



### RECONSIDERATION OF NCA 10-173

I, the undersigned, certify that the foregoing "Reconsideration of NCA 10-173" is a true extract from the September 25, 2010, Regular Session Journal of the Muscogee (Creek) National Council.

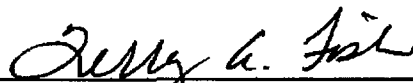
**AND THAT,** NCA 10-173 entitled, A LAW OF THE MUSCOGEE (CREEK) NATION ENACTING A NEW ATTORNEY GENERAL CODE AND CODIFYING LAW IN TITLE 49, ENTITLED "DEPARTMENT OF JUSTICE – OFFICE OF THE ATTORNEY GENERAL" was presented to the National Council acting as a Council as a Whole and was approved in Regular Session on September 25, 2010, National Council by a vote of 17 in favor, 5 against, 0 abstention.

**AND THAT,** Said legislation was returned as a Veto with objections by the Principal Chief on October 8, 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 October 30, 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-five present with a vote of 19 in favor, 6 against;

**THEREFORE, BE IT KNOWN,** under Article VI., Section 6. (a) of the Muscogee (Creek) Nation Constitution, NCA 10-173 is hereby recorded as a "VETO OVER-RIDE" on this 1<sup>st</sup> day of November, 2010.



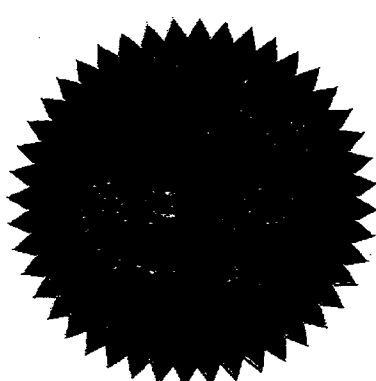
Terry A. Fish, Recording Secretary  
National Council  
Muscogee (Creek) Nation

### CERTIFICATION OF APPROVAL

**IN WITNESS WHEREOF,** I, the Presiding Officer of the Muscogee (Creek) National Council have hereto attached my signature this 1<sup>st</sup> day of November 2010.



Roger Barnett, Speaker  
National Council  
Muscogee (Creek) Nation



# VETO OVERRIDE



NCA 10-173

**CLASSIFICATION: #49. DEPARTMENT OF JUSTICE – OFFICE OF THE ATTORNEY GENERAL**

**A LAW OF THE MUSCOGEE (CREEK) NATION ENACTING A NEW ATTORNEY GENERAL CODE AND CODIFYING LAW IN TITLE 49, ENTITLED "DEPARTMENT OF JUSTICE - OFFICE OF THE ATTORNEY GENERAL"**

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

**SECTION ONE. FINDINGS. The National Council finds that:**

A. The National Council has the authority to legislate on matters creating authorities with attendant powers to achieve objectives allowed within the scope of the Constitution, as prescribed in Article VI, Section 7.(j) of the Constitution of the Muscogee (Creek) Nation.

B. NCA 04-146 inadvertently deleted the Office of the Attorney General/Department of Justice from the Reorganization Plan of 2004. Therefore it is necessary to establish an Independent Office of Attorney General expediently to protect the best interests of the Nation.

C. The Attorney General, as the Chief Legal Officer of the Nation, has the responsibility of enforcing the Nation's laws, and defending the interests of the Muscogee (Creek) Nation and, ultimately, the wellbeing of the members of the Muscogee (Creek) Nation.

D. The Attorney General is to provide leadership in preventing and controlling crime within the Muscogee (Creek) Nation's territory and to seek punishment for those guilty of unlawful behavior while ensuring fair and impartial administration of justice for all Muscogee (Creek) Citizens.

E. The unique composition of a Tribal Nation requires that the Department of Justice serve the interests of the Muscogee (Creek) Nation including all branches of the Tribal Government. In order for the Attorney General to be effective in his or her duties and free from political pressure and interference, the Office of the Attorney General should be neutral, separate and detached; and therefore be an Independent Office.

**SECTION TWO. NEW LAW.** The following new law shall be codified in Title 49 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts for 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 in this law in order to be 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 new law:

**TITLE 49. OFFICE OF THE ATTORNEY GENERAL**

**CHAPTER 1. GENERAL PROVISIONS**

**§1-101. Department of Justice (Office of the Attorney General)**

A. There is hereby established the Department of Justice which shall have an Office of the Attorney General, an Independent Agency, within the Government Structure of the Muscogee (Creek) Nation, the head of which shall be the Attorney General.

