

CONSTITUTION OF THE CHEROKEE NATION 1839

Constitution of 1839

The Eastern and Western Cherokees having again reunited, and become one body politic, under the style and title of the Cherokee nation; Therefore,

We, the people of the Cherokee nation, in National Convention assembled, in order to establish justice, insure tranquility, promote the common welfare, and to secure to ourselves and our posterity the blessings of freedom—acknowledging, with humility and gratitude, the goodness of the Sovereign Ruler of the Universe in permitting us so to do, and imploring His aid and guidance in its accomplishment—do ordain and establish this Constitution for the government of the Cherokee Nation.

ARTICLE I.

Sec. 1. The boundary of the Cherokee Nation shall be that described in the treaty of 1833 between the United States and Western Cherokees subject to such extension as may be made in the adjustment of the unfinished business with the United States.

Sec. 2. The lands of the Cherokee nation shall remain common property; but the improvements made thereon, and in the possession of the citizens of the Nation, are the exclusive and indefeasible property of the citizens respectively who made, or may rightfully be in possession of them: *Provided*, That the citizens of the Nation possessing exclusive and indefeasible right to their improvements, as expressed in this article, shall possess no right or power to dispose of their improvements, in any manner whatever, to the United States, individual States, or to individual citizens thereof; and that, whenever any citizen shall remove with his effects out of the limits of this Nation, and become a citizen of any other Government, all his rights and privileges as a citizen of this Nation shall cease: *Provided, nevertheless*, That the National Council shall have power to re-admit, by law, to all the rights of citizenship, any such person or persons who may, at any time, desire to return to the Nation, on memorializing the National Council for such readmission.

Moreover, the National Council shall have power to adopt such laws and regulations as its wisdom may deem expedient and proper to prevent citizens from monopolizing improvements with the view of speculation.

ARTICLE II.

Sec. 1. The power of this Government shall be divided into three distinct departments—the Legislative, the Executive, and the Judicial.

SUBSEQUENT HISTORY

Superseded by Article IV, 1975 Constitution.

Sec. 2. No person or persons belonging to one of these departments shall exercise any of the

powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.

SUBSEQUENT HISTORY

Superseded by Article IV, 1975 Constitution.

ARTICLE III.

Sec. 1. The Legislative power shall be vested in two distinct branches—a National Committee, and Council; and the style of their acts shall be—*Be it enacted by the National Council.*

SUBSEQUENT HISTORY

Superseded by Article V § 1, 1975 Constitution.

Sec. 2. The National Council shall make provision, by law, for laying off the Cherokee Nation into eight districts; and if subsequently it should be deemed expedient, one or two may be added thereto.

Sec. 3. The National Committee shall consist of two members from each district, and the Council shall consist of three members from each district, to be chosen by the qualified electors in their respective districts for two years; the elections to be held in the respective districts every two years, at such times and places as may be directed by law.

The National Council shall, after the present year, be held annually, to be convened on the first Monday in October, at such place as may be designated by the National Council, or, in case of emergency, by the Principal Chief.

SUBSEQUENT HISTORY

Superseded by Article V § 3 and Article V § 4, 1975 Constitution.

Sec. 4. Before the districts shall be laid off, any election which may take place shall be by general vote of the electors throughout the Nation for all officers to be elected.

The first election for all the officers of the Government—Chiefs, Executive Council, members of the National Council, Judges, and Sheriffs—shall be held at Tah-le-quah before the rising of this Convention; and the term of service of all officers elected previous to the first Monday in October, 1839, shall be extended to embrace, in addition to the regular constitutional term, the time intervening from their election to the first Monday in October, 1839.

SUBSEQUENT HISTORY

Superseded by Article V § 1, 1975 Constitution.

Sec. 5. No person shall be eligible to a seat in the National Council but a free Cherokee male citizen who shall have attained to the age of twenty-five years.

The descendants of Cherokee men by all free women except the African race, whose parents may have been living together as man and wife, according to the customs and laws of this nation, as well as the posterity of Cherokee women by all free men. No person who is of negro or mulatto parentage, either by the father or mother's side, shall be eligible to hold any office of profit, honor, or trust under this Government.

SUBSEQUENT HISTORY

Superseded by Article IX § 2 and Article V § 3, 1975 Constitution.

Sec. 6. The electors and members of the National Council shall in all cases, except those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and at the national Council, in going to and returning.

Sec. 7. In all elections by the people, the electors shall vote *viva voce*.

