

APPENDIX A

Ninth Circuit Court of Appeals  
Memorandum Opinion (Doc. 19-1)

*United States of America v. Tawnya Bearcomesout*  
Ninth Circuit Court of Appeals Case No. 16-30276

Filed August 17, 2017

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS

AUG 17 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 16-30276

Plaintiff-Appellee,

D.C. No. 1:16-cr-00013-SPW

v.

MEMORANDUM\*

TAWNYA BEARCOMESOUT,

Defendant-Appellant.

Appeal from the United States District Court  
for the District of Montana  
Susan P. Watters, District Judge, Presiding

Submitted August 9, 2017\*\*

Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

Tawnya Bearcomesout appeals from the district court's denial of her motion to dismiss the indictment and challenges her guilty-plea conviction for involuntary manslaughter, in violation of 18 U.S.C. §§ 1153(a) and 1112(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Bearcomesout's request for oral argument is denied.

Bearcomesout argues that the Double Jeopardy Clause barred her successive homicide prosecutions by the Northern Cheyenne Tribe and the United States government because the two entities are not separate sovereigns. This argument is foreclosed. *See Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, 1870-72 (2016) (successive prosecutions for the same offense are not barred by the Double Jeopardy Clause if brought by separate sovereigns, and Indian Tribes “count as separate sovereigns under the Double Jeopardy Clause”). Furthermore, Bearcomesout has not shown impermissible collusion between the United States government and the Northern Cheyenne Tribe such that an exception applies under *Bartkus v. Illinois*, 359 U.S. 121 (1959). *See United States v. Lucas*, 841 F.3d 796, 803 (9th Cir. 2016) (impermissible collusion occurs where “the prosecutors of one sovereign so thoroughly dominate or manipulate the prosecutorial machinery of the other sovereign that the latter retains little or no volition in its own proceedings” (internal quotations omitted)).

**AFFIRMED.**

APPENDIX B

United States District Court, District of Montana, Billings Division  
Order Denying Motion to Dismiss  
2016 WL 3982455

*United States of America v. Tawnya Bearcomesout*  
U.S. District Court Case No. CR 16-13-BLG-SPW

Filed July 22, 2016

2016 WL 3982455  
Only the Westlaw citation is currently available.  
United States District Court,  
D. Montana,  
BILLINGS DIVISION.

United States of America, Plaintiff,  
v.  
Tawnya Bearcomesout, Defendant.  
CR 16-13-BLG-SPW

|  
Signed 07/22/2016

Attorneys and Law Firms

John D. Sullivan, U.S. Attorney's Office, Billings, MT, [Kris A. McLean](#), Office of the U.S. Attorney, Missoula, MT, for Plaintiff.  
[Anthony R. Gallagher](#), Federal Defenders of Montana, Great Falls, MT, for Defendant.

## ORDER

[SUSAN P. WATTERS](#) United States District Judge

\*1 Before the Court is Defendant Tawnya Bearcomesout's Motion to Dismiss the Indictment based on Double Jeopardy. (Doc. 25) Bearcomesout argues that the Northern Cheyenne Tribe and the United States are no longer separate sovereigns, so her prosecution in the Northern Cheyenne Tribal Court and her prosecution in this Court are derived from the same source, in violation of the Fifth Amendment's Double Jeopardy Clause. The government argues that the Double Jeopardy Clause does not apply. For the reasons set forth below, the Court DENIES Bearcomesout's motion.

### I. Background

On February 19, 2016, Bearcomesout was charged by Indictment with voluntary manslaughter and involuntary manslaughter, in violation of [18 U.S.C. §§ 1153\(a\)](#) and [1112\(a\)](#). Prior to the federal Indictment, the Northern Cheyenne Tribal Court charged and sentenced Bearcomesout with crimes arising out of the same events. Bearcomesout accepted an *Alford* plea in tribal court. She was sentenced to one year of incarceration with the Bureau of Indian Affairs Law Enforcement Services and a \$5,000 fine for the charge of homicide as well as an additional one-year sentence and \$2,000 fine for the charge of assault, with both periods of incarceration to run consecutively. (Doc. 26-1 at 1-2).

### II. Legal Standard

The Double Jeopardy Clause of the Fifth Amendment provides an individual with three forms of protection: (1) it prohibits a second prosecution for the same offense after acquittal, (2) it prohibits a second prosecution for the same offense after conviction, and (3) it prohibits multiple punishments for the same offense. See [United States v. Enas](#), 255 F.3d 662, 665 (9th Cir. 2001). One notable exception to those prohibitions, however, is the Dual Sovereignty Clause which allows successive prosecutions by separate sovereigns. *Id.* at 666-67. The basis for this exception is that prosecutions under the laws of separate sovereigns do not, in the language of the Fifth Amendment, “subject [the defendant] for the same offence to be twice put in jeopardy.” [United States](#)

[v. \*Wheeler\*, 435 U.S. 313, 316-17 \(1978\).](#)

To determine whether two prosecuting authorities are independent sovereigns for Double Jeopardy purposes, the court must ask a “narrow, historically focused question.” [\*Commonwealth of Puerto Rico v. Sanchez Valle\*, 136 S.Ct. 1863, 1867 \(2016\).](#) “The inquiry does not turn, as the term ‘sovereignty’ sometimes suggests, on the degree to which the second entity is autonomous from the first or sets its own political course. Rather, the issue is only whether the prosecutorial powers of the two jurisdictions have independent origins—or, said conversely, whether those powers derive from the same ‘ultimate source.’ ” [\*Id.\* at 1867](#) (quoting [\*Wheeler\*, 435 U.S. at 320](#)).