B. The Attorney General shall be an appointed officer of the Muscogee (Creek) Nation and shall be required to take an oath to uphold the Constitution and laws of the Muscogee (Creek) Nation.

**§1-102. Attorney General**

A. The Attorney General is the Chief Law Officer of the Muscogee (Creek) Nation and shall have charge of the Department of Justice and of all legal matters in which the Muscogee (Creek) Nation has an interest, provided the Principal Chief and the National Council may have their own legal counsel representing the interest of their respective branches of government.

B. The Attorney General shall be nominated by the Principal Chief and confirmed by the National Council by Tribal Resolution. If the Principal Chief fails to nominate an Attorney General within 60 days from a vacancy, the National Council shall nominate and confirm the Attorney General. The Attorney General shall run concurrently with the Principal Chief's term.

C. The Attorney General shall only be removed under the provisions of Title 31 and the Constitution of the Muscogee (Creek) Nation.

**§1-103. Qualifications**

A. The position of the Attorney General shall be filled with a person who is a member in good standing with the Oklahoma Bar Association and the Muscogee (Creek) Nation Bar Association, with preference given to citizens of the Muscogee (Creek) Nation.

B. The Attorney General shall have no previous felony convictions.

**§1-104. Assistant Attorney Generals**

A. The Attorney General is authorized to create subordinate positions including Deputy Attorney General, Assistant Attorney General, Prosecutor, and other subordinate positions as funds permit. All subordinate attorneys shall be under the supervision of the Attorney General without political interference from the Executive or Legislative Branch.

B. All Assistant Attorney Generals or Attorney positions held under this Title shall be filled with a person who is a member in good standing with the Oklahoma Bar Association or a State Bar Association pending Oklahoma Bar admission and the Muscogee (Creek) Nation Bar Association, with preference giving to citizens of the Muscogee (Creek) Nation.

**§1-105. Staff**

The Attorney General is authorized to create and hire positions as deemed necessary for the functions of the Office of the Attorney General to be carried out for the best interests of the Nation.

**§1-106. Investigators**

A. Definitions for this Sub-Section are as follows:

1. "Peace officer" shall mean any duly appointed person who is charged with the responsibility of maintaining public order, safety, and health by the enforcement of all laws, ordinances or orders of this Nation and who is authorized to bear arms in execution of his responsibilities.
2. "Qualified" shall mean that said investigator is certified as a peace officer by the Bureau of Indian Affairs, the Indian Police Academy, Oklahoma's Council on Law Enforcement Education and Training

or some other comparable certifying school or agency for peace officers; and where a proper background investigation has been conducted utilizing the Federal Bureau of Investigation and Oklahoma State Bureau of Investigation, with fingerprints to be taken and sent to the Federal Bureau of Investigation.

B. The Attorney General is authorized to commission qualified investigators of the Attorney General's office as peace officers with the authority to maintain public order, safety, and health by the enforcement of all laws or orders of this Nation.

C. The Attorney General's investigators serve under the direction of the Attorney General, and shall perform such services as are necessary in the investigation of criminal activity or preparation of civil litigation within the Muscogee Nation.

D. If the Attorney General's investigator is certified as a peace officer by the Bureau of Indian Affairs, the Indian Police Academy, Oklahoma's Council on Law Enforcement Education and Training, or some other comparable training for peace officers, the investigator shall be eligible to be commissioned as a peace officer and upon such a commission shall have the powers now, or hereafter, vested by law in peace officers and, while in the performance of official duties as an investigator for the Attorney General or pursuant to any cross-deputization agreement, shall have jurisdiction in the Muscogee (Creek) Nation and pursuant to any cross-deputization agreement under which he receives a further commission.

#### **§1-107. Powers and Duties**

The Duties of the Attorney General as the Chief Law Officer of the Muscogee (Creek) Nation shall be:

A. The Attorney General shall give his advice and opinion on questions of law when required by the Office of the Principal Chief, Executive Departments, Independent Agencies, Muscogee (Creek) Nation Chartered Indian Communities and the National Council.

B. The Attorney General shall at the request of the Chief, the National Council, or Judicial Branch prosecute and defend in any court or before any commission, board or officers, any cause or proceeding, civil or criminal, in which the Muscogee (Creek) Nation may be a party or interested; and when so appearing in any such cause or proceeding, he or she may, if he or she deems it advisable and to the best interest of the Muscogee (Creek) Nation, take and assume control of the prosecution or defense of the Muscogee (Creek) Nation's interest therein.

