

MEMORANDUM

TO: Board of Directors
FROM: Lona Stewart, Board Administrator
DATE: November 27, 2024
RE: Workshop Agenda for December 6, 2024

AGENDA

10:00
Proposed Constitutional Reform

SEPARATION OF POWERS CONSTITUTIONAL AMENDMENT

Attachment A.

OCTOBER 1, 2024

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS
523 Ashmun Street, Sault Ste. Marie, MI, 49783

PREAMBLE

We, the members of the Sault Ste. Marie Tribe of Chippewa, in order to provide for the perpetuation of our way of life, provide for the welfare and prosperity of our People, protect our property and resources, preserve our inherent sovereignty in accordance with the teachings of our Seven Grandfathers, do ordain and establish this Constitution.

ARTICLE I - SOVEREIGNTY

Section 1. Source of Sovereignty.

The People shall be the source of all governing authority and power vested in the Tribe by this Constitution.

Section 2. Supremacy.

This Constitution shall be the supreme law over the government and all the People of the Tribe. All treaties, laws, compacts, and actions of the government shall be consistent with this Constitution. All laws of the Tribe existing at the time of adoption of this Constitution shall remain in effect so long as such laws are consistent with this Constitution.

The Tribal Chair and the Supreme Court, cooperatively, shall cause to be completed and present to the Council/Legislative Branch a written assessment of the existing laws within six months of the adoption of this Constitution Amendment to determine which laws are inconsistent with this Constitution.

Section 3. Delegation of Sovereignty.

The government shall exercise only the authority and powers granted by the People in this Constitution.

Section 4. Reserved Powers.

Powers not granted to the government shall be reserved to the People.

ARTICLE II - BILL OF RIGHTS

Section 1. Bill of Rights.

The government of the Tribe shall not make or enforce any law which:

- (a) infringes upon religious or cultural beliefs or prohibits the free exercise thereof nor any law which establishes religion;
- (b) prohibits the freedom of speech, expression, or of the press, or the right of the People peaceably to associate or assemble, and to petition the government for redress of grievances;
- (c) infringes upon the right of any person otherwise eligible at any time to seek and hold elective public office;
- (d) violates the right of the People to be secure in the privacy of their persons, houses, papers, electronic and telecommunications information, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation signed by a Judge and particularly describing the place, person, house, or things to be searched, the object and scope of such search, and the person or thing to be seized, nor execute an arrest without probable cause, nor exercise a detainment without reasonable suspicion;
- (e) subjects any person to search without probable cause or to interrogation while in custody without informing the person of their right to remain silent, to have access to an attorney, and to be advised that anything they say can be held against them in a court of law;
- (f) subjects any person to criminal prosecution or punishment more than once for the same offense arising out of the same incident, nor compels any person in any criminal case to be a witness against himself or herself;
- (g) discharges any person from employment without due process, or takes any private property or possessory interest in private property for public use, without due process and just compensation;

- (h)** discharges any person from employment or takes any other retaliation against an employee who makes public any information of misconduct by officials or employees of the Tribe;
- (i)** denies to any person in a criminal or civil proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him or her, to have compulsory process for obtaining witnesses in his or her favor, and in a criminal proceeding to have the assistance of counsel for his or her defense subject to income guidelines;
- (j)** requires excessive bail, imposes excessive fines, or inflicts cruel and unusual methods of interrogation or punishment;
- (k)** denies to any person within its jurisdiction the equal protection, application, or opportunity under the law or deprive any person of liberty or property without due process of law, provided, that the government shall have the power to enact and implement laws that provide employment preferences;
- (l)** directs a criminal proceeding against a specific individual or group, or punishes conduct after the fact through the enactment of laws or resolutions which criminalize such conduct;
- (m)** denies to any person accused of an offense punishable by imprisonment the right upon request, to a trial by an impartial jury of not less than six persons, and all persons shall be presumed innocent until proven guilty in a court of law;
- (n)** denies to any person the access to his or her own personal information maintained by the Tribe;
- (o)** denies to any Person the right to own, bear, and use arms subject to regulation by the Tribe by law.

ARTICLE III – TERRITORY AND JURISDICTION

Section 1. Territory.

