

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

25 CFR PART 81

SECRETARIAL ELECTION PROCEDURES

October 26, 2014

1:00 p.m. - 4:00 p.m.

The Hyatt Regency Hotel

265 Peachtree St NE

Atlanta, Georgia 30303

Before Mildred R. Hornblower, CCR

Janice S. Baker & Associates, Inc.

Certified Court Reporters  
235 Peachtree Street  
North Tower, Suite 400  
Atlanta, Georgia 30303  
404-969-1206

PANEL MEMBERS

Danelle Daugherty - Bureau of Indian Affairs Office of

1                                   Indian Affairs  
2    De Springer - Bureau of Indian Affairs Office of Indian  
3                                   Services  
4    Laurel Iron Cloud - Bureau of Indian Affairs Office of  
5                                   Indian Services  
6    Barbara Coen - Office of the Solicitor  
7    Jim Porter - Office of the Solicitor  
8    Elizabeth Appel - U.S. Department of the Interior  
9                                   Regulatory Affairs & Collaborative  
10                                  Action

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## P R O C E E D I N G S

1  
2 MS. IRON CLOUD: Good afternoon, everybody.  
3 We'll go ahead and get started. I am Laurel. I'm  
4 the division chief for tribal government services.  
5 On behalf of the assistant secretary, I welcome  
6 you to this consultation session.

7 Just to make sure that everybody is in the  
8 correct room. This is the consultation for the  
9 proposed rule for 25 CFR, part 81, secretarial  
10 election procedures.

11 With me today, I have Dannele Daugherty, out  
12 of the Great Plains region. And De Springer from  
13 the Indian Affairs Agency. We have also from the  
14 solicitor's office to my right Barb Coen and Jim  
15 Porter. All of us are here to be able to talk  
16 about the Rule, go through the Rule, explain the  
17 Rule.

18 We have a PowerPoint prepared for you all.  
19 At the back of the room, we have Liz Appel from  
20 our regulatory affairs office. She has copies --  
21 if you didn't get one -- she has copies of the  
22 Rule and our PowerPoint.

23 Also to the right, we have Ms. Hornblower.  
24 She is our court reporter today. We're putting  
25 everything on the record. We will have the

1 resulting transcript available for the public.  
2 She also asks that when you make comments, at  
3 lease for the first time, pronounce your name  
4 slowly and spell out your name so she can get your  
5 comments clearly.

6 At this point, I would ask that you all  
7 introduce yourselves. This is a small group. We  
8 can get introductions. Let us know where you're.  
9 I'd appreciate that.

10 Good afternoon, everyone. My name is  
11 Veronica Darnell, and I work with the Attorney  
12 General's office for Pascua Yaqui Tribe in  
13 Arizona.

14 Good afternoon. My name is Anne Joiner Rone.  
15 I'm the vice chairperson of the (indecipherable).

16 Good afternoon, everybody. I'm Stephen Smith  
17 of the Kiowa Tribe of Oklahoma and also Southern  
18 Plains region vice president.

19 Good afternoon. My name is Arlan Melendez.  
20 I'm tribal chairman of Reno Sparks Indian Colony  
21 and the Shoshone people. I'm also the area vice  
22 president for the western region of the national  
23 conference.

24 Good afternoon. My name is Dolly Pewitt. I  
25 work out of the office of the chief for the

1 Seneca-Cayuga Nation in Grove, Oklahoma.

2 My name is Vernon Miller. I'm on the Tribal  
3 Council for the Omaha Tribe.

4 Good afternoon. My name is Joan Tamichi, and  
5 I am a citizen of the Hopi Tribe and work with a  
6 program called the Native Nations Institute.

7 Good afternoon. My name is Paul Ellis. I'm  
8 a member of the Oneida Nation of New York, and I'm  
9 also tribal policy liaison for the Food and Drug  
10 Administration center for Tobacco Products.

11 MS. IRON CLOUD: Welcome, everybody. I would  
12 just like to say I'm Barbara Coen, Department of  
13 the Interior Solicitor's Office.

14 MS. IRON CLOUD: Welcome, everybody. Thank  
15 you for the brief introductions; however, I want  
16 you all to know that of the people at the table, I  
17 am new to the office. I came on board  
18 approximately six months ago. So this process was  
19 already in the hopper, so to speak, when I got  
20 here. I would like you all to know that the other  
21 people at the table, the panel, the people on the  
22 panel, have decades of experience doing this work.  
23 I'm just really pleased that they have agreed to  
24 help and be here to provide this information.