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C. The Attorney General shall prosecute and defend all actions and proceedings, civil or criminal, in the Muscogee (Creek) Nation District Court and Supreme Court and/or in which the Muscogee (Creek) Nation is interested as a party.

D. The Attorney General shall consult with and advise officers when requested, in all matters pertaining to the duties of their offices if the Muscogee (Creek) Nation is an interested party.

E. The Attorney General shall give an opinion in writing upon all questions of law submitted by the Principal Chief, National Council or any officer, board, commission, department and Muscogee (Creek) Nation Chartered Indian Community.

F. The Attorney General shall investigate and prosecute any official bond or any contract in which the Muscogee (Creek) Nation is an interested party, upon a breach thereof, and to prosecute or defend for the Muscogee (Creek) Nation all actions, civil or criminal, relating to any matter connected with Departments of the Tribe.

G. The Attorney General shall prepare proper drafts for contracts, forms and other writings which are for the use of the Muscogee (Creek) Nation.

H. The Attorney General shall assist the National Council or National Council Designee with writing drafts of bills and resolutions pertaining to the interests of the Muscogee (Creek) Nation upon the written request from the Speaker or Second Speaker of the National Council.

I. The Attorney General shall enforce the proper application of monies appropriated by the National Council and prosecute breaches of trust in the administration of such funds.

J. The Attorney General shall institute actions to recover tribal monies illegally expended, to recover tribal property and to prevent the illegal use of any tribal property, upon the request of the Chief or the National Council.

K. The Attorney General shall keep and file copies of all opinions, contracts, forms and letters of the office, and to keep an index of all opinions, contracts, and forms according to subject and section of the law construed or applied.

L. The Attorney General shall keep a register or docket of all actions, demands, and investigations prosecuted, defended or conducted on behalf of the Muscogee (Creek) Nation. The register or docket shall give the style of the case or investigation, where pending, court number, officer number, the description of the matter, result and the names of the assistants who handled the matter.

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M. The Attorney General shall keep a complete office file of all cases and investigations handled by the Attorney General's Office on behalf of the Muscogee (Creek) Nation for a period of eight (8) years from the date of closure; provided that some files may be kept longer at the Attorney General's discretion.

N. The Attorney General shall report to the National Council whenever requested upon any business relating to the duties of his office.

O. The Attorney General shall institute civil actions against members of any tribal board or commission for failure of such members to perform their duties as prescribed by the laws and the Constitution and to prosecute members of any tribal board as prescribed by the laws and the Constitution and to prosecute members of any tribal board or commission for violation of the criminal laws of the Muscogee (Creek) Nation where such violations have occurred in connection with the performance of such members' official duties.

P. The Attorney General shall respond to any request for a legal opinion of his or her office, submitted by the Principal Chief or a member of the National Council, regardless of subject matter, by written opinion determinative of the law regarding such subject matter.

Q. The Attorney General may convene a special grand jury for purposes as provided by law, provided, grand jury is composed of citizens from each of the districts on a pro rata basis by district.

R. The Attorney General shall investigate any report by the Tribal Auditor and Inspector filed with the Attorney General's Office pursuant to laws of the Muscogee (Creek) Nation and prosecute all actions, civil or criminal, relating to such reports or any irregularities or derelictions in the management of public funds or property which are violations of the laws of the Muscogee (Creek) Nation.

S. When an executive department or agency is of the opinion that the interests of the Muscogee (Creek) Nation require the service of counsel on the examination of any witness concerning any claim, or on the legal investigation of any claim, pending in the department or agency, he or she shall notify the Attorney General, giving all facts necessary to enable the Attorney General to provide proper professional service in attending the examination or making the investigation, and the Attorney General shall provide for the service.

**§1-108. Tribal officer or employee; legal defense services**

A. The Attorney General shall represent any officer or employee, whether such person is an elected or appointed tribal officer or employee of any tribal office, agency, board or commission of any branch of tribal government in any civil action or special proceeding in the courts of the Muscogee (Creek) Nation, or of the United States, by reason of any act performed in good faith in the course of his or her employment or service in accordance with law.

B. The Attorney General or a designated legal officer shall not represent a tribal employee if that employee did not perform a statutorily required duty and such duty is a basis of the civil action or special proceeding.

C. The Attorney General may direct an appropriate legal officer including a staff attorney of an agency authorized by law to be represented in court by a member of its own permanent legal staff to appear and defend such action. The Attorney may intervene in any such action or proceeding and appear on behalf of the Muscogee (Creek) Nation, or any of its officers or employees, where he deems the Muscogee (Creek) Nation to have an interest in the subject matter of the litigation.

