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# Muscogee (CREEK) Nation

*Executive Office*

Randall Hicks  
Honorable Speaker  
Muscogee (Creek) National Council  
P.O. Box 158  
Okmulgee, OK 74447

Dear Speaker Hicks:

I am returning NCA 21-045 herewith:

## **A MESSAGE OF THE PRINCIPAL CHIEF RETURNING NCA 21-045 TO THE NATIONAL COUNCIL AS A VETO WITH OBJECTIONS**

In accordance with the Constitution of the Muscogee (Creek) Nation, I, David W. Hill Principal Chief of the Muscogee (Creek) Nation, do hereby return NCA 21-045, entitled “**A LAW OF THE MUSCOGEE (CREEK) NATION CREATING NEW LAW IN TITLE 30, CHAPTER 9 ENTITLED “GOVERNMENT RECORDS”**” as a **VETO** with the following objections.

### **OBJECTIONS:**

The purported purpose of NCA 21-045 is to give individual members of the National Council the authority to obtain all records of the Nation regardless of confidentiality or privilege. Only narrow categories of records are not to be disclosed to National Council members. The role of the National Council is to legislate. Constitution of the Muscogee (Creek) Nation, Article VI, §§2 and 7; Ellis v. National Council, SC05-03/05 at p.7 and 14. Individual National Council members are not endowed with super investigatory powers by virtue of their election. Indeed, our Supreme Court has noted that the National Council’s power to investigate is limited both in scope and purpose. In Ellis v. National Council, SC05-03/05, the Supreme Court specifically held that the National Council’s investigatory powers were constitutionally limited. The Ellis Court stated:

United States case law recognizes the powers of Congress to investigate matters and call witnesses:

There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate. Without the power to investigate -including of course the authority to compel testimony, either through its own

processes or through judicial trial-Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively. (internal cites and footnotes omitted)

*Quinn v. U.S.*, 349 U.S. 155, 75 S. Ct. 668, 99 L. Ed. 964, 51 A.L.R.2d 1157(1955).

However, the Court in *Quinn* did not give Congress unrestrained powers, but recognized limitations:

**But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs unrelated to a valid legislative purpose. Nor does it extend to an area in which Congress is forbidden to legislate. Similarly, the power to investigate must not be confused with any of the powers of law enforcement; those powers are assigned under our Constitution to the Executive and the Judiciary. Still further limitations on the power to investigate are found in the specific individual guarantees of the Bill of Rights, such as the Fifth Amendment's privilege against self-incrimination which is in issue here. Id.**

This Court agrees with and adopts the reasoning of the United States Supreme Court on this issue in *Quinn*, which is consistent with this Court's rulings. There is no doubt that the National Council, in order to properly legislate for the Nation, needs additional information from time to time. Therefore, it is imperative that the process of calling witnesses and experts be allowed to continue amid Constitutional safeguards such as due process. It is incumbent upon, and hereby ordered that the National Council craft rules that safeguard every Muscogee (Creek) Nation citizen or employee, regardless of position, from the contempt powers of the National Council unless a subpoena is specifically issued and due process is implemented. The language of those rules shall also recognize and address the strain on individual governmental departments caused by calling individuals to testify before the Council, and additional safeguards shall be put into place that minimize the loss of the employee's vital time from work of the Nation. Finally, appropriate language should be drafted that addresses the subjects of subpoena, testimony, and contempt proceedings against the Principal Chief and/or Second Chief consistent with laws on executive privilege. It follows that this Court holds that Title 30 §§ 3-104, 8-101 and 8-102 of the Muscogee (Creek) Nation Code, as such sections pertain to the investigatory powers of the National Council, are hereby stricken as unconstitutional violations of individual rights to due process of law.

Ellis v. National Council, SC05-03/05 at p. 11-13(emphasis added).