In *Wheeler*, the Supreme Court outlined a baseline assumption that while Indian tribes exercise their independent sovereignty “only at the sufferance of Congress,” the tribes retain their existing sovereign powers “until [Congress acts](#)” to eliminate or control them. [435 U.S. at 323](#); see also [\*United States v. Lara\*, 541 U.S. 193 \(2004\)](#) (holding that the Civil Rights Act of 1968 § 201(2), as amended, [25 U.S.C.A. § 1301\(2\)](#), amounted to a federal *acknowledgement* (as opposed to the source) of the Spirit Lake Tribe's inherent sovereign power to prosecute and punish offenders, thus rendering a Double Jeopardy challenge impermissible). With respect to prosecutorial powers, the Court stated that because a tribe's power to enforce tribal law springs from “retained tribal sovereignty,” it is “undisputed that Indian tribes have power to enforce their criminal laws against tribal members.” [\*Wheeler\*, 435 U.S. at 322](#); see also [\*Duro v. Reina\*, 495 U.S. 676 \(1990\)](#) (“The power of a tribe to prescribe and enforce rules of conduct for its own members ‘does not fall within that part of sovereignty which the Indians implicitly lost by virtue of their dependent status.’ ”).

### III. Discussion

#### A. Tribal Sovereignty

\*2 Citing decades of “schizophrenic” case law, Bearcomesout argues that the law has evolved such that the Northern Cheyenne Tribe's concept of self-governance and sovereignty has disappeared. As a result, Bearcomesout argues that the Tribe is “subject to the external whim of the United States” which inherently extinguishes the tribe's sovereignty. Because the Tribe is not sovereign, Bearcomesout argues that her prosecution in Northern Cheyenne Tribal Court was in essence a federal prosecution, in violation of the Double Jeopardy Clause.

The obvious disagreement about the state of tribal sovereignty among Supreme Court justices contained in various dissents and concurrences over the years unquestionably creates uncertainty and doubt about whether the term “independent sovereign” still appropriately applies to Indian tribes. Nevertheless, as recently as June of this year, the Supreme Court reaffirmed the rule from *Wheeler* and its progeny that tribal sovereignty continues to exist, at least as it relates to Double Jeopardy, stating:

Indian tribes [ ] count as separate sovereigns under the Double Jeopardy Clause. Originally, this Court has noted the tribes were self-governing sovereign political communities, possessing (among other capacities) the inherent power to prescribe laws for their members and to punish infractions of those laws. After the formation of the United States, the tribes became domestic dependent nations, subject to plenary control by Congress—so hardly “sovereign” in one common sense. But unless and until Congress withdraws a tribal power—including the power to prosecute—the Indian community retains that authority in its earliest form. The ultimate source of a tribe's power to punish tribal offenders thus lies in its “primeval” or, at any rate, “pre-existing” sovereignty: A tribal prosecution, like a State's, is attributable in no way to any delegation of federal authority. And that alone is what matters for the double jeopardy inquiry.

[\*Sanchez Valle\*, 136 S. Ct. 1863, 1872 \(2016\)](#) (internal quotation marks and citations omitted).

Bearcomesout argues that the Tribe gave away any sovereignty it may have inherently possessed in the Northern Cheyenne Constitution (NCC). (Doc 26 at 12; Doc. 31 at 4). Noting the general requirements for approval by the

Secretary of the Interior throughout the NCC, Bearcomesout points specifically to Art. IV, § 1(i) of the NCC which sets out one of many of the enumerated powers the Tribal Council will exercise under the NCC:

“To promulgate and enforce ordinances, which shall be subject to review by the Secretary fo (sic) the Interior, governing the conduct of members of the Northern Cheyenne Tribe and any other person or persons coming within the jurisdiction fo (sic) the reservation, and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and power.”

Bearcomesout argues that the general requirements demonstrate that the federal government, through its review and approval power, dictates the management of all Tribal functions. She further argues that by acquiescing to federal government review and approval power over prosecutions, the Tribe has no prosecutorial sovereignty.

As Bearcomesout acknowledges, however, tribes remain sovereign for purposes of the Double Jeopardy Clause until Congress chooses to withdraw the plenary power it has. See [Sanchez Vallez, 136 S.Ct at 1869](#); [Wheeler, 435 U.S. at 323](#) (“the sovereignty that the Indian tribes retain ... exists only at the sufferance of Congress ... But until Congress acts, the tribes retain their existing sovereign powers.”); see also [Lara, 541 U.S. 193, 200 \(2004\)](#) (J. Thomas concurring) (“Congress ... can regulate virtually every aspect of the tribes without rendering tribal sovereignty a nullity.”) And, for the purposes of the Double Jeopardy analysis, the Court unequivocally stated that it does not examine the “extent of control” that “one prosecuting authority wields over the other,” or the “degree to which an entity exercises self-governance—whether autonomously managing its own affairs or continually submitting to outside direction[.]” [Sanchez Valle, 136 S.Ct at 1870](#). So at base, it doesn't matter whether the Tribe gives the power to review ordinances to the Secretary of the Interior, or whether the Tribe “possesses the usual attributes, or acts in the common manner, of a sovereign entity.” *Id.* The only element that matters for the Double Jeopardy analysis is the “ultimate source” of the power “undergirding the respective prosecutions.” *Id.* The Court has already answered that question: the tribe's prosecutorial sovereignty is inherent. [Wheeler, 435 U.S. at 323-24](#).