The Territory of the Tribe shall encompass all lands which are now or hereafter owned and held by the Tribe or owned by the Tribe and held in trust for the Tribe or Members by the United States, notwithstanding the issuance of any patent or right-of-way in fee or otherwise existing now or in the future. The Territory shall include lands and waters ceded by the 1836 Treaty or any other treaty entered into by the Tribe for purposes of exercising, regulating, and protecting reserved rights of hunting, fishing, trapping, gathering, and cultural, and ceremonial activities. The Territory shall include but not be limited to, the environment, air, airspace, all surface and subsurface land and water, and any resource severable from the land, minerals, and natural resources.

No Territory shall be ceded unless authorized by law subject to the approval of the voters in a Special Election. No real property, tangible property, or intellectual property, of the Tribe, shall be transferred, mortgaged, or otherwise encumbered unless authorized by law.

Section 2. Jurisdiction.

The Jurisdiction and governing authority of the Tribe shall extend to all persons, property, and activities within the Territory and shall include exercising, regulating, and protecting reserved rights to fish, hunt, trap, and other usual rights and privileges of occupancy over all lands and waters ceded by the Treaty of Washington of 1836 or any other treaty entered into by the Tribe. The Tribe shall have the power to assert the Sovereignty and Jurisdiction of the Tribe over all matters that affect the interests of the Tribe. Nothing in this Article shall be construed to limit the ability of the Tribe to exercise its Jurisdiction based upon law or its inherent sovereignty.

ARTICLE V - SEPARATION OF POWERS

Section 1. Branches of Government.

There shall be one Legislative branch, one Executive branch, and one Judicial branch.

There shall be a system of separation of powers and checks and balances between the branches of government. No branch of government or official of any branch of government shall exercise any power granted in this Constitution or properly delegated by law to any other branch of government except as expressly directed or permitted by this Constitution and each branch shall act as a check and balance upon the actions of the other branches as permitted by this Constitution.

ARTICLE VI – JUDICIAL BRANCH

Section 1. Composition of the Judicial Branch. There shall be one Judicial Branch. The Judicial Branch shall be made up of one Trial Court, one Supreme Court (Court of Appeals), a Judicial Commission, and appropriate court staff as established by law. The Judicial Branch shall also include trial level courts of special jurisdiction as established by law.

(a) Composition of the Trial Court. The Trial Court shall be made up of one Chief Judge, and any other Associate Judges or Substitute Judges as authorized by law. The Chief Judge shall have oversight authority of all matters related to the operations and administration of all trial level courts including, subject to the laws of the Tribe, the employment and discharge of Court personnel.

(b) Composition of the Supreme Court. There shall be five Justices on the Supreme Court. There shall be one Chief Justice, four Associate Justices and additional alternate Justices as established by law. The Chief Justice shall have oversight authority of all matters related to the operations and administration of the Supreme Court

Section 2. Election and Selection of Justices and Judges.

(a) Election of Justices and Judges. Justices and Judges, except substitute Judges, shall be elected directly by the voters.

(b) Appointed Justices and Judges. In the event that a qualified Sault Tribe Attorney does not register for Judicial Election, the Council/Legislature shall appoint an otherwise qualified attorney under the Governmental HR hiring process, subject to Native American Preference. This appointment shall serve the duration of the term of the appointment.

(c) Selection of Substitute Judges. Upon recusal of the Chief Judge and all Associate Judges, the Chief Judge shall select a Substitute Judge, subject to any restrictions imposed by rules of the Courts or by law.

(d) Selection of Substitute Justices. Upon recusal of the Chief Justice and all Associate Justices, the Chief Justice shall select a Substitute Judge, subject to any restrictions imposed by rules of the Courts or by law.

Section 3. Terms.

(a) The term of office for each Judge of the Trial Court or any other trial level court shall be four years. Unless removed, each Judge shall remain seated until an oath of office is administered to a successor. The terms of office for each Justice of the Supreme Court shall be six years. Unless removed, each Justice shall remain seated, until the oath of office is administered to a successor.

(b) The terms of office for Justices and Judges shall be staggered.

Section 4. Qualifications.

(a) Judges and three Justices shall be attorneys and members of the Tribe.