25 So we'll get started. Like I said, we have

1 the PowerPoint to start with. If at any point you  
2 have questions, comments, please feel free to ask  
3 them, and we'll move on from there. Thank you.

4 MS. DAUGHERTY: As Laurel said, I'm Danelle  
5 Daugherty. We're going to start off a little bit  
6 with De Springer speaking first, because really  
7 the history of these regs and their development  
8 and certainly the consultation processes and  
9 discussions that have gone on over time, De has  
10 been much more involved than I have. When she  
11 talked about decades of experience, she must've  
12 been referring to De, because I don't quite have a  
13 decade at Interior yet.

14 I want to let everybody know right out of the  
15 gate that in the secretarial election process, we  
16 do need all the tribal involvement and comments so  
17 we can take a look at this and make any changes  
18 before we roll these regulations out, based on  
19 both the needs of the tribes and the needs of the  
20 Department of the Interior. That is one of the  
21 reasons the secretarial election regs exist is  
22 that there are some elections that are required,  
23 because they are in the tribe's governing  
24 documents that require that the federal government  
25 conduct those elections, and we need some guidance

1 to get those elections performed in a manner that  
2 is consistent with every location. So we do have  
3 the regulations for that purpose. We're really  
4 looking forward to your interaction and your  
5 comments. If you don't have interaction and  
6 comments today, there's some time period to get  
7 those comments in. Please keep that in mind.  
8 I'll turn it over to De, because she's really the  
9 one with decades of experience.

10 MS. SPRINGER: Well, really I'm an old fart.  
11 I've been doing this for 28 years. When I first  
12 started working for the bureau back in '86, that  
13 was one of the things that was my concern. I  
14 don't know about the secretarial elections. I've  
15 never done one before. When they hired me, they  
16 said, don't worry about it. We hardly ever do  
17 secretarial elections, so it'll be a piece of  
18 cake. We did five in two years.

19 As you'll notice in this packet, we've kind  
20 of broken out secretarial elections for IRA tribes  
21 and OIWA tribes. That's strictly for Oklahoma.  
22 Through the years, the regs were initially updated  
23 in '91. They did consultations and everything in  
24 '91, and the process was never completed. So then  
25 about '93 or '94, they came back and said all the

1 regulations have to be written in plain English.  
2 So that's when we started trying to take the last  
3 draft and put them into plain English. Plain  
4 English is a lot harder than it sounds.

5 So then that kind of went by the wayside.  
6 When I left the central office at the end of '98,  
7 one of the last things I had to do was to make  
8 sure the regs were ready to go to consultation  
9 publication. Which I did. In '99, I sent them my  
10 latest draft. They never went anywhere. As  
11 administrations change through the years, the  
12 priorities changed, so regs are going to be hot  
13 for one minute, then the next minute they're not.  
14 With this assistant secretary, that's been one of  
15 his pushes is to get regulations updated, and we  
16 just have to follow to his schedule.

17 And so we presented the regs to him last  
18 fall. We were waiting to get the okay to do the  
19 consultations. We finally got that okay, so  
20 that's why we have these consultations. We  
21 tried -- I don't know how many of you are familiar  
22 with the old regs in the CFR, but when you try to  
23 follow them, you have to flip back and forth.  
24 Everything is like, well, according to this part,  
25 so you flip back and forth. So what I did for my



1 own peace of mind was I did an outline of who does  
2 what, tribe does this, Bureau does that, the tribe  
3 does that. So we kind of rolled that out and we  
4 tried to put the regs in an order that makes it  
5 more clear, and that they're easier to follow. So  
6 hopefully, when you read them, you'll have a  
7 better understanding of what the regulations are.

8 So a couple of years ago I was asked to act  
9 as division chief of Tribal Government Services.  
10 One of my assignments was to get these regs out.  
11 They asked me to put a team together of  
12 individuals that had history with the regs and  
13 whatever. So we put together a team of Danny  
14 Daugherty. She was new to the Bureau. And one of  
15 the reasons that we asked a couple of people that  
16 were new to the Bureau is because when you're  
17 doing these regs and you're seeing them time and  
18 time again or you've done them time and time  
19 again, you see things that aren't necessarily  
20 there. Or you read the regs or you've done the  
21 process, and so you know what you're doing, but  
22 are the instructions clear?