\*3 Accordingly, and perhaps illogically, the Tribe's decision to intentionally subject its governance to the oversight of the Secretary of the Interior has no bearing on the Tribe's sovereignty with respect to prosecutions. See [Duro v. Reina, 495 U.S. 676, 686, 110 S. Ct. 2053, 2060, 109 L. Ed. 2d 693 \(1990\)](#) (holding that a tribe's power to manage its internal affairs for its members “does not fall within that part of sovereignty which the Indians implicitly lost by virtue of their dependent status.”) Thus, while Bearcomesout's argument is logical, persuasive, and buttressed by significant legal analysis, it provides the Court with no authority to rule against such a firmly rooted line of precedent.

#### B. The *Bartkus* Exception

Bearcomesout also argues that the United States violated the Double Jeopardy Clause when it dominated her prosecution in the Northern Cheyenne Tribal Court in violation of [Bartkus v. People of the State of Illinois, 359 U.S. 121, 123-24 \(1959\)](#). In *Bartkus* the Supreme Court suggested that the dual sovereignty doctrine might be overcome if one jurisdiction was acting as a “tool” of another, or if a state prosecution was “a sham and a cover for a federal prosecution.” *Id.* at 124. The Ninth Circuit recognizes this exception as the so-called *Bartkus* exception. See [United States v. Bernhardt, 831 F.2d 181, 182 \(9th Cir. 1987\)](#).

Importantly, *Bartkus* does not prohibit “very close coordination in the prosecutions, in the employment of agents of one sovereign to help the other sovereign in its prosecution, and in the timing of the court proceedings so that the maximum assistance is mutually rendered by the sovereigns .... No constitutional barrier exists to this norm of cooperative effort.” [United States v. Figueroa—Soto, 938 F.2d 1015, 1020 \(9th Cir. 1991\)](#) (internal citations omitted); see also [Bernhardt, 831 F.2d at 182](#) (“It is clear that the *Bartkus* exception does not bar cooperation between prosecuting sovereignties.”).

Bearcomesout's *Bartkus* argument circles back to her argument regarding tribal sovereignty. That is, she argues that because the Tribe receives federal funding and regulatory oversight by the Secretary of the Interior, the Tribe is a “de facto arm of the federal government.” (Doc. 31 at 3). Bearcomesout further contends that by accepting the Secretary of the Interior's oversight, through its review and approval power of the Northern Cheyenne's Constitution, the Tribe has given away its sovereignty, particularly with respect to prosecutions. The result, according to Bearcomesout, is that the Tribe is a “subject political entity” of the federal government, which meets the level of collusion necessary to meet the *Bartkus* exception. *Id.* at 3. As noted above, the question of whether tribes maintain sovereignty with respect to prosecutions was addressed, and answered in the affirmative, in *Sanchez Valle*.

Furthermore, although the financial and regulatory relationship between tribal authorities and the federal government may be significant, this mutual cooperation does not mean the Tribe has given away its sovereignty or made itself a tool of the federal government as required under the *Bartkus* exception. The burden of establishing sufficient federal manipulation or control is “substantial; the [defendant] must demonstrate that the state officials had little or no independent volition in the state proceedings.” [Zone, 403 F.3d at 1105](#) (quoting [United States v. Liddy, 542 F.2d 76, 79 \(D.C. Cir. 1976\)](#)).

Here, the central funding and pooling of investigatory power between the federal government and the tribe is not unique. Cooperation between a tribal entity and the federal government does not automatically make one a “tool” of the other. See generally [Figueroa–Soto, 938 F.2d 1015](#). As the Government notably argues, while investigative agencies for the federal government and the Tribe cooperated closely with each other here, “the ultimate decision making authority on whether to charge a case or seek an indictment rested solely with the prosecuting agencies.” (Doc. 30 at 6).

\*4 Bearcomesout provides the Court with only conclusory allegations and no specific evidence that the Tribe had “little or no independent volition” in the Bearcomesout's tribal prosecution. [Zone, 403 F.3d at 1105](#). Accordingly, she does not meet the standard for an evidentiary hearing. See [United States v. Koon, 34 F.3d 1416, 1439 \(9th Cir. 1994\)](#) (To qualify for an evidentiary hearing, a defendant must, at the very least, “make more than ‘conclusory allegations’ of collusion.”) Based on the evidence before the Court, Bearcomesout has not shown the *Bartkus* exception applies.

#### IV. Conclusion

For the reasons stated above, Bearcomesout's Motion to Dismiss (Doc. 25) is DENIED.

All Citations

Not Reported in F.Supp.3d, 2016 WL 3982455



## APPENDIX C

Amended Constitution and Bylaws of the  
Northern Cheyenne Tribe of the  
Northern Cheyenne Indian Reservation

Original Constitution and Bylaws adopted in 1934,  
as amended by amendments adopted in 1960 and 1996.

**AMENDED \***

**CONSTITUTION AND BYLAWS**

**OF THE**

**NORTHERN CHEYENNE TRIBE**

**OF THE**

**NORTHERN CHEYENNE INDIAN RESERVATION**

**PREAMBLE**

We, the members of the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation in Montana, in order to establish a more unified tribal organization and to insure and promote the best interests of our society, industry, prosperity, and the general welfare of ourselves and our posterity do hereby establish this Constitution and Bylaws.

**ARTICLE I – TERRITORY**

The jurisdiction of the Northern Cheyenne Tribe under this Constitution and Bylaws shall extend to the territory within the confines of the Northern Cheyenne Indian Reservation boundaries as established by Executive Order dated November 26, 1884, under the administration of Chester A. Arthur and extended March 19, 1900, under the administration of William McKinley and to such other lands as may be hereafter added thereto by any law of the United States, except as otherwise provided by law.

**ARTICLE II – MEMBERSHIP**

**Section 1.** The membership of the Northern Cheyenne Tribe shall consist of as follows:

- (a)** All persons of Northern Cheyenne Indian blood whose names appear on the official census roll as of January 1, 1935, provided that by January 1, 1962, corrections shall be made in said roll by the Tribal Council, subject to approval of the Secretary of the

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\* This document sets forth the text of the original Constitution and Bylaws adopted in 1935, as amended by amendments adopted in 1960 and 1996.