In the event that a qualified Sault Tribe Attorney does not register for Judicial Election, the Council/Legislature shall appoint an otherwise qualified attorney under the Governmental HR hiring process, subject to Native American Preference. This appointment shall serve the duration of the term of the appointment.

(b) A Judge or Justice cannot serve in an elective office of any other government nor be an appointed official of any local unit of government.

Section 5. Jurisdiction of the Courts.

(a) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, treaties, laws, and customs of the Tribe, including cases in which the Tribe or its officials and employees shall be a party, except for an appeal of a final decision by the Election Commission on any election protest or challenge including challenges to a redistricting and reapportionment plan filed in the Supreme Court. Any such case or controversy arising within the jurisdiction of the Tribe shall be filed and exhausted in the Judicial Branch before it is filed in any other court or in any other jurisdiction. This grant of jurisdiction shall not be construed to be a waiver of the Sovereign Immunity of the Tribe.

(b) The Supreme Court shall have appellate jurisdiction over any case on appeal from the Trial Court or any other trial level court. The Supreme Court shall also have original and exclusive jurisdiction over any final determination of an election dispute by the Election Commission or on any approved plan to redistrict or reapportion, and such jurisdiction shall include the power to make findings of fact and conclusions of law, and to issue all remedies in law and equity. The

Supreme Court shall hear and decide all election disputes within thirty days of filing, and if no decision is rendered within thirty days, then the decision of the Election Commission shall be final.

Section 6. Powers and Duties of the Courts.

(a) Healing. The primary duty of the Judicial Branch shall be to promote community and individual healing and forgiveness in all matters which come before the Courts in accordance with the laws, customs, and traditions of the Tribe.

(b) Trial Court.

(i) The Trial Court shall have the power to make findings of fact, interpret the Constitution, treaties, and laws of the Tribe, make conclusions of law, and issue all remedies in law and in equity.

(ii) The Trial Court shall have the power to declare the laws of the Tribe void if such laws are not consistent with this Constitution.

(iii) The Trial Court shall have the power to review and determine if actions of the Executive, including any Department, Board, Committee, or Executive Branch official are consistent with this Constitution, and to order an appropriate remedy for actions which violate this Constitution.

(iv) All proceedings of the Trial Court or any other trial court shall be recorded for purposes of appellate review.

(c) Supreme Court.

(i) The Supreme Court shall have the power to interpret the Constitution, treaties, and laws of the Tribe, make conclusions of law and make findings of fact in election disputes, and issue all remedies in law and in equity. Decisions of the Supreme Court shall be final.

(ii) The Supreme Court shall have the power to declare the laws and Executive actions of the Tribe void if such laws are not consistent with this Constitution.

(iii) The Chief Justice shall have oversight authority of all matters related to the operations and administration of the Supreme Court including, subject to

the laws of the Tribe, the employment and discharge of Court personnel and the preparation and presentation of an annual budget request for the Judicial Branch. The Supreme Court shall have the power to adopt Rules and Court Procedures governing the Judicial Branch subject to the Rules of the Judicial Commission and the laws of the Tribe.

(d) Rules of Court. Each Court shall have the power to make its own rules of court, procedure, evidence, and other judicial matters, subject to the power of the Chief Judge to make or modify such rules, and any rule established by any Court, the Chief Judge, or the Judicial Commission shall be subject to the power of the Council to make or modify any rule by law.

(e) Written Decisions. All orders, judgments, opinions, or final decisions of any Court shall be written and published in a timely manner.

(f) Final Disposition. The Courts shall render a final disposition in all cases properly filed.

(g) Right to Appeal. Any party to a civil action, or a defendant in a criminal action, who is dissatisfied with the judgment or verdict of a Trial Court shall have the right to file an appeal to the Supreme Court. The Supreme Court shall have the right to accept or deny any appeal from a Trial Court. All appeals that are accepted for review by the Supreme Court shall be heard by the full Supreme Court.

(h) Precedent. The Courts shall develop rules regarding precedent. The Courts shall require all parties to a case to present arguments regarding the customs and traditions of the Tribe. In the absence of an applicable written law of the Tribe, the Courts shall separately consider and explain in writing the application of the customs and traditions to the disposition of the case.

