



NCA 19-141

CLASSIFICATION: #19. ELECTIONS

A LAW OF THE MUSCOGEE (CREEK) NATION AMENDING MCNCA TITLE 19 § 7-406. ENTITLED "Watchers; appointments and duties," §§ 8-202. ENTITLED "Petition for recount; filing fee; service of notice" AND 8-203. ENTITLED "Conduct of recount; duties of Supreme Court Justices" AND CREATING NEW LAW BY ADDING § 12-119. ENTITLED "Unlawful solicitation and collection of absentee ballot"

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

SECTION ONE. FINDINGS. The National Council finds that:

A. A Primary Election was held on September 21, 2019, for the Office of Principal Chief, the Office of Second Chief, and for National Council (Seat A) seats.

B. On September 27, 2019, a *Petition for Recount* was filed with the Muscogee (Creek) Nation Election Board seeking a recount of only absentee ballots for the Office of Principal Chief.

C. In accordance with the recount procedures provided in MCNCA Title 19, § 8-203, a quorum of the Supreme Court Justices were present with the Election Board on October 5, 2019, in the Auditorium of the Mound Building to hear evidence and to make a determination whether the absentee ballots were properly preserved in the manner required under Title 19.

D. After hearing evidence and investigating the absentee ballot transfer cases, the Supreme Court issued an Order and Opinion finding that the transfer cases failed to meet the minimum security standards placed on ballot boxes under MCNCA Title 19, § 3-111 and that there were inadequate security measures in place for the absentee ballots. The Court then determined that the entire election for all offices will be deemed null and void, even though the recount petition only pertained to the Office of Principal Chief's election.

E. In its Opinion and Order, the Supreme Court specifically noted that it was interpreting the current language in MCNCA Title 19, § 8-203 (as amended by NCA 11-133) as a requirement that the entire election must be null and void, and that if the intent for a new election was to be limited to only the race falling under the recount petition, then the National Council should make that clarification.

F. The National Council finds that clarification language is necessary for the recount procedures provided in MCNCA Title 19, §§ 8-202 and 8-203 and for these amendments to go into effect prior to the next election.

SECTION TWO. AMENDMENT. These amendments shall be codified in Title 19, of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Attorney General is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters, and sub-chapters are designated consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and; (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:

SECTION THREE. AMENDMENT. MCNCA Title 19, § 7-406 is hereby amended to read as follows:

§ 7-406. Watchers; appointment and duties

Any candidate in a primary election, or general election, shall be entitled to have a watcher present at any place where an official count is being conducted. Said watcher must be **a Muscogee (Creek) citizen and a registered voter of the Muscogee (Creek) Nation and be** commissioned in writing by the candidate. Said commission must be filed with the Manager of the Election Board no later than 5:00 p.m. on the Friday preceding the first day of early in-person voting. Watchers must subscribe to an oath to observe all laws and rules prescribed for watchers as hereinafter provided. Said oath must be administered by the Inspector of the precinct in which the watcher is authorized. In all elections, said watcher shall be limited to observing the official count and shall have no further authority than to make written objections to said count. Said watcher shall be required to remain at the polling place for the same hours as the precinct workers and shall be confined to the area wherein the official count is being conducted. If precinct workers are not used during the election hours, watchers shall be entitled to observe the vote-recording after the polls are closed and may, but need not be present at the polling place at other times. All watchers shall serve on a volunteer basis and shall not be paid for their services.

SECTION FOUR. AMENDMENT. MCNCA Title 19, §§ 8-202 and 8-203 are hereby amended to read as follows:

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

In the event a candidate requests a recount of the ballots cast in an Election, he or she must **file a petition for recount with the Election Board and identify the following: (1) the elective office being sought by the candidate, and (2) set forth in his or her petition the precincts and absentee ballots which he or she desires to be recounted.** Said petition must be accompanied by either a money order, cashier's or certified check or a bank instrument equivalent to such checks in the amount of five hundred dollars (\$500.00) for each district affected by the petition. When such petition is properly filed and the filing fee of five hundred dollars (\$500.00) duly paid, it shall be the duty of the Manager of the Election Board to order said recount to begin not less than three (3) nor more than ten (10) calendar days from the date of filing of said petition. **Any recount will be limited to only the elective office being sought by the candidate and the precincts or absentee ballots identified in the petition.** It shall be the duty of such contestant to cause to be served upon the candidate or candidates opposing him or her, and directly affected by said contest, a true copy of said petition and a true copy of said order. A copy of said petition and order shall be served in person upon the opposing candidate or candidates within twenty-four (24) hours after the filing of said original petition of contest. Procedures shall follow those stated in Title 19, § 8-203.