Interior.

- (b) Each person of one-half (1/2) or more Northern Cheyenne Indian blood, regardless of residence, born heretofore or hereafter to any member or descendant of a member of the Northern Cheyenne Tribe whose name was or is on the census roll referred to in Section 1(a) shall automatically be entitled to membership in the Northern Cheyenne Tribe.
- (c) All children heretofore born to any member of the Northern Cheyenne Tribe who was a resident of the Northern Cheyenne Indian Reservation at the time of the birth of said children.

**Section 2.** The Tribal Council shall have power to promulgate ordinances, subject to review by the Secretary of the Interior, covering future membership including adoptions and the loss of membership.

### **ARTICLE III – GOVERNING BODY AND OFFICERS**

**Section 1.** The Tribal Council shall consist of eleven members holding the following seats:

- (a) One at-large seat held by the Vice President of the Tribe, except when the Vice President is presiding over the Tribal Council due to the absence of the President.
- (b) Five seats allocated one each to the Reservation districts of Ashland, Birney, Busby, Muddy and Lame Deer.
- (c) Five seats allocated among the five districts in accordance with the percentage of the Tribal membership associated with each district, with fractional seats being rounded off to the nearest whole number. The allocation of these five seats shall be determined for the regular election of 1996, and redetermined for the regular election held every four years thereafter. By ordinance, the Tribal Council shall establish standards and methods for the implementation of such allocations.
- (d) The Tribal Council shall have power to change the boundaries of the districts.
- (e) The members of the Tribal Council holding the ten seats allocated among the districts shall be selected through district primary elections followed by a general election conducted at-large, as provided in Article VI, Section 4. The Vice President holding the at-large seat shall be selected through a primary election followed by a general election, both conducted at-large as provided in Article VI, Section 3.

**Section 3.** The officers of the Tribe shall be a President and Vice President who shall be elected by a popular vote as hereinafter provided; a Sergeant at Arms elected by the Tribal Council

from within its own number; and a Secretary and a Treasurer appointed by the Tribal Council from outside its number. The Secretary and the Treasurer shall have no vote. Other officers and committees shall be appointed as provided in Article I, Section 1 of the Bylaws.

**Section 4.** All regular elections for President, Vice President and Tribal council seats allocated to Reservation districts shall be held in even numbered years on the date set for regular Congressional elections, including the regular election of 1996 which shall be held on Tuesday, November 5, 1996. The President and Vice President shall serve for four years, and the members of the Tribal Council holding the ten district seats shall serve for four years, and the members of the Tribal Council holding the ten district seats shall serve for four years in staggered terms, provided that in the regular election of 1996 five members of the Tribal Council shall be elected for two-year terms, as set forth in Article VI, Section 4(d). After each regular election for the Tribal Council, the Council shall appoint the Sergeant at Arms, Secretary and Treasurer, each of whom shall serve at the pleasure of the Council.

**Section 5.** It is contemplated that the President, Vice President, Secretary and Treasurer, and all members of the Tribal Council ("Tribal Officials") will serve on a full-time basis, and will receive therefor a salary commensurate with the responsibilities of office and other appropriate emoluments of office, to the extent prudent in light of available Tribal financial resources. No Tribal Official may receive additional compensation or other financial benefits for: serving on any committee of the Tribal Council; serving on boards, commissions or bodies governing or managing instrumentalities or programs of the Tribe; or undertaking while in office tasks which would ordinarily be performed on behalf of the Tribe or an instrumentality or program of the Tribe by an employee or contractor.

#### **ARTICLE IV – POWERS OF THE TRIBAL COUNCIL**

**Section 1. Enumerated Powers.** The Tribal Council of the Northern Cheyenne shall exercise the following powers, subject to any limitations imposed by the applicable statutes of the United States and subject further to all express restrictions upon such powers contained in the Constitution and the attached Bylaws:

- (a) To negotiate with the Federal, State, and local governments, on behalf of the Tribe, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Northern Cheyenne Indian Reservation.
- (b) To employ legal counsel for the protection and advancement of the rights of the northern Cheyenne Tribe and its members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.
- (c) To approve or prevent any sale, disposition, lease or encumbrance of tribal lands, interests in lands or other tribal assets, including minerals, gas and oil.

- (d) To advise the Secretary of the Interior with regards to all appropriation estimates or Federal projects for the benefit of the Northern Cheyenne Tribe prior to the submission of such estimates to the Bureau of the Budget and to Congress.
- (e) To engage in any business that will further the economic well-being of the member of the Tribe and to undertake any economic activity of any nature whatever not inconsistent with law or any of the provision of this Constitution.
- (f) To administer any funds within the control of the Tribe; to make expenditures from available funds for tribal purposes, including salaries and expenses of tribal officials or employees. All expenditures of tribal funds under control of the Tribal Council shall be by resolution duly approved by a majority of the tribal Council in legal session and the amounts so expended shall be a matter of public record at all times.

The Tribal Council, subject to the approval of the Secretary of the Interior, or his authorized representative, shall prepare annual budget requests for the advancement to the control of the Tribe such money as it now or may hereafter be deposited to the credit of the Tribe in the United States Treasury or which may hereafter be appropriated for the use of the Tribe.

