

GOVERNING DOCUMENTS REVIEW COMMITTEE

REPORT & RECOMMENDATIONS

[Authorized by Tribal Council Resolution No. 271 (2010), this report documents the findings of the committee convened to research the Governing Documents of the Eastern Band of Cherokee Indians.]

June 2, 2011

Table of Contents

PROJECT OVERVIEW	3
COMMITTEE MEMBERS & PROJECT CONTRIBUTORS	4
HISTORY AND MATERIALS PRESENTED	6
PROJECT OUTCOMES	8
STATEMENTS OF FINDING	10
RECOMMENDATIONS TO TRIBAL COUNCIL	12
ATTACHMENT A	14
DOCUMENTS IDENTIFIED AND COMPILED IN COURSE OF THE PROJECT	14
MATERIALS COLLECTED AND PRESENTED TO QUALLA PUBLIC LIBRARY	15
DECEMBER 2010 - MAY 2011	15
ATTACHMENT B	21
GOVERNING DOCUMENTS REVIEW COMMITTEE SESSIONS POWERPOINT PRESENTATIONS, FEBRUARY – APRIL 2011	21
GOVERNING DOCUMENTS REVIEW COMMITTEE SESSIONS	22
FEBRUARY 17, 2011 SESSION	22
MARCH 3, 2011 SESSION	25
MARCH 17, 2011 SESSION	29
APRIL 14, 2011 SESSION	32
APRIL 21, 2011 SESSION	36
ATTACHMENT C	39
TIMELINE OF EBCI GOVERNANCE PREPARED BY MS. PEGGY HILL, YELLOWHILL COMMUNITY, MAY 2011	39
TIME LINE OF EBCI GOVERNANCE	40
ATTACHMENT D	42
TRANSCRIPTIONS OF HISTORIC DOCUMENTS OF THE EASTERN BAND OF CHEROKEE INDIANS 1868 - 1875	42

DOCUMENT 1	43
OFFICE OF INDIAN AFFAIRS COVER SHEET, OCT. 17, 1883	43
DOCUMENT 2	44
COVER LETTER SAM B. GIBSON, AGENT N. C. CHEROKEES, OCT. 10, 1883	44
DOCUMENT 3	45
DOCUMENT OF DECEMBER 10, 1868 (ADOPTED AT CHEOAH)	45
DOCUMENT 4	47
DOCUMENT OF NOVEMBER 26, 1870 (ADOPTED AT QUALLA TOWN, JACKSON COUNTY, N.C.)	47
DECEMBER 1 ST , 1870	49
DOCUMENT 5	51
DOCUMENT OF OCTOBER 13, 1875 (ADOPTED AT CHEOAH COUNCIL GROUND)	51
ATTACHMENT E	56
DOCUMENTS SHOWING PARALLEL PROVISIONS OF EASTERN BAND - AND STATE – ISSUED LAW	56
LOYD WELCH CONSTITUTION (1875) & CHAPTER 207,	57
NORTH CAROLINA PRIVATE LAWS (1897)	57

Governing Documents Review Committee

Report & Recommendations

Project Overview

A long-standing controversy has troubled the Eastern Band of Cherokee Indians community for almost twenty-five years regarding the validity of the Tribe's Charter and Governing document (the "Charter"). Although addressed by a 1993 Tribal Council-authorized investigation by a committee made up of Tribal Council and community members, criticism of the Charter as invalid continues to persistently arise in Tribal Council proceedings.

Tribal Council authorized the examination of the Governing Documents in Resolution No. 271 (2010) through the Committee convened "to research the governing documents of the Tribe, to clarify the role and function of the branches of our tribal government, and to make such recommendations to Tribal Council that will effect the goals of the findings." The present project undertook to examine the texts and origins of the tribe's governing documents, their history, and the development and approval of the 1986 Charter. The Committee was charged to present an informed report to Tribal Council as to any defects in the Tribe's current organizational integrity.

"... I have studied and labored for the past ten years of my life, to secure to my brothers equal Justice from their brothers of the west and the United States, and that you would no longer be hewers of wood and drawers of water, but assume that proud position among the civilized nations of the earth intended by the Creator that we should occupy, and which in the future you will take or be exterminated."

Farewell Address,
1880, Lloyd
Welch, Principal
Chief, Eastern
Band Cherokee
Indians

The Committee was also authorized to seeking funding to support the activities in carrying out the intent of the Resolution. The Cherokee Preservation Foundation awarded the Committee discretionary funding to implement this work. Mr. Robert Connelly, Sequoyah Distinguished Professor of Western Carolina University, also contributed funds to the project. The Qualla Library facilitated this project as the fiscal agent for the grants and hosted the 10-week series of research, analysis and discussion.

The research sessions were facilitated by Ms. Sarah Sneed, *J.D.*, who is uniquely qualified due to her extensive experience in working with Indian tribes and the Eastern Band community. Ms. Sneed is an enrolled member of the EBCI and graduate of Harvard Law School. Ms. Carolyn West, *J.D.*, graduate of University of New Mexico Law School and recently admitted member of the NC Bar, also an enrolled member, served as assistant facilitator.

The project proposed that Committee members would develop Statements of Findings regarding the historic development of the current Tribal government and advise the Tribal Council of these conclusions at project's end. The project was designed so that members of the Committee who did not concur with the conclusions reached by the majority of Committee members could state their dissenting opinions and present these separate findings to the Tribal Council.

Committee Members & Project Contributors

Each of the Eastern Band Community Clubs was asked to select a community member to serve on the Committee. Nine Committee members were appointed to the Committee December 21, 2010. The Committee members are:

Mr. Lloyd Arneach, Yellowhill Community
Mr. Frankie Bottchenbaugh, Big Cove Community
Ms. Kathy "Rock" Burgess, Wolfetown Community
Ms. Lois Dunston, Painttown Community
Ms. Lynne Harlan, Big Y Community
Mr. Roger Smoker, Snowbird Community
Ms. Jody Taylor, Birdtown Community
Ms. Barbara Vicknair, Cherokee County
Mr. Arthur Wade, 3200 Acre Tract

The Committee's working sessions were open to the public and the project greatly benefitted from the work and contributions made by individuals who joined the endeavor:

Ms. Dawn Arneach, Yellowhill Community
Mr. Tommy Chekelelee, Snowbird Community
Ms. Terri Henry, Painttown Community
Ms. Peggy Hill, Yellowhill Community

Mr. George Martin, Birdtown Community
Ms. Louise Reed, Snowbird Community
Mr. Matthew Tooni, Painttown Community
Ms. Mary Wachacha, Yellowhill Community
Ms. Amy Walker, 3200 Acre Tract

At its first meeting, Committee members devised a workable schedule for the ten weekly sessions. The sessions were conducted Thursday evenings from 5 p.m. to 7 p.m. Eight of the sessions were conducted at the Qualla Public Library. The ninth session, held on April 7, 2011, was conducted at the Senior Citizens' Center in Snowbird and the final session, held April 21 at the Senior Citizen's Center in Cherokee Countys ensured inclusion of those communities in the project's activities.

Each of ten (10) project sessions was videotaped by Jeremy Brown and Nathaniel Wade of the EBCI Information Technology (IT) department, and broadcast, with at least one repeat airing per week, over the tribal television channel, Channel 28. The entire series was played back-to-back, on April 23, 2011.

The EBCI Tribal Operations Program (TOP), Office of the Attorney General and individual members of the Eastern Band Community contributed materials for Committee research and review. Over fifty(50) documents were collected through the course of the project and will be made available to the public through the Qualla Public Library, Snowbird Library and Murphy Public Library.

Key documents will be presented to Cherokee Central Schools, Swain and Jackson County Schools, Western Carolina University's Cherokee Center and Hunter Library and the Museum of the Cherokee Indian.

The Committee would like to take this opportunity to extend their gratitude to the following:

To Tribal Council for trusting its citizens to examine the governing documents and their history by authorizing this important work.

To the Community Clubs for their recommendations of community members to the Committee.

To Cherokee Preservation Foundation, WCU Professor Robert Conely and the Qualla Library for their gracious contributions.

To the Community Member Contributors for their encouragement, support and interest in this work.

To Jeremy Brown, Nathaniel Wade and the IT Department, and, Bruce Welch and the Transit Program for their technical support of the groups work.

To Sarah Sneed for guiding the committee in its research, analysis and process, and to Carolyn West's assistance in the research of the project. This report to Council, including the compilation of certain documents examined, i.e., the documents received from the NC State Legislative Library, was developed in collaboration with the Committee and written by Sarah Sneed.

And finally, to the viewing public for their interest in and feedback to the Committee.

History and Materials Presented

Committee working sessions were planned with two objectives in mind: to introduce concepts of constitutionalism and to understand the development of Eastern Band self-governance from pre-colonial times to the present-day.

The sessions began with a discussion of the pre-contact (traditional) legal system of the Cherokee, which, through its clan system, entailed a fully constitutional legal system. See Reid, *A Law of Blood: The Primitive Law of the Cherokee Nations* and Strickland, *Fire and the Spirit: Cherokee Law from Clan to Court*.

Through this presentation, basic concepts of constitutionalism were introduced, as well as a description of the conflict that arose between original Cherokee self-governance and the Europeans' push to have the Cherokees adopt a representational government, the mechanism through which Europeans could more readily gain title to lands of indigenous Americans, including those of the Cherokee.

The geographical categorization of the Cherokee villages was discussed, i.e., Upper, Middle, Outer, Lower Towns, explaining how, though not organized under a single leader and absent a national center, the law of clanship unified the Cherokees as a people and a nation. But the 50-60 Cherokee towns, each under autonomous leadership that included spiritual councils and political councils, as well as war and peace councils, did not fit the European powers' need for the identification of a single "chief" who could bind the whole of the Cherokee nation to land cessions.

The Cherokees faced other legal constructs as the British sovereign claimed their lands. The Charter under which King George authorized the founding of the colony of Georgia, part of the Cherokee homeland, was discussed to introduce concepts of international law, later inherited by the United States, and to introduce concepts of federal Indian policy.

