

# **The Opinion of a Native American Attorney “Proposed New Tribal Constitution Brings Bad News for Catawba People and their Future”**

by  
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## **Introduction**

1. On Friday, May 18, 2001 the proposed new constitution will be voted upon by the Catawba tribal members. By the process established by Chief Gilbert Blue the proposed new constitution is to be voted for passage or rejection in its entirety. Prior to writing this document, however, another version of the new constitution was developed by a working group of Catawba tribal members known as the Constitutional Committee. This version was rejected by the Executive Committee, after which they drafted and put forth their own version of the constitution as the final draft of the proposed new constitution of the Catawba Nation. It is this version of the constitution which will be voted upon by the Catawba tribal members.

2. A document of this type needs to be carefully reviewed with the expectation that it will remain the permanent document of usage. Certainly, it is possible to amend a constitution and to correct issues as they arise in the future but it is unwise to accept such a document with the expectation that once passed it will almost immediately be amended to correct issues of concern.

3. Having carefully reviewed the proposed new constitution submitted to the Catawba people by Chief Gilbert Blue, it is my professional opinion that this proposed constitution contains not only numerous typographical errors but more importantly significant areas of legal concern. Any *one* of these legal concerns by themselves would be significant enough to compel a “No” vote on this proposed constitution.

*Summary of the problems which will be discussed in greater detail:*

*1) The membership section is in conflict with controlling federal law and is an inadequate effort to develop a two-tier class of tribal membership.*

*2) The powers given to the Executive Committee will result in the Executive Committee being the controlling governmental body of the Catawba Nation resulting in the General Council being nothing more than a token arm of government.*

3) *A blanket approval of all past contracts and/or agreements entered into by persons representing themselves as Catawba government leaders or other authorized officials is asked to be approved in this proposed constitution. However, the Catawba people are not given any fundamental information whereby they can make a reasoned determination as to what such an approval will have upon the Catawba people and the Nation. No party claiming to be a member of the current Catawba government has provided the most fundamental of business and legal information to the Catawba people in this area for more than half a decade. The Catawba people don't know what obligations have been entered into since 1993; no reports have been provide to convey to the Catawba the financial health of the Catawba Nation; no information has been provided regarding any current or future contracted for obligations of the Catawba Nation; and no information has been provided as to who may have acted on behalf of the Catawba Nation to make such obligations on behalf of the Catawba Nation. Certainly these obligations were not made by the General Council as there hasn't been a working General Council meeting held by Chief Blue for years prior to the October 2000 order by a federal judge.*

## **Discussion**

### **I. The membership section is in conflict with controlling federal law.**

1. Under Article II, the membership criteria is in direct conflict with the governing federal statute *Catawba Indians of South Carolina Land Settlement Act of 1993, Section 7(D)*. The language of the federal statute states that individuals can only be members of the Catawba Nation who are on the Final Catawba Membership Roll published in the Federal Register of July 24, 2000; or an individual who is a direct line descendent of an individual on that roll. There is ***no authority*** for the Catawba Nation to develop any enrollment standards for tribal enrollment for individuals to be acknowledged as a *federally recognized Catawba tribal member*. ***None!*** [There are possible legal challenges to that process as it was done but that is another matter that will not be discussed herein.]

2. It would be possible for the Catawba Nation to develop a second roll of those which the Catawba Nation deems to be Catawba members but this would create a second class system of tribal enrollment. On a purely tribal roll such individuals would be ineligible for any federal benefits or to be counted in any federal count towards benefit awards toward the Catawba Nation. It would also raise questions as to whether or not these second class Catawba citizens could vote on issues which would have an impact on federally supported programs. In all likelihood these tribally only enrolled members would be members in name only and have no legal standing.

3. Under the controlling federal law which Chief Gilbert Blue assisted in developing, he agreed to the extremely limiting tribal enrollment powers of the Catawba Nation. In other words Chief Blue *agreed to surrender* to the federal government inherent tribal rights of

determining tribal enrollment and freely gave this power to the federal government. The power to determine tribal membership — a significant sovereign right — was given up by Chief Gilbert Blue and others who concurred with the *Catawba Indians of South Carolina Land Settlement Act of 1993*.

4. *If it is the intent of the Catawba Nation to develop a second class citizenry of tribal enrollees, then the language found in the proposed new constitution is an ineffective method of doing so. The language is not specific enough to clearly convey that a two-tier tribal enrollment record will be developed being composed of a **federal tribal roll** and **tribal roll**.*

5. The proposed new constitution developed by the Constitutional Committee also contained language that would continue to bar the practice of *tribal banishment*. This clear and specific language has been removed from the proposed new constitution submitted for the May 18th, 2001 vote by Chief Gilbert Blue.