- (g) To levy taxes or assessments upon members of the Northern Cheyenne Tribe and to require the performance of community labor in lieu thereof, and to levy taxes or license fees, subject to review by the Secretary of the Interior, upon nonmembers doing business within the Reservation.
- (h) To exclude from the restricted lands of the Northern Cheyenne Indian Reservation persons not legally entitled to reside therein, under ordinance which shall be subject to review by the Secretary of the Interior.
- (i) To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Northern Cheyenne Tribe and any other person or persons coming within the jurisdiction of the reservation, and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers.
- (j) To purchase, under condemnation proceedings in courts of competent jurisdiction, land or other property needed for public purposes, subject to the approval of the Secretary of the Interior.
- (k) To protect and preserve the property, wildlife, and natural resources of the Tribe and to regulate the conduct of trade and the use and disposition of property upon the reservation, provided that any ordinance directly affecting nonmembers of the Tribe

shall be subject to review by the Secretary of the Interior.

- (l) To cultivate and preserve native arts, crafts, culture and Indian ceremonials.
- (m) To administer charity and to protect the health and general welfare of the Tribe.
- (n) To establish subordinate organizations of members of the Tribe for economic purposes.
- (o) To regulate the inheritance of property, real and personal, other than allotted lands, within the territory of the Northern Cheyenne Indian Reservation, subject to review by the Secretary of the Interior, and to consult with the Examiner of Inheritance in all heirship findings before they are submitted to the Secretary of the Interior.
- (p) To regulate the domestic relations of members of the Tribe and of nonmembers married to the Tribe.
- (q) To provide for the appointment of guardians for minors and mental incompetents by ordinance or resolution subject to review by the Secretary of the Interior.
- (r) To adopt resolutions regulating the procedures of the Council, other tribal agencies, and tribal officials of the reservation.
- (s) To delegate to subordinate boards or officials or to cooperative agencies which are open to all members of the Tribe any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated powers.

**Section 2. Future Powers.** The Tribal Council of the Northern Cheyenne Tribe may exercise such future powers as may in the future be given to the Council by members of the Tribe through the adoption of appropriate Bylaws and Constitutional amendments.

**Section 3. Reserved Powers.** Any right and powers heretofore vested in the Northern Cheyenne Tribe but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the people of the Northern Cheyenne Tribe through the adoption of appropriate Bylaws and Constitutional amendments.

**Section 4. Manner of Review.** Any resolution or ordinance which pursuant to this Constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation within ten (10) days of enactment by the Tribal Council, and to Superintendent shall, within ten (10) days after receipt, approve or disapprove same.

If the Superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary

of the Interior, who may within ninety (90) days from the date of enactment rescind the said ordinance or resolution for any cause by notifying the Tribal Council of such decision.

If the Superintendent shall refuse to approve any ordinance or resolution submitted to him within ten (10) days after its receipt, he shall advise the Tribal Council of his reasons therefor. If these reasons appear to the council insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may within ninety (90) days from the date of its enactment approve the same in writing, whereupon the said ordinance or resolution shall become effective.

## **ARTICLE V – BILL OF RIGHTS**

**Section 1.** All members of the Tribe shall be accorded equal opportunities to participate in the economic resources and activities of the Tribe.

**Section 2. Election Ordinances.** Subject to the provisions of this Constitution and Bylaws, all elections and other membership votes, whether primary, regular, special, referendum, or other election or vote, shall be conducted in accordance with such ordinances and resolutions as may be adopted by the Tribal Council.

**Section 3. Election of President and Vice President.** Candidates for President and Vice President shall be determined, and the President and Vice President shall be elected in at-large general elections, as follows:

- (a) A person desiring to run for President or Vice President shall file a Declaration of Candidacy which certifies the intent to run for the office and the possession of all qualifications for the office, and shall pay a \$200 filing fee. For each regular election for President or Vice President after the 1996 election, the Tribal Council may adjust the filing fee to account for inflation or other factors. Any person qualifying for a general election for President or Vice President by write-in vote in a primary election shall promptly file a Declaration of candidacy and pay the filing fee.
- (b) If more than two qualified persons file to run for President or for Vice President, there shall be a primary election among such persons, conducted at-large and held at least 30 days before the general election. Write-in voting shall be permitted in the primary. The two top vote-getters in the primary shall be the only candidates for such office in the general election, provided that if more than two persons tie for top vote-getter, or if there is one top vote-getter and a tie for second place, all such persons shall be the candidates. Write-in voting shall not be permitted in such general election. If a candidate dies, withdraws or is disqualified prior to the general election, the candidates shall be redetermined on the basis of the primary results without considering votes cast for the former candidate, provided that if this yields less than two candidates, write-in voting shall be permitted in such general election.

- (c) If no more than two qualified persons file to run for President or for Vice President, there shall be no primary election for such office. The person(s) who filed for such office shall be the only candidate(s) for such office in the general election. Write-in voting shall be permitted in such general election.
- (d) On Tuesday, November 5, 1996, and on the date set for regular Congressional elections every four years thereafter, there shall be regular elections for President and Vice President. The top vote-getter in every regular election shall be elected for a four-year term.

