illustration and not by way of limitation, the provisions of NCA 10-050 exceed the boundaries of legitimate legislation by unnecessarily subjecting the interference of the Executive and Legislative Branch in the selection of special judges in an attempt to influence the Judicial Branch, thereby going beyond normal advise and consent, and violating the separation of powers as envisioned by the Constitution of the Muscogee (Creek) Nation. NCA 10-050 is an example of legislation attempting to usurp the legitimate authority of other branches of the tribal government and to ignore the controlling judicial decisions of the Muscogee (Creek) Nation Supreme Court.

**OBJECTION THREE:** The amendments contained in NCA 10-050 are unnecessary and are not in the best interests of the Muscogee (Creek) Nation. The current statutory provisions and court rules, namely Title 26, § 3-102 and Title 27, App. 1, Rule 15A (Judicial Procedures) already sufficiently address the issues of Special Judges in a manner which allows for the independence of the judiciary.

For the reasons outlined above, NCA 10-050 is hereby returned as a VETO.

Sincerely,



A. D. Ellis, Principal Chief  
Muscogee (Creek) Nation

**DATED: April 9, 2010**

ADE/ky