

Proposed Constitution 10 27 2001
**LUMBEE TRIBE OF NORTH CAROLINA
CONSTITUTION**

PREAMBLE. In accordance with the inherent power of self-governance of the Lumbee Tribe of North Carolina (Tribe), the Tribe adopts this Constitution for the purposes of establishing a tribal government structure, preserving for all time the Lumbee way of life and community, promoting the educational, cultural, social and economic well-being of Lumbee people, and securing justice and freedom for the Lumbee people

Article I. Territory and Jurisdiction.

1. The territory of the Lumbee Tribe of North Carolina shall include the State of North Carolina.
2. The Tribe's jurisdiction shall extend to the fullest extent possible under Federal law to
 - a) all enrolled members of the Tribe, without regard to location or residence, and
 - b) all persons, property, and activities located or taking place upon the Tribe's territory

Article II. Membership

1. The general membership of the Tribe shall consist of those persons who apply for enrollment and demonstrate direct descent from a person listed on Source Documents, which are listed on Exhibit A to this Constitution and incorporated herein by reference, and who maintain contact with the Tribe.

2. Notwithstanding eligibility otherwise, no person's application for enrollment shall be accepted if the applicant has not historically or does not presently maintain contact with the Tribe. Enrolled members may be disenrolled for failure to maintain contact with the Tribe, in accordance with a tribal ordinance adopted under this Constitution.

3. Notwithstanding eligibility otherwise, no person's application for enrollment shall be accepted if the applicant is an enrolled member of any other Indian tribe, unless the applicant has relinquished in writing his or her membership in such tribe.

4. The voting general membership shall consist of those members of the Tribe who are eighteen (18) and older and who are registered voters in accordance with duly adopted tribal ordinance(s).

5. The tribal council shall have authority to enact such tribal ordinances governing tribal membership as are consistent with this and other articles of this constitution, provided that no individual shall be eligible for adoption into the Tribe unless such individual can demonstrate Lumbee or other Indian ancestry.

Article III. Distribution of powers.

1. The powers expressed herein and those powers necessary and proper to the exercise of those powers expressed herein are delegated to the specified branch of government by the general membership of the Lumbee Tribe of North Carolina. Those powers not delegated herein are reserved by the general membership of the Tribe.

2. The members of the Tribe shall be secure in their persons and property and such security shall be preserved by the government created by this constitution.

3. The powers delegated to the legislative, executive, and judicial branches, except as expressly provided in this Constitution, shall be separate and distinct and no branch shall exercise the powers delegated herein to another branch, except for the office of vice-chairman.

Article IV. Recall.

1. The power to recall any elected official of the Lumbee Tribe of North Carolina who is in the second calendar year or later in his or her term is specifically reserved for the general membership of the Tribe.

2. A recall election shall be held when a petition bearing the signatures, names, addresses, and enrollment numbers of at least ten (10) percent of eligible voters who voted in the election from the district electing a tribal official or ten (10) percent of eligible voters who voted in the election for the tribal chairperson, alleging in one hundred (100) words or less that the tribal official is guilty of malfeasance in office, gross disregard for tribal law or custom, or open abuse of authority, and designating three signatories as a Petitioner's Committee, is filed with the Tribal Elections Board.

3. Upon certification of the signatures on and grounds stated in the petition and within no more than five (5) days of its receipt, the Election Board shall:

- i) serve a copy of the petition upon the named tribal official, who shall have fifteen (15) days from the date of said notice to respond to the reasons stated in the petition in one hundred (100) words or less;
- ii) immediately upon receipt of any response, serve all members of the Petitioner's Committee with a copy of the same;
- iii) allow the Petitioner's Committee forty-five (45) days from the date of receipt of the response to collect additional signatures upon their petition;
- iv) conduct a recall election within ten (10) days of the resubmission of the petition, provided that the petition is signed by twenty (20) percent of the voters who voted in the election for the recalled tribal official;

4. If at least thirty (30) percent of the voters who voted in the election for the recalled official vote and a majority of those voting vote in favor of recall, the Election Board shall declare the office vacant and the vacancy shall be filled in accordance with the appropriate provisions of this constitution, except that the recalled tribal official shall not be qualified to run for office in that special election.

5. If a recall election on a tribal official fails to obtain a majority of those voting, the Election Board shall not certify any recall petition against that tribal official for a minimum of one year thereafter.

Article V. Initiative.

1. The power to initiate a vote on a tribal ordinance is specifically reserved for the general membership of the Lumbee Tribe of North Carolina.

2. A minimum of ten (10) percent of the eligible voters may initiate consideration of a proposed tribal ordinance by submitting to the Tribal Elections Board a petition bearing the following:

- i) their signatures, names, addresses, and enrollment numbers;
- ii) the terms of the proposed tribal ordinance; and
- iii) the designation of three signatories as a Petitioner's Committee.

