

**IN THE COURT OF INDIAN OFFENSES FOR THE MIAMI AGENCY
MIAMI, OKLAHOMA**

In the Matter of the Seneca-Cayuga Nation,)	
)	
William L. Fisher; Jerry Crow; Sarah S.)	
Channing; Sallie White; Lisa Spano; Calvin)	
Cassidy; and Geneva Fletcher,)	
Plaintiffs/Appellants,)	
)	
vs.)	Case No. CIV-16-M04
)	
Paul Barton; Scott B. Goode; Hoyit Bacon;)	
Cynthia Donohue; Diana Baker; Tonya)	
Blackfox; and TeNona Kuhn,)	
Defendants,)	
)	
Seneca Price; Robert Armstrong; Jason)	
Perry; and Charles Crow,)	
Intervenors.)	

MOTION FOR STAY PENDING APPEAL AND BRIEF IN SUPPORT

COME NOW, the Plaintiffs/Appellants and request this Court to stay that portion of its order of requiring the Seneca-Cayuga Nation (the “Nation”) to hold an election on July 23, 2016, with only in-person voting and appointing at the expense of the Nation a Special Master to judicially oversee the election.¹

FACTS

1. The Nation’s Constitution expressly provides that the Business Committee shall control the manner of elections for Tribal Office by ordinance. Likewise, although the Constitution sets a date for Tribal Election, the Nation’s Constitution (Exhibit A hereto) does not

¹ The factors regulating a stay of an order pending appeal in federal courts are: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interests lies. *Hilton v. Braunskill*, 481 U.S. 770,776 (1987).

address voting, much less mandate only in-person voting. Article VIII provides:

Annual meetings shall be held on the first Saturday of June of each year for the purpose of receiving reports and any other business which may come before the Council. Election of officers will also be held at such annual meetings, provided that such election is appropriate under this Amendment. In order to provide for staggered terms of office, in the first annual meeting after the adoption of this Amendment the Second-Chief, Secretary-Treasurer, Second Councilperson and Fourth Councilperson shall be elected for a four (4) year term of office. In the third annual meeting after the adoption of this Amendment, the Chief, First Councilperson and Third Councilperson shall be elected for a four (4) year term of office, and shall serve until his/her successor shall be duly elected and installed in office. Any member of the Business Committee in office on the date of adoption of this Amendment shall remain in office until his/her successor is duly elected and installed in office under the Amendment, regardless of the resulting length of the term for such member. Regular elections of the Business Committee shall be held pursuant to a Nation election ordinance prescribed by the Business Committee.

2. The Nation has elected officers by mail-in ballots (Exhibit B hereto, *Spicer v. Eastern Oklahoma Regional Director, Bureau of Indian Affairs*, 50 IBIA 328, 329). Likewise, as aided by this Court, the Nation has conducted elections including absentee ballots (Exhibit C hereto, *Rodgers v. Election Committee*, CIV 12-M13, ORDER August 6, 2012, ¶ 4).

3. Although a purported General Council of the Nation attempted to outlaw any absentee or other voting by mail through an Ordinance which usurped the Constitutional authority of the Business Committee to set the parameters of elections (Exhibit D hereto), that General Council Ordinance was declared invalid by the Nation's District Court (Exhibit E hereto, *Spicer v. Pewitt*, 2007-CIV-01, Temporary Restraining Order, p.2, as referenced in Exhibit B)

4. Pursuant to its Constitutional authority, the Business Committee members, in their official capacity, to broaden electoral participation, adopted an Ordinance establishing mail voting for the upcoming election so that all eligible voters could participate, regardless of geographical

location. (Exhibit F hereto)

5. On May 19, 2016, this Court, through another Magistrate, assumed and exercised jurisdiction over the upcoming election for certain Tribal officers. In that case, Case No. CIV-16-M03, the members of the Business Committee and the Election Committee were sued in their official capacities by a candidate who had been removed from the ballot by the Election Committee. After a hearing including counsel for all parties, the Court dissolved a prior Temporary Restraining Order, entered a stay of the election, and clearly contemplated further litigation as to the election after the Business Committee completed its review of the Election Committee action. (Exhibit G hereto) Although the unsuccessful party was ordered to promptly bring the Business Committee action to the Court and in spite of the Business Committee notifying all parties and the Court of its decision (Exhibit H and H-1 hereto), that unsuccessful party has not done so. Likewise, no challenge to the mail ballot aspect of the Ordinance was made.

6. Because of the candidacy challenge and the anticipated litigation over it, the Business Committee members in their official capacity postponed the election. (Exhibit I hereto)

7. On June 4, 2016, a gathering claiming to be the General Council dis-enrolled the Plaintiffs in Case No. CIV-16-M04 (“M04”) in admitted violation of the Nation’s Enrollment Ordinance, declared their offices vacant, and unlawfully elected successors.

8. On June 6, 2016, the Seneca-Cayuga Nation and these Plaintiffs as officers of the Nation filed this action seeking injunctive relief prohibiting the Defendants from declaring that they hold the offices to which Plaintiffs have been elected, from interfering with the Plaintiff’s discharge of the duties of those offices and from violating the Nation’s Constitution as to removal of officers and a declaratory judgment that the Plaintiffs to be the holders of the offices to which they have been elected and that the Defendants have no right, claim or title to such offices. No

issue concerning the upcoming election was raised. (Exhibit J hereto)

9. Later on June 6, 2016, the Defendants in this action filed Case No. CIV-16-M05 (“M05”), requesting a Temporary and Permanent Injunction and Restraining Order against the Plaintiffs in M04 individually and as former officers, restraining the Defendants in M05 from blocking access to Tribal offices and access to records and recognizing the M05 Plaintiffs’ election as officers. No issue concerning the upcoming election was raised. (Exhibit K hereto)

10. On June 21, 2016, the Court consolidated M04 and M05, allowed Election Committee Members, who had been unlawfully removed from office, to intervene as individuals, and *sua sponte* realigned the parties by removing the Nation as a party plaintiff and re-designating all parties as appearing only as individuals, as opposed to their official status stated in the original captions. The Court then proceeded to a trial on the merits. No party sought to amend the pleadings to raise issues concerning the Election Ordinance or the upcoming election. Because the upcoming election was not at issue in the case, Plaintiffs did not object to the realignment.

11. Certain individuals who filed for office under the Election Ordinance were not joined as parties. No notice prior to the trial was given to any Tribal members authorized to vote by mail that such a right would be determined at the trial. No officer with authority to conduct the election was a party in the capacity of such an officer.

12. At the end of the trial, the Court determined issues not raised by the pleadings and effectively invalidated the Election Ordinance by ordering that an election will be held under Court supervision through a Special Master (although none was sought by any party) and that only in person voting will be allowed (although that issue had not been raised for trial on the merits). (Exhibit L hereto)

13. As a result of the Order, entered on July 6, 2016, Tribal members, who are infirm,

serving in the military or because of distance or work commitments are unable to vote in person in the election, are disenfranchised, and those not a party to this litigation who are candidates for office have had the parameters of the election significantly changed, all without notice and hearing.

14. The Plaintiffs/Appellants have filed their Notice of Appeal. (Exhibit M hereto)

PROPOSITION I: THE PLAINTIFFS/APPELLANTS HAVE A STRONG LIKELIHOOD OF PREVAILING ON THE MERITS.

A: NO PARTY EXISTS IN THIS ACTION ON WHICH THE COURT'S ELECTION ORDER CAN OPERATE.

It is fundamental that a court lacks authority to issue orders to an entity which is not a party. *Davilt v. Slednik*, 2009 WL 1733333 (D. Nev. 2009) (“This Court lacks the authority to issue orders to an entity which is not a party”). In this case, the Court has made clear that the Plaintiffs/Appellant parties in their personal or individual capacities, and not in their official capacities. That distinction is significant. In *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) the Supreme Court analyzed the distinction between state officials in their individual (or personal) and official capacities.

Personal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law. See, e.g., *Scheuer v. Rhodes*, 416 U.S. 232, 237-238, 94 S.Ct. 1683, 1686-1687, 40 L.Ed.2d 90 (1974). Official-capacity suits, in contrast, “generally represent only another way of pleading an action against an entity of which an officer is an agent.” *166 *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, n. 55, 98 S.Ct. 2018, 2035, n. 55, 56 L.Ed.2d 611 (1978). As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. *Brandon, supra*, 469 U.S., at 471-472, 105 S.Ct., at 878. It is *not* a suit against the official personally, for the real party in interest is the entity.

Further, as the court observed:

Indeed, unless a distinct cause of action is asserted against the entity itself, the entity is not even a party to a personal capacity lawsuit

and has no opportunity to present a defense.

Id.

Here, the Nation, through its officers, conducts the upcoming election. Any action as to the election must be against the Nation itself, or against its officers in their official capacity, which legally is suit against the Nation.

The Order is clear in two respects. First, it attempts to compel action by the Nation, a non-party, as to the upcoming election, including expressly requiring the Nation to pay for a Special Master to conduct the Court's unrequested oversight of the election. Second, the Order actually orders no identified party, in any official or any other capacity, to do anything as to the election other than requiring the non-party Nation to pay for a Special Master. Since neither the Nation nor any of its officers in their official capacity are parties, the Order's attempt to compel aspects of the election is erroneous. The Plaintiffs/Appellants are likely to prevail on the merits of their appeal.

B: THE ORDER ERRONEOUSLY ADJUDICATED ISSUES AS TO THE ELECTION WHICH WERE NOT JOINED IN THE CASE, AND FOR WHICH NOTICE AND HEARING WERE NOT PROVIDED AS REQUIRED BY DUE PROCESS.

Not only were the Nation and its officers' non-parties, the election issues were not joined by any party for judicial determination. Accordingly, as Plaintiffs/Appellants stated at trial, the election issues were not before the Court.

The determination of issues not before the Court causes general and specific due process violations. Generally, due process requires notice and resulting in a meaningful hearing before adjudication. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). An elementary and fundamental

requirement of due process in any proceeding is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pending of the action and afford them an opportunity to present their objections. *Id.* Specifically, the adjudication of election issues involved the rights of other strangers, in addition to the Nation and its officers. Candidates were clearly affected by the Order, although none were given notice and hearing. Those who cannot vote in person are affected. Many are disenfranchised. None had notice and hearing.²

The Nation's Constitution makes due process an explicit right, along with equal protection.

Article XII provides:

All members of the Seneca-Cayuga Nation shall be accorded equal protection of the law under this constitution. No member shall be denied any of the rights or guarantees enjoyed by citizens under the Constitution of the United States, including, but not limited to, freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law. The protection guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77), against actions of an Indian entity in the exercise of its powers of self-government shall apply to the members of the Seneca-Cayuga Nation.

The Order's election provision denying mail voting, entered without notice and meaningful hearing on an issue not raised by the parties violates due process. Accordingly, Plaintiffs/Appellants are likely to prevail on the merits of their appeal.

C: THE DENIAL OF MAIL VOTING BY THE ORDER LIMITS SUFFRAGE BY DENYING THE VOTE TO SERVING MILITARY TRIBAL MEMBERS, AGED AND INFIRM TRIBAL MEMBERS AND THOSE UNABLE TO VOTE IN PERSON DUE TO DISTANCE, EMPLOYMENT, OR OTHER OBLIGATIONS IN VIOLATION OF DUE PROCESS AND EQUAL PROTECTION.

The Nation has over 3,500 eligible voters. The Business Committee adopted an Election

² Those without notice and hearing, be they candidate or member, will clearly have standing to seek a new election and protract the seating of new officers.

Ordinance for mail voting in order to increase member participation by eliminating discrimination against serving military personnel, the aged and infirm, those who live or work distant from Delaware County, Oklahoma, and those with obligations that prevent in-person voting. In other words, the Election Ordinance treats all members of a class-voters equally and imposes no special burden on any. All use exactly the same method by which to vote. Voting is not made easier for some based merely on geographical location.

By effectively invalidating the Ordinance the Order creates two classes of voters – those that can vote in-person and those that cannot. Those that cannot practically lose their right to vote. By so doing, the Order not only invalidates the public policy implemented by the Business Committee in the Election Ordinance for non-articulated reason in violation of due process, the Order imposes discrimination in violation of the Constitution's Tribal, state and federal constitutional rights of equal protection. Accordingly, the Order as to the election, should be reversed on appeal and Plaintiffs/Appellants are likely to prevail on the merits of their appeal.

D: THE ORDER VIOLATES THE BUSINESS COMMITTEE'S CONSTITUTIONAL AUTHORITY TO PROVIDE FOR MAIL VOTING IN TRIBAL ELECTIONS.

1. The Constitution makes the Business Committee the Sole Governmental Entity to set the Parameters of Elections.

The Nation's Constitution makes clear that the Business Committee by ordinance set the parameters of elections. Nothing in the Nation's Constitution makes that authority subject to control of the General Council. If the General Council desires to control elections, a Secretarial Election must amend the Constitution to remove such authority from the Business Committee and confer it on the General Council. No such election has occurred.

2. The Resolution of an Alleged General Council prohibiting mail voting is not controlling.

Initially, since the Nation's Constitution gives power to the Business Committee to set election parameters by ordinance, any resolution of a General Council attempting to set election parameters is unconstitutional. Secondly, the resolution was subsequently invalidated by the Nation's District Court. Finally, the invalidity has been recognized by the Nation subsequently conducting both mail-in only and absentee ballot elections without objection, including absentee balloting as noted in a prior order of this Court.

PROPOSITION II: PLAINTIFFS/APPELLANTS WILL BE IRREPARABLY HARMED ABSENT A STAY.

Although the Order in question, on its face, doesn't apply to the Plaintiffs/Appellants, the chance exists that enforcement of the Order will be sought against them. Further, as individual voters and Tribal members, they will be harmed by an election that violates the Election Ordinance, violates the Nation's Constitution, and discriminates against those unable to vote in person thereby unlawfully diminishing voter participation. As Tribal members, Plaintiffs/Appellants will be harmed by election challenges and related expense, and disruption of Tribal government if the improper election occurs pursuant to the Order. That harm is irreparable because no one exists to answer for it. Accordingly, a stay is appropriate.

PROPOSITION III: THE ISSUANCE OF A STAY WILL NOT SUBSTANTIALLY INJURE OTHER PARTIES INTERESTED IN THE PROCEEDINGS.

A stay will promote, rather than injure the interests of others. The stay should preclude the possibility of two elections. The stay will prevent a challenge to the winners of an in-person-only election. The stay will allow for appellate review of the mail balloting and its resulting non-discriminating broadening of electoral participation. The stay will allow candidates to only have to run once, and then only after an appellate court determines the legal impact of the Nation's

Constitution. However, the best proof that the stay will harm no significant interest is the fact that no one has sought that part of the Order for which the stay is sought.

PROPOSITION IV: THE PUBLIC INTEREST FAVORS THE STAY.

The public interest encourages expansion of voting rights, compliance with due process and promotion of equal protection. The public interest encourages implementation of the Nation's Constitutional determination that the Business Committee establish the parameters of elections through its Election Ordinance. The public interest favors elections that minimize opportunities for challenges and invalidations. Accordingly, the public interest supports a stay here until appellate review of the Order so there need be only one election.

Respectfully submitted,

Nancy Green, OBA No. 17315
GREEN LAW FIRM, P.C.
301 E. Main St.
Ada, Oklahoma 74820
(580) 436-1946
ng@greenlawfirm.com

-and-



Graydon D. Luthey, Jr., OBA No. 5568
GABLEGOTWALS
1100 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103-4217
(918) 595-4911
dluthey@gablelaw.com

**ATTORNEYS FOR DEFENDANTS,
SENECA-CAYUGA NATION OF OKLAHOMA AND
ITS BUSINESS COMMITTEE MEMBERS.**

-and-

James Wilcoxon, OBA No. 9605
WILCOXEN & WILCOXEN
112 N. 5th St.
Muskogee, OK 74401
(918) 683-6696
jim@wilcoxenlaw.net

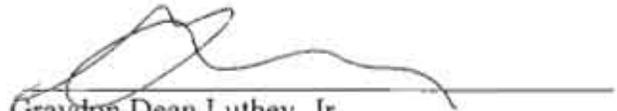
**ATTORNEY FOR SENECA-CAYUGA NATION
ELECTION COMMITTEE**

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July 2016, a true, correct and exact copy of the above and foregoing instrument was sent via Electronic Mail and by U.S. Mail, with postage prepaid to:

Cynthia J. Burlison
P.O. Box 266
Welch, OK 74369
Email: *cynthiaburlison@gmail.com*

Chadwick Smith
22902 S. 494 Road
Tahlequah, OK 74464
Email: *chad@chadsmith.com*


Graydon Dean Luthey, Jr.

1517653

CONSTITUTION AND BY-LAWS OF THE SENECA-CAYUGA NATION
Approved April 26, 1937

PREAMBLE

We, the Seneca-Cayuga Indians of Oklahoma, sometimes designated as the Seneca Tribe, in order to take the advantage of the opportunities of economic independence and social advancement offered by the Thomas Rogers Oklahoma Indian Welfare Act of June 26, 1936, do hereby amend our present Constitution and Bylaws and do adopt the following Constitution and Bylaws pursuant to that Act.

ARTICLE I – NAME

The name of this organization shall be the Seneca-Cayuga Nation.

And any place within the Constitution and By-laws of the Seneca-Cayuga Nation that refers to "The Seneca-Cayuga Tribe of Oklahoma" or "Seneca-Cayuga Tribe" or "Seneca-Cayuga" shall be replaced with "Seneca-Cayuga Nation" or any place the word "Tribe" is referenced, it shall be changed to "Nation". 4g/

ARTICLE II – OBJECT

The object shall be to promote the general welfare of the Seneca-Cayuga Nation.

ARTICLE III – MEMBERSHIP OF NATION

The membership of the Seneca-Cayuga Nation shall consist of the following persons:

1. All persons of Indian blood whose names appear on the official census roll of the Nation as of January 1, 1937
2. All children born since the date of said roll, both of whose parents are members of the Nation.
3. Any child born of a marriage between a member of the Seneca-Cayuga Nation and a member of any other Indian tribe who chooses to affiliate with the Seneca-Cayuga Nation.
4. Any child born of a marriage between a member of the Seneca-Cayuga Nation and any other person, if such child is admitted to membership by the Council of the Seneca-Cayuga Nation.

ARTICLE IV – MEMBERSHIP OF THE COUNCIL

The supreme governing body of the Nation shall be the Seneca-Cayuga General Council. The membership of the General Council shall be all members of the Seneca-Cayuga Nation eighteen (18) years of age and older. 1a/3d/

1a/ Amended January 28, 1973 - - First of three amendments

3d/ Amended October 15, 1990 - - Second of four amendments

4g/ Amended May 15, 2014 - - Fourth of four amendments



ARTICLE V – OFFICERS

The Officers of the Nation shall be the Chief, Second Chief, Secretary-Treasurer, and four (4) Councilmen who shall be elected by secret ballot.3e/

ARTICLE VI – BUSINESS COMMITTEES

There shall be a Business Committee which shall consist of the officers and councilmen as provided in Article V.

The Business Committee shall have power to transact business and otherwise speak or act on behalf of the Seneca-Cayuga Nation in all matters on which the Nation is empowered to act.3c/

ARTICLE VII – STANDING COMMITTEES

Section 1. Grievance Committee – This Committee shall be elected by the Council and shall not include any members of the Business Committee.

Section 2. Credit Committee – The Credit Committee shall be chosen by the Business Committee and shall act under the supervision of the Business Committee.

Section 3. Welfare Committee – This committee shall be chosen in the same manner as the Credit Committee.

Section 4. Education Committee – This Committee likewise shall be chosen in the same manner as the Credit Committee.