23 So we had Danny Daugherty help us. We had  
24 Gail (indecipherable). And I think Sherry Levins  
25 helped us out with Southern Plains region. And

1           then for the old farts that we had who had a lot  
2           more years than I did was Karen Catcher, she was  
3           the deputy regional director of Eastern Oklahoma.  
4           She's now retired and works with the Cherokee  
5           Nation. Suzanne Cheney, she was a community  
6           services officer out of Southern Plains. She's  
7           now retired. I think she's just enjoying  
8           grandkids now.

9           So we had all these ladies come in. We would  
10          spend days. We would start at 8 o'clock, and we  
11          wouldn't quit until 9 o'clock at night trying to  
12          get these into some kind of order that everybody  
13          can understand them and try to get new ideas.

14          The regs are basically the same. The  
15          processes are the same. The few changes that we  
16          did make is what is a proper request. One of the  
17          things that always gets us tangled up when we're  
18          trying to do this process is the review of the  
19          proposed amendments or the proposed constitution,  
20          because everybody was starting the 90-day or the  
21          180-day time frame when they submitted that  
22          request to the Bureau.

23          In some cases, it was taking us longer than  
24          90 days or 180 days to get a document that you  
25          could vote on. So then the attorneys would come

1 in and say, well, we're going to sue you because  
2 you missed your 90 days. Well, we would give them  
3 a choice. You can go ahead and sue us, we stop,  
4 you work on your lawsuit, or we continue to work  
5 on the document that you presented. Like I said,  
6 I've been doing this 28 years, and I haven't been  
7 sued for that part.

8 The thing is, that with these regulations is  
9 that whenever -- then we changed it so that when  
10 your request comes in for the election, your  
11 review has already been done, your legal review  
12 has been done. You have the exact language that  
13 you want voted on.

14 The other thing that's changed in there is we  
15 are now asking the tribe to present us a list of  
16 all tribal members 18 years of age and older. In  
17 the past the Bureau used to be able to provide  
18 those lists, because tribes used to give us their  
19 enrollment information. We used to have a system  
20 where we keep that up, and if they wanted an  
21 election, we can just get it off our computer. We  
22 had our own list. We don't have that anymore.  
23 The tribes all have their own databases and their  
24 own ways to maintain their membership, so now we  
25 have to ask the tribe for that information. And

1 so those are two of the main things that we've  
2 changed with the proper requests.

3 So we'll kind of go through the amendments,  
4 and I'm just kind of giving you a background of  
5 where we were and how we got to here. It's a  
6 condensed version that has taken me 20 years to  
7 get from there to here. So I hope that in the  
8 end, one of the things that you'll walk away from  
9 these consultations with is the fact there needs  
10 to be more information sharing with your  
11 membership. If you want to amend your  
12 constitution, have membership meetings, do straw  
13 polls, because there have been cases where, you  
14 know, we presented documents, we've done the  
15 election, and they failed miserably.

16 It's always a good thing, because one of the  
17 things I always tell people is that your  
18 constitution is how you govern yourself. This is  
19 how you say this is how we want it to be, this is  
20 how we want to be governed. Whatever decisions  
21 you make in your constitution, you have to live  
22 with it. There needs to be more participation,  
23 because I've noticed through the years that a lot  
24 of tribes have been letting attorneys do their  
25 work or they're hiring consulting firms to do

1 their work.

2 When you look at it, you have to live with  
3 that. Is this what you said? And I actually said  
4 in a consultation with one of the tribes when we  
5 were going article by article in the constitution.  
6 I told them, I said this part, I don't understand.  
7 I said, I read it quite a few times. I don't  
8 understand what it means. What was your intent  
9 with this?

10 So the chairman was looking at it, and he  
11 said, I don't know. Their tribal attorney was  
12 there. So what does this mean? Well, he told me  
13 he wanted this, and that's what it says. The  
14 chairman said, but that's not what it says. His  
15 response was, well, we can take it out. So he  
16 never really got what the intent was or what he  
17 wrote.