Prior to the present project, the Eastern Band has not recognized its origins as first appearing in the Treaty of Cherokee Agency (1817) and the Treaty of Washington (1819). The Treaty of Cherokee Agency references a meeting in 1808 between Cherokee delegates and President Thomas Jefferson, at which Upper Town Cherokees expressed a desire to secede from the Cherokee Nation in pursuit of civilization and citizenship.

Under the terms of these treaties, the United States granted a number of Cherokee households, properly registered with the federal Indian Agent, individual reservations of 640 acres in western North Carolina, in exchange for pledges that they would become citizens of the United States.

The provisions of these treaties were frustrated, however, by conflicting legal doctrine, such as principles of federalism, and the realities of a racist political order that denied citizenship to Native- and African-Americans. North Carolina

Cherokees were denied citizenship by the state and would not be granted United States citizenship until 1924. Thus, the treaties of 1817 and 1819 failed to fulfill the promises made to the Cherokee men registered thereunder, although the land concessions promised to the United States were, of course, fully executed.

The North Carolina Supreme Court ruled in 1824 that the individual parties to the treaties took the lands in full legal title, *Euchela v. Welsh*, 3 Hawks 135, which meant as well that the individual Cherokee reservations could be purchased or swindled away from the Cherokee families. The Upper Cherokees who agreed to the terms of the 1817 and 1819 treaties were ultimately left without a legal identity and lost their individual reservations. This political and legal vulnerability would drive the development of Eastern Band government through the twentieth century.

North Carolina Cherokees endured this all-pervasive uncertainty through the Removal of their Cherokee Nation relations and the Civil War until, in 1868, they convened, in a Grand Council at Cheoah near what is now the Snowbird community, to prepare an organizing document. This first expression of Eastern Cherokee self-governance is the earliest of three documents contained in what is referred to as the "Lloyd Welch Constitution." The 1868 Cheoah document was expanded and revised through amendment in 1870 by the people assembled at Qualla Town, near present-day Cherokee, North Carolina. Lloyd Welch was Principal Chief when the governing document was finally rewritten and adopted in 1875 at the Cheoah Council Grounds.

The remarkable accomplishment of developing and instituting a constitutional government was betrayed, however, when in 1886, the United States Supreme Court ruled against the Eastern Cherokees in *The Cherokee Trust Funds, the Eastern Band of Cherokee Indians v. the United States and Cherokee Nation*, commonly called *the Cherokee Nation West*, 117 U.S. 288. In its decision, the Court commented on the Eastern Band's constitutional documents, refuting its authority to organize under a constitutional system. The Court stated that the Eastern Cherokees had given up their status as an Indian tribe when they separated from the Cherokee Nation under the 1817 and 1819 treaties, and in so doing became subject to the laws of North Carolina, foreclosing the possibility of organization under a separate constitution.

Unable to hold property and without legal protection, the Eastern Band then turned to the state legislature obtaining a corporate charter from the North Carolina in 1889, Chapter 211, North Carolina Private Session Laws, amended in 1897 as Chapter 207. Once it achieved status as a North Carolina corporation, the Eastern Cherokees could finally own land and took title to the Qualla Boundary in 1897.

From this date, the state-issued charter was amended several times in the years 1931 to 1947 and served as the Eastern Band's governing document until 1986,

when it was modified and issued as its Charter and Government Document pursuant to its inherent tribal sovereignty.

The 1986 amendments have been repeatedly challenged by tribal members for failing to have been legally ratified. In 1993, the Eastern Band Tribal Council approved the creation of an investigating committee to look into any deficiencies in the referendum election through which the Charter and Governing Document was approved. The Committee authorized under Resolution No. 1 of that year concluded that Chapter 207 was in effect at the time of the 1986 referendum and its provisions were not followed, therefore invalidating approval of the Charter and Governing Document.

The present Committee's review of the Eastern Band's historic materials led to a different conclusion, which in its Statements of Finding and Recommendations follow below.

Project Outcomes

Committee members, together with the Project Facilitator, made a preliminary report to the Tribal Council at its May 5, 2011, regular Council session. The Committee requested a working session with the Council and to be placed on the agenda for a full report of its Statements of Finding and Recommendations at the June 2, 2011, regular Council session.

Over fifty (50) documents were compiled and organized for inclusion in the course of the Project (See Attachment A, "Documents identified and compiled in course of Governing Document Review Committee Project.") These materials, along with a notebook of materials compiled through the course of the project, and DVD recordings of the Committee working sessions will be available at the Qualla Public Library, the Snowbird library and the Murphy Public Library.

In response to Council interest in ensuring these materials are available to the primary and secondary schools that serve the EBCI, a set of Committee materials will also be presented to the Cherokee Central School System and Swain, Jackson and Graham County School Districts, for access by Eastern Band students. Similarly, the materials will be provided to Western Carolina University's Cherokee Center and Hunter Library.

Digitized copies of North Carolina statutory provisions provided by the North Carolina Legislative Library comprising the state-issued Charter (1887-1986) have been distributed to the Qualla Public Library, the EBCI Tribal Operations (TOP) office and the EBCI Office of the Attorney General.

In studying the Loyd Welch Constitution, the Committee was able to evaluate the authenticity of several versions of the document in current circulation and determine the best version available for research purposes.

Each Committee member was provided a copy of John R. Finger's books, *The Eastern Band of Cherokee Indians 1819-1900* (1984) and *The Eastern Band of Cherokees in the Twentieth Century* (1993) to provide background information about the development of the tribal government.

A number of interested community members joined this Committee's effort, actively participating in session discussions and contributing historic documents from their personal collections.

Throughout the course of the project, participants received numerous informal statements of interest and appreciation from tribal members who watched the session broadcasts on cablevision's Channel 28.

The development of Statements of Finding and Recommendations required intensive small-group discussion following the tenth and final working session in Cherokee County. To date, two meetings have been held to work on these final work products. Additional sessions were held in order to finalize the Findings and Recommendations for presentation to the Tribal Council on June 2, 2011.

Respectfully submitted,

The Governing Documents Review Committee

June 2, 2011

Statements of Finding and Recommendations

The Statements of Finding and Recommendations that follow

- Seek to clarify the authenticity of the Eastern Band's historic documents;
- Document the succession of documents under which the Eastern Band has been organized, from the Loyd Welch Constitution of 1875 through the adoption of the current Charter and Governing Document under the EBCI'S inherent tribal sovereignty in 1986;
- Identify any deficiencies in the 1986 adoption of the *Charter and Governing Document*; and
- Advocate for continued public education regarding the evolution of the Eastern Band from the original families who broke away from the greater Cherokee Nation under Treaties with the United States in 1817 and 1819, in order that ongoing disputes regarding the legitimacy of the tribe's organic legal structure can be finally resolved.

The findings and recommendations are submitted in the spirit with which the Committee's working sessions were conducted, with utmost respect for our forebearers, whose intelligence and determination that the Cherokees of North Carolina should remain together as a separate, and eventually, federally-recognized tribe, are fully evident in the history of the Eastern Band of Cherokee Indians.

Statements of Finding

These Statements of Finding are derived from the discussions of the Governing Document Review Committee of the documents reviews, the committee's understanding of the times in which they were developed, and sense of the Tribe's history.

Statement of Finding No. 1: The Loyd Welch Constitution

The *Loyd Welch Constitution* is comprised of three separate documents. The first was adopted at Cheoah in 1868. This rudimentary organizing document was amended at Qualla Town in 1870. The Qualla Town document was revised and greatly expanded through the adoption of an 1875 constitution at Cheoah Council Grounds in 1875.

The Committee based its work on the handwritten copy of *the Loyd Welch Constitution* certified on October 6, 1883, in Swain County Superior Court by W.R. Grant, Clerk of Court.

Statement of Finding No. 2: Eastern Band of Cherokee Indians Charter & Governing Document

The *Loyd Welch Constitution* was rejected as a legal constitution by the U.S. Supreme Court in *The Cherokee Trust Fund; Eastern Band of Cherokee Indians v. United States and Cherokee Nation*, 117 U.S. 288 (1886), in which the Court stated that the Eastern Band of Cherokee Indians were not an organized body, had entered into no treaties with the federal government, and its members were citizens of the state of North Carolina.

As a result of this decision, Eastern Band leaders were prompted to pursue recognition by North Carolina through a state-issued business charter, which was legislated into law in 1889.

In 1897, this corporate document was amended, as Chapter 207 of the North Carolina Private Session laws, to include articles from the 1875 *Loyd Welch Constitution*. Although by law the intentions of the Eastern Band were discounted by the United States, Eastern Band members viewed the charter as their “Constitution & Charter,” believing that the spirit of the *Loyd Welch Constitution* was embodied in the provisions of Chapter 207, North Carolina Private Session Laws.

Chapter 207 was upheld as the governing document of the Eastern Band in 1931 and on February 19, 1934, over the signatures of nine Council members, the Tribal Council Chairman, the Principal Chief and Agency Superintendent submitted the provision of Chapter 207 as the Tribe’s constitution in response to federal inquiry as to whether the Eastern Band wished to accept the provisions of the Indian Reorganization Act.

In 1947, the North Carolina legislature amended Chapter 207 to give authority for full self-government to the Eastern Band.

In 1986, the Charter was amended and issued under the Eastern Band’s inherent tribal sovereignty as the *Charter and Governing Document of the Eastern Band of Cherokee Indians*.

Statement of Finding No. 3: Resolution No. 1 (1993) Committee Conclusions on Grand Council & 25% Voter Approval Requirement

In 1993, an Investigating Committee concluded that the 1986 adoption and ratification of the current *Charter and Governing Document* was invalid because the approval requirement in place under Chapter 207 had not been fulfilled. See, *Transcript Eastern Band of Cherokee Indians Special Council Proceedings*, December 13, 1993, pp. 9-19.

The Committee finds that there is insufficient information in the *Loyd Welch* constitutional documents and Chapter 207 to form a conclusion regarding the role and function of the Grand Council. The Committee does not agree that the referendum to approve the 1986 Charter and Governing Document was invalid

because a Grand Council was not called and a two year period of deliberation was not provided.