**Section 4. Election of Council.** Candidates for the ten Tribal Council seats allocated among the Reservation districts shall be determined, and the Council members shall be elected in at-large general elections, as follows:

- (a) A person desiring to run for a Tribal Council seat allocated to a district shall file a Declaration of Candidacy which certifies the intent to run and the possession of all qualifications for the office, and shall pay a \$50 filing fee. For each regular election for the Tribal Council after the 1996 election, the Tribal Council may adjust the filing fee to account for inflation or other factors. Any persons qualifying for a general election for the Tribal Council by write-in vote in a primary election shall promptly file a Declaration of Candidacy and pay the filing fee.
- (b) If the number of qualified persons filing to run for the Tribal Council from a district is more than twice the number of open Council seats allocated to the district, there shall be a primary election among such persons, conducted within the district and held at least 30 days before the general election. Only the voters of the district may vote in the primary. Write-in voting shall be permitted in the primary. In descending order of votes received, the top vote-getters in the district primary shall be included in the general election as the only candidates for the open seat(s) in the district, until the number of such included candidates equals twice the number of such open seat(s); provided that if there is a tie for lowest vote-getter among such persons, the tied persons shall be included among the candidates. Write-in voting shall not be permitted in such general election. If a candidate dies, withdraws or is disqualified prior to the general election, the candidates for the open seat(s) in the district shall be redetermined on the basis of the primary results without considering votes cast for the former candidate, provided that if this yields a number of candidates which is less than twice the number of such open seat(s), write-in voting shall be permitted in such general election.
- (c) If the number of qualified persons filing to run for the Tribal Council from a district is no more than twice the number of open Council seats allocated to the district, there shall be no primary election for such seat(s). The person(s) who filed for such seat(s) shall be the only candidate(s) for such seat(s) in the general election. Write-in voting



shall be permitted in such general election.

- (d) On Tuesday, November 5, 1996, there shall be a regular election to fill the ten Tribal Council seats allocated among the districts. The top vote-getter among the candidates for the seat(s) allocated to a district shall be considered elected to the seat allocated to the district under Article III, Section 2(b) and shall serve a four-year term. The other five successful Council candidates in that election shall be considered elected to the seats allocated under Article III, Section 2(c) and shall each serve a two-year term.
- (e) On the date set for regular Congressional elections in 1998, and on the comparable date every two years thereafter, there shall be a regular election to fill five open Council seats, each for a four-year term.
- (f) In every regular and special election for Tribal Council, the top vote-getter(s) among the candidates for open Council seat(s) allocated to a district shall, in descending order of votes received, be considered elected to such seat(s) until the open seat(s) have thereby been filled.

#### **Section 5. Miscellaneous Election Rules.**

- (a) A person may not simultaneously file Declarations of Candidacy for more than one position. A person may not be listed as a candidate for more than one position in the general elections. If a person qualifies as a candidate for more than one position in the general elections, such person promptly shall advise the Tribal Secretary as to the single position for which such person is to be listed as a candidate in such elections.
- (b) Lists of all persons running in elections, whether primary or general, for President, Vice President or the Tribal Council, shall be posted by the Secretary in each of the Reservation districts at least three weeks before the date of the election.
- (c) No person may simultaneously hold more than one elected office. While holding an elected office a person may run for a second office, provided that, if such person is elected, the first office shall become vacant when such person is sworn in to the second office. While employed or retained by the Tribe or an instrumentality of the Tribe a person may run for office, provided that, if elected, such person shall resign from such employment or position.
- (d) In all elections for President, Vice President or the Tribal Council other than primary elections, tie votes shall be resolved by a public drawing of lots by the Tribal Secretary.
- (e) If a person who is elected to office in any regular or special election dies, withdraws

or is disqualified before being sworn in to the office, candidates for the office shall be redetermined and a general election shall be held in a manner which, in the judgment of the Tribal Council, is most appropriate under the circumstances and in light of the policies underlying Section 3 or 4 above, as the case may be. The decision of the Tribal Council shall be final and not subject to judicial review in any court.

- (f) A person elected as President, Vice President, or Tribal Council member shall be elected for the term of office specified in this Constitution and Bylaws and until his or her successor is sworn into office.

## **ARTICLE VII – REMOVAL FROM OFFICE, FILLING VACANCIES**

### **Section 1. Forfeiture of Office.**

- (a) Any officer or councilman found guilty of a felony in any tribal, county, State or federal court shall automatically be removed from office and may not stand for election for three (3) years thereafter.
- (b) Any officer or councilman found guilty of a misdemeanor involving moral turpitude in any court shall automatically be removed from office, but such member may stand for nomination and re-election.

**Section 2. Removal from Office.** Any officer or councilman who shall fail to perform the duties assigned to him or shall be guilty of gross neglect may be removed by a two-thirds (2/3) votes of the Tribal Council, after affording the accused member a fair opportunity to be heard in his own defense. The decision of the Tribal Council shall be final.

**Section 3.** Any complaint against the President, a member or officer of the Tribal Council must be in writing and sworn to by the complainant.

**Section 4. Filling Vacancies in Office.** If the office of President or Vice President, or a seat on the Tribal Council allocated to a Reservation district, becomes vacant due to death, resignation, removal, or other cause, the Tribal Council shall schedule a special election to fill the vacancy for the remainder of the term of office as follows:

- (a) In the case of a vacancy in the office of the President or Vice President, candidates for office shall be determined and the special election shall be held in accordance with Section 3 of Article VI. If the office of President is vacant, the Vice President shall serve as acting President in the interim. If the offices of both President and Vice President are vacant simultaneously, the Tribal Council shall appoint from within its own number an acting President who shall serve in the interim. While the Vice President or appointed Tribal Council member serves as acting President, such

person's seat on the Tribal Council shall be considered temporarily vacant, and upon completion of such service such person shall resume occupancy of the seat.

- (b) In the case of a vacancy in one of the ten seats on the Tribal Council allocated among the districts, candidates shall be determined and the special election shall be held in accordance with Section 4 of Article VI.
- (c) An election to fill a vacancy shall occur no later than 90 days after the occurrence of the vacancy, provided that, if the vacancy in office occurs when there is less than 180 days remaining in the term of office, the Tribal Council in its discretion may choose not to hold the election. The decision of the Tribal Council shall be final and not subject to judicial review in any court. If the Tribal Council so chooses not to hold an election as to a vacancy in a Tribal Council seat allocated to a district, the Council promptly shall publicly solicit the filing of Declarations of Candidacy by qualified persons desiring to be appointed to the seat for the remainder of its term. No filing fee shall be required. Promptly after the close of such filing period, by majority vote of the Tribal Council shall make such appointment from among all qualified persons filing a Declaration of Candidacy.
- (d) Subject to the provisions of this Constitution and Bylaws, all elections and other proceedings to fill a vacancy shall be conducted in accordance with such ordinances and resolutions as may be adopted by the Tribal Council.