ARTICLE VIII – ANNUAL MEETINGS

Annual meetings shall be held on the first Saturday of June of each year for the purpose of receiving reports and any other business which may come before the Council. Election of officers will also be held at such annual meetings, provided that such election is appropriate under this Amendment. In order to provide for staggered terms of office, in the first annual meeting after the adoption of this Amendment, the Second-Chief, Secretary-Treasurer, Second Councilperson and Fourth Councilperson shall be elected for a four (4) year term of office. In the third annual meeting after the adoption of this Amendment, the Chief, First Councilperson and Third Councilperson shall be elected for a four (4) year term of office, and shall serve until his/her successor shall be duly elected and installed in office. Any member of the Business Committee in office on the date of adoption of this Amendment shall remain in office until his/her successor is duly elected and installed in office under this Amendment, regardless of the resulting length of the term for such member. Regular elections of the Business Committee shall be held pursuant to a Nation election ordinance prescribed by the Business Committee. 2a/3f/3g/

3e/ Amended October 15, 1990 -- Third of Four amendments

3c/ Amended October 15, 1990 -- First of four amendments

2a/ Amended February 11, 1985 -- First of two amendments

3f/ Amended October 15, 1990 -- Fourth of four amendments

3g/ Amended May 15, 2014 -- Third of four amendments

ARTICLE IX – VACANCIES

Vacancies in any elective office shall be filled at any regular or special meeting of the Seneca-Cayuga Council.

ARTICLE X – REMOVAL OF OFFICERS

The Grievance Committee shall investigate complaints of misconduct or other acts of the members of the Business Committee and upon a proper showing shall call a special meeting of the Seneca-Cayuga Council to act upon such complaints. Such council shall have power, by majority vote, after giving the accused a hearing, to remove him from office and proceed to elect a successor.

ARTICLE XI – AMENDMENTS

Amendments to this Constitution and the attached Bylaws may be proposed by a majority vote of the Business Committee or by a petition signed by 30 percent of the adult members of the Nation, and if approved by the Secretary of the Interior shall be submitted to a referendum vote of the members of the Nation, and shall be effective if approved by a majority vote.

ARTICLE XII – BILL OF RIGHTS

All members of the Seneca-Cayuga Nation shall be accorded equal protection of the law under this constitution. No member shall be denied any of the rights or guarantees enjoyed by citizens under the Constitution of the United States, including, but not limited to, freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law. The protection guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77), against actions of an Indian entity in the exercise of its powers of self-government shall apply to the members of the Seneca-Cayuga Nation. 1c/

BY – LAWS

ARTICLE I – DUTIES OF OFFICERS

Section 1. Chief – It shall be the duty of the chief to preside at all meetings and perform all duties appertaining to the office, also to act as chairman of the Business Committee.

Section 2. Second Chief – In the absence of the chief, the second chief shall perform the duties of that officer. In case of vacancy, the second chief shall succeed at once to the office of the chief until the next special or regular election for the office of chief.

1c/ Amended January 28, 1973 - - Third of three amendments

Section 3. Secretary-Treasurer – The Secretary-Treasurer shall correctly record the proceedings of all meetings. He shall make out the order of the business for the chief, shall notify all committees of their appointments, shall have custody of the records and all papers of the Council, which records and papers shall be open to inspection at any time, in his presence, by any members of the Council desiring to read them. He shall keep a correct list of all members of the Council, shall authenticate all accounts or orders of the council and, in the absence of the chief and second chief, shall call the meeting to order until a chairman pro tem is selected. He shall render a written report at the annual meeting and at the expiration of his term of office the records and all papers in his possession shall be turned over to his successor. He shall issue notices of all meetings and conduct all general correspondence, as directed by the council or the Business Committee. He shall receive all moneys of the council and keep an accurate account of receipts and disbursements.

The Secretary-Treasurer shall keep all Nation moneys entrusted to his care in a special account and all disbursements therefrom should be made by check. At any time that such account shall amount to more than \$50.00, he shall file a bond satisfactory to the Business Committee and the Commissioner of Indian Affairs. The cost of such bond shall be paid out of Nation moneys.

ARTICLE II – QUALIFICATIONS OF OFFICERS

Any person elected to membership in the business council shall be not less than 25 years of age, a member of the Seneca-Cayuga Nation and reside within a radius of 150 miles in any direction from Bassett Grove Stomp Grounds, 1b/

ARTICLE III – REGULAR AND SPECIAL MEETINGS

Section 1. The regular meetings of the Council shall be held on the first Saturday of June of each year at the Bassett Grove Ceremonial Grounds, unless some other point under the Seneca-Cayuga Nation jurisdiction is specifically designated in the call. 2b/

Section 2. Special meetings of the council may be called by the Chief, and shall be called by him upon the written request of the majority of the Business Committee or the written request of One-hundred Seventy-Five (175) members of the Nation. 2g/

Section 3. The principal object of the special meeting must be stated in the call for same and may include the words “and for the transaction of other business that may be presented.” Unless these words are added, no other business can be transacted except for the object stated in the call.

1b/ Amended January 28, 1973 -- Second of three amendments

2b/ Amended February 11, 1985 -- Second of two amendments

2g/ Amended May 15, 2014 -- Second of four amendments

Section 4. The regular meetings of the Business Committee shall be held the first Tuesday in each month unless otherwise provided by resolution.

Section 5. Special meetings of the Business Committee may be called by the chief at his discretion, and shall be called by him upon the written request of three members of the Business Committee.

ARTICLE IV - QUORUM

Section 1. Four members of the Business Committee constitutes a quorum at any meeting.

Section 2. Two-hundred Twenty-five (225) members of the Seneca-Cayuga Council shall constitute a quorum to transact regular business. lg/

ARTICLE V - ADOPTION

This Constitution and By-laws shall be effective when approved by the Secretary of the Interior and ratified by a majority vote of the Indians of the Seneca-Cayuga Nation voting at an election called by the Secretary of the Interior under regulations which he may prescribe pursuant to Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936.

lg/ Amended May 15, 2014 - - First of four amendments

CERTIFICATION OF ADOPTION

Pursuant to an order, approved April 26, 1937, by the Secretary of the Interior, the attached Constitution and By-laws was submitted for ratification to the members of the Seneca-Cayuga Tribe and was on May 15, 1937, duly ratified by a vote of 186 for, and none against, in an election in which over 20 percent of those entitled to vote cast their ballots, pursuant to Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936 (Pub., No. 816, 74th Cong.)

Thomas Armstrong, Chief, Seneca-Cayuga Tribe

Grover C. Splitlog, Secretary-Treasurer,
Seneca-Cayuga Tribe

H. A. Andrews, Superintendent

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 26, 1936 (Pub., No. 816, 74th Cong.), do hereby approve the attached Constitution and By-laws of the Seneca-Cayuga Tribe of Oklahoma.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution and By-laws are hereby declared inapplicable to the Seneca-Cayuga Tribe of Oklahoma.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and By-laws.

Approval recommended April 20, 1937.

John Collier, Commissioner of Indian Affairs

Harold L. Ickes, Secretary
of the Interior
(Seal)

Washington, D.C., April 26, 1937.

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to an order approved November 20th, 1972, by the Acting Commissioner of Indian Affairs, the attached Amendment I to the Constitution and Bylaws of the Seneca-Cayuga Tribe of Oklahoma was submitted for ratification to the adult members of the Seneca-Cayuga Tribe, and was on 28th January, 1973, duly ratified by a vote of 22 for, and 9 against, in an election in which 32 cast their ballots in accordance with Article XI of the constitution and Section 3 of the Act of June 26, 1936 (49 Stat. 1967).

One (1) ballot was left blank.

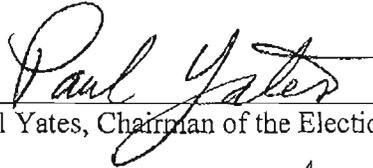
/s/ T.J. Perry
Chairman, Election Board

/s/ Amelia Perry
Election Board Member

/s/ Sue Beth Sherry
Election Board Member

CERTIFICATE OF RESULTS OF ELECTION

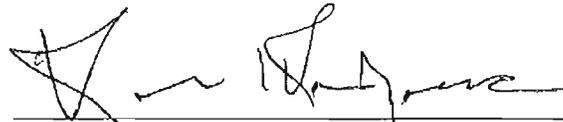
Pursuant to a Secretarial Election authorized by the Eastern Oklahoma Regional Director on March 12, 2014, delegated to the Director, Bureau of Indian Affairs, by the Act of June 26, 1936 (49) Stat. 1967, re-delegated to the Regional Director by 130 D.M. and Bureau of Indian Affairs Policy Memorandum dated October 11, 2006, the attached Constitution Amendments of the Seneca-Cayuga Tribe of Oklahoma was submitted to the qualified voters of the Tribe on May 15, 2014. Proposed Amendment (A) was duly ratified by a vote of 360 for and 242 against, and 0 cast ballots found soiled or mutilated. Proposed Amendment (B) was duly ratified by a vote of 364 for and 234 against, and 0 cast ballots found soiled or mutilated. Proposed Amendment (C) was duly ratified by a vote of 334 for and 279 against, and 2 cast ballots found soiled or mutilated. Proposed Amendment (D) was duly ratified by a vote of 373 for and 232 against, and 1 cast ballots found soiled or mutilated. At least thirty (30) percent of the 885 members entitled to vote, cast their ballot in accordance with the Oklahoma Indian Welfare Act of June 26, 1937, and Article XI of the Tribe's Constitution.



Paul Yates, Chairman of the Election Board



William Fisher, Election Board Member



Raymond Rodgers, Election Board Member

Date of Election
May 15, 2014



INTERIOR BOARD OF INDIAN APPEALS

Paul Spicer v. Eastern Oklahoma Regional Director, Bureau of Indian Affairs

50 IBIA 328 (11/16/2009)





United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

PAUL SPICER,)	Order Vacating Decisions and
Appellant,)	Dismissing Appeals as Moot
)	
v.)	
)	Docket Nos. IBIA 08-129-A
EASTERN OKLAHOMA REGIONAL)	08-130-A
DIRECTOR, BUREAU OF)	
INDIAN AFFAIRS,)	
Appellee.)	November 16, 2009

Paul Spicer (Appellant), individually and as Chief of the Seneca-Cayuga Tribe of Oklahoma (Tribe), appealed to the Board of Indian Affairs from two decisions by the Eastern Oklahoma Regional Director, Bureau of Indian Affairs (Regional Director; BIA), related to a tribal leadership dispute. In the first decision, dated July 11, 2008, the Regional Director declined to recognize as valid a tribal court temporary restraining order (TRO) that had been granted to Appellant against his tribal opponents. In relevant part, the TRO declared a June 7, 2008, General Council¹ meeting of the Tribe (at which LeRoy Howard allegedly was elected Chief) to be invalid, and prohibited Howard from holding himself out as Chief until further order by the court, or until an annual election held by mail-in ballot was officially certified and Appellant “tenders his resignation and causes Howard to be sworn in.”² The Regional Director’s second decision, dated July 31, 2008, recognized Howard as Chief of the Tribe on an interim basis for 6 months or until the Tribe internally resolved the dispute over the election. We refer to this decision as the “recognition decision.”

¹ The Tribe’s General Council consists of all members of the Tribe 18 years of age or older. Constitution and By-Laws of the Seneca-Cayuga Tribe of Oklahoma, Art. IV. It appears that the tribal court was established by the Tribe’s Business Committee, which consists of elected officers and Council members. *Id.*, Art. VI.

² TRO, *Chief Paul Spicer v. Dolly Pewitt*, No. 2007-CIV-01 (Dist. Ct. Seneca-Cayuga Tribe of Oklahoma, July 9, 2008). The introduction to the court’s order recites July 9, 2008, as the date of consideration and presumably of issuance, although above the judge’s signature, the order recites June 23, 2008, as the date “so ordered.” The parties refer to the order as having been issued on July 9, 2008.

Following expiration of the 6-month period, the Regional Director moved to dismiss this appeal as moot. Appellant objects to dismissal, arguing that the appeal is not moot because the Regional Director's decisions enabled the Howard faction to take control of the Tribe.

We agree that these appeals are moot. It is well-settled that under the appeals regulations applicable to BIA actions, any effectiveness of the Regional Director's decisions was automatically stayed (as Appellant recognizes), *see* 25 C.F.R. § 2.6, when Appellant appealed to the Board. Neither the Regional Director nor Howard sought to have the Board place either decision into effect during the 6-month period that the recognition decision could have been effective by its own terms. If tribal members misrepresented the Regional Director's decisions as effective when they were not, Appellant's remedy lies in a forum other than this Board. The July 11, 2008, decision was not, by its terms, limited in duration, but it also did not purport to take any action necessary for government-to-government relations with the Tribe. To the extent that the decision's only apparent valid justification would have been to serve as a predicate for, and effectively part of, the July 31, 2008, recognition decision, we conclude that the July 11 decision is also moot. Because neither decision had any legal force or effect during the relevant 6-month period, our adjudication of the merits of those decisions would be a hypothetical exercise, and we conclude that these appeals are moot. Although the fact that neither decision was ever effective should sufficiently resolve this matter, for the sake of clarity the Board vacates the two decisions.

Background

The details of the tribal dispute leading up to the Regional Director's decisions are not relevant to our disposition of these appeals, but a brief summary provides some context. In March of 2008, Appellant, who had been elected to a 2-year term as Chief in June of 2007, announced his intent to resign, and arranged to include the remainder of his term in a regular annual election of officers held by mail-in ballot. In a General Council meeting held on June 7, 2008, the Council purported to accept Appellant's resignation, effective immediately, and to elect Howard to fill the position of Chief, pending certification of the regular election, the votes of which were also counted on June 7.

In the months prior to the General Council meeting, the tribal court, whose jurisdiction was itself disputed, had issued several orders to prohibit the General Council from meeting, although the court did not prohibit the Tribe from conducting the regular election. Howard garnered the most votes in the mail-in regular election, but controversy ensued over the certification of the election. By then, however, Howard had already been

sworn in pursuant to the General Council's action in the June 7 meeting. Subsequently, the tribal court issued the TRO declaring the General Council's actions, including its special election of Howard, to be null and void, and prohibiting Howard from holding himself out as Chief of the Tribe until further order of the court or until the regular election was officially certified, and Appellant tendered his resignation and swore in Howard as Chief.

Each faction sought to have BIA side with it: the Howard faction sought to be recognized as the tribal government, and Appellant transmitted the TRO to the Regional Director as evidence he was still Chief. On July 11, 2008, without providing any justification for issuing a decision, e.g., as an action necessary to BIA's government-to-government relationship with the Tribe,³ the Regional Director issued the decision stating that the tribal court had lacked jurisdiction to issue the TRO (or prior orders leading up to it), and that BIA would not recognize the court's order. Appellant appealed that decision to the Board.

On July 31, 2008, the Regional Director issued her second decision, this time directly addressing the tribal leadership issue. In this second decision, the Regional Director recited as justification for her decision the need to engage in negotiations with the Tribe for a fiscal year 2009 annual funding agreement for the Tribe's Indian Self-Determination Act contract with BIA. The Regional Director also stated that other pending transactions might require action. Turning to the leadership dispute, the Regional Director concluded that BIA would recognize Howard as Chief. By its terms, the recognition decision was characterized as interim and limited to the 6-month period commencing with the date of the decision — i.e., from July 31, 2008, until January 31, 2009. Appellant also appealed that decision to the Board.

Appellant and the Regional Director filed briefs on the merits. Neither the Regional Director nor Howard asked the Board to have the Regional Director's decisions made effective, and Appellant did not bring to the Board's attention any purported actions by BIA to implement those decisions.

On January 30, 2009, at the expiration of the 6-month period, the Regional Director issued a letter to Howard stating that the recognition decision would expire by its own terms on January 31, 2009, and that in the absence of any need to issue a new decision for government-to-government purposes, BIA would not do so. The Regional Director

³ There is some evidence that each faction sought BIA's intervention in order to either gain or maintain the upper hand in private business dealings with a bank which held tribal deposits, and which was threatening an interpleader action.

then moved to dismiss this appeal as moot. Appellant filed a brief in opposition to the motion, and the Tribe filed a brief in support.⁴

Discussion

Under the regulations applicable to BIA administrative decisions, a BIA decision is automatically stayed during the period for filing an appeal, *see* 25 C.F.R. § 2.6(a) & (b), and the automatic stay continues once an appeal is filed with the Board, *see* 43 C.F.R. § 4.314(a). The Board has the authority to place a Regional Director's decision into immediate effect, *see* 25 C.F.R. § 2.6(a), but unless and until it is made effective, the decision has no legal effect, and no legal consequences may flow from it. *See Picayune Rancheria of the Chukchansi Indians v. Acting Pacific Regional Director*, 48 IBIA 241, 244 (2009) (legal consequences flow if decision is allowed to become final and effective); *Quantum Entertainment, Ltd. v. Acting Southwest Regional Director*, 44 IBIA 178, 208 (2007) (BIA decision was of no force or effect because it was appealed to the Board), *remanded in part on other grounds, Quantum Entertainment Ltd. v. U.S. Department of the Interior*, Civ. No. 07-1295 (D.D.C. Feb. 19, 2009); *Nomee v. Acting Billings Area Director*, 18 IBIA 87, 87 n.2 (1989) (Board order to stay BIA decision was for clarification only).

During the 6-month time period in which the Regional Director's recognition decision, by its own terms, could have been made effective by the Board, neither the Regional Director nor Howard sought to have the Board do so. Thus, it remained, in legal

⁴ The Howard faction, in the name of the Tribe, sought leave to file an amicus brief, but the Board denied the Tribe's request because in substance the Tribe was seeking to file an untimely answer brief, and stated no good cause for being allowed to do so. In response to the Regional Director's motion to dismiss the appeals as moot, the Tribe filed a voluminous brief "in support of the motion to dismiss" that effectively argues the merits, and Appellant moved to strike the brief as outside the scope of permissible briefing. The Board agrees that the Tribe's brief largely, if not entirely, seeks to argue the merits, and to insert new arguments or facts, rather than respond to the limited issue raised by the Regional Director's motion to dismiss. The Board does not rely on the Tribe's brief in deciding that these appeals are moot.

effect, a nullity.⁵ And now that it has expired by its own terms without having become effective, Appellant's appeal from the decision is moot.

Appellant acknowledges that the effect of section 2.6 is to render the Regional Director's recognition decision without effect, *see* Appellant's Opposition to Appellee's Motion to Dismiss, at 7, but Appellant nevertheless seeks an adjudication by the Board on the merits to obtain vindication related to actions taken by tribal members after the decision was issued. If, as Appellant contends, the Howard faction took actions based on the Regional Director's recognition decision, or even misrepresented to third parties that her decision was effective, that conduct cannot be attributable to the decision actually being in effect — it was not. *Cf. Quantum Entertainment*, 44 IBIA at 208 n.25 (entity that acted on Regional Director's legally ineffective decision assumed the attendant risks). Appellant's complaints against other tribal members are not within the scope of this appeal, and his recourse against them, if any, lies with tribal mechanisms, and not with the Board.⁶

The Regional Director's July 11, 2008, decision, announcing that BIA would not recognize the tribal court's TRO as valid, was not by its terms limited in duration. But neither was it issued with any stated justification. At best, the only apparent justification for issuing the decision emerged in the July 31, 2008, recognition decision, which relies in part on the July 11 decision, thus making it a predicate for the recognition decision. When the recognition decision lapsed by its own terms, any justification for the predicate lapsed as

⁵ Not only was the decision without legal effect, but the Board has long held that once an appeal is filed with the Board, BIA loses jurisdiction over the matter. *Bullcreek v. Western Regional Director*, 39 IBIA 100, 101 (2003), and cases cited therein. Thus, we agree with Appellant that, to the extent the Regional Director's January 31, 2009, letter to Howard, which included appeal rights, purported to be a decision, it was issued without authority. The Regional Director had no jurisdiction to "declare" her prior decision as having expired, any more than she would have had authority to place it into effect. *See Hammerberg v. Acting Portland Area Director*, 24 IBIA 78, 78-79 (1993) (Area Director's reconsideration decision, made while an appeal was pending, was of no force or effect); *Wallace v. Aberdeen Area Director*, 26 IBIA 150, 153 (1994) (Area Director did not have authority to place his own decision into effect).