The Committee does conclude, however, that the number of registered votes cast to approve the 1986 changes to the EBCI governing document did not meet the 25% approval requirement set by Tribal Council for that election. See, Transcript Eastern Band of Cherokee Indians Special Council Proceedings, December 13, 1993, Minutes of May 8, 1986, following p. 13, and letters from Superintendent Wilbur Paul to Principal Chief Robert Youngdeer, October 9, 1986, November 4, 1986, and December 11, 1986, reporting results of the October 8, 1986, Referendum.

Statement of Finding No. 4: Enhancement & Expansion of the EBCI Charter & Governing Document

The *Charter and Governing Document* needs to be expanded and enhanced under constitutional principles, which must include an independent court system and protection of the civil rights of tribal members.

Statement of Finding No. 5: Develop Educational Training & Materials on the EBCI Charter & Governing Document

Education regarding the current Charter and Governing Document, the Loyd Welch Constitution and Chapter 207, should be encouraged and promoted, including a focused inquiry consulting with Cherokee-speakers and tribal elders into our political history, in order to understand how the Cherokee language provides insight into the structure of EBCI government in the 19th and early 20th century.

Recommendations to Tribal Council

Having concluded its study of the historic documents of the Eastern Band of Cherokee Indians, the Governing Document Review Committee recommends:

1. That the historic documents of the EBCI assembled and compiled in the course of the Governing Document Review Committee project be preserved, organized and maintained for accessibility by the EBCI tribal membership.
2. That the Tribal Council support the development of public education, presented in the Cherokee language as well as in English, regarding the evolution of the Eastern Band in the hundred years between the adoption of the *Loyd Welch Constitution* to the 1986 amended *Charter and Governing Document*. This history is of monumental cultural value to the people of the Eastern Band and could inform tribal members regarding issues, past and current, in tribal governance.

3. That the EBCI government should be restructured pursuant to a constitutional system that includes independent branches of government, separation of powers and protection of individual members' rights.
4. That Tribal Council make budgetary accommodations, whether through grant or tribal funds, to develop a governing document consistent with constitutional standards as the Committee finds to be necessary.
5. That the Tribal Council adopt an approval percentage requirement for tribal referenda that is based on the number of members voting, rather than on the total number of registered voters to avoid the problem that arose with respect to the 1986 referendum. . See, *Transcript Eastern Band of Cherokee Indians Special Council Proceedings*, December 13, 1993, Minutes of May 8, 1986, following p. 13, and Letters from Superintendent Wilbur Paul to Principal Chief Robert Youngdeer, October 9, 1986, November 4, 1986, and December 11, 1986, reporting results of the October 8, 1986, Referendum.

ATTACHMENT A

DOCUMENTS IDENTIFIED AND COMPILED IN COURSE OF THE PROJECT

Materials Collected and Presented to Qualla Public Library December 2010 - May 2011

1. 1817, Jul 8 Treaty of Cherokee Agency, 7 Stat. 156
2. 1819, Feb 27 Treaty of Washington, 7 Stat. 195
3. 1824, Jun *Doe on demise of Eu-che-lah v. Welsh*, 2 Hawks 155, Supreme Court of North Carolina
4. 1870-1875 Unattributed printed copy of Lloyd¹ Welch Constitution, marked Appendix "A," text is incomplete
5. 1875 Typewritten version of Loyd Welch Constitution, abstracted version, unauthenticated
6. 1882, Feb 25 U.S. House of Representatives, 47th Congress: Eastern Cherokees in North Carolina, letter from the Secretary of the Interior. (Pages 6-12 are missing)
7. 1883, Oct 10 Handwritten, certified version of Loyd Welch Constitution transmitted to Office of Indian Affairs (includes 1868, 1870 and 1875 organizing documents of the North Carolina Cherokees)
8. 1883, Oct 10 Typewritten version of Loyd Welch Constitution, including cover letter from Sam B. Gibson, Agent, N.C. Cherokees to Hon. H. Price
9. 1886, Mar 1 *The Cherokee Trust Funds; Eastern Band of Cherokee Indians v. United States and Cherokee Nation, commonly called Cherokee Nation West*, 117 U.S. 288

¹ The best representation of the Loyd Welch Constitution, the 1883 handwritten document certified by the Swain County Superior Clerk of Court (document 7.), transcribes Principle Chief Welch's first name as "Loyd." Subsequent typewritten documents spell the name "Lloyd." The Committee adhered to the spelling contained in the 1883 certified document.

10. 1897, Mar 8 Private Laws of North Carolina, Chapter 207 (amended state charter of the Eastern Band of Cherokee Indians)
11. 1897, Mar 8 Typewritten version of Private Laws of North Carolina, Chapter 207
12. 1889 Private Laws of North Carolina, Chapter 211 (original state charter of Eastern Band of Cherokee Indians)
13. 1892 Extra Census Bulletin, Eastern Band of Cherokees of North Carolina by Thomas Donaldson (contains text of Loyd Welch constitutional documents deviating from original)
14. 1895 Private Laws of North Carolina, Chapter 166 (amended state charter of Eastern Band of Cherokee Indians)
15. 1897, Mar 8 Private Laws of North Carolina, Chapter 207 (amended state charter of Eastern Band of Cherokee Indians)
16. 1897, Mar 8 Unattributed typewritten version of Private Laws of North Carolina, Chapter 207 (includes copy of EBCI adoption of provisions of Chapter 207)
17. 1930, Feb 24 Reply Brief, In the Matter of the Enrollment of the Members of the Eastern Band of Cherokees of North Carolina, Joseph W. Howell, Attorney for the EBCI
18. 1931 Private Laws of North Carolina, Chapter 128 (amendments to state charter of Eastern Band of Cherokee Indians)
19. 1933 Private Laws of North Carolina, Chapter 39 (amendment to state charter of Eastern Band of Cherokee Indians)
20. 1934, Feb 14 Letter re: EBCI response to Indian Reorganization Act

21. 1939, Feb 15 Resolution No. 115 EBCI response to Indian Reorganization Act
22. 1947, Apr 5 Session Laws of North Carolina, Chapter 978 (amendment to state charter of Eastern Band of Cherokee Indians)
23. 1947, Aug 6 Letter from Henry Bradley, Candidate for Chief, and Mollie G. Arneach, Candidate for Council member, Cherokee Township, to N.C. Attorney General Harry McMullan re: Chapter 978, North Carolina Session Laws 1947
24. 1958, Apr 14 Resolution No. 58-147 regarding proposed regulations governing revision of EBCI membership roll
25. 1965, Dec 13 Notice, from Frell M. Owl, Chairman Constitution Committee, to All Members of the Eastern Band of Cherokee Indians re: Proposed Constitution and Bylaws of the Eastern Band of Cherokee Indians (includes Tentative Draft of Proposed Constitution and Bylaws November 18, 1965)
26. 1976, Aug 5 Materials prepared for Cherokee Tribal Council by Holt, Haire & Bridgers, P.A., Tribal Attorneys, for proposed Constitution of the Eastern Band of Cherokee Indians
27. 1978, May 2 & 23 Minutes of Constitution Committee May 2, and May 23, 1978
28. 1978, Oct 23 Draft Cherokee Constitution (includes questionnaire regarding changes in tribal governing document and related issues)
29. 1979, Jan 30 Draft EBCI Constitution (unratified)
30. 1980, Aug An Historical Analysis of the Legal Status of the North Carolina Cherokees by Ben Oshel Bridgers, reprinted from the University of North Carolina School of Law, N.C. Law Review

31. 1983, Dec 7 "Proposed Constitution," *Cherokee One Feather*, pp. 8-14
32. 1984, Jan 6 Transcript, Annual Council proceedings regarding proposed EBCI constitution and approval requirements
33. 1986, May 8 Resolution No. 132, authorizing referendum to approve changes to the Tribal Charter
34. 1986, Oct 9 Transmittal letter from Superintendent Wilbur Paul to Principal Chief Robert S. Youngdeer advising of outcome of October 8, 1986, referendum re: revised Tribal Charter
35. 1986, Nov 4 Transmittal letter from Superintendent Wilbur Paul to Principal Chief Robert S. Youngdeer advising of outcome of October 8, 1986, referendum re: revised Tribal Charter, which Principal Chief Youngdeer had vetoed
36. 1986, Dec 11 Resolution No. 461 approving outcome of October 8, 1986, referendum and directing Attorney General to revise charter to reflect approved changes
37. 1987, Apr 2 Transmittal letter from Superintendent Wilbur Paul to Principal Chief Robert S. Youngdeer advising of outcome of October 8, 1986, referendum re: revised Tribal Charter and that the tribal Attorney had been directed to revise the Charter
38. 1993, Aug 2 Letter from Interior Department Bureau of Indian Affairs, Director Office Tribal Services to Virginia Sexton (includes signed petition supporting investigation of the 1986 referendum amending EBCI governing document; copies of Lloyd Welch Constitution (abstracted version); Farewell Address of Lloyd Welch and materials related to Investigating Committee under Resolution No. 1, 1993
39. 1993, Oct 1 Resolution No. 1 authorizing Committee to investigate validity of EBCI Charter and Governing Document adopted 1986, includes transcript of Committee report to Tribal Council, December 13, 1993

40. 1993, Nov 23 Pamphlet, "WAKE UP!" Includes letters from Richard Tesatuskee, Chairman, Yellow Hill Community Club to Inspector General of the Interior Department and Wilbur Paul, Superintendent regarding validity of 1986 Charter and Governing Document and memorandum from Bob Warren regarding powers of the Grand Council
41. 1995, May 4 Resolution No. 479 ordering no action taken on Ordinance 434 until new Council is seated. (Includes reference to Tribal Council killing resolution to act upon Recommendations of the Investigating Committee of Resolution No. 1, 1993)
42. 1996, Jun 24 Ordinance No. 284, Enrollment Ordinance reflecting amendments
43. 1996, Aug 14 Resolution No. 310, authorizing Principal Chief Joyce C. Dugan to contract with Robert Lyttle and Richard Monette to develop an EBCI constitution (includes transmittal letter from Wilbur Paul, Superintendent, to Principal Chief Dugan)
44. 1997, Sept 25 Resolution No. 715 authorizing Secretary of the Interior to initiate election process for Secretarial Election approval of proposed Constitution
45. 1998, Jun 3 Advisory Opinion re: EBCI eligibility for state funds from Clean Water Management Trust Fund to David McNaught, Executive Director, Clean Water Management Trust Fund from Daniel C. Oakley, Senior Deputy Attorney General and Robin W. Smith, Assistant Attorney General
46. 1999, Oct 4 U.S. Dept. of the Interior certified version of proposed constitution for Secretarial Election (unratified)
47. 1999, Oct 4 Constitution of the Eastern Band of Cherokee of Qualla Boundary (1999-Final Draft)
48. 2000, Oct 10 Resolution No. 471 (withdrawn) request from John Adam Squirrel, an enrolled EBCI member, requesting Tribal Council adopt the Lloyd Welch Constitution as a governing document of the EBCI