Section 7. Conflicts of Interest. Judges and Justices shall disclose and recuse when they have a conflict of interest. Any party to a case shall have the right to request a Judge to recuse, and every decision on recusal shall be accompanied by a written explanation for the decision.

Section 8. Judicial Commission.

(a) Establishment. There shall be a Judicial Commission in the Judicial Branch.

(b) Composition of the Judicial Commission. The Judicial Commission shall be comprised of five seats to be filled by Members of the Tribe, three seats which of whom shall be selected upon public nomination by the Chair and two seats which of whom shall be selected upon public nomination by the Chief Justice, all nominations to be subject to confirmation by the Council. Members of the Judicial Commission shall serve four-year staggered terms of office.

(c) General Powers of the Judicial Commission. The Judicial Commission shall have the power to adopt Rules of Court governing the Judicial Branch subject to the Laws of the Tribe.

(d) Specific Powers to Regulate the Conduct of Judges, Justices, Attorneys, Advocates, and Officers of the Courts. The Judicial Commission shall have the power to establish Rules of Ethics for the Judicial Branch to hear any complaints regarding Judges, Justices, attorneys, advocates, or any other Officer of the Courts, subject to law. The Judicial Commission shall have the power, after providing due process, to make recommendations to the Supreme Court to conduct a disciplinary or removal hearing.

Section 9. Compensation. Judges and Justices shall be paid a reasonable compensation by law.

ARTICLE VII – LEGISLATIVE BRANCH

Section 1. Composition. The Council/Legislature shall be comprised of twelve (12) Council/Legislators:

(a) The Council/Legislatures will consist of the 12 members of the Tribal Council elected by the terms in existence at the time of this Constitution Amendment. Terms, election cycles, and tribal codes that govern the elections of the

Council/Legislators, that are consistent with this constitution, shall remain enacted unless legally changed by law under the authority of this constitution.

Section 2. Powers. Legislative power shall be vested in the Council/ Legislature.

(a) The Council/ Legislature shall have the power to make laws, raise revenue, borrow money, and enact an annual omnibus balanced budget for the entire Tribe by law, and take any other action as provided in this Constitution. The Council/ Legislature shall not have the power to enact a private bill.

(b) The annual budget shall include all revenue and funds controlled by the Tribe and all revenue and funds received by the Tribe from any and all sources. The Council/Legislature shall have the power to conduct one quarterly budget assessment and make appropriate modifications to the annual budget by law. Upon request of the Chair, the Council/Legislature shall have the power to make the requested modification to the annual budget at any time. No money shall be drawn from the Treasury unless it has been separately and previously authorized by law and included in an approved budget.

(c) If the Council/Legislature fails to approve an annual budget by the start of the fiscal year, then the Tribe shall continue to function at the level of the previous year's budget.

(d) The Council/Legislature shall follow a public Legislative Process to enact laws and budgets.

(i) Each proposed law and budget of the Council/Legislature shall be embodied in a written Bill, unless otherwise indicated in this Constitution. Each Council Member shall have the power to introduce a Bill which shall be read into the public Legislative Record and placed on the public Legislative Calendar. The name of the Council Member who is the primary sponsor of each Bill shall be indicated on the Bill. Every Bill shall include a section explaining how the law derives from, comports with, or affects the customs and traditions of the Tribe. Every Bill shall include a statement identifying the specific law, if any, to be amended, superseded, or repealed.

(ii) The Council/ Legislature or a Committee of the Council/ Legislature shall be required to conduct at least one public hearing in any District held outside the time of a Legislative Session which shall include time for public comment

on a Bill prior to passage by the Council/ Legislature. The Council/ Legislature shall have the power to compel evidence, Records, and witnesses by subpoena. Citizen/Members of the Tribe shall be afforded the opportunity to address the Council/ Legislature privately regarding a personal matter; however, the Council/Legislature shall not be permitted to take any action at such time.

(iii) The Council/ Legislature shall be required to publish every introduced Bill in the Tribe's newspaper, website, and in other public places at least thirty days prior to a vote by the Council, unless the Bill proposes a budget modification made upon the request of the Executive to meet a time-sensitive requirement for securing funding from a source other than the Tribe.