18 As tribal leaders or if you have your  
19 constitutional committees, or whatever, you need  
20 to have input from your membership, and you need  
21 to understand and be clear on what you're saying.  
22 Because a lot of times, one word can mess up your  
23 intent. Even sometimes a comma can mess up your  
24 intent. So you need to be clear and make sure  
25 that everybody can understand what it is you're

1           trying to say. You want to write it not in, you  
2           know, legal terms. You want anybody in your tribe  
3           18 of a years of age or older should be able to  
4           understand what the provisions of your  
5           constitution are. So this is your governing  
6           document.

7           A lot of the constitutions that are out there  
8           are the old ones from the '30s and the '40s,  
9           which have never been updated, and the tribes have  
10          outgrown those constitutions. So one of the  
11          things you want to do is you want to look at your  
12          constitution, and what I always tell people it's  
13          like a growing being. You've got to nurture that  
14          like a baby. You have to nurture that baby. You  
15          have to teach them things and get them acclimated  
16          to things as they're growing up. You have to look  
17          at your constitution that way, because it's not  
18          stagnant. It can be changed at any time.

19          If your tribe is changing, evolving, it's  
20          getting more sophisticated, then your governing  
21          documents need to follow that.

22          You can do that with informational meetings.  
23          Develop constitutional conventions within your  
24          tribe and work with the BIA. You can get an  
25          informal review anytime. I've answered hundreds

1 of questions from tribes wanting to know, can we  
2 do this? What exactly do you want to do? And  
3 then we'll help them put some language together to  
4 to get where they want to go.

5 So that's kind of the one thing that when I  
6 talk to tribes, and whatever, that's one thing  
7 that I want to stress is that there be more input  
8 between the membership and the governing body,  
9 because everybody in the tribe has to live by this  
10 document. Your attorneys, your consultants,  
11 they're not tribal members, so as soon as they're  
12 done, as soon as they're paid, they can walk away,  
13 and you're left to live with whatever they  
14 provided for you. It's always good to make sure  
15 that you have a lot of input into your governing  
16 documents.

17 Like I said, we broke the regs now into the  
18 Oklahoma Indian Welfare Act and the IRA. We also,  
19 even though there's an Alaska amendment in there,  
20 we didn't put a section in there for the Alaska  
21 amendment. I've been meeting with Alaska since  
22 June, so I'm finding out about the Alaska  
23 amendment firsthand. It's a little bit different  
24 process than what we have going on here. We'll  
25 probably address that later on.

1           The Oklahoma Indian Welfare Act, as many of  
2           you know, was adopted in 1986. At that time the  
3           tribe had to vote whether or not they wanted to  
4           accept the IRA or not. If you did not vote  
5           against it, then the IRA applies, if you voted  
6           against it, then you are not allowed to adopt a  
7           constitution under the IRA. The Oklahoma Indian  
8           Welfare Act was an exception to the IRA. They  
9           felt issues in Oklahoma were a little different  
10          than they were in most of the country. So the  
11          Oklahoma Indian Welfare Act was adopted  
12          specifically for Oklahoma tribes.

13          The main difference between the IRA  
14          secretarial election procedures and the Oklahoma  
15          Indian Welfare Act procedures is that for the IRA,  
16          we do the election, and then we do the approvals.  
17          For the Oklahoma Indian Welfare Act, we do the  
18          approval, and then there is a ratification of that  
19          approval. Why it was done that way? It was done  
20          before my time, so I can't answer that. Anyway,  
21          that is how we've done it through the years.

22          So one of the things that we also did when we  
23          revised the regs this time is there were two  
24          parts, part 81, secretarial elections, part 82  
25          was petitioning. So what we did was we combined



1           them, because the petitioning process -- if you go  
2           to the petitioning process, what you're trying to  
3           do is get to the secretarial election process. So  
4           we just kind of add them together so we would know  
5           that that's another way that you can get to a  
6           secretarial election. We added that.

7           So then we just kind of put the legislative  
8           background in there on how the amendments to the  
9           IRA had come about, and when regulations were  
10          adopted.

11          One of the things that I didn't know until  
12          '82 was when I started working for the Bureau, we  
13          always had a registration process in the  
14          secretarial election regulations. When I started  
15          looking at older constitutions like when I started  
16          working with Alaska, or whatever, I noticed that  
17          their 30 percent was based upon their adult  
18          membership, not on registration.