49. 2006, Jan 5 Resolution No. 143 to establish a committee to create a new EBCI Charter / Constitution (includes Resolution No. 36 (October 20,2005) authorizing the establishment of a committee to draft a new Charter/Constitution
50. 2008, Aug 26 Letter from Bob Warren, P.A. to Ruth Youngbird Beck with enclosures regarding documents and draft constitutions related to the EBCI. Enclosure noted, i.e., letter to Duane King, is missing
51. 2008, Apr 3 Notebook, materials for EBCI tribal officials regarding "one-man, one-vote requirement resulting from Wachacha v. EBCI, Civil No. BC-C74-23, W.D.N.C. (1974), prepared by Ben Oshel Bridgers
52. 2008, Dec 4 Resolution No. 606 (tabled and withdrawn) regarding establishment of a committee to draft an EBCI constitution (includes copy of Resolution No. 391, January 19, 1995, withdrawn, regarding prior authorization for a constitution committee; Resolution No. 318, October 12, 1994, calling for convening of Grand Council on October 15, 1994; Resolution No. 310, July 24, 1996, authorizing Principal Chief Joyce C. Dugan to contract with Robert Lyttle and Richard Monette to develop an EBCI constitution)
53. Undated Unattributed essay re: Treaty of Hopewell, 1785
54. Undated Unattributed essay re: Treaty of New Echota, 1835
55. Undated Article by Brett Riggs, "John Welch and the Valley Towns Conspiracy"
56. Undated List courtesy of Ray Kinsland, "Principal Chiefs since Reorganization"

ATTACHMENT B

GOVERNING DOCUMENTS REVIEW COMMITTEE SESSIONS POWERPOINT PRESENTATIONS, FEBRUARY – APRIL 2011

Governing Documents Review Committee Sessions

Over the course of the sessions, PowerPoint presentations were developed and provided by Ms. Sarah Sneed, Project Facilitator. Not all sessions had such presentations; some sessions were facilitated discussions amongst the Committee. The pages following are the PowerPoint presentations as provided during the course of the sessions.

February 17, 2011 Session

Nations in Conflict

The *Tsalagi* vs. European Powers in
the 18th Century

Legal Principles of Conquest

- The Discovery Doctrine
- The Georgia Charter (1732)
 - Johnson v. M’Intosh (1823)
 - Worcester v. Georgia (1832)

Tsalagi Clan Law

- Functioned as a comprehensive legal system
- Fulfills definition of a constitutional system
- Clan affiliation was matrilineal
- Legal rights were defined by clan affiliation
- Clan relations ensured national unity among Cherokee villages, i.e., the Overhill Towns (in p.d. TN), the Valley and Middle Towns and Out Town villages (in p.d. NC) and the Lower Towns (in p.d. South Carolina and Georgia)

Tsalagi political system

- Total egalitarianism
- Men and women had equal status; women exercised influence in decision-making
- Each town or village was independent; there was no centralized government
- Decisions were made by consensus
- There was no chief; leaders arose through effective persuasion

Decimation of the *Tsalagi* territory

- Originally, Cherokees inhabited 40,000 square miles within present-day states of VA, TN, NC, SC, GA and AL
- Successive treaties protected Cherokee rights to remnant land in exchange for cessions of vast expanses of territory
- The Removal effectively extinguished Cherokee land title in the southeastern U.S

Tsalagi Survival

- In the 18th century, the Cherokee Nation engaged in successive military onslaughts including conflict with colonial forces, campaigns by the British against the French, war with the Creeks, Revolutionary War raids and conflict with newly-created state governments
- The Cherokees also survived intermittent epidemics of small pox and other disease; a single outbreak of small pox in 1738-1739 reduced the Cherokees by half

Tsalagi cultural adaptation

- The egalitarianism of traditional Cherokee culture was supplanted by the European need to identify a principal leader or leaders with whom treaties could be negotiated. Two such efforts were made in 1730 by Alexander Cuming for the British and 1736 by Christian Priber in favor of the French.
- Europeans disdained the influence of women in Cherokee society. Under their legal system, wives were the chattel of their husbands.

The ultimate outcome of *Tsalagi* adaptation

- Clan affiliation allowed for individual protection throughout Cherokee villages as the population withdrew to the south from the Overhill, Valley and Middle villages; the Out Town village Cherokees remained isolated in western NC
- Intermarriage with whites was encouraged by the mid-18th century, in hope the offspring of these unions would assist Cherokee survival
- Despite remarkable accomplishments toward “civilization,” the Cherokee nation would not be spared extinguishment of title to their lands

March 3, 2011 Session

EBCI Document Review Committee March 3, 2011

3d Session
The problem of legal status in
Eastern Band Cherokee history

Tsalagi Clan Law as constitutional law

Law is

The regime that orders human activities and relations through systematic application of the force of politically organized society, or through social pressure backed by force, in such society.

Black's Law Dictionary

The body of rules and principles governing the affairs of a community and enforced by a political authority.

American Heritage College Dictionary

Tsalagi Clan law as constitutional law

Constitutional law is

The fundamental and organic law of a nation or state that establishes the institution and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and liberties.

Black's Law Dictionary

The system of fundamental laws and principles that prescribes the nature, functions and limits of a government or other institution.

American Heritage College Dictionary

Tsalagi Clan law as constitutional law

Tsalagi Clan law served as the constitutional law of the people inasmuch as it defined the legal rights and duties of all components of pre-colonial *Tsalagi* society and was enforced against all the elements of its political system.

Traditional *Tsalagi* Political System

- The *Tsalagi* political system recognized the equality of men and women.
- The 50-60 *Tsalagi* towns operated autonomously. Clan law unified the Upper, Middle (and Out Town) and Lower *Tsalagi* towns.
- There was no single Chief or Headman; various leaders were sought out for designation as chief (or “emperor”) in order to facilitate execution of treaties.

Through successive treaties, title to 40,000 square miles of *Tsalagi* land was reduced and finally extinguished

Treaty of . . .

Hopewell, November 28, 1785 (7 Stat. 18)
 Holston, July 2, 1791, (7 Stat. 39)
 Philadelphia, February 17, 1792
 Philadelphia, June 2 1794 (7 Stat. 43)
 Tellico, October 24, 1804 (7 Stat. 228)
 Tellico, October 25, 1805 (7 Stat. 93)
 Tellico, October 27, 1805 (7 Stat. 95)
 Washington, March 22, 1816 (7 Stat. 139)
 Chickasaw Council House, September 14, 1816 (7 Stat. 148)
 Cherokee Agency, July 8, 1817 (7 Stat. 156)
 Washington, February 27, 1819 (7 Stat. 195)
 Washington, May 6, 1828 (7 Stat. 311)
 Washington, March 14, 1835
 New Echota, December 29, 1835

Treaty of Cherokee Agency (1817)

"Whereas . . . In [1808 the Upper] Cherokee towns, duly authorized by their nation, went on to the city of Washington, to declare to the President of the United States their anxious desire to engage in the pursuits of agriculture and civilized life, in the country they then occupied and to make known . . . the impracticability of inducing the nation at large to do this, and to request the establishment of a division line between the upper and lower towns, so as to include all the waters of the Hiwassee river to the upper town, that, by thus contracting their society within narrow limits, they proposed to begin the establishment of fixed laws and a regular government."

Treaty of Cherokee Agency (1817)

". . . to each and every head of any Indian family residing on the east side of the Mississippi river, on the lands that are now, or may hereafter be, surrendered to the United States, who may wish to become citizens of the United States, the United States do agree to give a reservation of six hundred and forty acres of land . . . in which they will have a life estate, with a reversion in fee simple to their children, reserving in the widow her dower, the register of whose names is to be filed with the office of the Cherokee agent, which shall be kept open until the census is taken . . ."

Treaty of Washington (1819)

"It is . . . understood and agreed . . . That a reservation, in fee simple, of six hundred and forty acres square, . . . shall be made to each of the persons whose names are inscribed on the certified list annexed to this treaty . . . The reservations are made on the condition that those for whom they are intended shall notify, in writing, to the agent for the Cherokee nation, within six months after ratification of this treaty, that it is their intention to continue to reside permanently on the land reserved."

Doe on demise of Eu-che-lah v. Welsh,
3 Hawks 155, 10 N.C. 155 (1824)

- Action for ejectment appealed to the N.C. Supreme Court by unknown defendant to whom Eu-che-lah had leased reservation acquired under the treaties of 1817 and 1819
- North Carolina agents had sold the land to plaintiff in the lower court action, Welsh. The lower court had ruled in Welsh's favor.
- Appeal was made on behalf of Eu-che-lah's lessee .
- Court held that Eu-che-lah and other Cherokees who had properly registered with the Cherokee agent had acquired reservations in exchange for valuable consideration and owned these lands in fee simple absolute.
- Court held that N.C., having a history of acknowledgment of the federal government's exclusive power to treat with and provide for the protection of lands not ceded by Native American nations, has no interest in individual reservations established by the 1817 and 1819 treaties who may wish to become citizens of the United States.

Doe on demise of Eu-che-lah v. Welsh
(1824) *cf. U.S. v. Boyd* (1895)

- The individual reservations authorized under the 1817 and 1819 treaties were predicated on the possessor's desire to become citizens of the United States.
- In *Eu-che-lah*, Judge Henderson, assenting, states: "It appears that the lessor of the Plaintiff, has elected to become a citizen of the United States, by enrolling himself under Colonel Meigs, Indian agent, according to the provisions of the treaty.
- In a later federal decision, the Western District N.C. Circuit Court, citing the Treaty of New Echota (1835), ruled that "the Eastern band of Cherokee Indians in North Carolina have never become citizens of the United States." *United States et al. v. Boyd et al.*, 68 F. 577 (1895).

