



HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

**HO-CHUNK NATION LEGISLATURE
ACKNOWLEDGEMENT OF GENERAL COUNCIL RESOLUTION 09.16.23-G
TO MODIFY THE BLOOD DEGREE OF HO-CHUNK NATION MEMBERS
ENROLLED AS OF DECEMBER 31, 1999 AND
REFERRAL OF SAID RESOLUTION TO A LEGISLATIVE WORKGROUP
FOR FURTHER ACTION**

RESOLUTION 10-31-23 P

- WHEREAS,** on November 1, 1994, the United States Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago Tribe; and
- WHEREAS,** the Ho-Chunk Nation ("Nation") is a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934; and
- WHEREAS,** in Article IV, Section 2 of the Ho-Chunk Nation Constitution, the General Council delegated and authorized the Legislature to make laws and appropriate funds in accordance with Article V of the Constitution; and
- WHEREAS,** Article III, Section 3 of the Constitution states that no branch of the Nation's government shall exercise the powers or functions delegated to another branch; and
- WHEREAS,** Article V, Section 1(a) of the Ho-Chunk Nation Constitution ("Constitution") vests Legislative powers in the Legislature; and
- WHEREAS,** Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") grants the Ho-Chunk Nation Legislature ("Legislature") the power to make laws, including codes, ordinances, resolutions, and statutes; and
- WHEREAS,** Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power; and
- WHEREAS,** Article V, Section 2(l) of the Constitution empowers the Legislature to enact laws to manage, lease, permit, or otherwise deal with the Nation's lands, interests in lands, or other assets; and
- WHEREAS,** Article V, Section 2(r) of the Constitution gives power to the Legislature to protect and foster Ho-Chunk religious freedom, culture, language, and traditions; and

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- WHEREAS,** Article V, Section 2(s) of the Constitution authorizes the Legislature to promote the public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation; and
- WHEREAS,** Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its Legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers; and
- WHEREAS,** Article V, Section 3 of the Constitution requires that the Legislature adopt Codes governing topics such as Membership, Open Meetings, and Elections, among other items; and
- WHEREAS,** the Legislature originally adopted the Tribal Enrollment and Membership Act in 1995, and then updated and amended the law to the current Tribal Enrollment and Membership Code, codified in Ho-Chunk law as 2 HCC § 7 (hereafter, Enrollment Code); and
- WHEREAS,** the Enrollment Code is enacted based on the authority of Article II of the Nation’s Constitution, which defines the Requirements for Membership in the Nation, as follows:
- “The following persons shall be eligible for membership in the Ho-Chunk Nation, provided, that such persons are not enrolled members of any other Indian nation:
- (a) All persons of Ho-Chunk blood whose names appear or are entitled to appear on the official census roll prepared pursuant to the Act of January 18, 1881 (21 Stat. 315), or the Wisconsin Winnebago Annuity Payroll for the year one thousand nine hundred and one (1901), or the Act of January 20, 1910 (36 Stat. 873), or the Act of July 1, 1912 (37 Stat. 187); or
 - (b) All descendants of persons listed in Section 1(a), provided, that such persons are at least one-fourth (1/4) Ho-Chunk blood.
 - (c) DNA must prove parentage. “DNA” means deoxyribonucleic acid.
 - (d) Beginning the date this amendment is approved, the Ho-Chunk Nation shall no longer consider or accept for enrollment any person who has previously been enrolled as a member of another Tribe (including the Winnebago Tribe of Nebraska).”
- WHEREAS,** the above-noted language from the Nation’s Enrollment Code is consistent with Article II of the Nation’s Constitution; and
- WHEREAS,** the Ho-Chunk Nation General Council met on September 9, 2023 at its Annual Meeting and adopted **Resolution 09.16.2023-G**, entitled “**A Resolution to Modify the Blood Degree of Each and Every Person of Ho-Chunk Nation Indian Blood Who Was Duly Enrolled in the Ho-Chunk Nation on December 31, 1999, Will Now be Considered a Full-Blood, or 4/4 Blood Degree**”; and
- WHEREAS,** General Council Resolution 09.16.2023-G contained several “WHEREAS” clauses, leading up the clause headed by “NOW, THEREFORE, BE IT RESOLVED,” and two additional clauses under the headings “BE IT FURTHER RESOLVED”; and