All free male citizens who shall have attained to the age of eighteen years shall be equally entitled to vote at all public elections.

SUBSEQUENT HISTORY

Superseded by Article IX §§ 1 and 3, 1975 Constitution.

Sec. 8. Each branch of the National Council shall judge of the qualifications and returns of its own members; and determine the rules of its proceedings; punish a member for disorderly behavior, and, with the concurrence of two thirds, expel a member; but not a second time for the same offence.

SUBSEQUENT HISTORY

Superseded by Article V § 2, 1975 Constitution.

Sec. 9. Each branch of the National Council, when assembled, shall choose its own officers; a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members in such manner and under such penalty as each branch may prescribe.

SUBSEQUENT HISTORY

Superseded by Article V § 4, 1975 Constitution.

Sec. 10. The members of the National Council, shall each receive from the public Treasury a compensation for their services which shall be three dollars per day during their attendance at the

national Council; and the members of the Council shall each receive three dollars per day for their services during their attendance at the National Council, provided that the same may be increased or diminished by law, but no alteration shall take effect during the period of service of the members of the National Council by whom such alteration may have been made.

Sec. 11. The National Council shall regulate by law by whom and in what manner, writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

SUBSEQUENT HISTORY

Superseded by Article IX § 1, 1975 Constitution.

Sec. 12. Each member of the National Council, before he takes his seat, shall take the following oath, or affirmation: I, A. B. do solemnly swear (or affirm, as the case may be,) that I have not obtained my election by bribery, threats, or any undue and unlawful means used by myself or others by my desire or approbation for that purpose; that I consider myself constitutionally qualified as a member of _____, and that on all questions and measures which may come before me I will so give my vote and so conduct myself as in my judgment shall appear most conducive to the interest and prosperity of this Nation, and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power observe, conform to, support and defend the Constitution thereof.

SUBSEQUENT HISTORY

Superseded by Article V § 10, 1975 Constitution.

Sec. 13. No person who may be convicted of felony shall be eligible to any office or appointment of honor, profit or trust within this Nation.

SUBSEQUENT HISTORY

Superseded by Article IX § 2, 1975 Constitution.

Sec. 14. The National Council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the Nation, which shall not be contrary to this Constitution.

SUBSEQUENT HISTORY

Superseded by Article V § 7, 1975 Constitution.

Sec. 15. It shall be the duty of the National Council to pass such laws as may be necessary and proper to decide differences by arbitration, to be appointed by the parties, who may choose that summary mode of adjustment.

Sec. 16. No power of suspending the laws of this Nation shall be exercised, unless by the National

Council or its authority.

Sec. 17. No retrospective law, nor any law impairing the obligation of contracts, shall be passed.

SUBSEQUENT HISTORY

Superseded by Article V § 8, 1975 Constitution.

Sec. 18. The National Council shall have power to make laws for laying and collecting taxes, for the purpose of raising a revenue.

Sec. 19. All bills making appropriations shall originate in the National Committee, but the Council may propose amendments or reject the same; all other bills may originate in either branch, subject to the concurrence or rejection of the other.

Sec. 20. All acknowledged treaties shall be the supreme law of the land, and the National Council shall have the sole power of deciding on the construction of all treaty stipulations.

Sec. 21. The Council shall have the sole power of impeaching. All impeachments shall be tried by the National Committee. When sitting for that purpose the member shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

SUBSEQUENT HISTORY

Superseded by Article XI § 2, 1975 Constitution.

Sec. 22. The Principal Chief, assistant Principal Chief, and all civil officers shall be liable to impeachment for misdemeanor in office; but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of honor, trust, or profit under the Government of this Nation.

The party whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment according to law.

SUBSEQUENT HISTORY

Superseded by Article XI § 1, 1975 Constitution.

ARTICLE IV.

Sec. 1. The Supreme Executive Power of this Nation shall be vested in a Principal Chief, who shall be styled the Principal Chief of the Cherokee Nation.

The Principal Chief shall hold his office for the term of four years; and shall be elected by the qualified electors on the same day and at the places where they shall respectively vote for members

to the national Council. The returns of the election for Principal Chief shall be sealed up and directed to the president of the national Committee, who shall open and publish them in the presence of the national Council assembled. The person having the highest number of votes shall be Principal Chief; but if two or more shall be equal and highest in votes, one of them shall be chosen by joint vote of both branches of the Council. The manner of determining contested elections shall be directed by law.

SUBSEQUENT HISTORY

Superseded by Article VI § 1, 1975 Constitution.