3. Upon certification of the signatures on the petition and within no more than five (5) days of its receipt, the Tribal Elections Board shall serve a copy of the petition bearing the proposed tribal ordinance upon the tribal council, which shall take the proposed tribal ordinance under consideration and take a vote thereon at its next regularly scheduled meeting, but no more than thirty (30) days after its receipt from the Tribal Election Board.

4. The Tribal Elections Board shall notify all members of the Petitioner's Committee of the tribal council's action on the proposed tribal ordinance within five (5) days of such action.

5. If the proposed ordinance is not enacted or is enacted with substantive changes, the Petitioner's Committee shall have thirty (30) days from their receipt of notice of tribal council action to collect additional signatures upon their petition proposing a tribal ordinance.

6. The Tribal Elections Board shall conduct an election upon the proposed tribal ordinance within ten (10) days of the resubmission of the petition proposing the tribal ordinance, provided that the petition is signed by twenty (20) percent of eligible voters.

7. If at least thirty (30) percent of the eligible voters participate in the initiative election and a majority of those voting vote in favor of the proposed ordinance, the Tribal Election Board shall declare the ordinance duly enacted law of the Lumbee Tribe of North Carolina.

Article VI. Referendum.

1. The power to conduct a referendum on any tribal ordinance adopted by the Tribal Council is specifically reserved for the general membership of the Lumbee Tribe of North Carolina.

2. A minimum of ten (10) percent of the eligible voters may initiate a referendum by submitting to the Tribal Elections Board a petition bearing the following:

- i) their signatures, names, addresses, and enrollment numbers;
- ii) the terms of the challenged tribal ordinance adopted by the Tribal Council; and
- iii) the designation of three signatories as a Petitioner's Committee

3. Upon certification of the signatures of the petition and within no more than five (5) days of its receipt, the Tribal Elections Board shall serve a copy of the petition bearing the challenged tribal ordinance upon the Tribal Council, which shall reconsider its adoption of the challenged ordinance and take a vote thereon at its next regularly scheduled meeting, but no more than thirty (30) days after its receipt from the Tribal Elections Board.

4. The Tribal Elections Board shall notify all members of the Petitioner's Committee of the Tribal Council's action on the challenged tribal ordinance within five (5) days of such action.

5. If the challenged tribal ordinance is not rescinded or substantively altered by the Tribal Council, the Petitioner's Committee shall have thirty (30) days from their receipt of notice of Tribal Council action to collect additional signatures upon their petition for a referendum on the challenged tribal ordinance.

6. The Tribal Elections Board shall conduct a referendum upon the challenged tribal ordinance within ten (10) days of the resubmission of the petition seeking a referendum on the challenged ordinance, provided that the petition is signed by twenty (20) percent of eligible voters.

7. If at least thirty (30) percent of the eligible voters participate in the referendum election and a majority of those voting vote in favor of rescinding the challenged ordinance, the Tribal Elections Board shall declare the ordinance rescinded.

Article VII. Tribal Council.

1. The legislative power to enact ordinances of the Lumbee Tribe of North Carolina shall reside in the Tribal Council. Such legislative power shall include:

- a) the enactment of annual tribal budgets, provided that budgets shall be enacted into tribal law following the conduct of tribal hearing(s) on budgets proposed by the Tribal Chairperson;
- b) the adoption of rules and regulations governing the Tribal Council's procedure and decorum, consistent with the provisions of this Constitution; and
- c) the confirmation of either employment or dismissal of a Tribal Administrator.

2. Except as otherwise provided, members of the council shall serve three (3) year terms and no council member can serve more than two consecutive terms. The privilege to run for election to the tribal council shall be limited to those members of the Lumbee Tribe of North Carolina who at the commencement of the term of office for which the member stands for election:

- a) are over the age of twenty-one (21);
- b) have maintained their principal place of residence in the particular council district for which the members stand for election no less than the preceding one (1) year;
- c) the Tribal Council shall have authority to enact an ordinance governing disqualification from tribal council office due to felony conviction.

3. The council shall consist of twenty-one (21) members who shall be elected from districts within Lumbee territory. These districts shall have boundaries as drawn in accordance with the provisions of Article XII, section 3, below, which boundaries shall be redrawn within one (1) year following the publication of each decennial federal census to maintain equal representation for each tribal member.

4. The council members shall elect from their members the following officers:

- a) a speaker, who shall preside over council meetings;
- b) a vice-chairman, who shall preside over council meetings in the absence of the speaker and who is willing and qualified to serve as chairman in the event that becomes necessary;
- c) a secretary, who shall oversee the maintenance of all records of proceedings of the council and tribal ordinances; and
- d) a treasurer, who shall oversee council proceedings to prepare annual tribal budgets.