⁶ Of course, the Regional Director's recognition decision, if made effective, would have been for the limited purpose of government-to-government relations with the Tribe, and the dispute between Appellant and Howard would still have been subject to final resolution of the Tribe through tribal mechanisms. *See Poe v. Pacific Regional Director*, 43 IBIA 105, 113 (2006).

well. Thus, viewing the July 11, 2008, decision as an integral part of the recognition decision, we conclude that the appeal from that decision is also moot.⁷

Our confirmation that the Regional Director's decisions were without effect should be sufficient to end the matter. In several cases, however, in which the issue of whether a BIA decision has become moot is disputed, or the parties otherwise appear to desire to attach continuing significance to an admittedly moot decision, the Board has included in its order of dismissal an order vacating the underlying decision, to make it clear that the underlying decision had and has no force or effect. *See, e.g., Cloverdale Rancheria of Pomo Indians of California v. Pacific Regional Director*, 48 IBIA 308, 309, 312 (2009); *Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 275-76 (2005). We conclude that such action is appropriate by the Board in the present case to ensure that all parties fully understand that in granting the Regional Director's motion to dismiss this appeal as moot, no legal consequences may be deemed to have flowed from that decision.

Conclusion

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board vacates the Regional Director's decisions of July 11, 2008, and July 31, 2008, and dismisses these appeals as moot.⁸

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge

⁷ On the other hand, if we were to conclude that the appeal from the July 11 decision is not moot, we would summarily vacate it because, standing alone, it contains no factual or legal justification for its issuance. *See Parker v. Southern Plains Regional Director*, 45 IBIA 310, 322-23 (2007) (vacating a BIA decision intruding into tribal affairs that was issued without any factual or legal justification).

⁸ On September 4, 2009, the Board received from the Regional Director a "Notice of Election" results, which encloses a letter from Howard, as Chief, to the Miami Agency Superintendent, BIA, informing BIA of the results of a tribal election held on June 6, 2009, in which Howard was elected Chief (and Appellant did not run for office). We need not consider whether the 2009 tribal election would otherwise render these appeals moot, and thus we have not solicited responses to the Regional Director's filing.

IN THE COURT OF INDIAN OFFENSES
BIA-MIAMI AGENCY
P.O. BO 391
MIAMI, OKLAHOMA 74355

COURT OF INDIAN OFFENSES
FILED In The
Office Of The Court Clerk
AUG - 6 2012
Time 2:24 pm Recorded
In Docket of Page
Terry Seltor Court Clerk

RAYMOND L. RODGERS, a member of
the Seneca-Cayuga Tribe)

v.)

CIV 12-M13

ELECTION COMMITTEE OF THE
SENECA-CAYUGA TRIBE OF
OKLAHOMA and its Chairperson,
April Curnutte, et al.,)

CONSOLIDATED

And)

Terry Whitetree, et al,
Petitioners/Plaintiffs)

v.)

CIV 12-M14

Election Committee, in and for the
Seneca-Cayuga Tribe of Oklahoma, and
its members, Barbara Gonzalez, et al.)

ORDER SCHEDULING SPECIAL ELECTION
FOR THE SENECA-CAYUGA TRIBE OF OKLAHOMA
FOR SATURDAY, SEPTEMBER 8, 2012

NOW ON THIS 6th day of August, 2012, this Court considers the *Joint Motion of Plaintiffs, Requesting the Court to Order the Election Committee to Conduct a Special Election for September 8, 2012.*

Pursuant to the *Joint Motion of Plaintiffs*, for good cause shown, and in scheduling the Tribal Special Election in a timely manner referred to in my Order of July 31, 2012, FINDS:

1. A Special Election should be – and is hereby – scheduled for the Seneca-Cayuga Tribe of Oklahoma for Saturday, September 8, 2012;



2. The offices to be voted on at this Special Election shall be for the offices of Second-Chief; Secretary-Treasurer; Second Business Committee Member; and, Second Grievance Committee Member;

3. The Election Committee shall notify the Election Administrator forthwith of this Order scheduling the Special Election for Saturday, September 8, 2012;

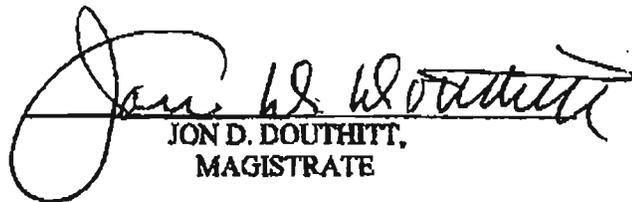
4. The Election Committee and the Election Administrator shall use the same Absentee Ballot Request List which was used in conducting the General Election held on June 2, 2012;

5. The Election Committee shall provide lawful notice to Seneca-Cayuga Tribal Members of this Special Election to be conducted on Saturday, September 8, 2012;

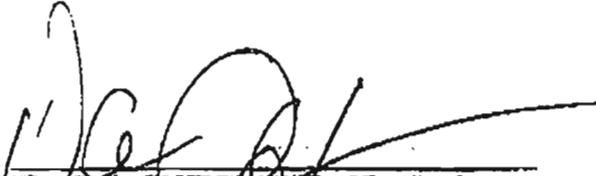
6. The Election Committee shall comply with all other aspects of the Seneca-Cayuga Election Ordinance duly adopted by the Seneca-Cayuga Tribal Business Committee on February 7, 2012; and

7. The Clerk of this Court is directed to notify counsel for the parties this date via email or facsimile.

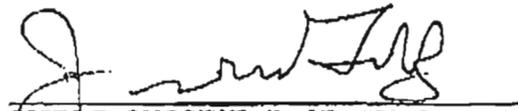
IT IS SO ORDERED.


JON D. DOUTHITT,
MAGISTRATE

APPROVED AS TO FORM:



DAVID L. CRUTCHFIELD, OBA #2062
105 First Avenue NE
Miami, OK 74354
918/542-8400 Telephone
918/542-8177 Fax
Attorney for Petitioner-Whitree



JOHN G. GHOSTBEAR, OBA#3335
8210 E. REGAL COURT, Ste. 100
Tulsa, OK 74133
918/747-6351 Telephone
918/747-6654 Fax
Attorney for Petitioner-Rodgers



SENeca-CAYUGA TRIBE
R2301 E. Steve Owens Blvd. P.O. Box 1283
(918) 542-6609 FAX (918) 542-3684
MIAMI, OKLAHOMA 74355

SECOND CHIEF
Katie Birdsong

13

Resolution # 01-060708

**"ADOPTING OF AGENDA, FIX THE TIME IN WHICH TO ADJOURN AND
RESCINDING OF UNCONSTITUTIONAL LEGISLATION"**

WHEREAS: The Seneca-Cayuga Tribe of Oklahoma is a Federally recognized Indian Tribe organized under the Oklahoma Indian Welfare Act of 1936 with a Constitution and By-Laws approved by the U. S. Secretary of Interior on April 26, 1937, and

WHEREAS: the Business Committee of the Seneca-Cayuga Tribe of Oklahoma is empowered under Article VI of the Constitution and By-Laws to transact business and otherwise speak or act on behalf of the Tribe on all matters on which the Tribe is empowered to act, NOW

WHEREAS: The General Council is the Supreme Governing Body, has the power and ability to exercise its authority over the Business Committee. The Business Committee is subordinate to the General Council and the Business Committee cannot override or disregard General Council directives or Resolutions, and,

WHEREAS: The General Council, according to the Election and Voting Ordinance of the Tribe, has the power to rescind said Ordinance. General Council feels the present Election and Voting Ordinance interferes with Tribal members' Constitutional right to assemble, deliberate and vote as the duly assembled, Supreme Governing Body of the Tribe, being the General Council and some that some Tribal members have been denied their right to vote under said Election and Voting Ordinance and by some certain Resolutions and Enactments passed by the Business Committee, NOW

THEREFORE, BE IT RESOLVED, the General Council, the Supreme Governing Body of the Tribe does hereby adopt the agenda for today's Annual Meeting of the General Council (attached hereto as Exhibit "A"), set/fix the time in which to adjourn the General Council Meeting, after the business of the day has been completed by adjourning until 10:00 a.m. on Saturday, June 21, 2008, in this location for the continuation of this meeting, that all votes of the day are to be conducted by rising count, no voice votes allowed, and,

SECRETARY/
TREASURER
Maree L. Pridgen

FIRST
COUNCILPERSON
Dustin White-Vin

SECOND
COUNCILPERSON
Jim Seaver

THIRD
COUNCILPERSON
Patricia Armstrong

FOURTH
COUNCILPERSON
Geneva Redbird



171

THEREFORE, BE IT RESOLVED, the General Council does hereby rescind certain parts of the Election and Voting Ordinance and does rescind all Resolutions and/or Ordinances enacted by the Business Committee regarding any General Council vote by mail process as it violates the Constitutional rights of Tribal Members. This portion of the Election and Voting Ordinance is hereby rescinded and revoked and the Business Committee is prohibited from enacting further legislation which provides for any form of referendum, absentee voting or any vote by mail process.

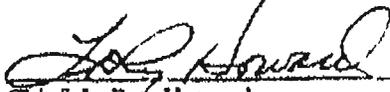
BE IT FURTHER RESOLVED that part of the Election and Voting Ordinance in which the Grievance Hearing process is to be conducted by absentee, referendum, or vote by mail ballot is hereby rescinded as General Council finds that portion to be unconstitutional. The Business Committee is prohibited from enacting further legislation on this matter. This right is exclusively reserved for the General Council of the Tribe.

BE IT FURTHER RESOLVED that the Election and Voting Ordinance of the Tribe is rescinded back to the Election and Voting Ordinance of the Tribe as it existed on January 1, 2005.

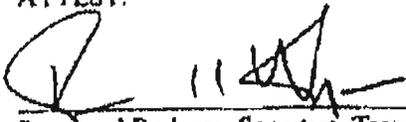
THEREFORE, BE IT FURTHER RESOLVED that the General Council, the Supreme Governing Body of the Tribe, is an assembled, legislative body which physically meets deliberates and votes at the assembled meetings of the General Council. This Resolution and Special Enactment shall be given immediate effect.

CERTIFICATION

The foregoing Resolution and Special Enactment was passed at the regular, Annual Meeting of the General Council of the Seneca-Cayuga Tribe of Oklahoma on the 7th day of June, 2008 with a vote of 65 for, 0 against, and 0 abstaining.


Chief, LeRry Howard

ATTEST:


Raymond Rodgers, Secretary-Treasurer

**IN THE DISTRICT COURT OF THE SENECA-CAYUGA TRIBE OF OKLAHOMA
MIAMI, OKLAHOMA**

**CHIEF PAUL SPICER and the SENECA-CAYUGA)
TRIBE OF OKLAHOMA,)**

Plaintiffs,)

v.)

Case No. 2007-CIV-01

DOLLY PEWITT, et al.,)

Defendants.)

TEMPORARY RESTRAINING ORDER

NOW on this 9th day of July, 2008, the Court considers Chief Paul Spicer's Verified Application for Temporary Restraining Order filed on June 23, 2008, and finds as follows:

1. Notwithstanding the prior orders of this Court staying and prohibiting any meeting of the General Council until further order of the Court pending hearing on the rules for the conduct of business at such meetings, some, if not all, of the Defendants participated in a meeting of tribal members on June 7, 2008, wherein they purported to act as the General Council and adopt various legislation, and to elect officers. The participants purported to elect LeRoy Howard as Chief, Katie Birdsong as Second Chief, Ray Rodgers as Secretary-Treasurer, among others.

2. The official election conducted pursuant to the Tribe's Election and Voting Ordinance has not been certified, apparently at least partially due to a challenge filed by candidate Mike Jones that the Election Committee has not ruled on said challenge due to its claim that it was interfered with in investigating and is seeking legal counsel regarding the matter, and that such interference was caused by Howard and others in control of the Tribal offices.

3. According to the Election Ordinance, officers cannot be sworn in until their election is certified by the Independent Contractor, which in this case is Chris H. Conine, P.C. Conine's firm has not certified the election at least partially due to the challenge of Jones.

4. Under the Tribe's Constitution, officers serve until their successor is elected and installed.

5. Chief Paul Spicer announced that he would resign effective upon swearing in his successor. Chief Spicer has further alleged that he not tendered his formal resignation, nor has he sworn in his successor.

6. Despite the foregoing, LeRoy Howard, Katie Birdsong, Ray Rodgers, Geneva Fletcher-Records and others purported to have themselves sworn in as tribal officers, and have held themselves out to the world as being the duly elected and installed Business Committee of the Tribe, and have purported to adopt resolutions and other items of business on behalf of the Tribe.



7. Howard, Birdsong, Rodgers and others acting in concert with them apparently have taken over the Tribe's offices headquarters in Miami, Oklahoma, and have changed the locks.

8. These actions are causing ongoing and irreparable harm to the Tribe and its members. The harm to the Tribe by a group unlawfully purporting to have authority to take action in the name of the Tribe, whether the group that purported to meet and take action as General Council, or those that purported to meet and take action as the Business Committee, is evident. No adequate remedy at law exists to repair the unlawful usurpation of Tribal governance. The injuries to the Tribe are causing other irreparable harm.

9. Chief Spicer is likely to prevail on the merits. The complained of actions are facially unlawful, in violation of this Court's prior orders and of Tribal laws, including especially the Election and Voting Ordinance and Constitution.

10. No notice should be required for this Order, since the injuries being inflicted stem from conduct which was facially in violation of this Court's prior orders and the plain letter of Tribal law. The actors being enjoined had notice of this Court's Order and of Tribal law, and acted in intentional violation thereof. No notice is required before an order to declare such actions unlawful, invalid, null and void. The actors will have the opportunity to come forward with pleadings and at hearing to show why this order should be dissolved.

Considering the foregoing findings, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

Any meeting of tribal members conducted on June 7, 2008, June 21, 2008, or any other date, purporting to be the General Council of the Tribe, was and is unlawful and null and void to the extent it purported to act as or on behalf of the Tribe. Any resolutions, ordinances, legislation, or other action taken at the June 7, June 21, or any other meeting, is hereby declared invalid. The meetings have been conducted in violation of this Court's May 13 Order and in violation of Tribal law passed by the duly-elected Business Committee.

11. The annual election conducted pursuant to the Election and Voting Ordinance has not been certified. Under the Election and Voting Ordinance, new officers cannot be sworn in until the election is certified. The purported swearing-in ceremonies of June 10, 2008, wherein LeRoy Howard, Katie Birdsong, Ray Rodgers and others had themselves "sworn in" as tribal officers was and is invalid, and legally null and void and of no effect.

12. Any and all actions taken by Howard, Birdsong, and Rodgers, purporting to act as duly-elected and installed members of the Tribe's Business Committee, including all resolutions or other acts purportedly adopted by them, are invalid, and legally null and void and of no effect.

13. The current Chief of the Seneca-Cayuga Tribe is Paul Spicer. Spicer was elected in 2007 to a two year term, expiring in 2009. Spicer has previously announced that he planned to resign effective when he swore in his successor, and a special election for the remainder of his term was therefore added to the regular annual election tabulated unofficially on June 7, 2008. The unofficial winner of that special election for the remainder of Spicer's term is LeRoy Howard.

Spicer has not resigned, and the election has not been certified. Spicer remains Chief of the Tribe, until such time as he tenders his official written resignation to the Business Committee, and swears in his successor or until further order of this Court.

14. The current official composition of the Tribe's Business Committee is as follows:

- a. Chief: Paul Spicer;
- b. Second Chief: vacant
- c. Secretary-Treasurer: vacant
- d. First Councilperson: Sharon Winnie-Vann
- e. Second Councilperson: Mike Jones;
- f. Third Councilperson: Patricia Armstrong
- g. Fourth Councilperson: Dennis Wadsworth.

15. This Court's May 13 Order remains in full effect, and all Defendants, anyone acting in concert with them, or anyone else with notice and purporting to act as or on behalf of the Tribe, are prohibited, enjoined and restrained from purporting to meet or otherwise act as the General Council of the Seneca-Cayuga Tribe, until further order of this Court pending hearings in the above-captioned case.

16. LeRoy Howard, Katie Birdsong, Ray Rodgers, Jim Spicer, and Geneva Fletcher-Records are hereby prohibited, enjoined and restrained from holding themselves out as duly-elected and installed officers of the Tribe, and from purporting to meet or otherwise act purporting to be officers of the Tribe, until further order of the Court, or until their election is officially certified by Chris H. Conine, P.C., and they are legally sworn in to office, and in Howard's case, until Chief Spicer tenders his resignation and causes Howard to be sworn in, or until further order of this Court.

17. Howard, Birdsong and Rodgers, and all those acting in concert with them, are hereby ordered to immediately surrender physical possession and control of the Tribe's offices in Miami and Grove, turn the keys over to Chief Spicer, and allow him to access the office to ensure that Tribal business and affairs can proceed in the ordinary course of business.

18. The Court takes judicial notice of the unofficial results of the election and accordingly sue sponte prohibits, enjoins and restrains the Chief and Business Committee from taking any action outside the normal and ordinary course of business pending the certification of the election or further order of the Court.

SO ORDERED, this 23rd day of June, 2008.

s/ Karl D. Jones Hon.
Karl Jones, District Court Judge

SENECA-CAYUGA NATION
ELECTION AND VOTING ORDINANCE
Adopted April 6, 2016



TABLE OF CONTENTS

ARTICLE	SECTION	TOPIC
I		AUTHORITY
II		PURPOSE
III		EFFECTIVE DATE
IV		REPEALER
V		SEVERABILITY
VI		CONDUCT OF ELECTIONS
	1.	Engagement of Independent Election Administrator
	2.	Election of Nation Officials
	3.	Referendum Questions on the Ballot
	4.	Nation Support Staff
VII		ELECTION PROCEDURES
	1.	Election Notice
	2.	Committee Positions To Be Elected
	3.	Declaration of Candidacy – Filing Period
	4.	Filing Fee
	5.	Withdrawal
	6.	Filing, Withdrawal and Re-Filing
	7.	Qualifications of Elected Officials
	8.	Testing Qualifications of Candidates
	9.	Challenge of Candidates
VIII		VOTING PROCEDURE
	1.	Persons Eligible to Vote
	2.	Eligible Voter List
	3.	Ballot Boxes, Electronic Tabulators and/or Laptop Computers
	4.	Ballots
	5.	Ballot Packet Voting Procedures
IX		COUNTING BALLOTS
	1.	Procedure for Counting Ballots
	2.	Tie Votes
	3.	Election Disputes
	4.	Certification and Announcement of Election Results
X		INSTALLATION OF ELECTED OFFICIALS
	1.	Procedure
	2.	Oath of Office

TABLE OF CONTENTS – CONTINUED

XI	VOTING ON REFERENDUM QUESTIONS
1.	Form of Proposition and Deadline
2.	Ballots for Referendum Votes
3.	Method of Voting
4.	Counting of Ballots
5.	Certification and Announcements
6.	Effect of Law
XIII	ELECTION COMMITTEE
1.	Authority
2.	Election Committee Composition
3.	Meetings
4.	Records
5.	Duties of Election Committee
6.	Conflict of Interest
	CERTIFICATION OF ENACTMENT

SENECA-CAYUGA NATION
ELECTION AND VOTING ORDINANCE OF 2016

ARTICLE I

AUTHORITY

This Election and Voting Ordinance of the Seneca-Cayuga Nation is adopted by the Business Committee of the Seneca-Cayuga Nation pursuant to Article VIII of the Constitution of the Seneca-Cayuga Nation, as amended April 6, 2016.

