



RECONSIDERATION OF NCA 11-133 AFTER VETO

I, the undersigned, certify that the foregoing "Reconsideration of NCA 11-133 After Veto" is a true extract from the, July 30, 2011, Quarterly Session Journal of the Muscogee (Creek) National Council.


AND THAT, NCA 11-133 entitled, **A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 19 §8-202 ENTITLED "Petition for recount; filing fee; service of notice", §8-203 ENTITLED "Conduct of recount; duties of Supreme Court Justices" AND §8-209 ENTITLED "Petition for fraud or irregularities"** was presented to the National Council acting as a Council as a Whole and was approved in Quarterly Session on July 30, 2011, by a vote of 11 in favor, 10 against, 1 abstention.

AND THAT, Said legislation was returned as a Veto with objections by the Principal Chief on, August 12, 2011 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 Regular Session on August 27, 2011, 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-three present with a vote of 18 in favor, 5 against;


THEREFORE, BE IT KNOWN, under Article VI., Section 6. (a) of the Muscogee (Creek) Nation Constitution, NCA 11-133 is hereby recorded as a "**VETO OVER-RIDE**", on this 27TH day of August 2011.



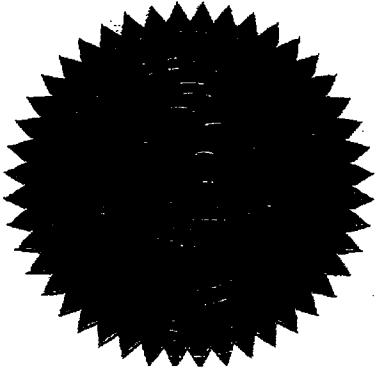
ShaRee Hill, Acting Recording Secretary
National Council
Muscogee (Creek) Nation

CERTIFICATION OF APPROVAL

IN WITNESS WHEREOF, I, the Presiding Officer of the Muscogee (Creek) National Council have hereto attached my signature this 29th day of August 2011.



Roger Barnett, Speaker
National Council
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

August 12, 2011

Muscogee (Creek) National Council
Honorable Speaker Barnett

Dear Speaker Barnett:

I am returning NCA 11-133 herewith:

A MESSAGE OF THE PRINCIPAL CHIEF RETURNING NCA 11-133 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 11-133, entitled **"A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 19 § 8-202 ENTITLED 'Petition for recount; filing fee; service of notice', § 8-203 ENTITLED 'Conduct of recount; duties of Supreme Court Justices' AND § 8-209 ENTITLED 'Petition for fraud or irregularities'"** as a VETO with the following objections:

OBJECTION ONE: The proposed NCA 11-133 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 11-133 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 Election Board. Further, NCA 11-133 violates the principle of separation of powers, since it attempts to improperly remove powers from, and to limit the powers of, the Executive Branch, in particular by mandating that certain investigations be made by the Judicial Branch. Last, the proposed NCA 11-133 violates the principle of separation of powers and threatens the independence of the Judicial Branch of the Muscogee (Creek) Nation, since it attempts to improperly inject the opinions and influence of the National Council into the decisions and internal affairs of the Judicial Branch, which is an independent and co-equal branch of the tribal government.

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National Council Office

OBJECTION TWO: The proposed NCA 11-133 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 11-133 has been passed unilaterally by the National Council, with no collaboration or consultation of any sort with the Principal Chief. As such, proposed NCA 11-133 is an unconstitutional infringement on the powers of the Principal Chief and the Executive Branch, by the National Council.

OBJECTION THREE: The provisions of NCA 11-133 are vague, unwieldy and improperly prevent both the Executive Branch and the Judicial 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 requirement in proposed Title 19, § 8-203 mandating the "investigation" by the Judicial Branch both circumscribes the power of the Election Board to conduct investigations, and prevents the Judicial Branch from being able to explore other options depending upon the facts and circumstances at the time. In addition, the standards for the "independent outside source" are vague. Last, the so-called "situations" referenced in the Findings are never specified and are vague and insufficient to support the proposed revisions to Title 19 proposed in NCA 11-133. In any event, no restructuring of the duties and authority of the Executive Branch in relation to the Judicial 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 11-133 exceed the boundaries of legitimate legislation by unnecessarily extending the normal opinions of the National Council into the workings of the Executive Branch, in particular the Election Board and to mandate requirements for the Judicial Branch. NCA 11-133 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 11-133 are unnecessary and unwieldy, 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 Election Board, as well as the Judicial Branch. The National Council has not conferred or consulted with either the Principal Chief or the members of the Supreme Court with regard to the passage of this legislation.

OBJECTION SIX: The Principal Chief believes that the amendments contained in NCA 11-133 are not necessary in that the current statutes of the Muscogee (Creek) Nation provide for sufficient means for both the Election Board and the Judicial Branch to respond to issues which may arise from National elections in the future, 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 11-133 is hereby returned as a **VETO**.

Sincerely,

A handwritten signature in black ink, appearing to read 'ADELLIS', with a horizontal line extending to the right.

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

DATED: August 12, 2011

ADE/vb

VETO OVERRIDE



NCA 11-133

CLASSIFICATION: #19. ELECTIONS

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 19 §8-202 ENTITLED "Petition for recount; filing fee; service of notice", §8-203 ENTITLED "Conduct of recount; duties of Supreme Court Justices" AND §8-209 ENTITLED "Petition for fraud or irregularities"

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

SECTION ONE. FINDINGS. The National Council finds that:

A. Amendments to Title 19 are imperative due to the fact that past elections with questionable irregularities and tampered ballot boxes have created situations.

B. The Muscogee people expect and believe that their government should possess integrity in all election and not create suspicions and doubts of their government leaders.