(iv) A majority of the whole number of seated Council/Legislators shall constitute a quorum, and a quorum shall be required to convene a Regular Session or Special Session of the Council/Legislature. The Council/ Legislature shall have the power to enact a Bill by a majority vote of Council/Legislature present. The Council/Legislature shall vote on each Bill in public by separate roll call votes. A Council/Legislator shall be present to cast a roll call vote, and the names and votes of each Council/Legislator on each Bill shall be recorded and published.

(v) All Bills enacted by the Council/Legislature shall be presented to the Chair for signature or veto. The Chair shall have ten days from presentment to sign the enactment into law or to veto the enactment with a written explanation of objections, and if the Chair takes no action on an enacted Bill, then it shall become law. The Council/ Legislature shall have the power to override an Executive veto by a vote of at least three-fourths of the seated Council/Legislature.

(vi) No law or budget, whether enacted by the Council/Legislature and signed into law by the Chair or enacted by veto override by the Council/Legislature, except a budget modification, shall be valid until it has been published. All laws shall be compiled into one Code which shall be published annually.

(vii) Unless otherwise permitted by this Constitution, any action by the Council/ Legislature which does not follow the Legislative Process shall be

deemed void and shall not be implemented or enforced by the government, Chair, or any official or employee.

(e) The Council/ Legislature shall select a Speaker from among its Members. The Council/ Legislature shall have the power to create internal rules and procedures for the Legislative Branch including the power to establish Committees of the Council/Legislature comprised exclusively of Council/Legislators. The Council shall have the power to employ legislative staff including legislative counsel and a Sargent of Arms.

(f) The Council/ Legislature shall have the power to establish executive Departments, Commissions, Boards, Offices, and other subordinate entities by law. All Commissions and Boards shall be established in the Executive Branch. No Council Member may be elected, appointed, or employed in the Judicial Branch, in the Executive Branch, or in an elective office for any other government and may not accept any position or appointment that creates a substantial conflict of interest. The Chair and Council/Legislators who are otherwise qualified may serve as unpaid members of the business board of any gaming enterprise owned by the Tribe and operated outside the Territory.

(g) Subject to the Constitutional Right of Referendum, the Council/Legislature shall have the power to enact, adopt, authorize, or otherwise approve any cession, diminishment, or relinquishment by law, agreement, or by any other means any treaty rights reserved to the Tribe. Any agreement prohibiting or abridging the exercise of any reserved treaty right to hunt, fish, or gather except for temporary conservation purposes shall be subject to the approval of the voters in a Referendum election called for this purpose.

(h) The Council/Legislature shall have the authority to establish by law a process for the extending Full Faith and Credit to the judicial orders and judgments of other jurisdictions.

(i) The Council/Legislature shall have the authority to establish limits on campaign spending by law.

Section 3. Legislative Sessions.

(a) Regular Sessions. Regular Sessions of the Council/Legislature will continue as in practice at the time of the approval of this Constitution Amendment)

(b) Special Sessions. The Legislative Speaker or the Chair shall be permitted to call a Special Session of the Council/Legislature. A Special Session may be held in any District and the date and location of the Special Session shall be made by public notice. The purpose of the Special Session shall be explained by public notice and only that purpose shall be considered during the Special Session. A Special Session shall last no longer than one day.

(c) Every Regular Session and Special Session shall be open to the public, unless otherwise permitted by law.

(d) Council/Legislators may vote on matters only during a Regular Session or a Special Session.

(e) The seat of government shall be Bawheting.

ARTICLE VIII – EXECUTIVE BRANCH

Section 1. Composition.

(a) The Executive Branch shall be comprised of one Chair and any Department established by law.

(b) There shall be a Department of Public Safety comprised of a Division of Law Enforcement and an Office of Prosecutor, an Office of Compliance, and an Office of Conservation Enforcement. The Office of Prosecutor shall have the sole discretion to prosecute on a case-by-case basis.

(i) The Chief Prosecutor shall be elected by the voters of the Tribe to serve a four-year term of office. The Chief Prosecutor shall be a Member of the Tribe, an attorney, and reside within a fifty-mile radius of principal Tribal Court House upon election to office. If no attorney is available to serve as Chief Prosecutor, then the Chair shall nominate an otherwise qualified person to serve as Chief Prosecutor until the next General Election, subject to confirmation by the Council.