ARTICLE II

PURPOSE

The purpose of this Ordinance is to establish guidelines, rules and orderly Election and Voting procedures of the Seneca-Cayuga Nation in accordance with Article VIII of the Constitution.

ARTICLE III

EFFECTIVE DATE

This Election and Voting Ordinance shall be effective immediately and for the conduct of the annual election of officials of the Seneca-Cayuga Nation to be held on the first Saturday of June 2016 and shall continue in effect until rescinded by Resolution of the Seneca-Cayuga Nation Business Committee.

ARTICLE IV

REPEALER

Any previous Election and Voting Ordinance is hereby repealed.

ARTICLE V

SEVERABILITY

Should any part of this Ordinance be determined to be unconstitutional, then and in that event, the remainder of this Ordinance shall continue to be given full effect and shall survive such determination.

ARTICLE VI

CONDUCT OF ELECTIONS

SECTION 1. ENGAGEMENT OF INDEPENDENT ELECTION ADMINISTRATOR

(a) By no later than the third Tuesday of February each year, the Business Committee shall engage the services of any Election Administrator as an independent contractor to conduct that year's regular or special election(s) of Nation officials. The independent contractor so engaged shall perform the duties and powers cited herein and shall conduct the Tribal election(s) in compliance with this Ordinance, their engagement contract and the Constitution and By-Laws of the Seneca-Cayuga Nation.

(b) The engagement contract entered into between the Nation and Election Administrator shall contain the following provisions.

(1) Contractor agrees that no person who has a financial interest in Contractor is or shall be a candidate for an elected position of the Nation's Government, nor is or shall be related to an elected member of the Nation's Government, nor is or shall be related to a candidate for an elected position of the Nation's Government.

(2) Contractor agrees that no elected member of Nation's Government, nor a candidate for an elected position of the Nation's Government, nor a relative of an elected position of the Nation's Government, nor a relative of a candidate for an elected position of the Nation's Government may be hired or work as an employee of Contractor.

(c) The Election Administrator so engaged shall report to the Business Committee.

SECTION 2. ELECTION OF NATION OFFICIALS

(a) Regular Election. In accordance with Article VIII of the Constitution of the Seneca-Cayuga Nation, the regular election of officers shall be held annually on the first Saturday of June of each year and shall be conducted pursuant to this Nation Election and Voting Ordinance prescribed by the Business Committee.

(1) The Business Committee, consisting of seven (7) members, shall be elected as follows: The Chief, First and Third Committee Members in accordance with *Seneca-Cayuga Nation Constitution, Article VIII – Annual Meetings*, and the Second Chief, Secretary-Treasurer, Second and Fourth Committee Members in accordance with *Seneca-Cayuga Nation Constitution, Article VII – Annual Meetings*. Positions of the Business Committee shall be elected as follows:

CHIEF (4 YEAR TERM) CURRENT TERM TO EXPIRE JUNE 2016;
SECOND CHIEF (4 YEAR TERM) CURRENT TERM TO EXPIRE JUNE 2018;
SECRETARY-TREASURER (4 YEAR TERM) CURRENT TERM TO EXPIRE JUNE 2018;
FIRST COUNCILPERSON (4 YEAR TERM) CURRENT TERM TO EXPIRE JUNE 2016;
SECOND COUNCILPERSON (4 YEAR TERM) CURRENT TERM TO EXPIRE JUNE 2018;

THIRD COUNCILPERSON (4 YEAR TERM) CURRENT TERM TO EXPIRE
JUNE 2016;

FOURTH COUNCILPERSON (4 YEAR TERM) CURRENT TERM TO
EXPIRE JUNE 2018

(2) The Grievance Committee consisting of five (5) members shall be elected as follows:

FIRST POSITION (4 YEAR TERM) CURRENT TERM TO EXPIRE JUNE
2016;

SECOND POSITION (4 YEAR TERM) CURRENT TERM TO EXPIRE JUNE
2018;

THIRD POSITION (4 YEAR TERM) CURRENT TERM TO EXPIRE JUNE
2016;

FOURTH POSITION (4 YEAR TERM) CURRENT TERM TO EXPIRE JUNE
2018;

FIFTH POSITION (4 YEAR TERM) CURRENT TERM TO EXPIRE JUNE
2016

(3) Voting shall be by secret ballot and the Business Committee candidates receiving the highest number of votes shall be elected to a four (4) year term of office. Grievance Committee candidates receiving the highest number of votes shall be elected to a four (4) year term of office.

Pursuant to Article IX of the Constitution of the Seneca-Cayuga Nation, vacancies in any elective office shall be filled at any regular or special meeting of the general Council. The filling of vacancies in any elective office shall be by secret ballot and such election shall be conducted pursuant to this Ordinance.

(b) Special Election. A Special Election to fill vacancies in any elective office shall be conducted in accordance with this Ordinance and shall be called as follows:

(1) Upon the declaration by Resolution of the Business Committee that an elected position in the Business Committee or Grievance Committee is vacant, due to death, resignation, or removal of an elected official, a special election shall be held. The special election shall be conducted in accordance with this Ordinance.

SECTION 3. REFERENDUM QUESTIONS ON THE BALLOT

(a) Referendum questions shall be submitted and put on the Annual Election Ballot on the first Saturday of June by the Chief and/or a quorum of the Business Committee.

(b) Referendum questions may also be submitted for vote by the Chief and/or quorum of the Business Committee. Conducting of referendum vote must be in accordance with this Ordinance pursuant to ARTICLE XI, Voting on Referendum Questions.

SECTION 4. NATION SUPPORT STAFF

(a) The Nation's Enrollment Officer shall be available at the Nation's Headquarters throughout the election and voting period and at the Nation's Headquarters on Election Day, to provide verifications or certifications of Nation membership to the Election Administrator engaged by the Business Committee pursuant to Section 1 of this Article. The Enrollment Officer shall be available, at Election Administrator's request, to perform such support services as may be required by the Election Administrator to include but not to be limited to mail services, to receive Declarations of Candidacy, record and prepare receipts of candidate filing fees, maintaining a list of candidates and other duties as assigned. Additional Nation support staff may be appointed by the Business Committee upon the written request of the Election Administrator. The duties of any such additional support staff shall be determined by the Election Administrator.

(b) The Election Administrator will be available at any General Council meeting to provide verification of eligible attendees. The Election Administrator shall also oversee all General Council votes to be conducted by "secret ballot".

ARTICLE VII

ELECTION PROCEDURES

SECTION 1. ELECTION NOTICE

The Regular Election Notice shall be published by the Election Administrator no later than the fourth Friday in March of each year. In the event that a Special Election is called by the Business Committee or the General Council pursuant to ARTICLE VI, SECTION 2(b) of this Ordinance, or a question or questions are to be submitted to a vote of the General Council pursuant to ARTICLE VI, SECTION 3 of this Ordinance, the Special Election Voting Notice shall be published no later than 45 days before the date set for the Special Election. The Election Notice shall include, but not be limited to the following:

- (a) Position(s), by Committee, to be elected, if any;
- (b) Questions to be submitted for referendum vote pursuant to Article VI, Section 3 of this Ordinance, if any;
- (c) Election date;
- (d) Place, time-frame and the qualifications required (to include documentary evidence to be submitted) for the filing of a Declaration of Candidacy.
- (e) Bio and picture for newsletter.

The Election Administrator shall cause the Election Notice to be published in the Miami News Record, the Grove Sun newspaper and the Seneca-Cayuga Nation Newsletter. The Election

Administrator shall cause the Election Notice to be posted in such places as the Nation's Headquarters Building, the Nation's Community Center Building, the Nation's Human Resources Building, the Nation's Tobacco Company Building, the Nation's Casino Building and the Bureau of Indian Affairs Miami Agency Building,

(f) The Election Notice shall also include the pertinent information regarding the Ballot Process.

(g) The Chief shall ensure that the Special Edition Nation's Election Newsletter shall contain all pertinent election information. Each qualified candidate for office shall be allowed to submit for publication in newsletter a one-page biography and/or political platform letter. Qualified candidates may also submit a picture for publication. Candidate's letters shall be listed according to official list of candidates. The Special Edition Newsletter shall be mailed to every eligible voter who has an address listed on the Official Voter List.

SECTION 2. COMMITTEE POSITIONS TO BE ELECTED

The Nation's Enrollment Officer, in conjunction with the Nation's Secretary-Treasurer, shall maintain a record of all Committee Members to include the name and address of each elected official and their term of office. The Nation's Secretary-Treasurer will notify the Election Administrator engaged by the Business Committee pursuant to ARTICLE VI, SECTION 1 of this Ordinance and the positions, by Committee, to be elected.

SECTION 3. DECLARATION OF CANDIDACY - FILING PERIOD

Any qualified member of the Seneca-Cayuga Nation who desires his/her name to be placed on the ballot as a candidate for office shall file a Declaration of Candidacy with the Election Committee or the Nation's Enrollment Officer at the Grove, Oklahoma, Nation Headquarters Office in the form prescribed by the Election Committee. The Burden of Proof shall be on the candidate to meet the qualifications of elected officials. The form prescribed by the Election Committee shall require prospective candidates to attach sufficient documentary evidence that the requirements set forth within SECTION 8 QUALIFICATIONS OF ELECTED OFFICIALS of this Article are met. Such required documentary evidence will consist of:

- (a) a copy of a valid driver's license to prove identity, age and current address; or
- (b) a copy of Seneca-Cayuga Nation Membership Card; or,
- (c) a valid state issued identification card or a valid United States Passport; and
- (d) any other documentation as requested by the election committee to determine tribal member eligibility or qualification for candidacy in the event of a protest or challenge to eligibility for candidacy.

The Declaration of Candidacy must be filed in writing and filed in person with the Election Committee or Nation's Enrollment Officer on the first Thursday, Friday, or Saturday of April

each year. In the event that a Special Election is called by the Business Committee or the General Council pursuant to ARTICLE VI, SECTION 2(b) of this Ordinance, the election notice shall specify the address and deadline for filing. No person shall be a candidate for more than one (1) office at any time.

SECTION 4. FILING FEE

There shall be a non-refundable filing fee of One Thousand Dollars (\$1,000.00) for Chief position, Seven Hundred Fifty Dollars (\$750.00) for Business Committee positions and Three Hundred (\$300.00) for Grievance Committee positions. Filing fees will be paid by cashier's check or money order only. The filing fee shall be paid on the same date the prospective candidate submits his/her declaration of candidacy. The filing fee shall be deposited into the Nation's General Operations Account to defray the expenses incurred during the election.

SECTION 5. WITHDRAWAL

A candidate seeking an office may withdraw by filing a written Notice of Withdrawal with the Election Administrator or the Nation's Enrollment Officer at the same address specified in the election notice and his/her name shall not appear on the ballot. Such notice shall contain the candidate's name and the office for which he/she is a candidate and signed by the candidate withdrawing and notarized. In the event a candidate withdraws subsequent to the printing of ballots, the Election Administrator shall mail notice of same to all Eligible Voting Members as soon as practicable. Any votes cast for a withdrawn candidate shall not be counted.

SECTION 6. FILING, WITHDRAWAL AND RE-FILING

In the event a prospective candidate has filed a Declaration of Candidacy, including the filing fee, and then desires to change or file for a different elected position/office, such candidate shall withdraw from the initially filed position/office; pursuant to SECTION 6 WITHDRAWAL of this Article. The filing of candidacy process shall begin anew, including a non-refundable filing fee for the position specified, provided the new Declaration of Candidacy is made before the deadline outlined in SECTION 4 DECLARATION OF CANDIDACY of this Article.

SECTION 7. QUALIFICATIONS OF ELECTED OFFICIALS

(a) A prospective candidate for elective office of the Seneca-Cayuga Nation must meet all of the requirements contained within Article III, membership of Nation, in addition to Article II of the By-Laws to the Constitution of the Seneca-Cayuga Nation as follows:

- (1) Be not less than twenty-five (25) years of age,
- (2) Be a member of the Seneca-Cayuga Nation, and
- (3) Reside within a radius of one hundred fifty (150) miles in any direction from the Basset Grove Stomp Grounds.

SECTION 8. TESTING QUALIFICATIONS OF CANDIDATES

By no later than the Wednesday following the filing period, set forth within SECTION 3 of this Article, the Election Committee shall review all filings for the elected offices to determine that the prospective candidates meet the qualifications set forth in SECTION 7 of this Article. If the Election Committee determines a person is not eligible to be a candidate, the Election Committee shall so notify that person in writing of their decision and the prospective candidate shall be given until the Friday following the filing period, set forth within SECTION 3 of this Article, to provide any additional documentary evidence required to establish their eligibility. Failure of the prospective candidate to provide said requested documentation by said deadline shall result in the person's name not being included on the ballots. The Election Committee shall make its determination regarding qualifications of candidates no later than the Saturday following the filing period in April set forth within SECTION 3 of this Article. All such determinations of the Election Committee shall be made by a meeting called by the Election Committee Chairman by a majority vote of committee members consisting of a quorum of the Election Committee members present.

APPEAL OF ELECTION COMMITTEE DECISION

The Election Committee's determination may only be appealed to the Business Committee. Such must be done in writing no later than the Wednesday following the determination of the Election Committee. Upon receipt of a written appeal the Business Committee shall hold a hearing to consider the appeal. The hearing shall be conducted by a quorum of Business Committee members with prior notice to all parties and render a decision on the appeal no later than the Tuesday following the filing of the appeal. All such appeals to the Business Committee are final. Business Committee members that have a personal interest in the election or outcome of the appeal must abstain from voting on the decision.

SECTION 9. CHALLENGE OF CANDIDATES

(a) Filing Challenge: Any qualified voter may challenge the eligibility of any person to be a candidate by filing with the Election Committee a written statement setting forth the grounds for evidence supporting the challenge, along with a Five Hundred Dollar (\$500.00) non-refundable fee. Any such challenges shall be filed no later than the Tuesday following the closing of the filing period. Each petition must state the reason(s) the candidate is not eligible to file for office. The same shall be considered when SECTION 9 TESTING QUALIFICATIONS OF CANDIDATES of this Article is addressed by the Election Committee.

The filing fee shall be paid on the same date the Challenge is submitted and said filing fee shall be paid to the Election Committee Chairperson of the Nation for deposit into the Nation's General Operations Account to defray the expenses incurred during the election.

(b) Procedure For Response: Upon receiving a petition challenging a candidate, or determining a challenge exists, the Election Committee shall deliver to the challenged candidate a summary of the issues or the petition. A written response may be filed with the Election Committee by the challenged person no later than the day set for performance of the duties of the Election Committee as set forth in SECTION 3 of this Article. The Election Committee's determination may only be appealed to the Business Committee. Such must be done in writing

no later than the Wednesday following the determination of the Election Committee. The Business Committee shall hold a hearing with prior notice to all parties and render a decision on the appeal no later than the Tuesday following the filing of the appeal. All such appeals to the Business Committee are final.

ARTICLE VIII

VOTING PROCEDURES

SECTION 1. PERSONS ELIGIBLE TO VOTE

(a) Pursuant to Article IV of the Constitution of the Seneca-Cayuga Nation, eligible voters shall be the Seneca-Cayuga General Council, consisting of all members enrolled in conformance with Article III of the Seneca-Cayuga Constitution who are eighteen (18) years of age and older on the day of election.

If a deceased member's outside return envelope is properly completed and postmarked on or before their date of death, the ballot will be counted. If the outer envelope is postmarked after the date of death, the ballot will not be counted.

SECTION 2. ELIGIBLE VOTER LIST

(a) Pursuant to Section IX of the Seneca-Cayuga Nation's Enrollment Ordinance, the Nation's Enrollment Officer shall compile an up-to-date and accurate "Eligible Voter List" of qualified Nation Members who have fulfilled the requirements, as set forth within SECTION 1 of this Article, giving them the right to vote in the Nation Election.

(b) In keeping with Section IX B. of the Seneca-Cayuga Nation Enrollment Ordinance, the Nation's Enrollment Officer will, upon receipt of the written request of the Election Administrator engaged by the Business Committee pursuant to ARTICLE VI, SECTION 1 of this Ordinance, provide for said Election Administrator's use during the election and voting period an up-to-date "Eligible Voter List" of the individuals on the Nation's Membership Roll meeting the requirements as set forth within SECTION 1 of this Article. The Election Administrator will exercise extreme care to ensure the list remains only within the Election Administrator's possession and used only for the purposes of the election of officers of the Seneca-Cayuga Nation. The "Eligible Voter List" shall remain in the possession of the Election Administrator during the election and voting period and shall not be released to any other person. The Election Administrator shall install adequate safeguards to ensure the "Eligible Voter List" is not removed, copied, or otherwise made available to anyone outside of the Election Administrator.

(c) Updating Records: Upon receipt of appropriate documentation, as defined within the Enrollment Ordinance of the Seneca-Cayuga Nation, the Nation's Enrollment Officer shall

update the Official Nation Membership Roll. The Nation Membership Roll will be up-dated following the annual meeting of the General Council. The membership roll will also be up-dated throughout the year to ensure persons enrolled pursuant to the Enrollment Ordinance not requiring General Council vote are included and will be purged throughout the year to ensure that persons who have relinquished their membership, or who are deceased are removed from the list. The up-to-date "Eligible Voter List" as of sixty (60) days prior to the date of a scheduled election will become the official "Eligible Voter List" that will be provided by the Enrollment Officer to the Election Administrator. The "Eligible Voter List" shall be used by the Election Administrator for mailing of Ballots. Ballot Packets shall include:

- (1) Election Notice
- (2) Ballot
- (3) Instructions for filling out and date for returning of Ballot; and,
- (4) Pre-addressed, stamped envelope to be returned to Election Administrator.

Only those members of the Nation who have returned their Ballot by the date specified are allowed to vote in the Nation's Elections.

(d) If a person is inadvertently left off the "Eligible Voters List" and does not receive a Ballot, such person can present evidence to the Election Administrator, in writing, of their eligibility to vote, Nation roll number, phone number and address. The Election Administrator shall then confirm the member's eligibility, will then manually add the individuals name to the "Eligible Voters List", and mail such individual a Ballot.

(e) If the Eligible Voters List does not contain an address for a member, the member will not be mailed a Ballot. If the member who was not mailed a ballot packet due to no address subsequently requests a Ballot; the member must provide a written request for a Ballot Packet to the Nation's Enrollment Officer with a mailing address, Nation roll number and phone number. The Enrollment Officer will then immediately forward the written request (information included) to the Election Administrator.

(f) All Qualified Candidates shall receive a copy of the Eligible Voter Mailing List: The Election Administrator shall see that every Qualified Candidate for office shall receive a copy of the Eligible Voter Mailing List at the time of filing for elective office.

SECTION 3. BALLOT BOXES. ELECTRONIC TABULATORS AND/OR LAPTOP COMPUTERS

(a) Description: There shall be no less than three (3) ballot boxes provided to the Election Administrator for use during the election, each capable of holding a minimum of 400 ballots. Said ballot boxes shall be constructed of substantial material and each shall be equipped for the attachment of a lock. Said locks shall be provided by the Election Administrator.

