



CONSTITUTION ELEMENTS

BIA Alaska Region
Branch of Tribal Operations

TRIBAL ORGANIZATION AND BIA RESPONSIBILITY



⦿ Organizational Status

- Indian Reorganization Act (IRA)
- Alaska Act
- Oklahoma Indian Welfare Act (OIWA)

⦿ BIA Responsibilities

- Drafting
- Informal Review
- Formal Review
- Secretarial Elections

⦿ Terms

- Document/Governing Document
- Adoption
- Ratification
- Approval
- Effective Date



CONSTITUTIONAL CONCEPTS

- ◉ **Establishing Relationships**
- ◉ **Achieving Significant Objectives**
 - Protecting Tribal Rights and Stating Fundamental Principles
 - Protecting Individual Rights
 - Governing by Law and Promoting Order

CONSTITUTION & BYLAWS



Definitions:

- ⦿ The **constitution** of an organization contains the fundamental principles which govern its operation.
- ⦿ The **bylaws** establish and elaborate on the specific rules of guidance by which the group is to function.



CONSTITUTIONAL ELEMENTS

- I. Title
- II. Preamble
- III. Territory and Jurisdiction
- IV. Civil Rights
- V. Governing Body
- VI. Powers
- VII. Judiciary
- VIII. Elections



CONSTITUTIONAL ELEMENTS

- ◉ IX. Vacancies
- ◉ X. Popular Participation
- ◉ XI. Duties of Officers
- ◉ XII. Meetings
- ◉ XIII. Saving Clause
- ◉ XIV. Severability
- ◉ XV. Amendment
- ◉ XVI. Adoption or Ratification
- ◉ XVII. Certificate of Election Results

REVIEWING PROPOSED CONSTITUTIONS



⦿ **Review Procedures**

- Tribal Request
- Agency and Area Review
- Central Office Review

⦿ **Field Responsibilities**

⦿ **Review Guidelines**

REVISING AND AMENDING TRIBAL CONSTITUTIONS



◉ Amendment Procedures

- Tribal Request
- Agency and Area Review
- Secretarial Election

◉ Field Responsibilities and Review Guidelines

INDIAN REORGANIZATION ACT CONSTITUTIONS



- ◉ Secretarial Elections are held pursuant to regulation found in 25 CFR § 81
 - Proposed or revised constitutions
 - Constitutional amendments
 - Ratify and amend charters
 - Revoke constitutions



REVIEWING PROPOSED CONSTITUTIONS

YES NO

TITLE

- ⦿ The title contains the words “amended” or “revised.”
- ⦿ The title contains the phrase “constitution and by-laws.”

PREAMBLE

- ⦿ Objective of and basis for the organization are easily understood.
- ⦿ Cites the specific authority under which the constitution will be adopted or ratified.
- ⦿ If the tribe was organized under an earlier governing document, the earlier document is acknowledged along with an explanation that it is now superseded by the current proposed constitution.

REVIEWING PROPOSED CONSTITUTIONS



TERRITORY AND JURISDICTION

- ⦿ Accurately describe the tribe's geographical territory and the extend of jurisdiction.
- ⦿ Reference is made to all treaties, Executive Orders, and/or specific congressional acts relating to establishment of the reservation or area within which the tribe has jurisdiction.
- ⦿ Includes a statement that jurisdiction over the tribe's territory is subject to Federal law.



REVIEWING PROPOSED CONSTITUTIONS

MEMBERSHIP (ENROLLMENT)

- Clearly describes the requirements for tribal enrollment by addressing the following:
 - Base Roll identification
 - Vested rights of previously recognized members
 - Authority to resolve enrollment questions
 - Application requirements
 - Content of ordinance for enrollment procedures
 - Adoption into membership
 - Disenrollment
 - Procedures for appeals or enrollment decisions

- Spells out viable procedures for resolving questions of membership in a fair and impartial manner.

- Provision is made for appeal of enrollment decision to an objective forum.



REVIEWING PROPOSED CONSTITUTIONS

CIVIL RIGHTS

- ⦿ Sets forth those individual rights that the tribe must respect in exercising its power of self-government (as stated in the Indian Civil Rights Act of 1968).
- ⦿ The article provides for a constitutionally-based judicial forum equal to but separate from the legislative and executive branches of government.