As a result of Title 30 §§3-104, 8-101 and 8-102 being declared unconstitutional, the National Council passed and the Principal Chief signed NCA 07-191. NCA 07-191 recognized that the National Council's investigatory powers were limited to validly issued subpoenas. The law also provided due process protections to employees and citizens and recognized that the Principal Chief

and Second Chief were immune from the law due to executive privilege. Contrary to the constraints of the Constitution, Ellis, and NCA 07-191, NCA 21-045 would purportedly allow individual members of the National Council to obtain confidential records such as Children and Family Services records about child abuse or deprived child proceedings, domestic violence records, sealed court records, guardianship and juvenile records, and documents subject to confidentiality agreements with other branches of government. The National Council cannot waive claims of privilege or confidentiality that belong to other branches of government by its own fiat.

The National Council's powers of investigation are limited as a body to properly issued subpoenas subject to due process and privilege. The National Council cannot confer powers on its individual members that it does not possess as a body. In addition, NCA 21-045 seeks to punish employees who fail to comply with records requests but includes no accountability for National Council members who disclose private or sensitive information from those records to others. The Constitution was enacted to protect the citizens from the overreach of their government. NCA 21-045 is a prime example of overreach by the National Council into "private affairs unrelated to a valid legislative purpose." NCA 21-045 is unconstitutional and contrary to established Supreme Court caselaw.

For the reasons outlined above, NCA 21-045 is hereby returned as a **VETO**.

Sincerely,



David W. Hill  
Principal Chief  
Muscogee Creek Nation

Dated: May 14, 2021





## NCA 21-045

### CLASSIFICATION: #30. NATIONAL COUNCIL/LEGISLATIVE BRANCH

### A LAW OF THE MUSCOGEE (CREEK) NATION CREATING NEW LAW IN TITLE 30, CHAPTER 9 ENTITLED "GOVERNMENT RECORDS"

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

#### SECTION ONE. Findings. The National Council finds that:

A. The National Council, through the Constitution of the Muscogee (Creek) Nation, is charged with legislating on matters *"to promote the public health and safety, education and welfare that may contribute to social, physical well-being and economic advancement of citizens of Muscogee (Creek) Nation"* and *"authorize and make appropriations."*

B. In order to accomplish the aforementioned constitutional duties, the National Council must have access to all Muscogee (Creek) government records.

**SECTION TWO. NEW LAW.** The following new law shall be codified in Title 30 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts for the Code of Laws of the Muscogee (Creek) Nation, the Attorney General is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated in this law in order to be consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws; and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law:

### TITLE 30 NATIONAL COUNCIL/LEGISLATIVE BRANCH

#### CHAPTER 9. GOVERNMENT RECORDS

##### § 9-101. Short title and codification

This Act shall be known and may be cited as the Muscogee (Creek) Nation Government Records Act and shall be codified as Chapter 9 in Title 30, "National Council/Legislative Branch" of the Muscogee (Creek) Nation code Annotated.

##### § 9-102. Purpose



The purpose of this Act is to provide for open access to each member of the National Council of the Muscogee (Creek) Nation ("National Council") to all "records" as defined below in the discharge of its governmental duties, and to provide procedures under which the National Council and its members shall obtain such records.

**§ 9-103. Definitions**

A. "Muscogee (Creek) Nation Government" means collectively, the Muscogee (Creek) Nation, its elected officials, officers, employees, agents, departments, divisions, enterprises and contractors, or any of the Nation's constitutionally or statutorily created agencies, commissions, boards, corporations, special or advisory committees, chartered communities and their subsidiaries, or other entities and their elected officials, officers, directors, employees, members, agents and contractors.

B. "Records" means all documents, including but not limited to any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, and record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of the Muscogee (Creek) Nation Government. "Records" does not mean computer software or nongovernmental personal effects.