March 17, 2011 Session

EBCI Document Review Committee March 17, 2011

5th Session
Present-day effect of the Loyd Welch
Constitution

Authentication of the Loyd Welch Constitution

The Governing Document Review Committee has been presented four versions of the Loyd Welch Constitution.

- Does the Committee find one version to be the best available version?
- Can the others be classified as not true to the document found to be the best available copy of the Loyd Welch Constitution?

Authentication of the Loyd Welch Constitution

Statement of finding:

Dissenting view(s):

Content of the Loyd Welch Constitution

What comprises the “Loyd Welch Constitution?”

Statement of Finding:

Dissenting view(s):

Content of the Loyd Welch Constitution

What branches of government were authorized by

- The 1868 Cheoah document?
- The 1870 Qualla Town document?
- The 1875 Cheoah document?

Content of the Loyd Welch Constitution

What is the effect of the 1875 document on the 1868 and 1870 documents?

Statement of Finding:

Dissenting view(s):

Authentication of the Loyd Welch Constitution

What is the actual “Loyd Welch Constitution”?

Statement of Finding:

Dissenting view(s):

Eastern Band of Cherokee Indians v. United States and Cherokee Nation, 117 U.S. 288, 309 (1886)

“The Cherokees in North Carolina dissolved their connection with their Nation when they refused to accompany the body of it on its removal, and they have had no separate political organization since. Whatever union they have had among themselves has been merely a social or business one. It was formed in 1868, at the suggestion of an officer of the Indian office, for the purpose of enabling them to transact business with the Government with greater convenience. Although its articles are drawn in the form of a constitution for a separate civil government, they have never been recognized as a separate Nation by the United States; no treaty has been made with them; *they can pass no laws*; they are citizens of that State and bound by its laws.”
(Italics added.)

Eastern Band of Cherokee Indians v. United States and Cherokee Nation, 117 U.S. 288 (1886)

What effect does the language of the Supreme Court in *The Cherokee Trust Funds* decision have on the present-day legal authority of the Loyd Welch Constitution?

Statement of Finding:

Dissenting view(s):

April 14, 2011 Session

1986 ENACTMENT AND ADOPTION OF EBCI CHARTER AND GOVERNING DOCUMENT

Governing Document Review
Committee
April 14, 2011

CONSTITUTION

- A constitution is the supreme law of a society; the authority under which constitutional law arises *internally* from the society's members.
- The constitution controls every component of the society's legal order; no division or official of the government is outside its scope.
- Constitutional law represents the rules by which the society's members *consent to be governed*.

U.S. Supreme Court rejection of the Loyd Welch Constitution

In the 1886 decision of *Eastern Band of Cherokee Indians v. United States and Cherokee Nation*, 117 U.S. 288, the United States Supreme Court, in legal *dictum*, refuted the legitimacy of the Loyd Welch Constitution, stating that "[a]lthough its articles are drawn in the form of a constitution for a separate civil government, [the Eastern Cherokees] have never been recognized as a separate Nation by the United States; no treaty has been made with them; they can pass no laws; they are citizens of that State and bound by its laws."

The North Carolina Charter of the Eastern Band of Cherokee Indians

Following the Supreme Court's characterization of the Loyd Welch Constitution, in 1889 the North Carolina Legislature enacted Chapter 211, NC Private Laws, an act incorporating the Eastern Band of Cherokee Indians. Chapter 211 was amended in 1897, adopting the provisions of the 1875 Loyd Welch Constitution as Chapter 207, NC Private Laws. This statute was subsequently amended in 1917, 1931 and 1933.

CHARTER

- A Charter is an instrument that establishes a body politic or other organization or that grants rights liberties, or powers to its citizens or members. (Black's Law Dictionary)
- The authority through which a charter is issued is from an *external* political source.

Amended Charter and Governing Document (1986)

- In 1986, the EBCI Tribal Council adopted and enacted the Charter and Governing Document under its own authority, supplanting the North Carolina Charter.
- Five items were placed for referendum approval pursuant to Resolution 132 (May 8).
- The Tribal Council authorized that a 25% voter turn-out was necessary for the referendum to be valid.

1986 Referendum

The five items included for approval on the referendum ballot, with results, were:

1. (Sec. 5) That Councilmembers should serve staggered four year terms. (Defeated)
2. (Sec. 6) The Chief and Vice Chief must be elected by a clear majority of at large votes case (sic). (More than 50%) (Approved)
3. (Sec. 9) In order to run for any elected post, candidate must be an enrolled member of the Eastern Band. (Approved)
4. (Sec. 16) The first generation of an enrolled member of the Eastern Band shall enjoy all property, both real and personal, that is held in the enrolled parent's name at death. This includes both natural and adopted children. (Approved)
5. (Sec 19) The Chairman of the Tribal Council shall vote on all issues. (Approved)

1993 Investigation into EBCI Governing Document

- In response to continued controversy regarding the validity of the 1986 referendum, the EBCI Tribal Council adopted Resolution 1 (Oct. 13), appointing a committee to conduct a complete investigation of the true governing document of the Eastern Band.
- A special Council session was convened to hear the results of the Committee's work on December 13, 1993.

1993 Investigation results

The Committee concluded that

1. The Governing Document in effect at the time of the 1986 referendum was the Chapter 207 Charter and
2. The 1986 referendum was invalid because it was not conducted following the convening of a Grand Council and a two-year period of deliberation as required pursuant to the Chapter 207 Charter.

The Committee also questioned whether other changes to the Charter had been made by the Tribal Council that had not been included on the referendum ballot and the low percentage of voter turn-out required for its validity.

Investigative Committee recommendations

The Committee's 3 recommendations were accepted by Tribal Council. They were:

1. All government entities, executive, legislative, and judicial to sit and review as a group the charters and amendments.
2. The Tribe to seek and find an attorney who will provide advice and protection for the Tribe.
3. Charter 207 and its amendments through 1933 is the governing document of the Eastern Band of Cherokee Indians.

Follow-up to the 1993 Committee's investigation

- The Committee's recommendations were subsequently denied action by Tribal Council (*see* Resolution 479, May 4, 1995).
- In 1996, the Tribal Council and Principal Chief appointed a Constitution Committee to draft a new Constitution, which was approved for review and approval by the Secretary of the Interior.
- The proposed constitution was not ratified by the EBCI membership.

April 21, 2011 Session

EBCI Governing Document Review Committee

Development of Statements of
Finding and Dissenting views
April 21, 2011

Statements of Finding

- What comprises the Loyd Welch Constitution?
- Statement of Finding: *The 1875 handwritten document comprises the Loyd Welch Constitution*
- Dissenting View(s):

Statements of Finding

- What branches of government were authorized by
- The 1868 Cheoah document? *Legislative (Tribal Council) and Executive (Chief)*
- The 1879 Qualla Town document? *Legislative*
- The 1875 Cheoah document? *Legislative and Executive*

Statements of Finding

- What is the effect of the 1875 document on the 1868 and 1870 documents?
- Statement of Finding: *The 1875 document supercedes the 1868 and 1870 documents*
- Dissenting view(s):

Statements of Finding

- What conclusions can we draw regarding the “Lloyd Welch Constitutions”?
- Statement of Finding:
- Dissenting view(s):

Statements of Finding

- What effect does the language of the Supreme Court in *The Cherokee Trust Funds* decision have on the present-day legal authority of the Lloyd Welch Constitution?
- Statement of Finding:
- Dissenting view(s):

Statements of Finding

- In 1889 the North Carolina Legislature enacted the first of several statutes authorizing the Eastern Band to operate as a corporation. What effect did these state laws have on the Loyd Welch Constitution?
- Statement of finding:
- Dissenting view(s):

Statements of Finding

- In 1986, the N.C. Charter was reissued under the EBCI's inherent sovereignty. The EBCI Charter was challenged in 1993 on grounds that its approval by referendum had not complied with Chapter 207, N.C. Private Laws, 1897. Is the current EBCI Charter invalid because then existing law was not followed in its formulation?

Statements of Finding

- Statement of finding:
- Dissenting view(s):

ATTACHMENT C

TIMELINE OF EBCI GOVERNANCE PREPARED BY MS. PEGGY
HILL, YELLOWHILL COMMUNITY, MAY 2011

TIME LINE OF EBCI GOVERNANCE

1817 & 1819 Treaties: Basis for NC Cherokees was land cessions and Cherokees withdrawing from the Cherokee Nation being given 640 acres within this ceded territory and who would become known as the "reserve" Cherokee or "Citizen" Cherokees.

1838	Removal
1846	Treaty with Cherokee Nation which excluded the Eastern Cherokees' rights & claims to U.S. Government
1868	First Constitution and the establishment of the Eastern Band of Cherokee Indians and its general Council
1870	Changes to Constitution establishes the Legislative and Executive branches of government
1875	Final Constitution is adopted with amendments and signed by Loyd C. Welch, becomes known as the Loyd Welch Constitution
1883	Handwritten copy of Loyd Welch Constitution is sworn and ratified by Swain County Superior Court Clerk, W. R. Grant
1886	U.S. Supreme Court decision in <i>Eastern Band of Cherokee Indians vs. US Government & Cherokee Nation</i> states that the Eastern Band of Cherokees are citizens of the state of North Carolina and is not a political entity
1889	The Eastern Band of Cherokees receives for a N.C. State Charter under Chapter 211. Recognized as a body politic and corporate under the name ...Eastern Band of Cherokee Indians... under the laws of the State of North Carolina.
1897	State Charter amended, becomes Chapter 207
1931, 1933	Charter amendments
1934	Indian Reorganization Act: Charter submitted as EBCI's "Constitution & Charter". This action sets up a jurisdictional conflict even though Federal law supersedes State law.
1947	Chapter 207 amended giving full authority to EBCI for Self-government. This action legally closed the jurisdiction of the N.C. State Charter.