5. All proceedings of the Tribal Council shall be conducted in public session, except for proceedings certified in advance by the speaker as implicating privacy rights of a tribal employee or member. No proceedings of the Tribal Council shall take place in the absence of a quorum which shall constitute two-thirds (2/3) of the sitting council members and all decisions of the tribal council shall require an affirmative vote of the majority of present council members, except that a veto override shall require two-thirds (2/3) vote.

6. No ordinance enacted by the Tribal Council shall be binding and effective until such ordinance has been posted in a place reserved for this purpose at the offices of the Tribal Council for a period of thirty (30) calendar days following its enactment, provided that such ordinance was not certified for referendum by the Tribal Chairperson in accordance with Article VIII, section 1 (b) within that period. The Tribal Council shall periodically publish in a newspaper of general distribution in Lumbee territory a calendar of proceedings showing all council actions taken and the address and phone number where copies of ordinances are available.

7. Any council member who is absent from three consecutive regularly scheduled meetings of the council shall be removed from office, provided that such absences are unexcused in accordance with a governing tribal ordinance. A vacancy in a Tribal Council seat will also occur automatically upon the death of a Tribal Council member or the occurrence during that member's term of any circumstance listed above in section 2 that would have disqualified the member from serving upon the Tribal Council. Vacancies in Tribal Council seats shall be filled as follows:

- a) If a Tribal Council seat becomes vacant for any reason and one calendar year or less remains in the term of the vacant seat, then
 - i) the Tribal Council shall schedule, advertise and conduct a public hearing in the district with the vacant seat for the purpose of receiving nominations from district residents to fill the vacancy, then elect as council member for the vacant seat from among those individuals nominated at the public hearing by a 2/3 vote of the Tribal Council;
 - ii) if no candidate described in (a) i) above is nominated or qualified to serve, the Tribal Council shall appoint a person who would be qualified to stand for election to that seat to serve the remainder of the term.
- b) If a Tribal Council seat becomes vacant for any reason and more than one calendar year remains in the term of the vacant seat, then
 - i) a special election shall be conducted to fill the vacancy; and
 - ii) the newly elected council member shall serve out the remainder of the vacated term.

Article VIII. Tribal Chairperson.

1. All executive powers, including implementation of and compliance with annual budgets, of the Lumbee Tribe of North Carolina shall reside in a Tribal Chairperson, who shall cause all laws of the Tribe to be faithfully executed. Specifically, the Tribal Chairperson shall:

- a) deliver to the general membership an annual State of the Tribe address during the first week of July, which address shall include a proposed budget for the upcoming fiscal year;
- b) within ten (10) days of its passage by the Tribal Council, certify for referendum by the general voting membership any tribal ordinance that affects fundamental rights or interests of the Lumbee Tribe of North Carolina. Any ordinance imposing a tax or authorizing gaming in Lumbee territory shall be deemed to affect fundamental rights or interests of the Tribe. No ordinance certified as requiring a referendum shall be effective unless and until such ordinance is approved by a majority of those voting in the referendum, such referendum to be conducted in accordance with Article V of the Constitution;

- c) have authority to veto any ordinance enacted by the Tribal Council;
- d) shall nominate a Tribal Administrator, subject to confirmation by the Tribal Council or its designee (s); the Tribal Administrator can be removed by the same process;
- e) represent the Lumbee Tribe of North Carolina before all other governments and tribunals, including the United States, the State of North Carolina, and all federal and state agencies

2. The Tribal Chairperson shall be elected by the voting general membership for a term of three (3) years and shall not serve more than two consecutive terms. The privilege to run for the office of Tribal Chairperson shall be limited to those tribal members who at the commencement of the term

- a) are thirty-five (35) year's age or more;
- b) have maintained his or her principal place of residence in territory of the Tribe for the preceding one (1) year;
- c) the Tribal Council shall have authority to enact a tribal ordinance governing disqualification from office of Tribal Chairperson due to felony conviction

3. A vacancy shall occur in the office of Tribal Chairperson upon the death of the chairperson or the occurrence during that chairperson's term of any circumstance listed above in section 2 that would have disqualified the chairperson from running for office. Vacancies in the office of Tribal Chairperson shall be filled as follows:

- a) If a vacancy occurs in the office of Tribal Chairperson with one calendar year or less remaining in the term of office, then the Tribal Vice-Chairperson shall serve out the term, provided that the Vice-Chairperson would be otherwise qualified to run for the office of Tribal Chairman.
- b) If the vacancy occurs in the office of Tribal Chairperson with more than one calendar year remaining the term of office, then a special election shall be conducted and the newly elected Tribal Chairperson shall serve out the remainder of the vacated term.

Article IX. Judiciary.