The language in the constitution developed by the Constitutional Committee stated:

*Article II: Membership*

*Section 2.2(e) At no time shall any tribal member be removed from the rolls of the tribe. This shall only happen in cases where positive proof is shown where individuals were placed on the rolls illegally.*

This is the language that the Constitutional Committee determined should govern the Catawba people, and Chief Gilbert Blue had this language removed from the proposed constitution in developing the version of the new constitution which is now up for vote by the Catawba tribal members.

*Based upon the defective language and clear conflicts with federal law, this proposed new constitution put forth by the Executive Committee should be rejected.*

**II. The powers given to the Executive Committee will result in the Executive Committee being the controlling governmental body of the Catawba Nation resulting in the General Council being nothing more than a token arm of the government.**

1. The proposed new constitution from the Executive Committee declares that any powers not vested by clear language to the Executive Committee will remain with the General Council. Exactly what powers will remain with the General Council? The answer in general terms is very few will be retained by the General Council.

2. The powers granted to the Executive Committee in their version of the proposed new constitution far exceed those granted to the Executive Committee in both the current constitution and the version developed by the Constitutional Committee. Let us take a look at the enumerated powers of the Executive Committee under their proposed constitution as compared with the powers retained by the General Council under this document.

**Retained Powers of the General Council under proposed new constitution from Executive Committee**

**Executive Committee Powers under proposed new constitution from Executive Committee**

*Article 5 General Council*

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*Article 6 The Executive Committee*

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1. Two meetings per year
  
2. Agenda of the General Council will be set by the Executive Committee Members; SUGGESTED topics may be submitted to the Executive Committee by individuals THIRTY days prior to a scheduled General Council meeting.
  
3. Retains all powers not delegated to the Executive committee
  
4. General Council will receive reports from Executive Committee concerning management, investment of tribal assets, progress of plans of economic development.
  
5. Call special General Council meetings with a petition of 15% of voting age members. All petitions will be verified as to validity of the named petitioners. [NOTE: No indication as to who will do this verification nor how long it will take; no process for appeals if denied] Special

1. Executive Committee shall have all powers vested in the tribe through inherent sovereignty or federal law.
  
2. Executive Committee shall prepare and adopt an annual operating budget for the Nation — it shall *present* such information to the General Council.
  
3. Executive Committee shall apply for and accept grant funding on behalf of Nation.
  
4. Executive Committee shall conduct all routine daily business including hiring and firing of personnel, contracting for goods and services.
  
5. Executive Committee shall enforce all laws and ordinances of General Council and Executive Committee as well as adopting any and all ***appropriate policies and procedures governing financial/ fiscal/ personnel/ purchasing activities***

Session to be held set by the chief as to date and time.

***6. Executive Committee shall have the right to issue bonds as provided by the Internal Revenue Code.***

***7. Executive Committee can appoint a recording secretary. These records bonds will be kept in a secure and locked area at all times. The transactions are to be reduced to minutes [Note: It is the summary of the transcriptions that will be available to the public, and NOT the complete record.]***

After examining the powers surrendered to the Executive Committee, one is left wondering exactly what significant power is retained by the General Council. The answer is very clearly ***none***. Under this proposed new constitution put forth by the Executive Committee, the power of the General Council is gutted, leaving it as merely a figure-head branch of government with no significant power nor authority.

**III. Blanket approval is granted for all past agreements of the Catawba Nation entered by persons representing themselves as Catawba government leaders or other authorized officials without providing to the Catawba General Council nor the general membership any record of when these agreements were entered, nor the financial status of the Catawba Nation, nor what current and future obligations may encumber the Catawba Nation as the result of such agreements.**

*Article XI Savings Clause*

*Section 1.1. Enactments*

*All enactments or contracts with the Catawba Indian Nation adopted or approved before the effective date of this Constitution shall continue in fiuli [sic] force to the extent they are consistent with this constitution.*

1. This means that any agreement entered into without consent of the General Council will now be binding upon the Catawba people. There has been to my knowledge no publicly released audit to the Catawba since 1994 and possibly earlier. It is therefore impossible for anyone to know exactly what kind of economic and legal burden this new constitution is expecting the Catawba people to shoulder. *It is unknown if the language of any of these contracts surrenders any additional tribal sovereignty rights or claims.* It is not known if there are any documents which purport to relieve any outside parties of any

legal accountability to the Catawba Nation for otherwise legally actionable claims such as fraud; waste; misrepresentation; negligence; and other legal liabilities. In other words the Executive Committee members or other tribal employees could have signed an agreement not to bring any legal action against an outside provider for negligent services, financial discrepancies, etc. and the language of the proposed new constitution would prohibit the Catawba Nation from exercising its legal rights to recover from such harms.