REVIEWING PROPOSED CONSTITUTIONS

GOVERNING BODY

- ◉ Clearly and thoroughly describes the nature of the entity (or entities) empowered to exercise the tribe's legislative and executive powers.
 - The title and number of positions that constitute the governing body
 - The means through which office holders are elected (from within or by running for a particular office)
 - Staggered terms of office
 - Incumbents to continue in office until their successors are duly elected and installed
 - Filling vacancies



REVIEWING PROPOSED CONSTITUTIONS

POWERS

- The article clearly delineates those authorities delegated to the governing entity or entities (legislative and executive branches or tribal council and general council).
- If more than one governing entity is established, the article specifies which powers are vested in each entity.
- The article includes a reserve powers clause that provides that any powers not specifically listed will be exercised only upon appropriate amendment to the constitution.
- The means through which office holders are election (from within or by running for a particular office).
- Staggered terms of office.
- Incumbents to continue in office until their successors are duly elected and installed.
- Filling vacancies.

REVIEWING PROPOSED CONSTITUTIONS



JUDICIARY

- ◉ Clearly provides for exercise of the tribe's judicial authorities.
- ◉ Judiciary that is independent from the legislative and executive functions of tribal government.
- ◉ Enumerates accurately the scope of judicial powers.
- ◉ Provides for election or appointment of judges by a process that frees the judiciary from potential pressures and influences of the tribal government.



REVIEWING PROPOSED CONSTITUTIONS

ELECTIONS

- ◉ Explains fundamental principles for the conduct of tribal elections including:
 - Qualifications of voters and candidates
 - Provision for an election board
 - A tribal election ordinance including:
 - Ongoing voter registration
 - Majority vote
 - Secret ballot
 - Absentee voting
 - Procedures for settling election disputes
 - Appeal procedures
 - The concept of “one man, one vote” is preserved
 - Promotes order in the choice of tribal officials



REVIEWING PROPOSED CONSTITUTIONS

VACANCIES

- ⦿ Specifies procedures for filling positions in the event of death, resignation, removal, forfeiture, and recall.
- ⦿ Promotes order in filling vacancies and to prevent undue confusion from arising around the loss of tribal officials.



REVIEWING PROPOSED CONSTITUTIONS

POPULAR PARTICIPATION

- Provides for tribal elections other than the regular elections of tribal officials-i.e., initiative, referendum, recall.
- Provisions established a viable “checks and balance” system.
- Procedures make it possible to achieve a recall when necessary but not so easy that officials can be unduly harassed.



REVIEWING PROPOSED CONSTITUTIONS

DUTIES OF OFFICERS

- ◉ Clearly defines the major duties of various officials
- ◉ Describes how tribal members can gain access to tribal records
- ◉ Provisions are included for transfer of documents and records to newly elected officials upon expiration of the incumbent's terms
- ◉ Authorities of various officials are clearly defined



REVIEWING PROPOSED CONSTITUTIONS

MEETINGS

- ◎ Clearly provides for calling and conducting regular and special meetings including specific instructions regarding:
 - Who is responsible for calling the sessions
 - What constitutes a quorum
 - When and where regular meetings are to be held
 - How many special or emergency meetings can be called
 - Use of Robert's Rules of Order in conducting meetings
 - Voting by secret ballot



REVIEWING PROPOSED CONSTITUTIONS

SAVINGS CLAUSE

- ⦿ The article provides that all tribal legislation enacted under any previous constitutions will remain in force to the extent that those enactments are consistent with the new constitution.

SEVERABILITY

- ⦿ The article provides that if any part of the constitution is held by a Federal court to be invalid or contrary to the U.S. Constitution or Federal law, the remainder of the document will continue in effect.

AMENDMENT

- ⦿ The article clearly sets forth procedures for modifying or amending the constitution.



ELEMENTS SHOULD NEVER CONTRADICT

AMENDMENT CONSIDERATIONS

- ⦿ Amending one Element may contradict another

“SECOND SET OF EYES”

- ⦿ Informal review:
 - a recommended change in one area may require an amendment to another element
 - Example: If you reduce council size from 7 to 5, the quorum must also adjust from 4 to 3.
 - Example: Rules of Eligibility for Tribal Membership might impact Rules of Eligibility for Voting in an Election
 - Example: Changes in percentages (i.e. 30%, 20%...)



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