1986	Chapter 207 changed by Tribal Council by removal of Sections, the addition of four Sections that were approved by referendum vote and changed the name of Chapter 207 to <i>Charter & Governing Document</i> .
1993	Resolution No. 1 approved to review Chapter 207 and the 1986 Charter and Governing Document. The Committee found that the 1986 Council action was invalid.
2010	Resolution No. 271 established a committee to review the legal historical and current governing documents. The Committee issues this report to Tribal Council June 2, 2011.

ATTACHMENT D

TRANSCRIPTIONS OF HISTORIC DOCUMENTS OF THE EASTERN BAND OF CHEROKEE INDIANS 1868 - 1875

Document 1

OFFICE OF INDIAN AFFAIRS COVER SHEET, OCT. 17, 1883

19111 Office of 1883
 Indian Affairs
 Rec'd Oct 17

Sam. B. Gibson

N.C. Cherokee agcy

Oct. 10-83

Enc. Copy of constitution of

E. B. N. C. Cherokees

+ refs to same

/inc.

^ North Carolina Cherokees

See letter to Chief Smith + Del [Coward]

July 9, 1884 L.B.127-295

[indecipherable]

L 12/71

Document 2

COVER LETTER SAM B. GIBSON, AGENT N. C. CHEROKEES, OCT. 10, 1883

United States Indian Service

N.C. Cherokee Agency,

Oct. 10th, 1883

Nantahala, Swain County, N.C.

Hon. H. Price,

Commissioner [+ co],

I enclose herewith copy of Constitution of Eastern Band Cherokee Indians.

I find their Constitution only in manuscript and it soiled and torn. I am unable to find but one copy, which copy is in the possession of Chief N.J. Smith and used in their Council. You will see that what purports to be the "Amendments to the Constitution" is the Constitution it self.

I think there ought to be several copies of their Constitution printed for the use of their officers and Councilmen.

I am yours Respectfully,

Sam. B. Gibson

Agent N.C. Cherokees

Document 3

DOCUMENT OF DECEMBER 10, 1868 (ADOPTED AT CHEOAH)

[copy]

Cheoah. December 10th, 1868.

In General Council assembled of the Eastern Cherokees being desirous of holding our General Councils in some organized and established manner and under a like form as other tribes of Indians who are desirous of adopting a republican form of Government and restricting – controlling and compensating our rulers, do hereby enact as follows:

That hereafter each Cherokee Settlement or Town shall be entitled to one delegate for each 150 members of such settlement who shall represent them in General Council and that said General Council shall meet once in each year on [1st Monday] of [October] . That said General Council shall from their number when convened elect one of their number who shall be Chairman or President of said Council and who shall be President or Chief of said Eastern Cherokees for the term of time so directed by Said Council not exceeding four years, and in case of choice each Settlement may petition said Council in writing upon any subject. Said Council shall have power to elect a Secretary, and Interpreter of the Council and Marshal of the Nation and fix the duties, compensation of the same.

Said Council shall have the power to prepare and adopt by laws and rules for general government of the people, and the duties of each national officer and also the compensation of said Council and assess the National funds and property to pay the same.

Said Council may prepare by laws and police regulations and other rules and submit the same to the Nation in General Council assembled and a majority vote shall adopt or reject the same. They shall also prepare a system of schools in each Settlement and provide for the election of a Superintendent or Board of Trustees who shall organize the same in accordance with said regulations.

Said Council may in their discretion fix a place and day or days for holding a National fair-where each person may present samples of grain, stock, weaving, knitting, spinning, needlework, butter, and any article of agricultural product or fruit and domestic, or mechanical product and also a measured, and proven amount of crop per acre and the numbers of acres cultivated in any crop and fix committees to grant premiums thereon and name the same and one premium for the best general system of farming to be shown by general statement.

John Wayne-na [or Wayme-na], Chr'mn

Longbear, Allen Ratler, Tramper

{William McElmore} John Axe,

Sawanooka, James Blythe, Skeega,

John Large ^Etiyah

Kur ska les kee, Tah-qah-tee [or Tah-quid-tee],

Attest N. J. Smith Clerk of Committee

And Council

Enclosed in brackets

In margin of page by said names is the following: (Signed in Cherokee handwriting)

Document 4

DOCUMENT OF NOVEMBER 26, 1870 (ADOPTED AT QUALLA TOWN, JACKSON COUNTY, N.C.)

QUALLA TOWN, JACKSON COUNTY, NORTH CAROLINA, November 26,
1870

In conformity to previous appointment and notice having been previously given to the different towns composing the Eastern Band of Cherokees- a Grand Council is this day organized by appointing Suata Owl and [Ehul]tassel Chairman and John Lige and Samuel W. Davidson Clerks.

The Credentials of the delegation were presented and refered to a committee consisting of the following Gents: John Jackson Blythe, Will McElmore, Swimmer, Young Squirrel Ah-ma-chuah, Wilson Wolf, Tom Skitty, Sam Wolf, Lewis Smith, Leander Hornbuckle, John Dobson, Willigeh, who after examining the credentials report favorable and the following delegates then presented themselves to wit:

From Long Ridge, Cherokee County R. B. Smith, John Going, Will West; --

Hanging dog John Owl and [C]eceteska; Cheoah, Jacob Chur and L.R. Welch: Buffalo, Standingdeer, John Jackson as proxy for Sandtown ; Henry Smith for Notley—the delegation then came forward and recorded their names:

Jackson County N.C. Blackfox, Woftown

Jackson County, N.C. Wilson Wlech, Wolf Town

“ George Wilnota, Paint Town

“ Jo. Welch, “

“ Lee yanah, Lufty “

“ Lewey Owl, “

“ Jim Ross, Bird “

“ Benj. Brown, “ “

“ Axe, Raven fork

“ Oolenasseh, “

Cherokee County N.C. R. B. Smith, Long Ridge

“ Will West, “

“ John Going, “

“ John Owl, Hanging dog

“ Teceteska “

“ Jacob Chur, Cheoah

“ L.R. Welch, “

“ Henry Smith, Notla

“ Standingdeer, Buffalo

“ Jim Jackson, Sand Town

Cherokee County Will McElmore Lower Hanging dog

Signed in presence of Samuel W. Davidson, Clerk

Ordered by the Council that an election be held on Thursday Dec. 1st, 1870 for Principal Chief to serve until our next annual election in 1871.

December 1st, 1870

The Council met pursuant to ajournment and proceeded to business

The election of Principal + second Chief was then opened and held and resulted in the election of Flying Squirrel or Cull lee high as Principal Chief and John Jackson Oowah-tuntsee as Second Chief.

The following form of Government was referred to the Committee and report favorable.

It was then moved and seconded that the Constitution be certified by the Council which was unanimously adopted as follows.

1st Whereas the legal representatives or Councilmen of the different towns or Settlements of the Eastern Band of Cherokee Indians have this day and date at the place afore mentioned met according to general agreement and understanding.

2nd Said Council be and is hereby duly authorized and empowered by representation as the undersigned sheweth to provide for the common interest and enact measures by which the aforesaid band of Indians may be represented in prosecuting and defending all matters pertaining to or touching the interest of said Band of Indians with the United States Government or State or States or Individuals of the United States in whatever relation said interest may be. Provided that nothing herein be so construed as an abrogation of any rights, claim or claims of any individual or individuals of said band to the legislation of said Council as common property.

3rd All members constituting the aforesaid Council shall be and they are hereby governed and bound by all acts passed in Council of delegates and approved by the Chief.

4th All acts done, made, and confirmed in General Council as aforesaid shall be effectual and binding upon all members belonging to or constituting the aforesaid band as a band in all matters held in common or pertaining to the common interests of said band and not otherwise.

5th Provided further that there be and the Council is hereby authorized to appoint an annual session for holding Grand Councils at such place and time as they designate and determine on, and no called or appointed Council otherwise held shall be held valid or binding upon the aforesaid Band or the subjects thereof, unless the Chief in his judgment and reason thinks the interest of said Band demands or justifies such call or appointed Council.

Also that there be ordered a stated election to be held in each Town or Settlement for the purpose of electing 1st and second Chief whose power and

right of governing shall extend over the whole Band of Eastern Cherokees, for and not exceeding the term of two years. Also for the electing all subaltern officers to legally constitute the aforesaid annual Council. The said subordinate term of office shall not exceed one year, only by the annual election of the Band. The right of vote by which said Band shall be governed, shall be exclusive and consist only of its males members of 16 years of age and upwards.

And the aforesaid officers so elected shall have the exclusive right to govern and rule and all the acts done made or had by said officers for the term elected shall be held binding and in full force upon said band. The aforesaid Chiefs so elected shall have no power nor hold any right of jurisdiction to enact or enforce laws within themselves over the Band of which he presides as Chief but in all cases or interests conflicting or touching the common rights of his band the legal representatives shall be duly assembled.

Signed + c

^on the margin here is written, "All signed in Cherokee hand"

Flying Squirrel Principal Chief, John Jackson, Ast. Chief, Blackfox, Wilson Welch, George Willanota, Js. Welsh, Layeneh, Lewey Owl, Jim Ross, Benj. Brown, Axe, Oola nos sah, Ross B. Smith, Will West, John Going, John Owl, Tece teska

Document 5

DOCUMENT OF OCTOBER 13, 1875 (ADOPTED AT CHEOAH COUNCIL GROUND)

Amendments to the Constitution of the Eastern Band of Cherokee Indians

The Eastern Band of Cherokees having again reunited and become one body politic under the style and title of the Eastern Band of Cherokees

Therefore-- We the People of the Eastern Band of the Cherokee Indians in annual Council assembled, in order to establish Justice, ensure tranquility, promote the Common welfare, and to assure to ourselves and our posterity the blessings of freedom, acknowledging with humility and gratitude the goodness of the Sovereign Ruler of – Universe in permitting us to do, and imploring His aid and guidance in its accomplishments, do ordain and establish these amendments to the Constitution for the Government of the Eastern Band of Cherokee Indians.

Art. 2 Sec. 1 The power of the Eastern Band of the Cherokee Indians, shall be divided into two distinct Departments, the Executive and the Legislative. The Executive to consist of the 1st and 2nd Chief and the Legislative of the Council.