## **ARTICLE VIII – REFERENDUM**

**Section 1.** Upon a petition, signed by at least ten (10) percent of the registered voters from each district, a referendum may be demanded on any tribal adoption of a person or the elimination of a person from the tribal roll, or an any proposed or enacted ordinance or resolution of the Tribal Council and the vote of the majority of the qualified voters voting in such referendum shall be conclusive and binding upon the Tribal Council, provided at least thirty (30) percent of the eligible voters shall vote in such referendum.

## **ARTICLE IX – LAND**

**Section 1. Allotted Lands.** Allotted lands, including heirship land, within the Northern Cheyenne Indian Reservation shall continue to be held as heretofore by their present owners. It is recognized that under existing law such lands may be inherited by the heirs of the present owner, whether or not they are members of the Northern Cheyenne Tribe. Likewise, it is recognized that under existing law the Secretary of the Interior may, in his discretion, remove restrictions upon such land, upon application by the Indian owner, whereupon the land will become subject to State taxes and may be mortgaged or sold. The right of the individual Indian to hold or to part with his land, as under existing law, shall not be abrogated by anything contained in this Constitution, but the owner of restricted land may, with the approval of the Secretary of the Interior, voluntarily convey

his land to the Northern Cheyenne Tribe either in exchange for a money payment or in exchange for an assignment covering the same land or other land, as hereinafter provided.

**Section 2. Tribal Lands.** The allotted lands of the Northern Cheyenne Indian Reservation and all lands which may hereafter be acquired by the Northern Cheyenne Tribe or by the United States in trust for the Northern Cheyenne Tribe, shall be held as tribal lands and no part of such land shall be mortgaged, sold, or ceded. Tribal lands shall not be allotted to individual Indians but may be assigned to members of the Northern Cheyenne Tribe, or leased, or otherwise used by the Tribe, as hereinafter provided.

**Section 3. Leasing of Tribal Land.**

- (a) Tribal land may be leased by the Tribal Council, with the approval of the Secretary of the Interior, for such periods as permitted by law.
- (b) Grazing permits covering tribal lands may be issued by the Tribal Council, with the approval of the Secretary of the Interior, for such periods of time as permitted by law.

**Section 4. Assignments of Tribal Land.**

- (a) The Tribal Council may by ordinance approved by the Secretary of the Interior provide for the granting and tenure of assignments of tribal land to members of the Tribe, provided, the rights of all members of the Tribe be not violated.
- (b) Any member of the Tribe who owns an allotment or any share of heirship land or patent-in-fee land may voluntarily transfer his interest in such land to the Tribe in exchange for an assignment to the same land or for other land or a proportionate share in a larger grazing unit.

**Section 5. Use of Unassigned Tribal Land.** Tribal land which is not leased or assigned, including tribal timer reserves, shall be managed by the Tribal Council subject to the approval of the Secretary of the Interior, for the benefit of the members of the entire Tribe, and any cash income derived form such land shall accrue to the benefit of the Tribe as a whole.

**Section 6. Purchase of Land by Tribe.** The Northern Cheyenne Tribal Council is hereby authorized and empowered to use tribal funds to purchase lands or interests in lands for and on behalf of the Northern Cheyenne Tribe under such terms as may be agreed upon provided the purchase is approved by the Secretary of the Interior.

**ARTICLE X – AMENDMENTS**

This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Tribe, voting at an election called for that purpose by the Secretary of the Interior, provided that

at least thirty (30) percent of those entitled to vote shall vote in such election, but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment at the request of two-thirds (2/3) of the Tribal Council, or upon presentation of a petition signed by one-third (1/3) of the qualified voters of the Tribe.

## **ARTICLE XI – SEPARATION OF POWERS**

**Section 1. Three Branches of Tribal Government.** The power of the government of the Tribe shall be divided into three distinct branches – Legislative, Executive and Judicial. No person or entity charged with the exercise of one branch shall exercise a power belonging to another branch unless expressly authorized to do so in this Constitution and Bylaws, Tribal law, or applicable federal law.

- (a) The Legislative Branch shall consist of the Tribal Council and all committees of the Tribal Council. The Tribal Council shall exercise the legislative power of the Tribe, subject to the right of referendum reserved to the Tribal membership under Article VIII.
- (b) The Executive Branch shall consist of the Tribal President, Vice President, Secretary and Treasurer, and all administrative agencies, departments and other instrumentalities of the Executive Branch.
- (c) The Judicial Branch shall consist of all courts established by ordinance under Article IV, Section 1(i) or any other provision of this Constitution and Bylaws.



# **BYLAWS**

## **ARTICLE I – DUTIES OF OFFICERS**

**Section 1.** The President may, if he desires, preside over all meetings of the Tribal Council. He shall, with the advice and consent of the Tribal Council, appoint delegates, representatives, committees, or other officers as are deemed proper from time to time. He shall have power to fill all vacancies, not otherwise provided for in this Constitution and Bylaws, that may occur when the Tribal Council is not in session and then he shall submit the names of such appointees at the following session. It shall be his duty to convene the Tribal Council for extra sessions. It shall be his duty to see that all enactments, orders, and resolutions are properly executed. He shall have the further right of conferring with any federal or State official on any matters that affect the welfare of the Tribe. And he shall also have the further right to confer with the several district councils.