(b) Electronic Tabulators and/or Laptop Computers: There shall be not less than three (3) Electronic Tabulators provided by the Election Administrator for use during the election. Laptop computers are also allowable as a means of tabulating ballots. Said Electronic Tabulators shall be constructed of substantial material and each shall be equipped for the security of ballots by the

Election Administrator. Not less than three (3) Electronic Tabulator or laptop shall be provided for the counting of returned ballot packets. Not less than one Electronic Tabulator or laptop for the counting of "secret ballot" voting at General Council meetings.

(c) Keys to Ballot Box Locks and Electronic Tabulators: Keys and locks to be placed on the ballot boxes shall be furnished by and maintained only by the Election Administrator during the election and voting period. Any keys for the Electronic Tabulators used shall be furnished by and maintained only by the Election Administrator during the election and voting period.

(d) Ballot Boxes: Ballots will be picked up the day of the election at 11:00 A.M. The Election Administrator shall open the ballot boxes and show them to be empty of all materials in front of two (2) Election Committee Members. The Post Office Box is then opened and all returned ballots are placed in the ballot boxes, the ballot boxes locked and sealed for transport to the Nation's Headquarters or other location designated by Chief. Upon arrival at the Nation's Headquarters Office the Election Administrator shall unlock and empty the ballot boxes in the presence of not less than two (2) Election Committee Members. The emptied ballot boxes shall then be re-closed and re-locked in the presence of the two (2) Election Committee Members. All envelopes containing returned ballots will then be checked to determine if the sender is an Eligible Voter. Only one (1) ballot shall be allowed per envelope. The Election Administrator shall proceed to verify that the name contained on each pre-addressed and stamped outer envelope is contained on the list of persons who were mailed ballots pursuant to SECTION 5(2) of this Article. If the name contained on the outer envelope is contained on the Official Voters List, the sealed outer envelope will be removed and the inner envelope containing the ballot will then be placed back into the locked ballot box. Once the voter eligibility verification process has been completed, the Election Administrator shall proceed to the counting of the ballots.

(e) Election Records and Ballot Boxes: After each election, all election records and ballots shall be placed in locked ballot boxes and stored by the Election Administrator in a secure location. No later than the following day after the election results are certified and posted the ballot boxes and all materials used in the election shall be delivered to the Seneca-Cayuga Nation 2nd Chief and placed in the vault and shall be maintained as a permanent record of the Seneca-Cayuga Nation. Ballots shall only be held for three (3) months after the election results are certified thereafter, the 2nd Chief of the Nation shall cause them to be destroyed.

SECTION 4. BALLOTS

(a) Appearance of Candidate's Name: The name of any candidate for office shall be printed on the official ballot as it appears on the Declaration for Candidacy form as filled out by the qualified candidate. Each qualified candidate shall not have any prefix, suffix or title placed before or after his/her name.

(b) Unopposed Candidates: Any candidate who is unopposed in any election shall be deemed to have been elected, and his/her name will not appear on the ballot in any election in which he/she is so unopposed.

(c) Manner of Printing Ballots for Elections: The official ballot for the election shall be printed so that the candidate's name will appear with an appropriate location indicating a voter's choice alongside each candidate's name.

(d) Order of Name on Ballots for Elections: On all election ballots, the names of the candidates for each office shall be listed in alphabetical order according to the candidate's last name.

(e) Number of Ballots: The Election Administrator shall ensure that for every election a sufficient number of ballots shall be printed so that all eligible voting members receive a ballot and a number of additional ballots are available in case of spoiled ballots.

SECTION 5. BALLOT PACKET VOTING PROCEDURES

(a) Mailing of Ballot Packets: the Election Administrator shall mail a ballot packet to each eligible voter on the "Official Voter List".

(1) Eligible Voters List Obtained: No later than sixty (60) days before the date set for any given election the Election Administrator shall submit a written request, pursuant to SECTION 2 (c) of this Article, to the Seneca-Cayuga Nation Enrollment Committee - Attention Enrollment Officer, requesting to be provided with the "Eligible Voters List" for the pending Nation election. The Election Administrator shall utilize the "Eligible Voters List" to complete the mailing of Ballot Packets to all eligible voters. Ballot Packets must be mailed not less than 25 days prior to Election Day.

Upon return of any ballot packet to the Election Administrator as undeliverable, the Election Administrator shall verify the mailing address is the same address shown on the Voting List. If the address is incorrect then the Election Administrator will mail the ballot packet to the corrected address. If the address is correct, the Election Administrator shall use his best efforts to mail the ballot to the eligible voter based on corrected information so provided by the US Postal Service.

(b) Ballot Packet Content: The Ballot Packet mailed to each voter pursuant to SECTION 5 (a) of this Article, shall be mailed in an envelope containing the return address of the SENECA-CAYUGA NATION - ELECTION at the Grove, OK Election Post Office Box address and contain the following:

- (1) An inner envelope bearing the outside, the words; "OFFICIAL BALLOT".
- (2) A ballot and instructions for completion of the ballot.
- (3) A stamped outer envelope, pre-addressed to the SENECA-CAYUGA NATION - ELECTION at the Grove, OK Election Post Office Box and with a Certificate on the underside, which will read as follows:

I certify that I marked the enclosed ballot in secret.

Signature: _____

Print Name: _____

All voters shall be notified that in order to be counted, all ballots must be received by return mail no later than 11:00 A.M. the day of "Election Day". No hand carried ballots shall be accepted, it is required that the official envelope assigned to the Nation Member by the Election Administrator be used, otherwise ballot will not be counted.

After the ballots are picked up and processed the day of the election, the Election Administrator will cancel all the ballots returned as undeliverable and in his/her possession. The Election Administrator will open the ballot mailing and write, "VOID" across the face of the ballot and sign and date the ballot. The voided ballot must be retained as part of the election records.

If a ballot is mutilated upon receipt in mail or by the voter, then the voter may return the ballot in its entirety to the Election Administrator and request in writing issuance of a new ballot so long as request is received prior to Election Day. Upon receipt of the mutilated ballot the Election Administrator will sign and date the ballot and write "SPOILED - Replaced by Ballot No. " and write the number of the replacement ballot in the blank space. The spoiled ballot shall be retained as part of the election records. The Election Administrator will then issue the proper replacement ballot to the voter.

(c) Records/Receipt of Ballot Packets: The Election Administrator shall keep a record of the name of the voter, date and address and when the ballot packets were mailed, in addition to the complete ballot packet envelope and store such materials in accordance with the requirements for storage and preservation of ballots and information contained herein Election Administrator shall also record if an individual requested a ballot packet and record if individual was a voter or not. Beside each voter's name, Election Administrator shall cause to have the words "BALLOT RECEIVED" beside each voter's name in which the ballot was received back in mail.

(d) NO ELECTIONEERING OR LOITERING SHALL BE ALLOWED WITHIN FIVE-HUNDRED FEET OF POLLING PLACE PREMISES. This includes inside or outside the Polling Place premises, during such time as ballots are being counted. The Election Administrator shall request security personnel for assistance as may be required to maintain order about the building during the hours of election. The Business Committee shall cause a misdemeanor complaint to be filed with the Court of Indian Offenses against any such violators (offenders) of this section.

If offender is a member of the Seneca-Cayuga Nation, the Business Committee shall vote, by resolution, to ban member from all lands and enterprises owned by the Nation for a period of not less than two (2) years. If offender is a non-member of the Nation, the Business Committee shall vote, by resolution, to ban offender from all lands and enterprises owned by the Nation forever.

ARTICLE IX

COUNTING BALLOTS

SECTION 1. PROCEDURE FOR COUNTING BALLOTS

(a) Securing Ballot Boxes: On the day of election the Election Administrator shall secure in his or her possession the ballot boxes and shall retire to a private room for counting. The Election Administrator will count the ballots. In addition to the Election Administrator, Election Committee and Election Administrator personnel and such staff support personnel requested by Election Administrator pursuant to this Ordinance, the presence of one (1) Observer per candidate as hereafter described will be permitted in the room where the votes are being counted.

(b) Counting Ballots: Upon removing the lock and opening the box, the Election Administrator personnel shall insert each ballot into the electronic tabulator for counting, giving due consideration to examining spoiled and replacement ballots.

(c) Rules Governing Counting: The following rules shall govern the counting and recounting of votes:

(1) If the name of any person is written on a ballot, said ballot shall not be counted for any office or question thereon.

(2) An "x" cross, two (2) lines meet, including the so-called "Check Mark," a blacked out square or a straight line, marking the empty square beside a candidate's name on the ballot shall be considered valid markings. Such valid markings located outside the square on the ballot shall not be counted.

(3) Marks used to designate the intention of the voter, other than those herein defined as a "Valid Markings," shall not be counted.

(4) Failure to properly mark a ballot as to one or more candidates shall not of itself invalidate the entire ballot if the same has been properly marked as to other candidates.

(5) Any ballot or part of a ballot on which it is impossible to determine the voter's choice of question or candidate shall be void as to the question, candidate or candidates thereby affected.

(6) If a ballot is not counted for any reason, the reason shall be written on the back of said ballot, and signed by the Election Administrator.

(7) A ballot which was placed in the ballot box without being voted upon shall be considered as a mutilated ballot and shall be retained separately from the ballots which have been counted in whole or in part. Such ballots will not be counted.

(8) Each candidate, if desired, may select one (1) person in writing as his/her representative, who is not a candidate or incumbent, to serve as an observer to watch the counting of the ballots. Such designation must be presented to any Member of the Election Committee no later than 1:00 p.m. seven (7) days prior to the day of the Election. Observers are cautioned to minimize conversation, refrain from making favorable comments or exclamations with regard to candidates or Nation matters, and know not to question Election Committee and Election Administrator personnel with regard to matters other than the vote counting process. Observers can be ejected for inappropriate behavior or a violation of the foregoing or at the discretion of the Election Administrator.

(9) Election Administrator personnel shall place each ballot in the Electronic Tabulator for counting or may use laptop for counting.

(10) Election Administrator personnel shall call out the name on each ballot that requires hand counting and shall mark the tally sheet beside the candidate's name.

SECTION 2. TIE VOTES

In the event two (2) or more candidates tie for the same position, the Election Administrator shall conduct a recount of the ballots cast in that election as provided in Section 1 of this Article. Should there be a tie vote after the recount, a Special Election will be held for the run-off as soon as possible. Date shall be set by Election Administrator (not more than 60 days from original Election Day).

SECTION 3. ELECTION DISPUTES

(a) Recount: In the event that any eligible voter or candidate for Nation Office wishes to request a recount of the voting results of a given election for office or written question referendum vote, such eligible voter or qualified candidate must file a written or typed Request for Recount with the Election Committee Chairman no later than 4:30 p.m., the Monday following the Regular Election or no later than 4:30 P.M. on the second business day following a Special Election, legal holidays excluded. A non-refundable fee of Five Hundred dollars (\$500.00) shall be paid to the Chair of Election Committee by certified check or money order made payable to the Seneca- Cayuga Nation for recount. The recount shall then be conducted in the same manner as the original count and shall be conducted immediately or within twenty-four hours of Request for Recount being filed.

The certified results will be posted in the Seneca-Cayuga Nation's Headquarters Office Building. The fee shall be paid on the same date the Request for Recount is submitted and said filing fee shall be deposited into the Nation's General Operation Account to defray the expenses incurred during the election.

(b) Challenge of Election Procedure: In the event that any eligible voter or candidate for Nation Office wishes to challenge the results of a concluded election, such eligible voter or candidate must file a written or typed Petition for Challenge with the Election Committee Chairperson no later than 4:30 p.m. on the Tuesday following the Regular Election day or no later than 4:30 P.M. on the second business day following a Special Election, legal holidays excluded. In the event that the second day falls on a holiday, the Petition for Challenge shall be filed the next business day. Accompanying the Petition, a non-refundable fee of Five Hundred Dollars (\$500.00) shall be submitted to the Chair of the Election Committee by certified check or money order made payable to the Seneca-Cayuga Nation. The filing fee shall be paid on the same date the Petition for Challenge is submitted and said filing fee shall be deposited into the Nation's General Operations Account to defray the expenses incurred during the election.

The Petition for Challenge must set forth:

- (1) The Petitioner's name, address and Seneca-Cayuga Nation Roll Number;
- (2) The Specific election for office(s) being challenged;
- (3) The Specific Article(s) and Section(s) of this Election and Voting Ordinance violated and the particular grounds for the Challenge; and
- (4) ALL EVIDENCE in support of the Challenge.

After the Petition for Challenge is filed with the Election Committee Chair, the Chair shall conduct a meeting of the Election Committee in accordance with the procedures in Article XII Section 3 of this Ordinance. The Election Committee may question and take testimony of the Election Administrator as necessary for purposes of considering the Challenge. The Election Committee must issue a determination on the Petition for Challenge the Tuesday following Election Day. The Election Committee decision may be appealed to the Business Committee in accordance with Article VII Section 8 of this Ordinance .

The Business Committee shall conduct a hearing in accordance with the procedures set forth in Article VII Section 8 of this Ordinance. The Business Committee may overturn or concur with the decision of the Election Committee. The decision of the Business Committee is final.

If a new election is ordered, it shall be conducted in accordance with this Election and Voting Ordinance excepting the "Official Voters List" shall remain the same. The results of the new election shall be final. If the Petition for Challenge is not upheld, the Election Administrator shall certify the election results and issue an Official Notice of Election Results. If Petition for Challenge is filed by an ineligible voter, Petition for Challenge shall be ruled invalid.

SECTION 4. CERTIFICATION AND ANNOUNCEMENT OF ELECTION RESULTS

Two (2) business days after ballots are counted and the protest period has expired without protest, the Election Administrator shall certify and issue an Official Notice of Election Results. The Election Administrator shall certify election results on the Tuesday following the election at 5:00 P.M., or after protest or recount is resolved, whichever is later. The certified results will be posted at the Seneca-Cayuga Nation's Headquarters Office Building.

ARTICLE X

INSTALLATION OF ELECTED OFFICERS

SECTION 1. PROCEDURE

All duly elected officers of the Seneca-Cayuga Nation shall be sworn into office immediately following the official certification of the election results.

SECTION 2. OATH OF OFFICE

The oath of office shall be administered by the Chief or a Pot Hanger of the Nation.

ARTICLE XI

VOTING ON REFERENDUM QUESTIONS

In the event that referendum questions are to be brought to a vote of the General Council of the Seneca-Cayuga Nation, all members of the Seneca-Cayuga Nation eighteen (18) years of age and older on Election Day shall be given the opportunity to cast their vote and the voting on such questions shall be conducted in accordance with this Article.

SECTION 1. FORM OF PROPOSITION AND DEADLINE

(a) The question is to be written in the form of a proposition couched in language with clearly states that a "yes" vote is a vote in favor of the proposition, and a "no" vote is a vote against the proposition. The proposition shall not exceed 150 words.

(b) Deadline: In order to allow sufficient time for the preparation and printing of ballots, any proposition that is to be submitted to a vote during the annual election held the first Saturday of June of each year shall be prepared and submitted to the Nation Secretary for provision to the Election Administrator no later than the second Tuesday in March of each year. In order to allow sufficient time for the preparation and printing of ballots, any proposition that is to be submitted to a vote at any other time during the year must be presented to the Election Administrator sixty (60) days prior to the date set for the special election or proposition voting date.

SECTION 2. BALLOTS FOR REFERENDUM VOTES

Ballots for referendum questions shall be printed by the Election Administrator in such manner as to include the ballot title and the following language, "Shall the proposed (Amendment) or (Act) or (Ordinance) be approved?" followed by the words "YES" and "NO", one above the other, each preceded by an empty square.

(a) Ballot Title: The ballot title shall contain the gist of the proposition couched in language which clearly states that a "yes" vote is a vote in favor of the proposition, and a "no" vote is a vote against the proposition. The ballot question shall not:

- (1) Exceed one hundred fifty (150) words.
- (2) Reflect partiality in its composition or contain any argument for or against the measure,

(b) Position on Ballot: The written question(s) shall be on a separate ballot, and may not be put on the same ballot with candidate's names who are seeking office.

SECTION 3. METHOD OF VOTING

Eligible voters shall vote on written questions by secret ballot. Method of voting shall be in the same manner as the voting for Tribal Elected Officials pursuant to Article VIII of this Election and Voting Ordinance.

SECTION 4. COUNTING OF BALLOTS

Counting of ballots shall be conducted in the same manner as Article IX of this Election and Voting Ordinance.

SECTION 5. CERTIFICATION OF BALLOTS

Certification and announcement of the results of the voting on said written question(s) shall state the passage or failure of any measure.

The Certification and announcement including disputes shall be made in accordance with Article IX of the Election and Voting Ordinance.

SECTION 6. EFFECT OF LAW

Propositions passed by the General Council of the Seneca-Cayuga Tribe of Oklahoma shall become law immediately following passage, unless otherwise provided and after Official Certification by the Election Administrator.

ARTICLE XII

ELECTION COMMITTEE

SECTION 1. AUTHORITY

The Seneca-Cayuga Election Committee is hereby established, to uphold and enforce the approved Election and Voting Ordinance.

SECTION 2. ELECTION COMMITTEE COMPOSITION

The Election Committee shall be appointed by the Business Committee.

(a) Appointment: It shall consist of three (3) members and shall at no time consist of any elected official of any duly elected Committee or an immediate family member of the Business Committee. No Election Committee member shall be immediate family to any other Election Committee member. For the purposes of this Section immediate family member shall mean, husband-wife, parent- offspring, or sibling and all persons who live in the same household related by blood or not. An alternate member shall also be selected to serve in case a regular member is unable to perform due to illness, absence from the area, a conflict of interest, or upon the resignation or death of any member.

Furthermore, the Business Committee may add quorum members any time the Election Committee fails to meet for lack of quorum. Such quorum members shall serve only when their presence is required to make a quorum. The Business Committee shall appoint members of the Election Committee by position as follows:

- (1) Chairperson
- (2) Vice Chair-person

- (3) Clerk
- (4) Alternate Member

An Election Committee member must resign his/her committee position upon officially filing for candidacy.

(b) Oaths of Office: All persons appointed as Members of the Election Committee shall, before entering upon the duties of their offices, take an oath of office as prescribed by the Business Committee. Said oath shall be retained by the Secretary- Treasurer of the Business Committee.

(c) Terms: The Election Committee Members shall serve at the discretion of the Business Committee. An Election Committee Member may be removed from office by a majority vote of the Business Committee and a replacement may be appointed.

(d) Costs: The cost of conducting a meeting of the Election Committee, including a stipend cost to cover travel costs of Committee members to attend the meeting, shall be paid from the Tribe's General Operations Account. The amount of any such stipend or necessary supplies shall be determined by and approved by the Business Committee.

SECTION 3. MEETINGS

(a) Calling of Meeting: A meeting of the Election Committee shall be called by the Election Committee Chairperson as needed to address the matters brought before the Committee.

(b) Quorum: A quorum shall consist of two (2) members of the Election Committee. No vote of the Election Committee shall be valid in the absence of a quorum.

SECTION 4. RECORDS

The Election Committee shall maintain complete and accurate minutes of its meetings. A copy of these records shall be filed with the Secretary-Treasurer's Office within two days of the completion of an election or referendum vote.

SECTION 5. DUTIES OF THE ELECTION COMMITTEE

(a) Chairperson: Shall be the presiding member responsible for the overall activities of the Election Committee, including safekeeping of Committee records.

(b) Vice Chairperson: In the absence of the Chairperson shall assume and perform the duties of the Chairperson.

(c) Clerk: Shall record and maintain accurate minutes of meeting and records pertaining to the Election Committee including but not limited to:

Providing mail services, receive/record, prepare receipts of all fees received and keep an accurate account of receipts and all disbursements.