1. The judicial power of the Lumbee Tribe of North Carolina shall reside in the Supreme Court of the Lumbee Constitution and such inferior courts as the Tribal Council may establish. The Supreme Court of the Lumbee Constitution shall have original jurisdiction over all cases and controversies arising under the Lumbee Constitution and all ordinances of the Lumbee Tribe of North Carolina. In the event the Tribal Council establishes inferior courts, the Supreme Court of the Lumbee Constitution shall have appellate jurisdiction only over those cases and controversies arising under tribal ordinances.

2. The rule of law to be applied in the Supreme Court of the Lumbee Constitution in all cases and controversies within its original jurisdiction shall be the will of the Lumbee people as expressed in the Lumbee Constitution, duly adopted tribal ordinances, and Lumbee custom. In the absence of a governing rule of law from these sources, the governing rule shall be federal common law.

3. The Supreme Court of the Lumbee Constitution shall consist of five sitting judges, who shall serve five-year terms; no judge may serve two consecutive terms. These judges shall have the qualifications and be selected as set out below:

- a) the qualifications for Tribal Chairperson specified in Article V, section 2, shall apply to judges of the Supreme Court of the Lumbee Constitution, except that the minimum age of judges shall be thirty-five (35);
- b) at all times, two of the sitting judges shall be graduates of accredited law schools and three shall be lay people;
- c) for the initial appointments to the Court, the Tribal Chairman shall nominate ten qualified candidates, from whom the Tribal Council shall appoint five. By some method of chance, one of the initial appointees shall serve a one year term, one a two year term, one a three year term, one a four year, and one a five year term. Thereafter, each appointed judge shall serve a five-year term. In making nominations and appointments, the Tribal Chairperson and Tribal Council shall to the greatest extent possible select candidates who reside in different areas or communities of the Lumbee territory.

4. There shall be a Chief Judge of the Supreme Court of the Lumbee Constitution who shall bear administrative responsibilities for the conduct of the court's business and who shall be elected on an annual basis by the sitting judges.

Article X. Elections Board.

1. There shall be an independent Tribal Elections Board of the Lumbee Tribe of North Carolina, which shall have the following authority:

- a) to promulgate necessary and appropriate regulations under authority of this constitution and tribal ordinances governing voter registration and the conduct of all regular and special tribal elections;
- b) to conduct all recall, initiative, and referendum proceedings; and
- c) any other matters specified herein or authorized by tribal ordinance.

2. The Tribal Elections Board shall consist of five (5) enrolled members over the age of eighteen (18) appointed by the Tribal Council. For purposes of this appointment, the council members shall be divided as equally as possible into five (5) appointing committees by some method of chance. Each of the five appointing committees shall appoint one Elections Board member. The Board members shall serve six-year terms and may not serve consecutive terms.

3. Any matter decided or certified by the Tribal Elections Board shall be deemed final tribal action and shall be reviewable by the Supreme Court of the Lumbee Constitution.

Article XI. Duty of Loyalty.

1. Every elected and appointed tribal official empowered herein shall affirm upon taking office that he or she will abide by this Constitution and laws of the Lumbee Tribe of North Carolina and will, to the best of his or her ability, perform his or her duties with undivided loyalty to the Lumbee Tribe of North Carolina.

2. The first Tribal Council elected under this Constitution shall adopt an ordinance proscribing conflicts of interests in the performance of duties by elected and appointed tribal officials, which ordinance shall require a tribal official to recuse him or herself from any decision or vote affecting his or her pecuniary interest or a family member.

Article XII. Adoption.

1. A referendum on the adoption of this Constitution shall be conducted among the enrolled members of the Lumbee Tribe of North Carolina aged eighteen (18) and above on November 6, 2001.

2. This Constitution shall be deemed adopted if, at the general referendum conducted therefor, a majority of those enrolled members voting vote in favor of adoption of the same. Specific provisions of the Constitution set out for special vote at the same referendum, if any, shall be deemed adopted upon favorable vote of a majority of those voting on each specific provision as if those provisions were set out in the document itself.

3. Upon adoption, this Constitution shall be considered immediately effective as the governing document for the Lumbee Tribe of North Carolina. The tribal chairperson and tribal council members elected on November 7, 2000, shall serve out their full terms, set to expire in November 2003, and shall in the meantime be bound by the terms of this Constitution, subject to the following exceptions and special responsibilities as the first tribal officials to serve under the Constitution:

- a) the present tribal council members shall be deemed council members at large in the interim between the adoption of this Constitution and the first set of elections held under the Constitution in November 2003, without regard to district boundaries from which they were elected;
- b) before the election in November 2003, the present tribal officials shall draw boundaries for the twenty-one (21) tribal council districts, provided that:
 - i) each tribal member has equal representation on the Tribal Council; and
 - ii) the boundaries for tribal council districts shall be drawn and published throughout the tribal territory no less than sixty (60) days in advance of the election to be held in November 2003;
- c) for purposes of the conduct of the election to be held in November 2003,