**Section 2.** The Vice President shall act as presiding officer of the Tribal Council whenever the President does not so preside. Whenever the President does not preside he may delegate any or all of his powers to the Vice President. In the event that the office of the President becomes vacant, the Vice President shall become temporary President and shall perform the duties and execute the powers of President until the office of President is filled.

**Section 3.** The Tribal Council Secretary shall keep a full report of all proceedings of each regular and special meeting of the Tribal Council and shall perform such other duties of like nature as the Council shall from time to time by resolution provide, and shall transmit copies of the minutes of each meeting to the President of the Council, to the Superintendent of the Reservation, to the Commissioner of Indian Affairs, and to all recognized District Councils of the Reservation.

**Section 4.** The Tribal Council Treasurer shall be the custodian of all moneys which come under the jurisdiction or control of the Tribal Council of the Northern Cheyenne. He shall pay out money in accordance with the orders and resolutions of the Council. He shall keep accounts of all receipts and disbursements and shall make written reports of same to the Tribal Council at each regular and special meeting. He shall be bonded in such an amount as the Council by resolution shall provide, such bond to be approved by the Commissioner of Indian Affairs. The books of the Tribal Council Treasurer shall be subject to inspection or audit by the direction of the Council or the Commissioner of Indian Affairs.

**Section 5.** The Sergeant at Arms shall be present at all regular and extra sessions and shall keep order in such meetings and shall perform such other duties as the Tribal Council may by resolution provide.

## **ARTICLE II – QUALIFICATIONS**

**Section 1.** In order for a person to be eligible for the office of President of the Tribal Council he must be at least thirty (30) years of age and a member, by blood, of the Northern Cheyenne Tribe.

**Section 2.** Any person elected as a member of the Tribal Council must be at least twenty-one (21) years of age and a member of the Northern Cheyenne Tribe.

## **ARTICLE III - CERTIFICATION**

**Section 1.** The Tribal Council shall appoint an election board which shall certify to the election of all members elected and this shall be done within five (5) days after the election.

**Section 2.** (Oath) I, \_\_\_\_\_, do solemnly swear that I will support and defend the Constitution of the United States against all enemies; carry out faithfully and impartially the duties of my office to the best of my ability; promote and protect the best interests of my Tribe, the Northern Cheyenne, in accordance with this Constitution and Bylaws.

This oath of office shall be administered by a Notary Public or Judge.

## **ARTICLE IV – SALARIES**

**Section 1.** The salaries of the members or other officers of the Tribal Council of the Northern Cheyenne Tribe may be paid out of available funds within the exclusive control of the Tribal Council or out of any other available funds with the approval of the Secretary of the Interior in accordance with ordinances duly enacted, provided that no Tribal Council shall enact any ordinance increasing the salaries of councilmen during the existing term of office.

## **ARTICLE V – MEETINGS AND PROCEDURE**

**Section 1.** The Tribal Council shall assemble on the first and third Mondays of each month.

**Section 2.** A majority of two-thirds (2/3) of the members of the Tribal Council must be present in order to constitute a quorum to do business.

**Section 3.** Extra sessions may be called by the President or by three members of the Tribal Council in writing to the President and when so-called two-thirds (2/3) of the members of the Tribal Council must be present to constitute a quorum, and the Tribal Council shall have power to transact business as in regular meetings.

**Section 4.** The presiding officer in meetings of the Tribal Council shall vote only in the case of a tie.

**Section 5.** Every order, resolution, or vote to which the concurrence of the Tribal Council may be necessary (except on the question of adjournment) shall be presented to the President of the Tribal Council, and before the same shall take effect it shall be approved by him or being disapproved by him may become effective by being repassed by affirmative vote of seven members of the Tribal Council.

## **ARTICLE VI – ADOPTION OF CONSTITUTION AND BYLAWS**

**Section 1.** This Constitution and the attached Bylaws when approved by a majority of the adult voters of the Northern Cheyenne Tribe voting in a special election called by the Secretary of the Interior in which at least 30 percent of the eligible voters vote, shall be submitted to the Secretary of the Interior for approval and shall be effective from the date of such approval.

## **ARTICLE VII – CODE OF ETHICS**

**Section 1.** It is declared that the observance of high ethical standards by the President, Vice President, Secretary and Treasurer, and all members of the Tribal Council (“Tribal Officials”) is essential to the conduct of the Tribal government. In order to promote such high standards of public service and to strengthen the confidence of the Tribal membership in Tribal government, the principles set forth in Section 2 below are adopted as a Code of Ethics for Tribal Officials.

**Section 2.** Every Tribal Official shall be guided by the following principles in discharging the duties and exercising the powers of office. Except as may be otherwise specifically required or permitted by Tribal or federal law, while in office every Tribal Official shall:

- (a) discharge the duties and exercise the powers of office in good faith and in a manner which the Tribal Official believes will best serve the interests of the Tribe;
- (b) not accept any compensation, gratuity, benefit or advantage (other than duly authorized emoluments of office) from any source other than the Tribe in return for exercising or abstaining from exercising any duty or right of office in any particular way;
- (c) not use Tribal money, property or personnel for personal benefit;
- (d) not disclose or use for personal gain any confidential information of the Tribe;
- (e) not knowingly falsify, alter, conceal or destroy any official book, record, account or other document of the Tribe;



- (f) not present, allow or pay any charge or claim against the Tribe which the Tribal Officials know to be improper; and
- (g) not knowingly make any false statement in any official statement, report, certificate or other document, presented to or on behalf of Tribal government or the Tribal membership, which as an adverse effect on significant interest of the Tribe or its membership.