19          So our solicitor that works with Barb and  
20          Jill, his name is Scott King, he told me that they  
21          didn't have a registration process until 1967.  
22          That's why we have, you know -- our percentage of  
23          participation is based on how many people  
24          registered to vote in the election. That's where  
25          that came from. Even though I've been doing this

1 a long time, I'm still learning stuff, too.

2 I don't know how many of you know him, but  
3 Kevin Washburn, the assistant secretary, is here,  
4 and he wanted to address you guys for just a  
5 minute. Just a minute now.

6 MR. WASHBURN: Yes, ma'am. I will just say a  
7 few words. I want to thank everybody who's here.  
8 This actually is very important work that's being  
9 done here. Frankly, De Springer and Danny  
10 Dougherty, De Springer probably the most has been  
11 working on this for a very, very long time.  
12 Danny Daugherty, Barb Coen's worked on it a long  
13 time, and Jim Porter as well. Liz Appel, in the  
14 back, from my office, has worked on this for a  
15 while, too.

16 These are very important rules. The  
17 secretarial elections, in some ways their time  
18 might be passed, but they are still a requirement  
19 in many tribal constitutions. If nothing else, we  
20 need to amend the secretarial election process so  
21 that it works better when people are amending that  
22 requirement for secretarial elections out of their  
23 constitutions, which we are fully supportive of  
24 tribes doing, because that's tribal  
25 self-governance and tribal self-determination.

1 But we don't want our election process to be an  
2 obstacle to tribes doing that. We need to get it  
3 fixed so that they can do that.

4 De and Danny are going through a lot more  
5 detail of kind of what all this means. But that's  
6 basically the gist of it for me. We need to have  
7 a good set of rules for you so that you can amend  
8 your constitutions and hold secretarial elections.

9 There have been a lot of changes since we  
10 first drafted our secretarial elections. One  
11 change to the United States Constitution that we  
12 have to follow. We need our secretarial elections  
13 to be lawful under federal law, and that's who we  
14 are accountable to is the federal law. As long as  
15 you have a secretarial election provision in your  
16 constitution, you have to suffer under that as  
17 well. But if you amend the secretarial election  
18 provision out of your constitution, then you're  
19 purely subject to the tribe's processes, and  
20 frankly that may be the way it should be. But we  
21 need to have a good process for you to get there.  
22 So that's what this is about.

23 We've had several tribes comment on the  
24 secretarial elections rule, or proposed rule, and  
25 we are very grateful for that. This has been a

1 long time in coming, because a lot of the work on  
2 this was done four years ago or so or more, and  
3 this is one of those things that's not terribly  
4 sexy, but it's important, so I'm glad that you all  
5 are here to help provide guidance on it.

6 I don't need to say a whole lot more than  
7 that. I'm going to stick around for a little  
8 while. We've got a bunch of other listening  
9 sessions and consultations going on  
10 simultaneously, so I've been trying to read each  
11 of them. This one is a very important one, and  
12 I'm glad that you all are here to talk about this  
13 and to help us work through it. Thank you.

14 De, I'll turn it back to you.

15 MS. DAUGHERTY: That was a little over a  
16 minute, Kevin.

17 MS. SPRINGER: Like Mr. Washburn was saying,  
18 in this day and age, a lot of tribes are taking  
19 the secretarial rule out of their future  
20 amendments. We've kind of had a running argument  
21 on whether or not, you know, that was contrary to  
22 federal law or not. I was on the side that says  
23 that was contrary to federal law. But then when  
24 it was explained to me, as long as the BIA  
25 conducts the election that removes us, it's not

1           contrary to federal law. We have to agree to take  
2           it out.

3           We have had some tribes in the past few years  
4           that have thought about taking the secretarial  
5           approval out of their constitutions, and we  
6           haven't had any elections pass where that's been  
7           taken out. As far as I know, there's only one  
8           tribe in the country that has taken secretarial  
9           approval out of their amendments, and that's the  
10          Potawatomi tribe out of Kansas. Just like  
11          Mr. Washburn said, that's part of self-governance.  
12          That's part of your inherent authority to govern  
13          yourselves and decide how you are going to govern  
14          yourselves.