Sec. 2. No person except a natural born citizen shall be eligible to the office of principal Chief; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years.

SUBSEQUENT HISTORY

Superseded by Article VI § 2, 1975 Constitution.

Sec. 3. There shall also be chosen at the same time by the qualified electors in the same manner for four years an assistant Principal Chief, who shall have attained to the age of thirty-five years.

SUBSEQUENT HISTORY

Superseded by Article VI § 3, 1975 Constitution.

Sec. 4. In case of the removal of the Principal Chief from office, or of his death or resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the assistant Principal Chief until the disability be removed or the vacancy filled by the National Council.

SUBSEQUENT HISTORY

Superseded by Article VI § 4, 1975 Constitution.

Sec. 5. The National Council may by law provide for the case of removal, death, resignation, or disability of both the Principal and assistant Principal Chief, declaring what officer shall then act as Principal Chief until the disability be removed or a Principal Chief shall be elected.

SUBSEQUENT HISTORY

Superseded by Article VI § 5, 1975 Constitution.

Sec. 6. The Principal Chief and assistant Principal Chief shall, at stated times, receive for their services a compensation which shall neither be increased nor diminished during the period for which they shall have been elected; and they shall not receive within that period any other

emolument from the Cherokee Nation or any other Government.

SUBSEQUENT HISTORY

Superseded by Article VI § 6, 1975 Constitution.

Sec. 7. Before the Principal Chief enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear, or affirm, that I will faithfully execute the duties of Principal Chief of the Cherokee Nation, and will, to the best of my ability, preserve, protect, and defend, the Constitution of the Cherokee Nation."

SUBSEQUENT HISTORY

Superseded by Article VI § 7, 1975 Constitution.

Sec. 8. He may, on extraordinary occasions, convene the National Council at the seat of Government.

SUBSEQUENT HISTORY

Superseded by Article VI § 8, 1975 Constitution.

Sec. 9. He shall, from time to time, give to the National Council information of the state of the Government, and recommend to their consideration such measures as he may deem expedient.

SUBSEQUENT HISTORY

Superseded by Article VI § 9, 1975 Constitution.

Sec. 10. He shall take care that the laws be faithfully executed.

SUBSEQUENT HISTORY

Superseded by Article VI § 10, 1975 Constitution.

Sec. 11. It shall be his duty to visit the different districts at least once in two years, to inform himself of the general condition of the country.

Sec. 12. The assistant Principal Chief shall, by virtue of his office, aid and advise the Principal Chief in the administration of the government, at all times during his continuance in office.

SUBSEQUENT HISTORY

Superseded by Article VI § 11, 1975 Constitution.

Sec. 13. Vacancies that may occur in offices, the appointment of which is vested in the National

Council shall be filled by the Principal Chief, during the recess of the National Council, by granting commissions which shall expire at the end of the next session thereof.

Sec. 14. Every bill which shall pass both branches of the National Council shall, before it becomes a law, be presented to the Principal Chief; if he approve, he shall sign it, but if not, he shall return it, with his objections to that branch in which it may have originated, who shall enter the objections at large on their journals, and proceed to reconsider it; if, after such reconsideration, two-thirds of that branch shall agree to pass the bill, it shall be sent, together with the objections, to the other branch, by which it shall likewise be reconsidered, and if approved by two-thirds of that branch, it shall become a law. If any bill shall not be returned by the Principal Chief within five days (Sundays excepted) after the same has been presented to him, it shall become a law, in like manner as if he had signed it, unless the National Council, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

SUBSEQUENT HISTORY

Superseded by Article V § 11, 1975 Constitution.

Sec. 15. Members of the National Council, and all officers, Executive and Judicial, shall be bound by oath to support the Constitution of this Nation, and to perform the duties of their respective offices with fidelity.

SUBSEQUENT HISTORY

Superseded by Article V § 10, 1975 Constitution.

Sec. 16. In case of disagreement between the two branches of the National Council, with respect to the time of adjournment, the Principal Chief shall have power to adjourn the same to such a time as he may deem proper; provided, it be not to a period beyond the next constitutional meeting thereof.

SUBSEQUENT HISTORY

Superseded by Article V § 1, 1975 Constitution.

Sec. 17. The Principal Chief shall, during the session of the National Council, attend at the seat of Government.

SUBSEQUENT HISTORY

Superseded by Article VI § 9, 1975 Constitution.