D. The Attorney General shall determine the method of preparation and presentation of such defense. The Attorney General or other legal officer under his direction shall not be held civilly liable for the exercise of such discretion.

E. The employee named in the action may employ private counsel at his own expense to assist in his defense.

F. Any officer or employee who acts outside of the scope of his official authority shall be liable in damages in the same manner as any private citizen.

G. When an original action seeks either a writ of mandamus or prohibition against a Tribal Judge, the Attorney General shall represent such judicial officer if, and only if, directed to do so, by the National Council upon finding that such representation is necessary to protect either the function or integrity of the judiciary.

**§1-109. Litigation.**

A. Except as otherwise authorized by law, the conduct of litigation in which the Muscogee (Creek) Nation, an agency, or officer thereof is a party, or is interested, is reserved to officers of the Department of Justice, under the direction of the Attorney General, with the exception of Counsel for the National Council in acts to protect the National Council as a separate body.



B. The Attorney General or any officer of the Department of Justice shall attend any hearing in any Tribal Court, State, or District Court in the United States to attend to the interests of the Muscogee (Creek) Nation. The Attorney General shall represent the Muscogee (Creek) Nation in a suit pending in any Tribal Court, State Court, or District Court of the United States, or in a court of a State, or to attend to any other interest of the Muscogee (Creek) Nation.

C. Except when the Attorney General in a particular case directs otherwise, the Attorney General shall conduct and argue suits and appeals in the Supreme Court and suits in the United States Court of Federal Claims or in the United States Court of Appeals for the Federal Circuit and in any Court in which the Muscogee (Creek) Nation is interested. When the Attorney General considers it in the interests of the Muscogee (Creek) Nation, he or she may personally conduct and argue any case in a court of the United States in which the United States is interested, or he may direct an Assistant Attorney General or any officer of the Department of Justice to do so.

D. Except as otherwise authorized by law, the Attorney General shall supervise all litigation to which the Muscogee (Creek) Nation, agency, or Officer thereof is a party, and shall direct all assistant attorney Generals, and Special attorneys hired under this title in the discharge of their respective duties. The Attorney General shall keep in-house counsel for the Principal Chief and the National Council informed of all litigation and may ask for their assistance to represent the Nation.

#### **§1-110. Reporting**

The Attorney General, by December 1 of each year, shall report to the National Council on the business of the Department of Justice for the last preceding fiscal year, and on any other matters pertaining to the Department that he or she considers proper, including - (1) a statement of the several appropriations which are placed under the control of the Department and the amount appropriated; (2) the statistics of crime; and (3) a statement of the number of cases involving the Muscogee (Creek) Nation, civil and criminal, pending during the preceding year.

#### **§1-111. Authority to Investigate**

The Attorney General may investigate the official acts, records, and accounts of the following but not limited to:

Employees, Officers, Elected Officials, The Principal Chief, the Clerks of the Muscogee (Creek) Nation Courts, Probation Officers, Judges, and Court Reporters; for which purpose all the official papers, records, dockets, and

accounts of these officers, without exception, may be examined by agents of the Attorney General at any time.

**§1-112. Disqualification**

The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including an Assistant Attorney General or member of such Attorney General's staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in termination. Such Rules shall be approved by Tribal Resolution. Any amendments shall be accepted by Tribal Resolution

**§1-113. Opinions of Attorney General**


The Attorney General shall annually publish all of the written opinions which he or she promulgates in connection with the interpretation of the laws of the Muscogee (Creek) Nation. One copy of the bound volume shall be provided to each member of the National Council, the Principal Chief, and members of the Judicial Branch.

**SECTION THREE: REPEALER.** NCA 89-19, NCA 92-81, NCA 07-075 and all other provisions contained in Muscogee (Creek) Nation ordinances, laws and resolutions which are inconsistent with this Act are hereby repealed and shall have no force and effect from this date forward.

**SECTION FOUR. EFFECTIVE DATE.** This law 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 **25th** day of **September** **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 **25th** day of **September 2010**, and that the above is in conformity with the provisions therein adopted by a vote of **17** in favor, **5** against, **0** abstentions, 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.