(d) Alternate Member: Shall be ready to act as an additional member in any meeting in which one or more of the Election Committee members are absent or have been disqualified due to conflict of interest.

(e) Quorum Member: Shall serve as member until a quorum is established by regular or alternate member or shall serve as a member if required due to one or more of the Election Committee members being disqualified due to conflict of interest.

SECTION 6. CONFLICT OF INTEREST

Members of the Election Committee and the Enrollment Officer are required to meet Conflict of Interest requirements immediately after the Certification of Candidates. Committee Members and/or Enrollment Officer are required to recuse themselves from the business of the Committee and Election. For the purposes of this Section, immediate family members shall mean, husband-wife, parent-offspring, or sibling and all persons who live in the same household related by blood or not. Each member of the Election Committee and the Enrollment Officer shall provide the Chairperson of the Election Committee with a list of their immediate family members and shall keep said list current at all times.

In the event the Nation's Enrollment Officer is disqualified from participating in an Election, the Business Committee shall appoint an Official Designee to perform such duties as assigned to the Enrollment Officer as outlined in this Ordinance. The Nation's Secretary-Treasurer shall inform the Election Administrator, in writing, if an Official Designee has been appointed.

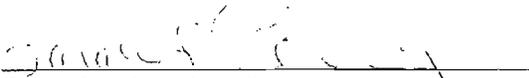
CERTIFICATION

This Election and Voting Ordinance was approved and enacted by the Business Committee of the Seneca-Cayuga Nation at a meeting of the Business Committee conducted on the day of April 6, 2016, with a vote of 6 for 1 against 0 abstain.



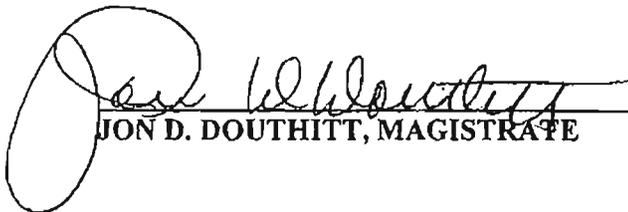
William L. Fisher, Chief

ATTEST:



Sarah S. Channing, Secretary-Treasurer

Business Committee to complete
its administrative process
regarding the candidacy of the
Plaintiff - Business Committee
will promptly advise the court on
completion of said process -
Election Committee will suspend
Seneca-Cayuga election pending
administrative process completion -
Hearing on unresolved issues will
be scheduled at all parties'
earliest convenience & upon
receipt of conclusion of Business
Committee's administrative process


JON D. DOUTHITT, MAGISTRATE

IN THE COURT OF INDIAN OFFENSES FOR THE MIAMI AGENCY
MIAMI, OKLAHOMA

LEROY HOWARD,
Plaintiff,

vs.

SENECA-CAYUGA NATION, et al.,
Defendants.

)
)
)
)
)
)
)

CASE NO. CIV-16-MO3

NOTICE

COMES NOW the Defendant, SENECA-CAYUGA NATION, through its undersigned attorney, Nancy Green, and gives Notice to the Court that the Business Committee of the Nation has met to hear the appeal filed by Plaintiff, Leroy Howard, regarding the Final Decision of the Election Committee of the Seneca-Cayuga Nation. A Final Decision regarding said Appeal has been entered dated May 24, 2016.

Respectfully submitted,



Nancy Green OBA 17315

Green Law Firm, P.C.

301 E. Main St.

Ada, OK 74820

580-436-1946 phone

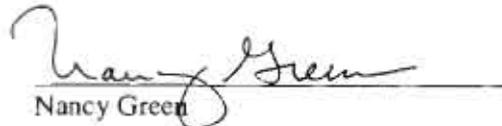
580-332-5180 fax

greenlaw@greenlawfirmpc.net

Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of May, 2016 a true and correct copy of the foregoing has been furnished by U.S. Mail to Scott B. Goode, 115 W 3rd St., Suite 413, Tulsa, OK 74103.



Nancy Green



SENECA - CAYUGA NATION

23701 South 655 Road Grove, Oklahoma 74344 | P: 918-787-5452 | F: 918-787-5521

NOTICE OF FINAL DECISION OF THE BUSINESS COMMITTEE ON APPEAL

May 23, 2016

In the Matter of the Appeal by Leroy Howard of Election Committee Final Decision;

BACKGROUND

This matter was initiated by a Challenge brought before the Seneca-Cayuga Nation Election Committee challenging Mr. Leroy Howard's eligibility to seek elected office in an election. Pursuant to the Seneca-Cayuga Nation Election and Voting Ordinance the Election Committee notified Mr. Howard of the protest filed disputing his candidacy and requested Mr. Howard's response. Subsequently, Mr. Howard was provided a supplemental Notice of the Protest with copies of the original protest and supporting evidence presented to the Election Committee. Mr. Howard submitted documents to the Election Committee for consideration. The Election Committee entered its Final Decision upholding the challenge determining that Mr. Howard does not meet the membership requirements contained in Article III, Section 4 of the Seneca-Cayuga Nation Constitution.

Mr. Howard, by and through his attorney, Scott Goode, appealed the Election Committee decision to the Business Committee pursuant to the Election and Voting Ordinance Section 8. A hearing on the appeal was scheduled on May 10, 2016 before the Seneca-Cayuga Nation Business Committee. Mr. Howard appeared with counsel, Scott Goode, and all Business Committee members were present. Mr. Howard, by and through his attorney, submitted argument and a number of documents for the Business Committee consideration, but retrieved same at conclusion of the hearing. No copies were submitted for inclusion in the record of this appeal. The Business Committee conducted the hearing and held the final appellate decision in abeyance until the CFR Court rendered a decision regarding the continuation of the Temporary Restraining Order issued previously.

FINDINGS

1. The Business Committee is tasked and sworn to uphold the Nation's Constitution and By-laws as a part of their duties as elected officials of the Seneca-Cayuga Nation (Art. VI, Constitution).
2. The Election Committee is tasked with the review and determination of the eligibility of a candidate pursuant to Article VII, Section 7 of the Election and Voting Ordinance.



3. The appeal of Leroy Howard has been conducted in accordance with the Nation's Election and Voting Ordinance Section 8 requiring the Business Committee to consider appeals of Election Committee determinations and render a final decision on the appeal.
4. Jerry Crow, Second Chief and Sarah Sue Channing, Secretary/Treasurer, did not vote in the decision on appeal herein. A quorum for voting purposes was established.
5. The Business Committee has reviewed the documents and evidence submitted to the Election Committee on this matter, the final decision of the Election Committee entered, and the argument and documents provided by respondent Leroy Howard at the hearing on appeal conducted May 10, 2016, before the Business Committee.
6. Appellant Leroy Howard submitted no evidence of a marriage pursuant to the requirements of Article III, Section 4 of the Seneca-Cayuga Nation Constitution nor evidence which may refute the allegations contained in the challenge submitted to the Election Committee.
7. Appellant attorney Scott Goode admitted that Mr. Leroy Howard's Birth Certificate contains false information and that Mr. John D. Howard named as Leroy Howard's father on the Birth Certificate could not possibly have been Leroy Howard's father.
8. The Election Committee followed the mandates of the Election and Voting Ordinance in this matter.
9. The Election Committee decision is not contrary to law and is consistent with the Seneca-Cayuga Nation Constitution and By-laws and the Nation's Election and Voting Ordinance.

DECISION

In accordance with the above stated Findings the Business Committee finds that the Election Committee decision should be and is hereby upheld.

Dated: 5/24/2016

SENECA-CAYUGA NATION BUSINESS COMMITTEE

By: William L. Fisher
William L. Fisher, Chief

Attest: Sarah S. Channing
Sarah S. Channing, Secretary-Treasurer

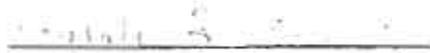
SENECA - CAYUGA
NATION

PO Box 453220, Grove OK, 74345-3022 P: 918-787-5452 F: 918-787-5521 www.sctribe.com

NOTICE

April 26, 2016

The previously scheduled Election has been postponed. Due to recent litigation and in order to ensure due process to those candidates subject to protest or decision of the Election Committee, there is insufficient time to issue the proper notices and complete the prerequisites necessary to the conduct of the regularly scheduled Election. The Election will be rescheduled to a date and time certain.



Sarah S. Channing
Secretary-Treasurer



JUN 06 2016

Time 8:30 AM Recorded
In Docket on Page
C. Bennett Court Clerk

IN THE COURT OF INDIAN OFFENSE
MIAMI, OKLAHOMA

Seneca-Cayuga Nation of Oklahoma, a)
federally-recognized Indian Nation;)
William L. Fisher, Chief; Jerry Crow,)
Second Chief; Sarah S. Channing,)
Secretary-Treasurer; Sallie White, Lisa)
Spano, Calvin Cassady, and Geneva)
Fletcher, Council Persons,)
Plaintiffs,)

CASE NO CIV-16-M04

v.)

Paul Barton, Scott Goode, Hoyit Bacon,)
Cynthia Donohue, Diana Baker, Tonya)
Blackfox, TeNona Kuhn,)
Defendants.)

**COMPLAINT FOR DECLARATORY JUDGMENT, PRELIMINARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION**

COME NOW the Plaintiffs, William L. Fisher, Chief; Jerry Crow, 2nd Chief; Sarah S. Channing, Secretary-Treasurer; Sallie White, Lisa Spano, Calvin Cassady and Geneva Fletcher, Councilpersons, and for their claims against the Defendants allege and state:

Parties and Jurisdiction

1. Plaintiffs, William L. Fisher, Jerry Crow, Sarah S. Channing, Sallie White, Lisa Spano, Calvin Cassady and Geneva Fletcher, respectively, are the duly elected and serving Chief, Second Chief, Secretary-Treasurer and Councilpersons of the Seneca-Cayuga Nation of Oklahoma, a federally recognized Indian Tribe (the "Nation").

2. The Defendants, Paul Barton, Scott Goode, Hoyit Bacon, Cynthia Donohue, Diana Baker, Tonya Blackfox, and TeNona Kuhn are co-conspirators who, in violation of the Nation's Constitution, and without lawful process, have usurped the offices to which the Plaintiffs have been elected and which the Plaintiffs hold.



3. Defendants, after usurping the offices of the Business Committee Members, also declared that the members of the Nation's Election Committee and the Nation's Grievance Committee were removed from office and new members elected or appointed to replace those individuals illegally removed.

4. This Court, pursuant to Resolution of the Nation's General Council, has subject matter jurisdiction of this action.

5. Upon service of process upon the Defendants, who claim to be members of the Nation, this Court will have personal jurisdiction of the Defendants.

The Nation's Constitution

6. The members of the Nation have adopted a Constitution and By-laws approved by the Secretary of the Interior, attached hereto as Exhibit A.

7. That Constitution, Article V, identifies the Offices of the Nation as "Chief, Second Chief, Secretary-Treasurer, and four (4) Councilmen who shall be elected by secret ballot."

8. That Constitution, Article VI, provides that:

There shall be a Business Committee which shall consist of the officers and councilmen as provided in Article V. The Business Committee shall have the power to transact business and otherwise speak or act on behalf of the Seneca-Cayuga Nation in all matters on which the Nation is empowered to act.

9. That Constitution, Article VIII, addresses annual meetings of the Nation's membership called a General Council. That Article, in part provides:

Annual meetings shall be held on the first Saturday of June of each year for the purpose of receiving reports and any other business which may come before the Council. Election of officers will also be held at such annual meetings, provided that such election is appropriate under this Amendment.

That Article, in part further provides:

Regular elections of the Business Committee shall be held pursuant to a Nation election ordinance prescribed by the Business Committee.

10. That Constitution provides a specific procedure involving due process for the removal of officers. Article X provides:

The Grievance Committee shall investigate complaints of misconduct or other acts of the members of the Business Committee and upon a proper showing shall call a special meeting of the Seneca-Cayuga Council to act upon such complaints. Such council shall have power, by majority vote, after giving the accused a hearing, to remove him from office and proceed to elect a successor.

11. That Constitution contains a Bill of Rights guaranteeing equal protection and due process of law and expressly recognizing the protection of the Indian Civil Rights Act of 1968.

Article XII of that Constitution provides:

All members of the Seneca-Cayuga Nation shall be accorded equal protection of the law under this Constitution. No member shall be denied any of the rights or guarantees enjoyed by citizens under the Constitution of the United States, including, but not limited to due process of law. The protection guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77), against actions of an Indian entity in the exercise of its powers of self-government shall apply to the members of the Seneca-Cayuga Nation.

The Nation's By-Laws

12. Article I of the Nation's By-laws provides that:

[I]t shall be the duty of the chief to preside at all meetings and to perform all duties appertaining to the office, also to act as chairman of the Business Committee.

In the absence of the chief, the second chief shall perform the duties of that officer.

13. Article IV of the Nation's By-laws establishes that:

Two hundred twenty-five members of the Seneca-Cayuga Council shall constitute a quorum to transact regular business.

The June 4, 2016 Meeting of the General Council

14. On June 4, 2016, Chief Fisher called the Annual Meeting of the General Council to Order. He had previously posted on the Nation's website an Agenda (Exhibit B, hereto). A quorum was established of 268 members present.

15. Because of the pending litigation concerning LeRoy Howard's failure to satisfy the Nation's Constitutional requirements for tribal membership, including a minute order of this Court prohibiting an election until the litigation is concluded, no elections were included on the Agenda.

16. Proceeding through the Agenda, Chief Fisher recognized the Nation's accountant, Finley and Cook, for its report. Finley and Cook is investigating potential financial irregularities by Defendant, Paul Barton, who now claims to be Chief.

17. Consistent with a desire to avoid an adverse report as to those potential financial irregularities, individuals interrupted the accountant's report at its outset and demanded an election for chair of the meeting three times.

18. Chief Fisher warned those interrupting the meeting that they were out of order and that he would follow the Constitution, which designated him as Chair of the meeting.

19. Because of escalating hostility, including threats to an independent election contractor present to establish quorums, along with the interrupters' disruptive refusal to come to order, Chief Fisher adjourned the meeting.

20. After adjournment a quorum was no longer present.

The Coup

21. After the General Council Meeting ended by adjournment, certain individuals gathered with clear intention to take acts in violation of the Nation's Constitution and overthrow

the validly elected government. Within that group intent to engage in such a Coup was the Defendants, including Scott Goode, a lawyer who had previously obtained an ex parte temporary injunction against these Plaintiffs which this Court vacated after learning the facts at a hearing involving counsel for all parties.

22. Although Article X of the Constitution, quoted in paragraph 9, supra, provides for a specific removal process, including notice and hearing after an investigation by the Grievance Committee, the Defendants and their aiders and abettors at the Coup gathering did not follow that Constitutionally mandated procedure.

23. The Defendants, including Defendant Attorney Scott Goode, and their aiders and abettors at the Coup gathering, summarily “removed” the Plaintiffs from office, “expelled” the Plaintiffs from tribal membership and “elected” the Defendants to Plaintiffs’ offices.

24. No notice of the “removal” and “expulsion” of Plaintiffs or the “election” of their “successors” was provided in advance to the Plaintiffs, who were not present at the Coup gathering or to the general membership of the Nation.

25. Defendant, Attorney Scott Goode, contrary to his obligations as a lawyer, did nothing to prevent the violation of the Constitution and Minute Order of the Court and, in fact, has used those violations to his benefit.

26. After the Coup gathering, the Defendants attempted to take control of the headquarters of the Nation which are being held by the Plaintiffs as the validly elected Business Committee of the Nation. Included in that government overthrow effort by the Defendants was the hiring of a locksmith to change the locks at the headquarters. When the locksmith learned of the gravity of the situation, he departed without performing any work.

27. Unless restrained from implementing their Coup, the Defendants will continue to claim offices to which they are not legally entitled and will attempt to control assets of the Nation over which they have no legal right of control.

COUNT I
DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

28. Paragraphs 1 through 26 are realleged and restated.

29. The Defendants' conduct in overthrowing the Nation's Business Committee, expelling the Plaintiffs from tribal membership and assuming the offices to which Plaintiffs are the validly elected holders thereof violates the Nation's Constitution, Article X as to removal of officers, Article III as to membership, Article XII as to equal protection and due process, (and their election violates the Minute Order of this Court pertaining to elections).

30. The Plaintiffs are entitled to a declaration that they, in fact, do hold the offices to which they have been validly elected prior to the actions of the Defendants, that they are members of the Nation, and that the Defendants are not officers of the Nation.

31. Because of the blatant disregard of the Nation's Constitution as demonstrated by the Coup perpetrated by the Defendants, including Defendant Attorney Scott Goode, an injunction is required to remedy the irreparable harm perpetrated on the Plaintiffs and the Nation since no adequate remedy at law exists to protect the Plaintiffs' right to office to which the Nation has elected them. No reason exists to believe that Defendants would honor a declaratory judgment without an injunction to enforce that declaration of rights.

COUNT II
TEMPORARY RESTRAINING ORDER AND PERMANENT INJUNCTION

32. The Plaintiffs have shown a likelihood of success on the merits.

33. The Plaintiffs have no plain, specific, adequate remedy at law to stop the Defendants' usurpation of Plaintiffs' offices.

34. The Defendants' overthrow of the Nation's elected government and the usurpation of its offices by Defendants constitute irreparable harm.

35. The equities balance between the position in favor of the Plaintiffs and the Nation since the Plaintiffs and the Nation are entitled to have the Constitution enforced.

36. Public policy supports enforcement of the Constitution.

37. Plaintiffs are entitled to a temporary restraining order and preliminary injunction prohibiting the Defendants from claiming the offices to which the Plaintiffs have been elected, from interfering with the Plaintiffs' discharge of the duties of those offices and from violating the Nation's Constitution as to Removal of Offices and Bill of Rights.

WHEREFORE, the Plaintiffs request this Court (a) enter a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction prohibiting Defendants from claiming that they hold those offices to which Plaintiffs have been elected, from interfering with the Plaintiffs' discharge of the duties of those offices and from violating the Nation's Constitution as to Removal of Officers and Bill of Rights and (b) enter a declaratory judgment declaring the Plaintiffs to be the holders of the offices to which they have been elected and that Defendants have no right, claim or title to any such offices.

VERIFICATION

STATE OF OKLAHOMA)
) ss:
COUNTY OF Craig)

WILLIAM L. FISHER, being first duly sworn upon his oath, states:

That he is a Plaintiff above named; that he has read the above and foregoing and knows the contents thereof, and that the statements, allegations and facts therein set forth are true and correct to the best of his information, knowledge and belief.

William L. Fisher
WILLIAM L. FISHER

Subscribed and sworn to before me this 6 day of June, 2015.

My Commission Expires:

Christina G. Bennett
Notary Public
Com exp - 5-26-19

SEAL



Respectfully submitted,

Nancy Green
Nancy Green, OBA #17315
GREEN LAW FIRM, P.C.
301 E. Main St.
Ada, OK 74820
580-436-1946 phone
580-332-5180 fax
greenlaw@greenlawfirmpc.net

and

Graydon D. Luthey, Jr., OBA #5568
GableGotwals
1100 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103-4217
918-595-4911
dluthey@gablelaw.com

Attorneys for Plaintiffs, Seneca-Cayuga Nation
and its Business Committee Members

and

James Wilcoxon, OBA #9605
Wilcoxon & Wilcoxon
112 N. 5th St.
Muskogee, OK 74401
918-683-6696
jjm@wilcoxonlaw.net

Attorney for Seneca-Cayuga Nation
Election Committee

CONSTITUTION AND BY-LAWS OF THE SENECA-CAYUGA NATION

Approved April 26, 1937

PREAMBLE

We, the Seneca-Cayuga Indians of Oklahoma, sometimes designated as the Seneca Tribe, in order to take the advantage of the opportunities of economic independence and social advancement offered by the Thomas Rogers Oklahoma Indian Welfare Act of June 26, 1936, do hereby amend our present Constitution and Bylaws and do adopt the following Constitution and Bylaws pursuant to that Act.