(ii) No person shall be eligible to serve as the Chief Prosecutor who has ever been convicted of a felony in any jurisdiction.

(iii) The Prosecutor shall not be elected, appointed, or employed in the Judicial Branch, in the Legislative Branch, or in any other government or in an elective office for any other government and may not accept any position or appointment that creates a substantial conflict of interest.

(c) The Chair shall be in charge of the Executive Branch of government. The Chair shall be subject to the laws of the Tribe.

Section 2. Terms. The term of office for the Chair shall be four years.

Section 3. Selection. The Chair shall be elected by receiving the highest number of votes cast by eligible voters of the entire Tribe.

Section 4. Qualifications.

(a) The Chair shall be a Member of the Tribe and of voting age.

(b) The Chair shall physically reside in any District for at least one year immediately prior to an election for Chair and within thirty days of taking the oath of office, shall physically reside within a fifty-mile radius of Original Sault Tribe Reservation as recognized in 1972 for the duration of their term.

(c) The Chair cannot be elected, appointed, or employed in the Judicial Branch, in the Legislative Branch, or in any other government or in an elective office for any other government and may not accept any position or appointment that creates a substantial conflict of interest.

Section 5. Powers. Executive power shall be vested in the Executive Branch. The Executive Branch shall execute, enforce, and administer the laws and budgets of the Tribe.

(a) Under the direction of the Chair, the Executive Branch shall present a proposed balanced omnibus budget to the Council no later than the first day of June of each year for enactment the subsequent year.

(b) The Chair shall serve as the official representative of the Tribe.

(c) Subject to Legislative override, the Chair shall have the power to veto a Bill within ten days of presentation to the Chair. A veto shall include a written explanation of any objections to the Bill.

(d) The Executive Branch shall not have the authority to spend money unless previously authorized by law and appropriated in a budget.

(e) The Chair shall be authorized to hire staff in the Office of Chair. Such positions shall serve at the direction of the Chair and shall be vacated to coincide with the expiration of the Chair term. During this term of employment, the Chair's staff shall be subject to the tribe's personnel policies of Governmental Employees. Funding shall be included for four such positions and any additional positions established by the Legislature.

(f) No person shall make or participate in making an executive decision if such person has a direct or personal financial interest in the outcome of the decision.

(g) The Chair shall present an annual state of the Tribe address

Section 6. Compensation. The Chair shall be paid reasonable compensation.

ARTICLE XII – SOVEREIGN IMMUNITY

Section 1. Sovereign Immunity. The Tribe shall possess Sovereign Immunity. Nothing in this Constitution shall be deemed to constitute a waiver of Sovereign Immunity from suit unless specifically stated herein, except that the Council/Legislature may authorize a waiver of Sovereign Immunity by law. Any authorization by the Council/Legislature to waive Sovereign Immunity shall be specific and for a limited scope and duration.

Section 2. Immunity from Suit by Parties Outside the Jurisdiction of the Tribe.

The Tribe and its executive Officials and Employees acting in their official capacity or within the scope of their authority shall be immune from suit brought by any party not subject to the Jurisdiction of the Tribe except to the extent waived in accordance with law.

Section 3. Immunity from Suit by Parties Within the Jurisdiction of the Tribe.

The Tribe and its Executive Officials and Employees acting in their official capacity or within the scope of their authority shall be immune from suit except to the extent waived in accordance with law or except for suits in equity filed exclusively in the Courts of the Tribe by any party subject to the Jurisdiction of the Tribe to enforce rights and duties established by law or this Constitution. Any Member of the Tribe may bring a suit exclusively in the Judicial Branch to enforce the terms of this Constitution. Sovereign Immunity shall not extend to Officials and Employees acting outside their official capacity or beyond the scope of their authority.

Section 4. Suits Against the Council and Council/Legislators. The Council and individual Council/ Legislators acting in their official capacity shall be immune from suit in law and equity. When the Council or Council Member is exercising an Executive function specifically authorized by this Constitution, the Council or Council Member shall not be immune from suit in equity filed exclusively in the Judicial Branch by any party subject to the Jurisdiction of the Tribe.

Section 5. Suits Against Judges. Judges and Justices shall be immune from suit in law and equity for actions taken in their official capacity.