Art. 3 Sec. 1 The legislative power shall be vested in a Council and all enactments of the Council shall be signed by the Chairman of the Council, approved by the principal Chief and in all their deliberations the vote shall be taken by yeas and naves unless otherwise directed by the Council.

Section 2nd That each member of the annual Council before he takes his seat to transact any business of the Council shall take the following oath (or affirmation) I- A.B. do solemnly swear (or affirm) that I have not obtained my selection or appointment as a member of this Council by bribery or any undue or unlawful means or duress or fraud used by myself or others by my desire or approbation for that purpose; that I consider myself constitutionally qualified as a member of this Council, 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 the Eastern Band of the Cherokee Indians, 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.

Art. 3 Sec. 3 No person shall be eligible to any office on appointment of honor profit or trust or seat in the Council, who shall have aided or abetted, counceled or encouraged any person or persons guilty of defrauding the Eastern Band of the Cherokees or who may hereafter, aid or abet, council any pretended agents or attorneys, in defrauding the Eastern Band of the Cherokees.

Art. 3 Sec. 4 The annual Council to make all rules and regulations, which they shall deem necessary and proper for the good of the band which shall not be contrary to this constitution.

Art. 3 Sec. 5 It shall be the duty of the annual Council to pass such rules and regulations as may be necessary and proper to decide differences, by arbitration, to be appointed by the parties who may choose that summary mode of settlement.

Art. 4 Sec. 1 The supreme executive power of this Band shall be vested in a Principal Chief, who shall be styled Principal Chief of the Eastern Band of the Cherokee Indians. The Principal Chief shall hold his office for four years and shall be elected by the male members of the Eastern Band of the Cherokee Indians of sixteen years of age and upward.

Art. 4 Sec. 2 No person shall be eligible to the office of Principle Chief except he be of Cherokee Indian blood, and a member of the Eastern Band of the Cherokee Indians, neither shall any person be eligible to that office, who shall not have attained the age of thirty five years, nor shall any person be eligible to a seat in the annual Council of the Eastern Band except he be of Cherokee Indian blood and a member of the Eastern Band of the Cherokee Indians.

Art. 4 Sec. 3 The annual Council may in case of removal, death, resignation or disability of both the Principal and assistant Principal Chief, and declaring what officers shall then act as Principal Chief, until their disabilities be removed or a Principal Chief be elected.

Art. 4th Sec. 4^{3rd} 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.

Art. 4th Sec. 5th Before the Principal Chief enters upon executive duties 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 Eastern Band of the Cherokees and will to the best of my ability preserve, protect and defend the constitution of the Eastern Band of the Cherokee Indians.

Art. 4th Sec. 6th He may in extraordinary occasions convene the Council at such place as the annual council may designate as the seat of government.

Art. 4th Sec. 7th He shall from time to time give to the annual Council information as to the state of affairs of the Eastern Band and recommend to their consideration such measures as he may think expedient.

Art. 4th Sec. 8th He shall take care that the rules and regulations of the Council are faithfully executed.

Art. 4th Sec. 9th It shall be his duty to visit the different Towns and Settlements at least once in two years.

Art. 4th Sec. 10th Members of the annual Council, executive and all officers shall be bound by oath to support the Constitution of the Band.

Art. 4 Sec. 11 The members of the annual Council shall be chosen for the term of two years.

Art. 4 Sec. 12 The Treasurer of the Eastern Band shall be chosen by the annual Council for a term of four years, the Treasurer shall before entering upon the duties of his office give bond to the Band with sureties, to the satisfaction of the annual Council for the faithful discharge of his trust.

Art. 4 Sec. 13 No moneys shall be drawn from the Treasury but by warrant from the Principal Chief, and in consequence of appropriations made by the Council.

Art. 4 Sec. 14 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 Session of the annual Councils.

Art. 5 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 of the Eastern Band of the Cherokee Indians.

Art. 5 Sec. 2 The free exercise of religious worship, and serving God, without distinction, shall forever be enjoyed within the limits of the Eastern Band, provided that this liberty of conscience, shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the Eastern Band of the Cherokees.

Art. 5 Sec. 3 When the annual Council shall determine the expediency of appointing a delegation 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 annual Council appoint and commission said delegates accordingly on all matters of interest touching the rights of the Eastern Band which may require the attention of the United States government. The Principal Chief shall keep up a friendly correspondence through the medium of the proper officers.

Art. 5 Sec. 4 The commissions shall be in the name and by the authority of the Eastern Band of the Cherokee Indians and be sealed with the seal of the Probate Judge in the county where the Council is held, signed by the Chairman, attested by the Clerk of the Council, and approved by the Principal Chief.

Art. 5 Sec. 5 Religion, morality and knowledge being necessary to good government the preservation of liberty and happiness of mankind, schools and the means of education shall forever be encouraged and cherished by the Eastern Band of Cherokee Indians.

Art. 5 Sec. 6 The annual Council may prepare such amendments as two thirds of Council may seem expedient and such amendments shall not be passed until the meeting of the next annual Council, and to the protection and preservation

of the Constitution we mutually pledge over lives our fortunes and our sacred honor.

Art. 6 Sec. 1 The Council shall consist of two members from each town or settlement having a population of one hundred souls and when a Town or Settlement shall exceed two hundred souls it shall have an additional member, provided that when any Town or Settlement shall have less than one hundred souls, it shall be entitled to one member.

Art. 6 Sec. 2 All male Cherokees or persons of Cherokee blood and all persons who have intermarried with Cherokees or those of Cherokee blood who shall have attained the age of 16 years shall vote at all public elections.

Art. 6 Sec. 3 The annual Grand Council at its annual session shall appoint two suitable persons as judges to hold all public elections at the various Towns or Settlements and the certificate of such judge shall be evidence of his election or selection, provided that when no election is held or selection made in any Town or Settlement any person or persons may represent such Town or Settlement by producing a certificate or authority from a majority of the souls of said Town or Settlement; provided further that the certificate or authority shall contain the name of the souls they represent and further that elections shall be held on the 1st Thursday in September for all officers and councilmen as the constitution prescribes.

Art. 6 Sec. 4 There shall be an executive Council consisting of the Principal Chief, assistant Chief and three associates who shall be nominated by the principal Chief and confirmed by the Council.

Art. 6 Sec. 5 The Grand Council shall be held after the present session, annually to be convened on the 1st Monday in October at such place as may be designated by the Grand Council, in case of emergency by the Principal Chief.

Art. 6 Sec. 6 The Grand Council at its annual session shall be called together by the assistant Chief and organized by the election of Chairman and Clerk and in case of death, resignation, inability, or for any other cause, said Second Chief does not act, then any member of the executive Council may organize the Council.

Art. 6 Sec. 7 The officers of the Grand Council shall consist of a Chairman, assistant Chairman, first and second Clerk, Interpreter, marshal, messenger and door keeper.

Art. 6 Sec. 8 The oath of Principal Chief, Councilmen and Clerks may be administered by any officer of the Government of North Carolina or the United States Government authorized to administer oaths.

Art. 6 Sec. 9 No person who may be convicted of felony shall be eligible to any office or appoint of honor, profit or trust within the Eastern Band of Cherokee Indians.

Art. 6 Sec. 10 The Grand Council may by commission provide for the purchase of lands for the Eastern Band of the Cherokee Indians, provided that any commission provided for under this ordinance may be nominated by the Principal Chief and confirmed by the Grand Council. Provided further that no act of the commission shall be construed to interfere with or in any manner impare the rights of individual members of said Band.

Art. 6 Sec. 11 The Grand Council shall by appropriate legislation provide a public school system for the Eastern Band of the Cherokee Indians.

Art. 6 Sec. 12 The Principal Chief shall have the right of veto upon all acts or resolutions enacted by the annual or called Council of the Band. Provided that the veto power shall not hold good over a two-thirds vote of the Grand Council.

Art. 6 Sec. 13 The style of the Grand Council of the Eastern Band of Cherokee Indians shall be—Be it enacted by the Grand Council of the Eastern Band of Cherokees

Attest:)	W. J. Hilderbrand	
John G. Tatham,)	[Cherokee hand] Enola	Chairman
Sec'y of Council)	Approved: Loyd R. Welch	
Henry Smith,)	Principal Chief E. B. of C.	
Interpr)	Cheoah Council Ground	
		Oct. 13 th 1875	

North Carolina)	
Swain County)	In the Superior Court

I certify that the foregoing is a true copy of the Constitution of the Eastern Band of Cherokee Indians.

Witness my hand and seal of said Court.

October 6 th , 1883	W.R. Grant	Clerk
	Superior Court Swain Co. N	

ATTACHMENT E

DOCUMENTS SHOWING PARALLEL PROVISIONS OF EASTERN BAND - AND STATE – ISSUED LAW

Loyd Welch Constitution (1875) & Chapter 207, North Carolina Private Laws (1897)

Loyd Welch Constitution 1875	N.C. Private Laws Chapter 207 1897
Preamble-"We the People of the Eastern Band. . ."	N/A
Art. 2 Sec. 1: two branches of government, Executive and Legislative	Section 1: two branches of government, Executive and Legislative
Art. 3 Sec. 1: all enactments of the Council shall be signed by the Chairman of the Council, approved by the principal Chief Votes taken by yeas and naves	Section 12: all acts of council shall be signed by the chairman and the clerk, and countersigned by the chief, and certified by the secretary. Federal agent to serve as ex officio secretary unless failure to act, then council may elect secretary
Art. 3 Sec. 2: oath of Council members	Section 19: oath of council members
Art. 3 Sec. 3: Person ineligible for office if aided or abetted persons guilty of fraud against the Eastern Band or may aid or abet in defrauding of Eastern Band	Section 18: same provision, plus ineligible if convicted of felony or denies the existence of a God or a future state of rewards and punishments.
Art. 3 Sec. 4: Council to make all necessary rules not contrary to this constitution	N/A
Art. 3 Sec. 5: Duty of Council to pass rules and regulations to decide differences by arbitration	Section 28 provides for jury valuation of improvements taken under Imminent Domain with right of appeal to (N.C.) County Superior Court
Art. 4 Sec. 1: Principal Chief shall hold office for four years ; to be elected by male Eastern Band members 16 years and upward	Section 2: Term of principal chief and assistant chief shall be four years, elected by male Eastern Band members who have attained the age of 18 years
Art. 4 Sec. 2: Principal Chief and Council members must be of Cherokee Indian blood and a member of the Eastern Band. Principal Chief must have attained age of 35 years	Section 17: Principal chief and assistant chief must be age 35 or older and at least 1/4 eastern Cherokee blood. Council members must be at least age of 21 and at least 1/16 eastern Cherokee blood