  
\_\_\_\_\_  
Stephanie Harry, Acting 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 10-173** 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



## 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

October 8, 2010

Muscogee (Creek) National Council  
Honorable Speaker Barnett

**RECEIVED**

OCT 08 2010

10-08-10A10:08 RCVD

**National Council Office**

Dear Speaker Barnett:

I am returning NCA 10-173 herewith:

### **A MESSAGE OF THE PRINCIPAL CHIEF RETURNING NCA 10-173 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 10-173, entitled "**A LAW OF THE MUSCOGEE (CREEK) NATION ENACTING A NEW ATTORNEY GENERAL CODE AND CODIFYING LAW IN TITLE 49, ENTITLED 'DEPARTMENT OF JUSTICE - OFFICE OF THE ATTORNEY GENERAL'**" as a VETO with the following objections:

**OBJECTION ONE:** The proposed NCA 10-173 is in violation of Article V, Section 1 of the Constitution of the Muscogee (Creek) Nation which vests the Executive power in the Office of the Principal Chief. In general, NCA 10-173 violates the principle of separation of powers, since it attempts to improperly inject the opinions and influence of the National Council into the functioning of the Executive Branch, in particular the Office of the Attorney General. In addition, NCA 10-173 violates the principle of separation of powers, since it attempts to *improperly remove* powers from, and limit the powers of, the Executive Branch, which are to be vested pursuant to the Constitution of the Muscogee (Creek) Nation, in the Principal Chief, with all Executive Offices to be created and organized by the Principal Chief.

**OBJECTION TWO:** The proposed NCA 10-173 is additionally in violation of Article V, Section 2 of the Constitution of the Muscogee (Creek) Nation, which provides that the Principal Chief, not the National Council, shall "create and organize the Executive Office of the Principal Chief." The proposed NCA 10-173 has been passed unilaterally by the National Council, with no collaboration or consultation of any sort with the Principal Chief. As such, proposed NCA 10-173 is an unconstitutional infringement on the powers of the Principal Chief and the Executive Branch, by the National Council. By way of illustration, and not by way of limitation, provisions such as proposed §1-102.B. are unconstitutional in that such provisions create a situation in which the Attorney General may be nominated and confirmed by the National Council with no involvement of the Principal Chief in violation of Article V, Section 2(b) of the Constitution of the Muscogee (Creek) Nation. The National Council has no power of appointment as that is a purely Executive function.

**OBJECTION THREE:** The provisions of NCA 10-173 are vague, unwieldy and improperly prevent the Executive Branch from acting in the best interests of the citizens of the Muscogee (Creek) Nation. By way of illustration, and not by way of limitation, the provisions of NCA 10-173 place excessive authority in the Office of the Attorney General at the expense of the Principal Chief's Constitutional authority to execute the Executive power of the Muscogee (Creek) Nation. In any event, no restructuring of the Executive Branch is proper or Constitutional without the involvement of the Principal Chief pursuant to Article V, Section 2 of the Constitution of the Muscogee (Creek) Nation.

**OBJECTION FOUR:** The Constitution of the Muscogee (Creek) Nation and the judicial decisions of the Muscogee (Creek) Nation Supreme Court support the proposition that the powers of the National Council are limited to passing laws, appropriating money and legitimate advice and consent. By way of illustration and not by way of limitation, the provisions of NCA 10-173 exceed the boundaries of legitimate legislation by unnecessarily extending the normal advice and consent, as envisioned by the Constitution of the Muscogee (Creek) Nation to Executive Branch officers closely tied to the office of Principal Chief. NCA 10-173 is the latest example of the National Council's ongoing attempts to usurp the legitimate authority of the Muscogee (Creek) Nation Executive Branch and to ignore the controlling judicial decisions of the Muscogee (Creek) Nation Supreme Court.

**OBJECTION FIVE:** The Principal Chief believes that the amendments contained in NCA 10-173 are unnecessary and are not in the best interests of the Muscogee (Creek) Nation. They represent an unwarranted and unwise intrusion of the National Council into the workings of the Executive Branch. Although the National Council has stated in NCA 10-173 that the Attorney General should be free from "political pressure and interference," the National Council has, in the proposed legislation, created a context in which an Executive Branch officer is subject to the political meddling and interference of the members of the Legislative Branch, in violation of separation of powers and the norms of sound tribal government.

**OBJECTION SIX:** The Principal Chief believes that the amendments contained in NCA 10-173 are not necessary in that the current statutes of the Muscogee (Creek) Nation provide for sufficient appropriate advice and consent authority of the National Council and therefore do not require any amendments. Further to the extent any amendments are warranted, they must be initiated by the Principal Chief pursuant to Article V, Section 2 of the Constitution of the Muscogee (Creek) Nation.

For the reasons outlined above, NCA 10-173 is hereby returned as a VETO.

Sincerely,

A handwritten signature in black ink, appearing to read "A. D. Ellis" with a small flourish at the end.

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

**DATED: October 8, 2010**

ADE/vb