C. Most candidates do not have a substantial amount of funds to pay for recounts due to irregularities that the government is supposed to prevent from happening in elections.

SECTION TWO. AMENDMENT. This amendment shall be codified in Title 19, Chapter 8, 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 2010 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 THREE. AMENDMENT. MCNCA Title 19, § 8-202 is hereby amended to read as follows:

§ 8-202. Petition for recount; filing fee; service of notice

In the event a candidate requests a recount of the ballots casts in an Election, he or she must set forth in his or her petition the precincts and absentee ballots which he or she desires to be recounted. Said petition must be accompanied by either a money order, cashier's or certified check or a bank instrument equivalent to such checks in the ~~non-refundable amount of one thousand dollars (\$1,000.00)~~ **five hundred dollars (\$500.00)** for each district affected by the petition. When such petition is properly filed and the filing fee of ~~one thousand dollars (\$1,000.00)~~ **five hundred dollars (\$500.00)** duly paid, it shall be the duty of the Manager of the Election Board to order said recount to begin not less than three (3) nor more than ten (10) calendar days from the date of filing of said petition. It shall be the duty of such contestant to cause to be served upon the candidate or candidates opposing him or her, and directly affected by said contest, a true copy of said petition and a true copy of said order. A copy of said petition and order shall be served in person upon the opposing candidate or candidates within twenty-four (24) hours after the filing of said original petition of contest. Procedures shall follow those stated in Title 19, §8-203.

SECTION FOUR. AMENDMENT. MCNCA Title 19, § 8-203 is hereby amended to be read as follows:

§8-203 Conduct of recount; duties of Supreme Court Justices

Once service has been made in accordance with Section 8-110 of this Code, the actual recount of ballots shall be conducted by the Precinct Election Committee or the Precinct Workers and/or the Absentee Workers designated by the Manager of the Election Board. The recount shall be conducted in the Auditorium of the Mound Building, or if said room is not available than at such other place at the Capitol Complex as the Election Board may order in which case the Election Board shall immediately post notice of the time and place of the recount at prominent places in the Capitol Complex. It shall be the duty of a quorum of the Supreme Court Justices of the Muscogee (Creek) Nation to attend and, in conjunction with the Election Board, conduct a recount. It shall be the exclusive and sole duty of said Justices to hear evidence as to whether the ballots have been preserved in the manner prescribed by this Title, whether the ballots are the identical ballots cast by the voters, and whether the ballots have been exposed to the reach of unauthorized persons thus affording a reasonable opportunity for an unauthorized person to tamper with or change the ballots. The judgment of said Justices upon such questions shall be final and conclusive. If the Justices cannot determine that the ballots have been properly preserved, then ~~no recount shall be conducted~~ **the election will be deemed null and void and a new**

election shall take place within sixty (60) days. All funds paid by the candidate for said recount shall be refunded to the candidate if no recount takes place. Further, the Justices shall immediately initiate an investigation to be conducted by an independent outside source that is qualified investigative authority which they deem suitable to accomplish the task of finding where and how the tampering occurred. If the judgment of the Justices is that the ballots have been properly preserved, then the recount of the ballots shall be conducted immediately thereafter under the exclusive supervision of the Election Board.

SECTION FIVE. AMENDMENT. MCNCA Title 19, §8-209 is hereby amended to read as follows:

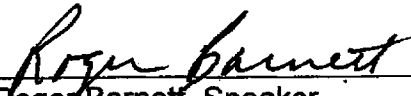
§8-209. Petition for fraud or irregularities

In the event a candidate contests the correctness of the announced results of an election, by alleging fraud or any other irregularities, said candidate shall file with the Manager of the Election Board a contest petition, at any time before 5:00 P.M. on the first Friday following an election, setting forth with particularity the facts which are alleged to constitute fraud and irregularities. Said petition must be accompanied by either a money order, cashiers or certified check or a bank instrument equivalent to such checks in the non-refundable amount of ~~One Thousand Dollars (\$1,000.00)~~ **five hundred dollars (\$500.00)** for each district affected by the petition. When such petition is properly filed and the filing fee of ~~One Thousand Dollars (\$1,000.00)~~ **five hundred dollars (\$500.00)** duly paid, the Manager of the Election Board shall immediately file or cause to be filed said contest petition in the a District Court of the Muscogee (Creek) Nation. A hearing on the contest petition shall be set by the a District Court no less than three (3) nor more than ten (10) calendar days from the date of the filing of said petition in the a District Court. The A District Court shall immediately render an oral decision at the conclusion of the hearing, and shall file a written order and opinion consistent with the oral decision no later than the following calendar day. Any appeal to the Muscogee (Creek) Nation Supreme Court shall be filed within three (3) calendar days of the oral decision of the a District Court. If the deadline for filing an appeal falls on a holiday or weekend, the Appellant shall contact the Court Clerk in order to make arrangements for filing the appeal within the three (3) calendar day filing period. A hearing on the appeal shall be set by the Supreme Court no less than three (3) nor more than ten (10) calendar days from the date of the filing of the appeal in the Supreme Court. The Supreme Court shall immediately render an oral decision at the conclusion of the hearing, and shall file a written order and opinion consistent with the oral decision no later than three (3) calendar days after the date the oral decision was rendered. The decision of the Muscogee (Creek) Nation Supreme Court shall be final and conclusive.

SECTION SIX. 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 30th day of July 2011.


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-two members attending this meeting on the 30th day of July, 2011 and that the above is in conformity with the provisions therein adopted by a vote of 11 in favor, 10 against, 1 abstention, 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.



ShaRee Hill, Acting Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature this _____ day of _____, 2011, to the above Law, NCA 11-133 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