**§ 9-104. Requests for Records**

A. Requests for records shall be in writing and addressed to the Secretary, Director, CEO or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request. The request shall identify the specific agency(ies) or other entity(ies) and/or the matter(s) which are the subject of the request. Said requests shall be delivered to the Speaker of the Council, who shall enter said request in the records of the Council and shall deliver it to the Secretary, Director, CEO or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request on the same or the following working day.

B. The Secretary, Director, CEO, or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request shall produce the requested records within five (5) calendar days of the receipt of such request at no cost to the National Council member(s). If it is not possible to produce the requested record during the prescribed time limit, the Secretary, Director, CEO or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request shall, within the prescribed time limit, provide a written explanation to the National Council member(s) as to why the requested record cannot be made available. If the record cannot be made available at a later date, the Secretary, Director, CEO or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request will include a statement as to when the record will be provided to the National Council member(s). The Muscogee

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(Creek) Nation Government can extend the time to respond by an additional five (5) calendar days, but must provide written notification to the requesting party.

C. The Secretary, Director, CEO or Supervisor of the Department, Agency, Entity or Principal Chief that is the subject of the request shall provide the requested records to the requesting National Council member(s) and the Speaker of the National Council so that the response is made a part of the records of the National Council.

D. No confidentiality agreements affecting records covered by this Act or claim of privilege or confidentiality shall prevent the National Council members from having access to any records.

E. In the event that the record submitted to the National Council member(s) is "Confidential" as defined under the Muscogee (Creek) Nation Freedom of Information Act, as amended, or is confidential under Muscogee (Creek) Nation law, that record shall, nevertheless, be produced or otherwise made available to the requesting Council member(s); provided, however, that the producing Muscogee (Creek) Nation Government officer shall give notice to the National Council member(s) of such status and shall clearly mark each such record with the words "Confidential." The Council member(s) shall make no disclosures of such privileged or confidential records to third parties. Without limiting the generality of the foregoing, personal financial information, credit reports or other financial data obtained by or submitted to the Muscogee (Creek) Government for the purpose of evaluating credit worthiness, obtaining a license, permit or for the purpose of becoming qualified to contract with the Muscogee (Creek) Nation Government shall be "Confidential" under this Act.

F. Individual health, adoption and medical records, records deemed classified by the Muscogee (Creek) Nation or U.S. Government; records constituting attorney-client privilege; information or documents that may be subject to an evidentiary privilege or whose disclosure is prejudicial to the interests of the Nation; documents and materials relating to pending criminal investigations; records that disclose law enforcement investigative techniques or procedures; records that are reasonably likely to disclose the identity of a confidential source; records disclosing the existence of a confidential surveillance or investigation; and any material which would endanger the life or physical safety of any person are not disclosable to the National Council under this Act.

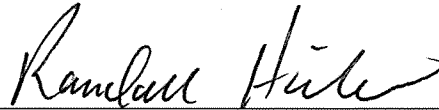
G. Nothing in this Act shall be construed to require the disclosure of any individual's social security number, date of birth, home address or Muscogee (Creek) citizenship number. Such information may be redacted even though the record is marked "Confidential" pursuant to subsection (E).

H. The civil penalties referenced in MCNCA Title 37 § 9-112 shall be applicable to violations of this Act.

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

**ENACTED** by the Muscogee (Creek) National Council on this 24<sup>th</sup> day of April, 2021.

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

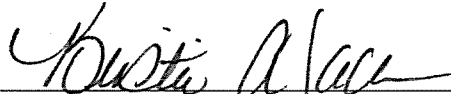


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Randall Hicks, Speaker  
National Council  
Muscogee (Creek) Nation

**CERTIFICATION**

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Sixteen members with **Sixteen** members attending this meeting on the 24<sup>th</sup> day of April, 2021 and that the above is in conformity with the provisions therein adopted by a vote of 11 in favor, 4 against and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.



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

**APPROVAL**

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 to the above Law, **NCA 21-045** authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

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David W. Hill, Principal Chief  
Muscogee (Creek) Nation