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

Once service has been made in accordance with Section 8-110 of this Code, the actual recount of ballots shall be conducted by the Precinct Election Committee or the Precinct Workers and/or the Absentee Workers designated by the Manager of the Election Board. The recount shall be conducted in the Auditorium of the Mound Building, or if said room is not available than at such other place in the Auditorium of the Mound Building, or if said room is not available than at such other place at the Capitol Complex as the Election Board may order in which case the Election Board shall immediately post notice of the time and place of the recount at prominent places in the Capitol Complex. It shall be the duty of a quorum of the Supreme Court Justices of the Muscogee (Creek) Nation to attend and, in conjunction with the Election Board, conduct a recount. It shall be the exclusive and sole duty of said Justices to hear evidence as to whether the ballots **that are the subject of the recount petition** have been preserved in the manner prescribed by this Title, whether the ballots are the identical ballots cast by the voters, and whether the ballots have been exposed to the reach of unauthorized persons thus affording a reasonable opportunity for an unauthorized person to tamper with or change the ballots. The judgment of said Justices upon such questions shall be final and conclusive. If the Justices cannot determine that the ballots **that are the subject of the recount petition** have been properly preserved, then the election **results for the elective office that is the subject of the recount petition** will be deemed null and void and a new election **for the elective office identified in the recount petition** shall take place within sixty (60) days. **In the event a new election is ordered for the elective office identified in the recount petition, all other election results that were not the subject of any recount petition shall remain certified;**

provided, however, that if the Justices find clear and convincing proof of tampering or intentional misconduct that could have affected the outcome of the entire election, then the Justices shall declare the whole election null and void and require a new election of all candidates to take place within sixty (60) days.

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

SECTION FIVE. NEW LAW. The following new law shall be codified in Title 19, Chapter 12 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts for the Code of Laws of the Muscogee (Creek) Nation, the Attorney General is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated in this law in order to be consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws; and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law:

§ 12-119. Unlawful solicitation and collection of absentee ballot

A. Any person who knowingly solicits or collects an absentee ballot from another person shall be deemed guilty of a felony.

B. This section shall not apply to:

1. A lawfully registered voter who requests an absentee ballot for himself or herself;
2. An election official, a United States postal worker or any other person who is permitted by law to transmit United States mail, if the election official, postal worker, or other person is engaged in official duties, and;
3. A family member, household member or caregiver of the voter. For purposes of this paragraph:

(a). "Caregiver" shall mean a person who has guardianship or power of attorney or provides medical or health care assistance to the voter in a residence, nursing care

institution, hospice facility, assisted living center, assisted living home, residential care institution, adult day health care facility or adult foster care home.

- (b) "Collects" shall mean to gain possession or control of an absentee ballot, whether the ballot has been completed by the voter or not.
- (c) "Family member" shall mean a person who is related to the voter by blood, marriage, adoption or legal guardianship.
- (d) "Household member" shall mean a person who resides at the same residence as the voter.

SECTION SIX. EFFECTIVE DATE. This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) National Council on this 16th day of November, 2019.

IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



Lucian Tiger III, Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

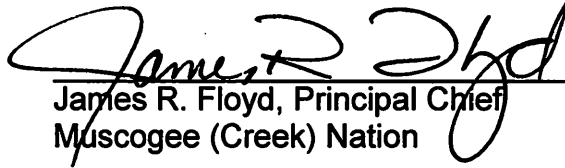
I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Sixteen members with Sixteen members attending this meeting on the 16th day of November, 2019 and that the above is in conformity with the provisions therein adopted by a vote of 15 in favor, 0 against and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.



Kristie A. Jackson, Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this 16th day of November, 2019 to the above Law, **NCA 19-141** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.


James R. Floyd, Principal Chief
Muscogee (Creek) Nation