2. There have been discussions of late regarding the development of a waste water treatment plant between the city of Charlotte, North Carolina and the Catawba Nation. From reports in the media it would appear that the Catawba Nation's Executive Committee members have been working to have the waste waters of North Carolina dumped in the sacred waters of the Catawba River. This project would tear through the ancient town sites of the Catawba people potentially disturbing burial grounds and dumping its polluted "treated" waste at or near another sacred ground site — the clay holes. There has not been any communications with the Catawba people about the terms of such proposed agreements. If the new constitution is approved this section of the constitution would force the acceptance of whatever terms are contained in such contracts or agreements.

3. What other deals are in the making but have been hidden from the Catawba tribal members? How many knew of the proposed Bingo Hall site before it was announced in the local newspapers? How many knew of the restaurant owned by the Catawba Nation in Myrtle Beach, South Carolina? What about the numerous land purchases? What about the Catawba Nation's ownership in a construction company? What about the rumored deal of purchasing the Santee Cooper Power Plant?

4. Does the Catawba Nation have any contractual obligations with the United Nations which might have been made by or through Ms. Wanda Warren and her frequent trips to Switzerland each fall? It is my understanding that it is unclear as to whether or not Ms. Warren attended these United Nations aboriginal native rights meetings in her own right as a globally concerned citizen or whether she represented the Catawba Nation on these activities. The Catawba members have a right to know before-hand what, if any, obligations have been made during these frequent European trips to work with the United Nations on aboriginal rights. We have already had reports that the Catawba Nation hosted a large gala Thanksgiving affair in Switzerland in recent years. Is the Catawba Nation committed to other events in Europe? If so, what will it cost the Nation?

5. Before approving this section of the proposed new constitution a full and complete disclosure of all contracts, agreements, assets, liabilities, audits, and obligations of any sort must be disclosed by those individuals who have had access to this information since 1993. Without a full and complete disclosure of such information this section of the proposed new constitution is of such a grave concern as to vote "No" to this proposed new constitution.

6. The new constitution from the Constitutional Committee has numerous protective language clauses that do not appear in the proposed new constitution submitted by Chief Gilbert Blue. For example the document from the Constitutional Committee stated:

*Article 6 Executive Committee  
Section 6.3*

*(i) Audits: The Audit shall be made available to the General Council during the regularly scheduled meeting for the General Council in April of each year.*

*(j) [section j required written travel reports to insure accountability of these expenditures]*

These protective language clauses have been removed from the proposed new constitution submitted to the Catawba people by Chief Blue. One can only ask, “Why?”.

### **What options are available if the Catawba people reject the proposed new constitution?**

Having elections is **not** dependant upon having a new constitution! The language of the current Catawba constitution does empower the people to control the destiny of the Catawba Nation. If the current chief refuses to call for and set a date for new tribal elections with objective procedures for conducting elections — which of course elections haven’t been called by Chief Blue for many years — then the people have a right call for an election by their own power as General Council members. Just do it!

A new constitution is **not** mandatory. It is a right of the Catawba people to develop the type of document they are proud to live under in which fairness and honor will be reflected in a well thought out and impartial document. The Catawba people have the right to keep their current constitution. If there is a desire to have a new constitution and the proposed new constitution is unacceptable — outside professional companies or law professors who have written such documents can be hired to write a document that specifically addresses the needs and culture of the Catawba people. Keep in mind that the Catawba Constitutional Committee did produce a new constitution, however, Chief Gilbert Blue selected to present to the Catawba members a different proposed new constitution — one that was not developed by the people.

Many issues of recent concern to the Catawba people could be addressed by simply developing laws to govern the conduct of tribal employees and contracting processes.

## **Conclusion**

In view of the fact that the membership section is in direct conflict with federal law; there has been no information forthcoming to the Catawba people as to the legal obligations or debts incurred by the current administration; a blanket approval of past and current obligations is illogical and unwise to agree to; and finally the gross imbalance of the placement of power contained in the proposed new constitution, which for all practical purposes gives control of the government to a handful of individuals in the Executive Committee — a vote of “No” on this constitution is fully justified.