- WHEREAS,** the action taken by General Council 09.16.2023-G is set forth in the single “Now, THEREFORE, BE IT RESOLVED” provision and the two provisions headed by “BE IT FURTHER RESOLVED”; and
- WHEREAS,** within the “Now, THEREFORE, BE IT RESOLVED” provision of General Council Resolution 09.16.2023-G, the General Council set policy to authorize the President to propose a Resolution on behalf of the General Council to the Ho-Chunk Nation Legislature, to amend the Tribal Enrollment and Membership Code (codified at 2 HCC § 7) to reflect a statute that clearly defines a modification stating that the blood degree of each and every person of Ho-Chunk Nation Indian blood who was duly enrolled in the Ho-Chunk Nation on December 31, 1999, will now be considered a full-blood, or 4/4 blood degree; and
- WHEREAS,** General Council Resolution 09.16.2023-G contains language in a “WHEREAS” provision authorizing that the Tribal Enrollment and Membership Code be amended to reflect a statute that clearly defines a modification to the blood degree of each and every person of Ho-Chunk Nation Indian blood who was duly enrolled in the Ho-Chunk Nation by December 31, 1999, to be considered a full-blood, or 4/4 blood degree, and that such language be enacted by the Legislative Branch within forty-five (45) days of the General Council meeting; and
- WHEREAS,** General Council Resolution 09.16.2023-G is unclear, in that it does not include a policy directive to the Legislature in a compelling provision such as a “Now, Therefore, be it Resolved,” or “Be it Further Resolved” clause; and
- WHEREAS,** Article IV, Section 3(a) of the Constitution states that “[t]he General Council retains the power to set policy for the Nation. This policy shall be resolutions proposed and approved at Annual Meetings and Special Meetings, by a majority vote of the qualified voters of the Ho-Chunk Nation General Council. This policy shall be made into laws, including codes, ordinances, resolutions and statutes by the Legislative Branch of the Ho-Chunk Nation within forty-five (45) days after a majority vote of the qualified voters of the Ho-Chunk Nation General Council at Annual Meetings and Special Meetings.”; and
- WHEREAS,** according to the Nation’s Trial Court in *Coalition for Fair Government II v. Chloris Lowe, Jr., et al.*, CV 96-22 (HCN Tr. Ct., Jul. 23, 1996) at 11, the General Council is bound to follow the Constitution of the Nation; and
- WHEREAS,** also in *Coalition for Fair Government II v. Chloris Lowe, Jr., et al.*, CV 96-22 (HCN Tr. Ct., Jul. 23, 1996) at 13, the Trial Court of the Nation emphasized that properly conducted and Constitutional actions of the General Council are binding, but action which violates the Constitution would be unlawful and not “binding”; and
- WHEREAS,** in *Coalition for Fair Government II v. Chloris Lowe, Jr., et al.*, CV 96-22, 96-24 (HCN Tr. Ct., Jan. 03, 1997) at 29 the Trial Court ruled that to be granted a presumption of validity, a body politic must follow procedural guidelines which are easily understandable and subject to verification, which applies to the General Council; and
- WHEREAS,** the Attorney General of the Nation rendered an opinion, analyzing the 2023 General Council Resolutions, by memo dated October 16, 2023; and