Sec. 18. There shall be a council composed of five persons to be appointed by the National Council, whom the Principal Chief shall have full power at his discretion to assemble; he, together with the assistant Principal Chief, and the counsellors, or a majority of them, may, from time to time, hold and keep a Council for ordering and directing the affairs of the Nation according to law; provided the National Council shall have power to reduce the number, if deemed expedient, after

the first term of service, to a number not less than three.

SUBSEQUENT HISTORY

Superseded by Article VI § 12, 1975 Constitution.

Sec. 19. The members of the Executive Council shall be chosen for the term of two years.

SUBSEQUENT HISTORY

Superseded by Article VIII, 1975 Constitution.

Sec. 20. The resolutions and advice of the Council shall be recorded in a register, and signed by the members agreeing thereto, which may be called for by either branch of the National Council, and any counsellor may enter his dissent to the majority.

Sec. 21. The Treasurer of the Cherokee Nation shall be chosen by a joint vote of both branches of the National Council for the term of four years.

SUBSEQUENT HISTORY

Superseded by Article VIII, 1975 Constitution.

Sec. 22. The Treasurer shall, before entering on the duties of his office, give bond to the nation with sureties to the satisfaction of the National Council, for the faithful discharge of his trust.

SUBSEQUENT HISTORY

Superseded by Article X § 11, 1975 Constitution.

Sec. 23. No money shall be drawn from the Treasury but by warrant from the Principal Chief, and in consequence of appropriations made by law.

SUBSEQUENT HISTORY

Superseded by Article X § 9, 1975 Constitution.

Sec. 24. It shall be the duty of the Treasurer to receive all public moneys, and to make a regular statement and account of the receipts and expenditures of all public moneys, at the annual session of the National Council.

SUBSEQUENT HISTORY

Superseded by Article VIII, 1975 Constitution.

ARTICLE V.

Sec. 1. The Judicial powers shall be vested in a Supreme Court, and such Circuit and Inferior courts as the National Council may, from time to time, ordain and establish.

Sec. 2. The Judges of the Supreme and Circuit courts shall hold their commissions for the term of four years, but any of them may be removed from office on the address of two-thirds of each branch of the National Council to the Principal Chief, for that purpose.

SUBSEQUENT HISTORY

Superseded by Article VII, 1975 Constitution.

Sec. 3. The Judges of the Supreme and Circuit courts shall, at stated times, receive a compensation which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under the Government of this Nation or any other Power.

Sec. 4. No person shall be appointed a Judge of any of the courts until he shall have attained to the age of thirty years.

SUBSEQUENT HISTORY

Superseded by Article VII, 1975 Constitution.

Sec. 5. The Judges of the Supreme and Circuit courts shall be elected by the National Council, and there shall be appointed in each district as many justices of the peace as it may be deemed expedient for the public good, whose powers, duties, and duration in office, shall be clearly designated by law.

SUBSEQUENT HISTORY

Superseded by Article VII, 1975 Constitution.

Sec. 6. The Judges of the Supreme Court and of the Circuit courts shall have complete criminal jurisdiction in such cases and in such manner as may be pointed out by law.

Sec. 7. No Judge shall sit on trial of any cause when the parties are connected by affinity or consanguinity, except by consent of the parties.

In case all the Judges of the Supreme Court shall be interested in the issue of any cause, or related to all or either of the parties, the National Council may provide by law for the selection of a suitable number of persons of good character and knowledge for the determination thereof, and who shall be specially commissioned for the adjudication of such case by the Principal Chief.

Sec. 9. All writs and other process shall run "in the name of the *Cherokee Nation*," and bear test, and be signed by the respective clerks.

Sec. 10. The Supreme court shall, after the present year, hold its session annually at the seat of Government, to be convened on the first Monday of October, in each year.

Sec. 11. In all criminal prosecutions, the accused shall have the right of being heard; of demanding the nature and cause of the accusation; of meeting the witnesses face to face; of having compulsory process for obtaining witnesses in his or their favor; and in prosecutions by indictment or information, a speedy public trial, by an impartial jury of the vicinage; nor shall the accused be compelled to give evidence against himself.

SUBSEQUENT HISTORY

Superseded by Article II, 1975 Constitution.

Sec. 12. The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without good cause supported by oath or affirmation.

SUBSEQUENT HISTORY

Superseded by Article II, 1975 Constitution.

Sec. 13. All persons shall be bailable by sufficient securities, unless for capital offences, where the proof is evident, or presumption great.

SUBSEQUENT HISTORY

Superseded by Article II, 1975 Constitution.