ARTICLE I - NAME

The name of this organization shall be the Seneca-Cayuga Nation.

And any place within the Constitution and By-laws of the Seneca-Cayuga Nation that refers to "The Seneca-Cayuga Tribe of Oklahoma" or "Seneca-Cayuga Tribe" or "Seneca-Cayuga" shall be replaced with "Seneca-Cayuga Nation" or any place the word "Tribe" is referenced, it shall be changed to "Nation", 4g/

ARTICLE II - OBJECT

The object shall be to promote the general welfare of the Seneca-Cayuga Nation.

ARTICLE III - MEMBERSHIP OF NATION

The membership of the Seneca-Cayuga Nation shall consist of the following persons:

1. All persons of Indian blood whose names appear on the official census roll of the Nation as of January 1, 1937
2. All children born since the date of said roll, both of whose parents are members of the Nation.
3. Any child born of a marriage between a member of the Seneca-Cayuga Nation and a member of any other Indian tribe who chooses to affiliate with the Seneca-Cayuga Nation.
4. Any child born of a marriage between a member of the Seneca-Cayuga Nation and any other person, if such child is admitted to membership by the Council of the Seneca-Cayuga Nation.

ARTICLE IV - MEMBERSHIP OF THE COUNCIL

The supreme governing body of the Nation shall be the Seneca-Cayuga General Council. The membership of the General Council shall be all members of the Seneca-Cayuga Nation eighteen (18) years of age and older. 1g/3d/

- 1g/ Amended January 28, 1973 -- First of three amendments
2d/ Amended October 15, 1990 -- Second of four amendments
4g/ Amended May 15, 2014 -- Fourth of four amendments



ARTICLE V - OFFICERS

The Officers of the Nation shall be the Chief, Second Chief, Secretary-Treasurer, and four (4) Councilmen who shall be elected by secret ballot.^{3e/}

ARTICLE VI - BUSINESS COMMITTEES

There shall be a Business Committee which shall consist of the officers and councilmen as provided in Article V.

The Business Committee shall have power to transact business and otherwise speak or act on behalf of the Seneca-Cayuga Nation in all matters on which the Nation is empowered to act.^{3g/}

ARTICLE VII - STANDING COMMITTEES

Section 1. Grievance Committee - This Committee shall be elected by the Council and shall not include any members of the Business Committee.

Section 2. Credit Committee - The Credit Committee shall be chosen by the Business Committee and shall act under the supervision of the Business Committee.

Section 3. Welfare Committee - This committee shall be chosen in the same manner as the Credit Committee.

Section 4. Education Committee - This Committee likewise shall be chosen in the same manner as the Credit Committee.

ARTICLE VIII - ANNUAL MEETINGS

Annual meetings shall be held on the first Saturday of June of each year for the purpose of receiving reports and any other business which may come before the Council. Election of officers will also be held at such annual meetings, provided first such election is appropriate under this Amendment. In order to provide for staggered terms of office, in the first annual meeting after the adoption of this Amendment, the Second-Chief, Secretary-Treasurer, Second Councilperson and Fourth Councilperson shall be elected for a four (4) year term of office. In the third annual meeting after the adoption of this Amendment, the Chief, First Councilperson and Third Councilperson shall be elected for a four (4) year term of office, and shall serve until his/her successor shall be duly elected and installed in office. Any member of the Business Committee in office on the date of adoption of this Amendment shall remain in office until his/her successor is duly elected and installed in office under this Amendment, regardless of the resulting length of the term for such member. Regular elections of the Business Committee shall be held pursuant to a Nation election ordinance prescribed by the Business Committee. ^{2a/3f/3g/}

- ^{3e/} Amended October 15, 1990 -- Third of Four amendments
- ^{3g/} Amended October 15, 1990 -- First of four amendments
- ^{2a/} Amended February 11, 1985 -- First of two amendments
- ^{3f/} Amended October 15, 1990 -- Fourth of four amendments
- ^{3g/} Amended May 15, 2014 -- Third of four amendments

ARTICLE IX - VACANCIES

Vacancies in any elective office shall be filled at any regular or special meeting of the Seneca-Cayuga Council.

ARTICLE X - REMOVAL OF OFFICERS

The Grievance Committee shall investigate complaints of misconduct or other acts of the members of the Business Committee and upon a proper showing shall call a special meeting of the Seneca-Cayuga Council to act upon such complaints. Such council shall have power, by majority vote, after giving the accused a hearing, to remove him from office and proceed to elect a successor.

ARTICLE XI - AMENDMENTS

Amendments to this Constitution and the attached Bylaws may be proposed by a majority vote of the Business Committee or by a petition signed by 30 percent of the adult members of the Nation, and if approved by the Secretary of the Interior shall be submitted to a referendum vote of the members of the Nation, and shall be effective if approved by a majority vote.

ARTICLE XII - BILL OF RIGHTS

All members of the Seneca-Cayuga Nation shall be accorded equal protection of the law under this constitution. No member shall be denied any of the rights or guarantees enjoyed by citizens under the Constitution of the United States, including but not limited to, freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law. The protection guaranteed to persons by Title II of the Civil Rights Act of 1968 (82 Stat. 77), against actions of an Indian entity in the exercise of its powers of self-government shall apply to the members of the Seneca-Cayuga Nation. 1c/

BY - LAWS

ARTICLE I - DUTIES OF OFFICERS

Section 1. Chief - It shall be the duty of the chief to preside at all meetings and perform all duties appertaining to the office, also to act as chairman of the Business Committee.

Section 2. Second Chief - In the absence of the chief, the second chief shall perform the duties of that officer. In case of vacancy, the second chief shall succeed at once to the office of the chief until the next special or regular election for the office of chief.

1c/ Amended January 28, 1973 -- Third of three amendments

Section 3. Secretary-Treasurer - The Secretary-Treasurer shall correctly record the proceedings of all meetings. He shall make out the order of the business for the chief, shall notify all committees of their appointments, shall have custody of the records and all papers of the Council, which records and papers shall be open to inspection at any time, in his presence, by any members of the Council desiring to read them. He shall keep a correct list of all members of the Council, shall authenticate all accounts or orders of the council and, in the absence of the chief and second chief, shall call the meeting to order until a chairman pro tem is selected. He shall render a written report at the annual meeting and at the expiration of his term of office the records and all papers in his possession shall be turned over to his successor. He shall issue notices of all meetings and conduct all general correspondence, as directed by the council or the Business Committee. He shall receive all moneys of the council and keep an accurate account of receipts and disbursements.

The Secretary-Treasurer shall keep all Nation moneys entrusted to his care in a special account and all disbursements therefrom should be made by check. At any time that such account shall amount to more than \$50.00, he shall file a bond satisfactory to the Business Committee and the Commissioner of Indian Affairs. The cost of such bond shall be paid out of Nation moneys.

ARTICLE II - QUALIFICATIONS OF OFFICERS

Any person elected to membership in the business council shall be not less than 25 years of age, a member of the Seneca-Cayuga Nation and reside within a radius of 150 miles in any direction from Bassett Grove Stamp Grounds. 1b/

ARTICLE III - REGULAR AND SPECIAL MEETINGS

Section 1. The regular meetings of the Council shall be held on the first Saturday of June of each year at the Bassett Grove Ceremonial Grounds, unless some other point under the Seneca-Cayuga Nation jurisdiction is specifically designated in the call. 2b/

Section 2. Special meetings of the council may be called by the Chief, and shall be called by him upon the written request of the majority of the Business Committee or the written request of One-hundred Seventy-Five (175) members of the Nation. 2g/

Section 3. The principal object of the special meeting must be stated in the call for same and may include the words "and for the transaction of other business that may be presented." Unless these words are added, no other business can be transacted except for the object stated in the call.

- 1b/ Amended January 28, 1973 -- Second of three amendments
- 2b/ Amended February 11, 1985 -- Second of two amendments
- 2g/ Amended May 15, 2014 -- Second of four amendments

Section 4. The regular meetings of the Business Committee shall be held the first Tuesday in each month unless otherwise provided by resolution.

Section 5. Special meetings of the Business Committee may be called by the chief at his discretion, and shall be called by him upon the written request of three members of the Business Committee.

ARTICLE IV - QUORUM

Section 1. Four members of the Business Committee constitutes a quorum at any meeting.

Section 2. Two-hundred Twenty-five (225) members of the Seneca-Cayuga Council shall constitute a quorum to transact regular business. 1g/

ARTICLE V - ADOPTION

This Constitution and By-laws shall be effective when approved by the Secretary of the Interior and ratified by a majority vote of the Indians of the Seneca-Cayuga Nation voting at an election called by the Secretary of the Interior under regulations which he may prescribe pursuant to Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936.

1g/ Amended May 15, 2014 - - First of four amendments

CERTIFICATION OF ADOPTION

Pursuant to an order, approved April 26, 1937, by the Secretary of the Interior, the attached Constitution and By-laws was submitted for ratification to the members of the Seneca-Cayuga Tribe and was on May 15, 1937, duly ratified by a vote of 186 for, and none against, in an election in which over 20 percent of those entitled to vote cast their ballots, pursuant to Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936 (Pub. No. 816, 74th Cong.)

Thomas Armstrong, Chief, Seneca-Cayuga Tribe

Grover C. Spillbig, Secretary-Treasurer,
Seneca-Cayuga Tribe

H. A. Andrews, Superintendent

SENECA - CAYUGA NATION

23701 South 655 Road Grove, Oklahoma 74344 | P: 918-787-5452 | F: 918-787-5521 | www.sctribe.com

Seneca-Cayuga Annual General Council Meeting Saturday, June 4, 2016 Community Building

Agenda

Call to Order

Prayer

Declaration of Quorum

Reading and Approval of Minutes from 2015 General Council Meeting

Reading and Approval of Proposed Tribal Members to be Added to Roll

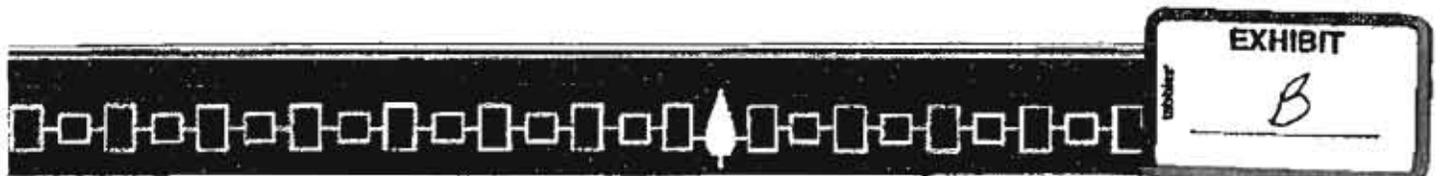
Presentation by Finley & Cook

Gaming Report

Casino Report

Tobacco Report

Adjournment



**ELECTION RESULTS
NUMERICAL DESIGNATION**

**CHAIRMAN, ELECTION BOARD
SENECA-CAYUGA TRIBE OF OKLAHOMA
MAY 15, 2014**

AMENDMENT D

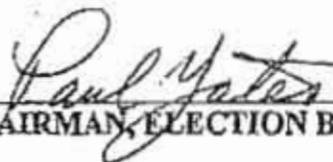
CONSTITUTION, ARTICLE I - NAME

The name of this Tribe shall be the Seneca-Cayuga Nation.

And any place within the Constitution and By-laws of the Seneca-Cayuga Tribe of Oklahoma that refers to "The Seneca-Cayuga Tribe of Oklahoma" or "Seneca-Cayuga Tribe" or "Seneca-Cayuga" shall be replaced with "Seneca-Cayuga Nation" or any place the word "Tribe" is referenced, it shall be changed to "Nation".

Numerical Designation

Having been duly approved and ratified, proposed amendment D is hereby designated as amendment No. four (4) to the Constitution and By-Laws of the Seneca-Cayuga Tribe of Oklahoma.



CHAIRMAN, ELECTION BOARD

ELECTION RESULTS
NUMERICAL DESIGNATION

CHAIRMAN, ELECTION BOARD
SENECA-CAYUGA TRIBE OF OKLAHOMA
MAY 15, 2014

AMENDMENT C

CONSTITUTION, ARTICLE VIII – ANNUAL MEETINGS

Annual meetings shall be held on the first Saturday of June of each year for the purpose of receiving reports and any other business which may come before the Council. Election of officers will also be held at such annual meetings, provided that such election is appropriate under this Amendment. In order to provide for staggered terms of office, in the first annual meeting after the adoption of this Amendment, the Second Chief, Secretary-Treasurer, Second Councilperson and Fourth Councilperson shall be elected for a four (4) year term of office. In the third annual meeting after the adoption of this Amendment, the Chief, First Councilperson and Third Councilperson shall be elected for a four (4) year term of office. Thereafter, each member of the Business Committee shall be elected for a four(4) year term of office, and shall serve until his/her successor shall be duly elected and installed in office. Any member of the Business Committee in office on the date of adoption of this Amendment shall remain in office until his/her successor is duly elected and installed in office under this Amendment, regardless of the resulting length of the term for such member. Regular elections of the Business Committee shall be held pursuant to a Tribal election ordinance prescribed by the Business Committee

Numerical Designation

Having been duly approved and ratified, proposed amendment C is hereby designated as amendment No. three (3) to the Constitution and By-Laws of the Seneca-Cayuga Tribe of Oklahoma.



CHAIRMAN, ELECTION BOARD

ELECTION RESULTS
NUMERICAL DESIGNATION

CHAIRMAN, ELECTION BOARD
SENECA-CAYUGA TRIBE OF OKLAHOMA
MAY 15, 2014

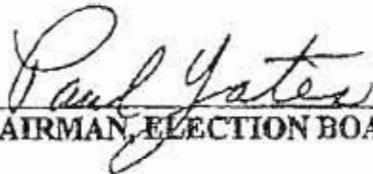
AMENDMENT B

BY-LAWS, ARTICLE III – REGULAR AND SPECIAL MEETINGS,
SECTION 2

Special meetings of the council may be called by the Chief, and shall be called by him upon the written request of the majority of the Business Committee or the written request of One-hundred Seventy-Five (175) members of the Tribe.

Numerical Designation

Having been duly approved and ratified, proposed amendment B is hereby designated as amendment No. two (2) to the Constitution and By-Laws of the Seneca-Cayuga Tribe of Oklahoma.


CHAIRMAN, ELECTION BOARD

ELECTION RESULTS
NUMERICAL DESIGNATION

CHAIRMAN, ELECTION BOARD
SENECA-CAYUGA TRIBE OF OKLAHOMA
MAY 15, 2014

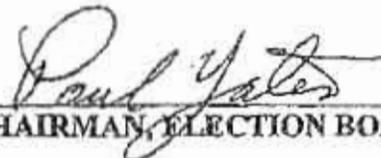
AMENDMENT A

BY-LAWS ARTICLE IV – QUORUM, SECTION 2

Two-hundred twenty five (225) members of the Seneca-Cayuga Council shall constitute a quorum to transact regular business.

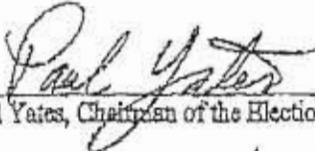
Numerical Designation

Having been duly approved and ratified, proposed amendment A is hereby designated as amendment No. one (1) to the Constitution and By-Laws of the Seneca-Cayuga Tribe of Oklahoma.

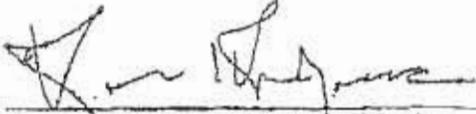

CHAIRMAN, ELECTION BOARD

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial Election authorized by the Eastern Oklahoma Regional Director on March 12, 2014, delegated to the Director, Bureau of Indian Affairs, by the Act of June 26, 1936 (49) Stat. 1967, re-delegated to the Regional Director by 130 D.M. and Bureau of Indian Affairs Policy Memorandum dated October 11, 2006, the attached Constitution Amendments of the Seneca-Cayuga Tribe of Oklahoma was submitted to the qualified voters of the Tribe on May 15, 2014. Proposed Amendment (A) was duly ratified by a vote of 360 for and 242 against, and 0 cast ballots found soiled or mutilated. Proposed Amendment (B) was duly ratified by a vote of 364 for and 234 against, and 0 cast ballots found soiled or mutilated. Proposed Amendment (C) was duly ratified by a vote of 334 for and 272 against, and 2 cast ballots found soiled or mutilated. Proposed Amendment (D) was duly ratified by a vote of 373 for and 232 against, and 1 cast ballots found soiled or mutilated. At least thirty (30) percent of the 885 members entitled to vote, cast their ballot in accordance with the Oklahoma Indian Welfare Act of June 26, 1937, and Article XI of the Tribe's Constitution.


 Paul Yates, Chairman of the Election Board


 William Fisher, Election Board Member


 Raymond Rodgers, Election Board Member

Date of Election
 May 15, 2014

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to an order approved November 20th, 1972, by the Acting Commissioner of Indian Affairs, the attached Amendment I to the Constitution and Bylaws of the Seneca-Cayuga Tribe of Oklahoma was submitted for ratification to the adult members of the Seneca-Cayuga Tribe, and was on 28th January, 1973, duly ratified by a vote of 22 for, and 9 against, in an election in which 32 cast their ballots in accordance with Article XI of the constitution and Section 3 of the Act of June 26, 1936 (49 Stat. 1967).

One (1) ballot was left blank.

/s/ T.J. Perry
Chairman, Election Board

/s/ Amelia Perry
Election Board Member

/s/ Sue Beth Sherry
Election Board Member

May 1 1937 2:10 PM

65-11

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 26, 1936 (Pub., No. 816, 74th Cong.), do hereby approve the attached Constitution and By-laws of the Seneca-Cayuga Tribe of Oklahoma.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution and By-laws are hereby declared inapplicable to the Seneca-Cayuga Tribe of Oklahoma.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and By-laws.

Approval recommended April 20, 1937.

John Collier, Commissioner of Indian Affairs

Harold L. Ickes, Secretary
of the Interior
(Seal)

Washington, D.C., April 26, 1937.

No. 2627 P. 2
COURT OF INDIAN OFFENSES
FILED in The
Office Of The Court Clerk
 JUN 06 2016
 In Tocket 1000am Recorded
C. [Signature] Court Clerk

IN THE COURT OF INDIAN OFFENSES FOR THE MIAMI AGENCY
MIAMI, OKLAHOMA

SENECA-CAYUGA NATION,)
 Paul Burton as)
 Current Chief;)
 Scott B. Goode as)
 Current Second Chief;)
 Hoyit Bacon as)
 Current Secretary and Treasurer;)
 Cynthia Donohue as)
 Current First Council Person;)
 Diana Baker as)
 Current Second Council Person;)
 Tonya Blackfox as)
 Current Third Council Person;)
 TeNona Kuhn as)
 Current Fourth Council Person;)

Plaintiffs)

vs.)

Case No. *CIU-16-M05*

William Fisher individually and as)
 Former Chief;)
 Jerry Crow individually and as)
 Former Second Chief;)
 Sara "Sue" Channing individually and as)
 Former Secretary and Treasurer;)
 Sally White individually and as)
 Former First Council Person;)
 Lisa Spano individually and as)
 Former Second Council Person;)
 Calvin Cassidy individually and as)
 Former Third Council Person;)
 Geneva Fletcher individually and as)
 Former Fourth Council Person;)

Defendants.)