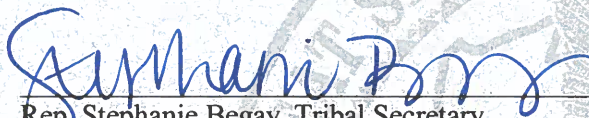
- WHEREAS,** in the opinion memo of the Attorney General, it is noted that General Council Resolution 09.16.23-G adopts a policy to modify the Tribal Enrollment and Membership Code, to add language stating that the blood degree of each and every person of Ho-Chunk Nation Indian blood who was duly enrolled in the Nation on December 31, 1999, will now be considered a full-blood, or 4/4 blood degree; and
- WHEREAS,** the Attorney General opinion noted, and emphasized, that Article II, Section 5 of the Constitution states that “[t]he Legislature shall have the power to enact laws *not inconsistent* with this Article to govern membership”; and
- WHEREAS,** the Attorney General opinion concluded that if the Legislature changed the Enrollment Code, and made the change sought by the General Council, it would be inconsistent with the current language regarding membership in Article II of the Constitution; and
- WHEREAS,** as an alternative approach, the Attorney General opinion suggested that the Membership language of the Nation’s Constitution should be changed first and that the Legislature could request that a Constitutional Election/Secretarial Election take place under the Nation’s Constitution and Election Code; and
- WHEREAS,** the Legislature shares the concerns of the Attorney General, and determines that a better course of legal and constitutional action would be to amend the Nation’s Constitution to implement the policy directive in General Council Resolution 09.16.2023-G; and
- WHEREAS,** Legislators took an oath to uphold the Nation’s Constitution, including the support of the Nation’s inherent sovereignty, in order to advance the general welfare, safeguard the Nation’s interests, sustain Ho-Chunk Nation culture, promote traditions and perpetuate the Nation’s existence, and the Legislature recognizes the importance of exploring and pursuing the policy identified in General Council Resolution 09.16.2023-G, as an aspect of tribal self-determination and exercise of tribal sovereignty; and
- WHEREAS,** the Legislature finds that other tribal Nations in Indian Country have recently pursued a policy change similar to that expressed in General Council Resolution 09.16.2023-G; however, it has come with substantial research, to forecast tribal population trends and fiscal impacts on the tribal government and tribal members; and
- WHEREAS,** the Legislature finds that it is of critical importance to conduct due diligence on the implementation of a change in Membership and blood quantum, in order to protect the general welfare of the Nation’s tribal members, yet seek to also perpetuate the Nation’s existence, and therefore, the Legislature intends to refer this matter to a Legislative Workgroup in working toward the policy goal set forth in General Council Resolution 09.16.2023-G;

NOW, THEREFORE, BE IT RESOLVED, that the Legislature, pursuant to its Constitutional authority, acknowledges General Council Resolution 09.16.2023-G, but defers taking action to amend the Nation’s Enrollment Code, as it would be illegal and inconsistent with Article II of the Constitution; further, that the policy directive to the Legislature within the General Council Resolution was set forth in a “Whereas” provision; *however*, as set forth below, the Legislature will request that the Nation’s Election Board conduct a Constitutional Election pursuant to Section 21 of the Election Code, and Article XIII of the Constitution;

BE IT FURTHER RESOLVED that the Legislature will establish a Legislative Workgroup in order to consider the policy goal set forth in General Council Resolution 09.16.2023-G, examine demographic data, forecast tribal population trends, review fiscal impacts on the tribal government and tribal members; and conduct due diligence in order to further the Nation's self-determination and perpetuate the Nation's existence.

CERTIFICATION

I, the undersigned, as Tribal Secretary of Ho-Chunk Nation, hereby certifies that the Legislature of the Ho-Chunk Nation, composed of **13 members** of whom **11** constituting a quorum were present at a meeting duly called and convened and held that on the **31st day of October, 2023**, that the foregoing resolution was adopted at said meeting by an affirmative vote of **11 members, 0 opposed, and 0 abstaining**, pursuant to the Article V, Section 2(a) and (x) of the Constitution of the Ho-Chunk Nation approved by the Secretary of the Interior on November 1, 1994, and that the foregoing resolution has not been rescinded or amended in any way. I further certify that this is a verified copy of said resolution.


Rep. Stephanie Begay, Tribal Secretary

10.31.23
Date