Art. 4 Sec. 3: In case of removal, death, resignation or disability, annual Council to select officers to act as Principal Chief and Assistant Principal Chief	Section 15: Assistant chief shall become the principal chief in case of death, resignation or disability. Council to elect replacement until disability is removed or successor elected
Art. 4 Sec. 4: Principal Chief and Assistant Principal at stated times to receive compensation which may not be increased or diminished during term of office	<p>Section 7: Principal chief to be compensated for his services sum fixed by council, not to exceed \$250 per annum; Assistant chief compensated sum fixed by council, not to exceed \$125 per annum. Both to receive travelling expenses approved by Council</p> <p>Council members to receive \$2/day for time as necessarily in session</p> <p>All other officers to be compensated as fixed by Council</p>
Art. 4 Sec. 5: Principal Chief oath of office	Section 19: Principal Chief oath of office
Art. 4 Sec. 6: Principal Chief may in extraordinary occasions convene the Council at such place as the annual council may designate as the seat of government	Section 9: The seat of government of the Eastern Band shall be at Cherokee Council Grounds, Swain County, North Carolina, until changed by the council
Art. 4 Sec. 7: Principal Chief shall from time to time give Council information as to the state of affairs of the Eastern Band and recommend for consideration measures as he may think expedient	Section 14: Principal chief shall from time to time give information as to the state of affairs of the band and recommend such measures he may think expedient
Art. 4 Sec. 8: Principal Chief shall take care that rules and regulations of Council are faithfully executed	Section 14: Principal chief shall make an effort to see that the rules and regulations of the council are faithfully executed
Art. 4 Sec. 9 It shall be the duty of the Principal Chief to visit the different Towns and Settlements at least once in two years	Section 14: Principal chief shall visit the different towns and settlements at least once in every 2 years
Art. 4 Sec. 10: Members of the annual Council, executive and all officers are bound by oath to support the Constitution of the Eastern Band	N/A

Art. 4 Sec. 11: Members of the annual Council shall be chosen for the term of 2 years	Section 2: The term of office of members of council shall be 2 years
Art. 4 Sec. 12: Treasurer to be chosen by the annual Council for a term of 4 years; Treasurer to give Bond to satisfaction of the annual Council for faithful discharge of his trust	Section 20: Treasurer shall give a bond for the faithful performance of his duties as treasurer in double the sum of money that passes through his bonds
Art. 4 Sec. 13: No moneys to be drawn from Treasury but by warrant from the Principal Chief as appropriated by Council	Section 20: No money shall be paid out, except upon warrant of the principal chief, authorized by council
Art. 4 Sec. 14 Treasurer to receive all public moneys and make a regular statement and account of the receipts and expenditures of all public moneys at the Session of the annual Councils	Section 20: The Treasurer shall render a statement of all moneys received and disbursed by him at each annual council, and oftener if required to do so by the principal chief
Art. 5 Sec. 1: No person who denies the being of a God or a future state of reward or punishment shall hold any office in the civil department of the Eastern Band	Section 18: Person ineligible to hold office or qualified for appointment if denies the existence of a God or a future state of rewards and punishments
Art. 5 Sec. 2: Free exercise of religious worship, and serving God shall forever be enjoyed within the limits of the Eastern Band, provided that this liberty of conscience shall not be construed to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the Eastern Band	Section 18: Free exercise of religion, worship and manner of serving God shall be forever enjoyed, but not construed as to excuse acts of licentiousness
Art. 5 Sec. 3: Principal Chief shall recommend with advice and consent of annual Council delegates for transacting business with the United States on all matters of interest touching the rights of the Eastern Band. Principal Chief to keep up a friendly correspondence through the medium of the proper officers	N/A

Art. 5. Sec. 5: Commissions to be in name and authority of the Eastern Band and sealed by Probate Judge in county where Council is held, signed by Chairman, attested by Clerk of Council and approved by Principal Chief	N/A
Art. 5 Sec. 6: Annual Council may prepare amendments as 2/3 of Council may seem expedient; amendments not to be passed until meeting of next annual Council. To protection and preservation of the Constitution is pledged "our lives, fortunes and sacred honor"	None
Art. 6 Sec. 1: Council to consist of 2 members from each town/settlement of 100 souls; towns/settlements with over 200 shall have 3 members; towns/settlements with less than 100 souls to have 1 member	Section 8: Each town/settlement of 100 souls to have 2 members of council; towns/settlements with more than 200 souls shall have 3 members; towns/settlements with less than 100 shall 1 member
Art. 6 Sec. 2: Male Cherokees, persons of Cherokee blood, persons who have married Cherokees or persons of Cherokee blood 16 years and over shall vote at all public elections	None
Art. 6 Sec. 3: Annual Grand Council at annual session shall appoint election judges at each town/settlement When election not held, any person may represent that town/settlement by producing certificate or authority from a majority of the souls of that town/settlement with names Elections to be held the first Thursday in September for all officers and councilmen	Section 5: Council shall appoint 2 judges for council elections who shall hold elections and certify the results under rules and regulations prescribed by council Elected principal and assistant chiefs declared by Council; council members certified by election judges

Art. 6 Sec. 4: Executive Council consisting of Principal Chief, assistant Chief and 3 associates nominated by Chief and confirmed by Council	<p>Section 6: Executive council shall consist of the principal chief, assistant chief, and 3 associates appointed by chief and confirmed by council</p> <p>Executive council associates to be compensated same as council members</p>
Art. 6 Sec. 5: Grand Council to be held after the present session, annually to be convened the first Monday in October at place designated by Grand Council or in emergency by Principal Chief	<p>Section 10: There shall be an annual or grand council held on the first Monday in October</p> <p>In cases of immergency [sic], principal chief can call a special council, but no business can be transacted in either annual or special council absent a quorum , i.e., a majority of members present</p>
Art. 6 Sec. 6: The Grand Council shall be called together by the assistant Chief and organized by the election of the Chairman and Clerk; if assistant Chief does not act to call Grand Council, any member of Executive Council can convene Council	<p>Section 11: Annual council shall be called to order by the assistant chief. In absence or through neglect of the assistant chief to organize the grand council any member of the executive committee may organize annual council</p> <p>A chairman, vice chairman and clerk to be elected; salaries to be fixed by the council</p> <p>Chairman or Vice Chairman may call special councils; Chairman may not vote except in case of tie-vote.</p>
Art. 6 Sec. 7: Officers of Grand Council shall consist of a Chairman, assistant Chairman, first and second Clerk, Interpreter, marshal, messenger and door keeper	Section 1: Officers of said corporation [shall include] a secretary, treasurer, interpreter, marshal and other officers as herein provided
Art. 6 Sec. 8: Oath of Principal Chief, Councilmen and Clerks may be administered by officers of North Carolina or the United States authorized to administer oaths	None
Art. 6 Sec. 9: No person who may be convicted of felony shall be eligible to hold any office or appointment within the Eastern Band	Section 18: Persons ineligible for any office or appointment if convicted of felony or denies the existence of a God or a future state of rewards and punishments.

Art. 6 Sec. 10: The Grand Council may provide for the purchase of lands for the Eastern Band provided the rights of individual members of the Eastern Band are not interfered with or impaired [sic]	No discreet provision, but as corporation, EBCI could purchase land
Art. 6 Sec. 11: The Grand Council shall provide for a public school system	<p>Section 24: Any poll taxes collected from EBCI males by counties shall be paid to the corporation</p> <p>Section 28: EBCI may provide for schools, churches and public purposes through exercise of Imminent Domain, with provision for appeal of valuation of improvements</p>
Art. 6 Sec. 12: Principal Chief to have veto right re: all acts or resolutions by annual or called Council of the Band except over a 2/3 vote of the Grand Council	SEC. 13. Chief shall have power to veto all acts and resolutions, etc, of council, except where approved by 2/3 vote of council.
Art. 6 Sec. 13: Style of the Eastern Band Grand Council shall be <i>Be it enacted by the Grand Council of the Eastern Band of Cherokees</i>	None
	Section 21: Any EBCI officer who violates oath of office or has been guilty of an offense making him ineligible to hold office may be impeached by 2/3 vote of council
	<p>Section 22: Council shall direct management and control of all property of EBCI as corporation</p> <p>No person shall be entitled to enjoy EBCI lands or profits therefrom unless person is at least 1/16 Eastern Band Cherokee</p>
	Section 23: EBCI authorized to adopt bylaws and rules for the corporation for the management of all property of the corporation and may enforce obedience to such rules and regulations
	Section 24: EBCI males exempt from poll taxes; if poll taxes are collected, counties to pay amounts to the EBCI for educational purposes

	Section 25: U.S. Attorney General's decree that EBCI holds fee title to the Qualla Boundary is ratified and confirmed; EBCI as corporation authorized to hold fee title to "Sibbald dee" land as trustee for the EBCI; provisions of N.C. Corporations Code repealed with respect to Chapter 207
	Section 26: Organization and by laws adopted by EBCI under Chapter 211 and all acts and contracts undertaken thereunto extent not inconsistent with the N.C. Constitution ratified and confirmed; Acts and resolutions of EBCI under Chapter 166 amendments are validated whether or not countersigned by assistant chief
	Section 28: EBCI may exercise imminent domain for school, church and other public purposes for the benefit of the Eastern band provided land occupant is paid for improvements, to be assessed by jury of competent persons who are EBCI members, appeals to be made to the Superior Court of the county in which lands are located
	Section 29: Marshall shall execute, serve and carry into effect all orders, [service of]process and acts of the council affecting the rights, interests and affairs of the EBCI as corporation; salary to be set by council
	Section 30: All provisions of N.C. law in conflict with this act are repealed
	Section 31: Ratified March 8, 1897