REQUEST FOR TEMPORARY AND PERMANENT INJUNCTION AND
RESTRAINING ORDER



COMES NOW, Paul Barton as current Chief, Scott B. Goode as current Second Chief, Hoyit Bacon as current Secretary and Treasurer, Cynthia Donohue as current First Council Person, Diana Baker as current Second Council Person, Tonya Blackfox as current Third Council Person and TeNona Kuhn as current Fourth Council Person hereafter collectively referred to as "Current Administration" herein by and through their attorney of record, Cynthia J. Burlison, and files this Request for Temporary and Permanent Injunction and restraining order against William Fisher individually and as Former Chief; Jerry Crow individually and as Former Second Chief; Sara "Sue" Channing individually and as Former Secretary and Treasurer; Sally White individually and as Former First Council Person; Lisa Spano individually and as Former Second Council Person; Calvin Cassidy individually and as Former Third Council Person; Geneva Fletcher individually and as Former Fourth Council Person hereafter collectively referred to as "Former Administration" the Defendants herein, for this cause of action, in the Court of Indian Offenses for the Miami Agency, the Plaintiffs alleges and states the following:

1. That the Court of Indian Offenses for the Miami Agency has personal and subject matter jurisdiction to hear and decide this matter in accordance to 25 CFR 11.116 and 11.503;
2. On June 4, 2016, with quorum, a General Council meeting took place;
3. That the current Administration was elected to their current positions during a vote of the General Council on June 4, 2016¹;
4. That at the beginning of the General Council meeting but before the election commenced, multiple members made requests of the [now] former

¹ The Tribe's General Council consists of all members of the Tribe 18 years of age or older. Constitution and By-Laws of the Seneca-Cayuga Tribe of Oklahoma, Art. IV.

Jun. 6. 2016 3:05PM

Administration for multiple "points of order". These requests were not denied but outright ignored.

5. That after a short while the former Chief, William Fisher, without a motion for adjournment; without a second to the implied motion, and without a vote on said implied motion, yelled to the General Council that "This meeting is adjourned and we are leaving". At which point the Defendants, after removing all micro phones in an attempt to keep the General Council meeting from proceeding, simply walked out of the room. Despite the failure of the former Administration to perform its duties as laid out in the Seneca-Cayuga Constitution under Article VIII-Annual meetings². Pursuant to Article IV of the Seneca-Cayuga Constitution, the General-Council, as the *Supreme Governing Body*, continued the annual meeting. *Emphasis added.*³
6. After the former Administration walked out of the General Council meeting the entire General Council stayed, keeping quorum and a number of issues were addressed; one of them after a motion was made from the floor for disenrollment of the Defendants as individuals, rather than in their Tribal capacities. Said motion was seconded and discussion of the same was held for a number of hours. During this lengthy discussion there was ample time for the Defendants to argue their position on the matter. Defendants made no argument against their disenrollment based on their voluntary absenteeism. Following discussion the

² Annual meetings shall be held on the first Saturday of June of each year for the purpose of receiving reports and any other business which may come before the Council.

³ Seneca-Cayuga Constitution Article IV-Membership of the Council: The supreme governing body of the Nation shall be the Seneca-Cayuga General Council.

- motion was called for a vote in which said motion passed by an overwhelming majority.
7. The aforementioned disenrollment created vacancies in the Tribal Government due to the fact that Officers are required to be Members of the Nation. Pursuant to Article IX of the Constitution, the General Council took nominations for said vacancies by floor motion which was followed by elections by secret ballot.⁴
 8. Plaintiffs were each elected by the June 4, 2016 General Council meeting to their respective titled positions. After said elections were held and the results announced, each and every member was given their oaths of office and sworn into their respective positions.
 9. On June 5, 2016, the newly elected current Administration attempted to enter tribal offices to begin serving their tribe and to otherwise ensure the Tribe was safeguarded.
 10. Defendants individually, jointly or through agents blocked the current Administration from being able to enter Tribal offices or safeguard Tribal assets.
 11. At best the actions of Defendants former Administration are obtuse but more likely this is a further showing, as evidenced by the former Administrations' actions during the near past, of their clear, blatant and intentional disregard of the Tribe's governing procedure.
 12. Plaintiffs in this matter are likely to succeed on the merits of this case and be ultimately determined the proper Tribal administration as this issue as arisen

⁴ Vacancies in any elective office shall be filled at any regular or special meeting of the Seneca-Cayuga Council.

before with a comparable fact pattern and with the requested result prevailing⁵;

Unless the Defendants are enjoined from the following but not limited to, blocking the current Administration from access to the Tribal Offices, accessing all tribal financial accounts, financial signature cards, safe deposit boxes and control over all Tribal Enterprises the current Administration as well as the Tribe as a whole would likely suffer irreparable injury for which there is no adequate remedy at law; the Defendants will suffer no formidable injury with the issuance of this temporary injunction making the balance of equities here clearly in favor of the Plaintiff; the interests of the public will not be disserved by granting this temporary injunction.

AUTHORITY

In *Spurr v Nottawaseppi Huron Band of Potawami Tribal Council*, the NHBP Supreme Court affirmed the test for preliminary injunctions adopted by the Tribal Court:

We first address the standard that the trial court must use in determining whether to issue an injunction, and the standard the appellate court must use in reviewing the trial court's decision. The trial court applied the four-part test required in Federal and state courts: "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Spurr vs. Nottawaseppi Huron Band of Potawami Tribal Council*, No 11-251TRO, at 8 (NHBP Tribal Court, December 29, 2011) (quoting *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20, 2008)). This four-part test is standard in other Anishinaabe tribal courts as well. e.g., *Crompton v. Election Board*, 9 Am. Tribal Law 295, 296 (Little River Band of Ottawa Indians Tribal Court 2009); *Deverney v. Election Board*, 9 Am. Tribal Law 290, 291 (Little River Band of Ottawa Indians

⁵ *Paul Spicer v Eastern Oklahoma Regional Director, Bureau of Indian Affairs*; Docket Nos. IBIA 08-129 & 130-A. Wherein the Court determined in relevant part that the General Council meeting of the Tribe determining [the newly elected Chief] controls and was permitted to hold himself [the newly elected Chief]. And CIV-01-4406; that stated in pertinent part "The General Council had authority to consider the removal of the Election Committee directly"

Tribal Court 2009). We agree with the trial court on the proper test to apply in analyzing requests for injunctive relief. (*Spurr v. Nottawaseppi Huron Band of the Potawatomi Tribal Council*, No. 12-005APP, at 9-10 (NHBP S.Ct. Feb 21, 2012).

The status quo, as it should be pursuant to the June 4, 2016 General Council meeting and election should be preserved in this case by the issuance of a temporary injunction. More specifically, this Court should enter an immediate Order restraining the Defendants from the following but not limited to, blocking the current Administration from access to the Tribal Offices, accessing all tribal financial accounts, financial signature cards, safe deposit boxes and control over all Tribal Enterprises and to recognize Plaintiffs' election.

A temporary injunction is appropriate in this case. Plaintiffs are likely to prevail on the merits of his claims, and if the relief requested is not granted they may suffer irreparable harm. The harm to Plaintiffs if this temporary injunction is not granted far outweighs the harm to Defendants if it is granted. The only thing requested in this action is that the Plaintiffs be recognized as elected officials and given the ability to proceed in such capacity to ensure the Tribe receives the representation they elected. No harm will befall Defendants if the Court should award the relief requested since Plaintiffs are only seeking that to which they is entitled by law.

WHEREFORE, Plaintiffs, Paul Barton as current Chief, Scott B. Goode as current Second Chief, Hoyit Bacon as current Secretary and Treasurer, Cynthia Donohue as current First Council Person, Diana Baker as current Second Council Person, Tonya Blackfox as current Third Council Person and TeNona Kuhn as current Fourth Council Person, prays that upon hearing, this Court grant a temporary injunction restraining the Defendants from the following but not limited to, blocking the current Administration from access to the Tribal Offices, accessing all tribal

financial accounts, financial signature cards, safe deposit boxes and control over all Tribal Enterprises and to recognize Plaintiffs' election, that upon a trial on the merits, this Court grant a permanent injunction as to the same; and that upon a hearing on the merits this Court determine the actions of Defendants' to rise to the level of sanction-able and deserving of punitive damages by this Court.



Cynthia J. Burleson, OBA #22510
P.O. Box 266
Welch, OK 74369
Phone: (918) 822-5050
Fax: (918) 856-3720
Email:

VERIFICATION ATTACHED HERETO

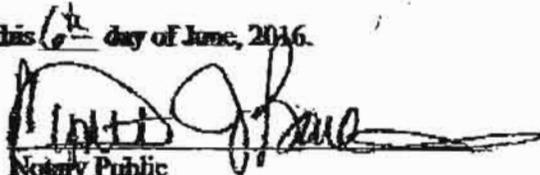
STATE OF OKLAHOMA)
) ss.
COUNTY OF)

Paul Barton, Chief, of lawful age, after first having been duly sworn upon oath, deposes and states: That he is the of the above-named Plaintiff, that he has read the above and foregoing Application for Temporary and Permanent Injunction, and that the contents contained therein are true and correct to the best of his knowledge.


Paul Barton, Chief

Subscribed and sworn to before me this 6th day of June, 2016.




Notary Public

My commission expires:

10-28-16

IN THE COURT OF INDIAN OFFENSES
FOR THE EASTERN OKLAHOMA REGION
OF TRIBES, MIAMI AGENCY
MIAMI, OKLAHOMA

In the Matter of the Seneca-Cayuga Nation,

William L. Fisher, Jerry Crow, Sarah S.
Channing, Sallie White, Lisa Spano, Calvin
Cassady and Geneva Fletcher,

Plaintiffs

vs

CIV-16-M04

Paul Barton, Scott B. Goode, Hoyit Bacon,
Cynthia Donohue, Diana Baker, Tonya
Blackfox, and TeNona Kuhn,

Defendants

Seneca Price, Robert Armstrong, Jason Perry
and Charles Crow,

Intervenors

ORDER

Cause CIV-16-M04 and cause CIV-16-M05 come before the Court on June 21, 2016. The plaintiffs in CIV-16-M04 and defendants in CIV-16-M05 appear with counsel, Graydon D. Luthey, James Wilcoxon and Nancy Green. The plaintiffs in CIV-16-M05 and defendants in CIV-16-M04 appear with counsel, Chadwick Smith and Cynthia J. Burlison. The intervenors in CIV-16-M04 appear with counsel, James Wilcoxon.

Without objection from the parties, the Court combines CIV-16-M04 and CIV-16-M05 into CIV-16-M04, renames the cause as set forth in the caption herein, and designates the plaintiffs in CIV-16-M04 as individual plaintiffs and the plaintiffs in CIV-16-M05 as individual defendants.

The Court grants the request of Seneca Price, Robert Armstrong, Jason Perry and Charles Crow to intervene as individuals.

Whereupon, the plaintiffs call witnesses and rest. Thereafter, the defendants call witnesses and rest.



Based thereon, on the documents filed herein, and being otherwise fully advised, the Court finds as follows:

William L. Fisher, as Chief of the Seneca-Cayuga Nation and presiding officer of the June 6, 2016 meeting of the Seneca-Cayuga Nation General Council, was without authority to adjourn the said meeting under the circumstances then existing.

While acting in his capacity as presiding officer of the June 6, 2016 meeting of the General Council, the decisions of the said Chief to not permit members the General Council to raise points of order were improper.

The actions of those who remained after William L. Fisher improperly adjourned the 2016 meeting of the General Council which purportedly were official actions of the General Council were not authorized by the Seneca-Cayuga Nation's Constitution and are null.

Any purported disenrollment of a member or members of the Seneca-Cayuga Nation from and after the 2015 meeting of the Seneca-Cayuga General Council was invalid.

Any election of officers of the Seneca-Cayuga Nation by the Seneca-Cayuga General Council other than by an in-person ballot, cast at a meeting of the General Council is invalid.

THEREFORE, THE COURT ORDERS AS FOLLOWS:

The General Council of the Seneca-Cayuga Nation will reconvene July 23, 2016 or as soon thereafter as may be authorized by this Court, and the Business Committee of the Seneca-Cayuga Nation will give notice of said reconvened meeting in the manner required by the Constitution, By-laws and Ordinances of the Seneca-Cayuga Nation.

All officers of the Seneca-Cayuga Nation holding office as of the time the June 6, 2016 meeting of the General Council of the Seneca-Cayuga Nation convened, but were later purportedly removed from office are reinstated.

The actions of those who remained and purportedly continued to conduct the business of the Seneca-Cayuga General Council after William L. Fisher adjourned the June 6, 2016 meeting of the said General Council are null.

The decisions of the Seneca-Cayuga Nation General Council meeting of June 6, 2016 admitting certain persons to membership in the Seneca-Cayuga Nation are not invalidated by this order.

The reconvened meeting ordered hereby will follow the posted agenda for the June 6, 2016 meeting of the Seneca-Cayuga Nation General Council with the following amendments, *to-wit*, the election of officers whose terms expire, or had expired, as of the 2016 meeting of the Seneca-Cayuga Nation General Council, and a report from the Secretary-Treasurer of the Seneca-Cayuga Nation of the general financial condition of the Seneca-Cayuga Nation.

No additional declarations of candidacy for election to office at the reconvened 2016 meeting of the Seneca-Cayuga Nation General Council will be permitted.

The election of officers at the reconvened meeting of the Seneca-Cayuga Nation General Council will be by in-person ballot, cast at said meeting.

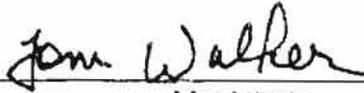
It is the intent of the Court that the reconvened meeting of the Seneca-Cayuga Nation General Council commence as of the point at which the June 6, 2016 meeting of the General Council improperly adjourned, and proceed through the agenda of said June 6, 2016 meeting with the additions ordered hereby.

The Court will appoint a special master to monitor the election of officers to be conducted at the reconvened 2016 meeting of the Seneca-Cayuga Nation General Council, and said monitor will report to the Court the propriety of said election and its results. The expense of said monitor will be paid from the treasury of the Seneca-Cayuga Nation in an amount set by this Court.

Except for those plaintiffs who occupied the offices of Second Chief, Second Council Person and Fourth Council Person at the commencement of the June 6, 2016 meeting of the Seneca-Cayuga Nation General Council, the costs of this action are taxed to each individual party in equal shares.

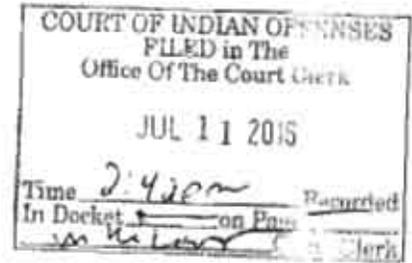
The costs of those plaintiffs who occupied the offices of Second Chief, Second Council Person and Fourth Council Person at the commencement of the June 6, 2016 meeting of the Seneca-Cayuga Nation General Council are taxed to the individual defendants in equal shares.

Within 15 days, the said plaintiffs who occupied the offices of Second Chief, Second Council Person and Fourth Council Person may submit a request to include her or his attorney fee in the taxation of costs. Within 15 days after receiving a copy of said request the defendants may file a response. Any party may request a hearing.


Magistrate

**IN THE COURT OF INDIAN OFFENSES FOR THE MIAMI AGENCY
MIAMI, OKLAHOMA**

In the Matter of the Seneca-Cayuga Nation,)
)
William L. Fisher; Jerry Crow; Sarah S.)
Channing; Sallie White; Lisa Spano; Calvin)
Cassidy; and Geneva Fletcher,)
Plaintiffs,)
)
vs.)
)
Paul Barton; Scott B. Goode; Hoyit Bacon;)
Cynthia Donohue; Diana Baker; Tonya)
Blackfox; and TeNona Kuhn,)
Defendants,)
)
Seneca Price; Robert Armstrong; Jason)
Perry; and Charles Crow,)
Intervenors.)



Case No. CIV-16-M04

NOTICE OF INTENT TO APPEAL

COMES NOW, the Plaintiffs in this consolidated matter and pursuant to Rule 6.2.4 give notice of their Intent to Appeal. For their statement of reasons for this Appeal, these Plaintiffs/Appellants state:

1. This Court lacked both subject matter and personal jurisdiction (1) to invalidate the Nation's election ordinance enacted by the Business Committee Members in their official capacities, and (2) to enter the portions of its Order addressing the upcoming election. That sua sponte portion of the Order violates due process and constitutes reversible error.

(a) No pleading in this action raised, much less joined for trial on the merits and subsequent judicial determination, the issues concerning the upcoming election determined by the Order.



- (b) By aligning the parties on its own motion to limit the action to the parties in their personal (individual) capacities, rather than their official capacities, and not including the Nation as a party, plaintiff or defendant, the Court lacked jurisdiction to enter any order concerning the conduct of the upcoming election by officers of the Nation in their official capacities.
- (c) By invalidating the election ordinance as to mail-in balloting, the Court decided an issue not before it, imposed an order on the Tribe and its officers which were not before the Court, and without notice and hearing deprived serving members of the military, infirmed Tribal members and Tribal members without the ability to vote due to work commitments, lack of financial resources to travel to a poll or for other reasons of their franchise as Tribal members, and substantially affected the rights of non-party candidates to an election designed to expand citizen participation. This invalidation violates the Nation's Constitution's Bill of Rights which provides for equal protection, expressly incorporates federal constitutional rights of due process and makes applicable the due process and equal protection provisions of the Indian Civil Rights Act.

2. This action was not the proper forum to determine the election issues decided sua sponte since a prior action is pending before another judge against the Business Committee Members and the Election Committee Members in their official capacity raising election issues and effectively staying the election pending judicial resolution of those issues.

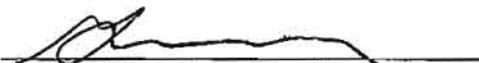
3. This Court committed reversible error by discriminating against some successful Plaintiffs/Appellants in denying them their costs. The Court gave complete relief requested by all Plaintiffs by invalidating their disenrollment, restoring them to the offices elected by the Nation's

membership, and determining that the Defendants held no office. The Court denied all relief sought by the Defendants. Accordingly, all Plaintiffs were prevailing parties and all Plaintiffs were entitled to costs, rather than only some of the Plaintiffs.

Respectfully submitted,

Nancy Green, OBA No. 17315
GREEN LAW FIRM, P.C.
301 E. Main St.
Ada, Oklahoma 74820
(580) 436-1946
ng@greenlawfirm.com

-and-



Graydon D. Luthey, Jr., OBA No. 5568
GABLEGOTWALS
1100 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103-4217
(918) 595-4911
dluthey@gablelaw.com

**ATTORNEYS FOR DEFENDANTS,
SENECA-CAYUGA NATION OF OKLAHOMA AND
ITS BUSINESS COMMITTEE MEMBERS.**

-and-

James Wilcoxon, OBA No. 9605
WILCOXEN & WILCOXEN
112 N. 5th St.
Muskogee, OK 74401
(918) 683-6696
jim@wilcoxenlaw.net

**ATTORNEY FOR SENECA-CAYUGA NATION
ELECTION COMMITTEE**

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of July 2016, a true, correct and exact copy of the above and foregoing instrument was sent via Electronic Mail and by U.S. Mail, with postage prepaid to:

Cynthia J. Burlison
P.O. Box 266
Welch, OK 74369
Email: cynthiaburlison@gmail.com

Chadwick Smith
22902 S. 494 Road
Tahlequah, OK 74464
Email: chad@chadsmith.com



Graydon Dean Luthey, Jr.

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