ARTICLE VI.

Sec. 1. No person who denies the being of a God, or a future state of reward and punishment, shall hold any office in the civil department in this Nation.

SUBSEQUENT HISTORY

Superseded by Article II, 1975 Constitution.

Sec. 2. The free exercise of religious worship, and serving God without distinction shall, forever, be enjoyed within the limits of this Nation: provided, that this liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this Nation.

SUBSEQUENT HISTORY

Superseded by Article II, 1975 Constitution.

Sec. 3. When the National Council shall determine the expediency of appointing delegates, or other public agents, for the purpose of transacting business with the Government of the United States, the Principal Chief shall recommend, and, by the advice and consent of the National Committee, appoint and commission such delegates or public agents accordingly. On all matters of interest, touching the rights of the citizens of this Nation, which may require the attention of the United States Government, the Principal Chief shall keep up a friendly correspondence with that Government, through the medium of its proper officers.

Sec. 4. All commissions shall be "in the name, and by the authority of the Cherokee Nation;" and be sealed with the seal of the nation, and signed by the Principal Chief. The Principal Chief shall make use of his private seal until a National seal shall be provided.

Sec. 5. A Sheriff shall be elected in each district, by the qualified electors thereof, who shall hold his office two years, unless sooner removed. Should a vacancy occur, subsequent to an election, it shall be filled by the Principal Chief, as in other cases; and the person so appointed, shall continue in office until the next regular election.

Sec. 6. No person shall for the same offence be twice put in jeopardy of life or limb; nor shall the property of any person be taken and applied to public use without a just and fair compensation: *Provided*, That nothing in this clause shall be so construed as to impair the right and power of the National Council to lay and collect taxes.

SUBSEQUENT HISTORY

Superseded by Article II, 1975 Constitution.

Sec. 7. The right of trial by jury, shall remain inviolate; and every person, for injury sustained in person, property, or reputation, shall have remedy by due course of law.

SUBSEQUENT HISTORY

Superseded by Article II, 1975 Constitution.

Sec. 8. The appointment of all officers, not otherwise directed by this Constitution, shall be vested in the National Council.

Sec. 9. Religion, morality, and knowledge, being necessary to good government, the preservation of liberty, and the happiness of mankind, schools, and the means of education, shall forever be encouraged in this Nation.

Sec. 10. The National Council may propose such amendments to this Constitution, as two-thirds of each branch may deem expedient; and the Principal Chief shall issue a proclamation, directing all civil officers of the several districts to promulgate the same as extensively as possible within their respective districts, at least six months previous to the next general election. And if, at the first

session of the National Council, after such general election two-thirds of each branch shall, by ayes and noes, ratify such proposed amendments, they shall be valid to all intent and purposes, as parts of this Constitution: *Provided*, That such proposed amendments shall be read on three several days in each branch, as well when the same are proposed, as when they are ratified.

SUBSEQUENT HISTORY

Superseded by Article XV § 2, 1975 Constitution.

Done in Convention at Tah-le-quah, Cherokee Nation, this sixth day of September, 1839.

GEORGE LOWREY,

President of the National Convention.

Hair Conrad, his x mark,
John Benge, his x mark,
Thomas Candy
Archibald Campbell, his x mark
John Drew
George Guess, his x mark,
Walter Scott Adair
Young Elders, his x mark,
Will. Shorey Coodey
Thomas Foreman
Richard Taylor
Thomas Fox Taylor
O-kan-sto-tah Logan, his x mark,
James Spears, his x mark,
John Spears
Stephen Foreman
Sal-la-tee-skee Watts, his x mark,
Young Glass, his x mark,
Looney Price
Tobacco Will, his x mark,
Major Pullum, his x mark,
Moses Parris
George Washington Gunter
Kenah Logan, his x mark,

Young Wolf,
Joseph Martin Lynch,
George Brewer, his x mark,
Joshua Buffington,
Jesse Bushyhead,
Jesse Russell,
John Fletcher Boot, his x mark,
Crying Buffalo, his x mark,
Bark Flute, his x mark,
Oo-la-yo-a, his mark,
Soft-shell Turtle, his x mark,
Edward Gunter,
Daniel Colston, his x mark,
Lewis Ross,
George Hicks,
Turtle Fields, his x mark,
Elijah Hicks,
Tah-lah-see-nee, his x mark,
James Brown,
Charles Coodey,
Riley Keys,
Daniel McCoy,
Lewis Melton,