15          One of the things that -- I think we even  
16          address it in there that you can do it. We do the  
17          election and if we approve it, then your future  
18          amendments no longer have to be approved by the  
19          secretary. That's for the IRA.

20          The OIWA was silent on that. The OIWA  
21          doesn't say the secretary shall, so the OIWA  
22          tribes have to know they've always had that  
23          authority to do that. Nobody has, but I think  
24          Cheyenne and Arapahoe are the only ones that took  
25          that out of their constitution. That's probably

1 about seven or eight years ago.

2 Just like I said, it just depends on how your  
3 tribe is evolving and how you want to govern  
4 yourselves. Do you want the Bureau involved in  
5 your business? Because as were going through and  
6 doing these constitutional reviews and everything,  
7 one of the things that we've been telling the  
8 tribes since I started working at the Bureau in  
9 '86 was that if there is not a Federal statute  
10 that requires the Bureau to take action, don't put  
11 it in your constitution.

12 There's a lot of constitutions that say the  
13 secretary shall approve our board members. The  
14 secretary shall approve our ordinances, our tribal  
15 codes. If there is no Federal statute that  
16 requires that, then don't put that in there,  
17 because every time you want to make a change to  
18 your ordinance, you had to get approval from the  
19 secretary.

20 Nowadays, we're hearing, we don't want the  
21 BIA in our business. We don't want the BIA  
22 telling us what to do. So that's what you need to  
23 do. You need to look at your constitution, see  
24 what provisions are there, and if there are any  
25 provisions in there requiring secretarial

1 approval, see if there's a statute that requires  
2 that approval. If not, then take it out when  
3 you're amending your constitution.

4 One of the other things that we started  
5 putting in there was like -- I don't know if all  
6 of you guys remember -- attorney contracts used to  
7 have to be approved by the secretary. That was in  
8 the IRA. The IRA just changed, and they took the  
9 secretarial approval out of attorney contracts.

10 So one of the things we started doing in the  
11 early '90s was putting a phrase in there "as long  
12 as required by federal law." So if the law  
13 changed, then your constitution automatically  
14 changed because the federal law changed. So there  
15 are little tricks that you can do there.

16 If there's a question of your jurisdiction or  
17 your territory, you can put in there the  
18 statement, to the extent allowed by federal law.  
19 So you don't have to take it out, because it's not  
20 contrary. You're saying that if we come up to  
21 this situation, we're going to follow federal law.

22 The main thing is to look at your document.  
23 Make sure it still meets the needs of today,  
24 because your constitution may be from the '40s.  
25 A lot of those 1930s, 1940s constitutions were

1 boilerplate, and they were boilerplate by region.  
2 I didn't realize that until I started working for  
3 the Great Plains. The Great Plains had in their  
4 boilerplate has a lot of language in there dealing  
5 with land, leasing land, homesteads, and all this  
6 other stuff.

7 You look at constitutions from the other  
8 regions, they don't have that in there. For some  
9 reason, for that region, it was important to those  
10 tribes, so it was put in there. So now the couple  
11 of tribes that I work with, they're trying to  
12 eliminate a lot of that and take it out. So it  
13 just depends. The boilerplate constitutions were  
14 what the government thought you needed at that  
15 time.

16 One of the things I always tell my relatives  
17 when they're running for office, or whatever, we  
18 have our tribal building, we have our executive  
19 committee, we have our governor or lieutenant  
20 governor. I said, these things are what the  
21 governments said that we have to have for them to  
22 do business with us. That doesn't define who we  
23 are. Who we are is how we raised our kids, our  
24 tribal traditions, our culture, our ceremonies,  
25 and all of this stuff. That defines who we are.



1 If you ask me, are you a native? I'm not going to  
2 say I'm native. I'm going to tell you I'm  
3 Shawnee. I'm not native, I'm not Indian, I'm  
4 Shawnee. It's kind of hard for me to use that  
5 term a lot. It just doesn't define who we are.  
6 I'm Shawnee, you're Kiowa, you're Pascua Yaqui,  
7 you're Pascua Yaqui. So these are things that,  
8 you know -- a lot of tribes are looking at the way  
9 that they used to govern themselves in the past,  
10 whether they had chiefs or whether they had  
11 different traditional councils, or whatever.

12 In my tribe, we have our governor who was the  
13 leader of our executive committee, but we also  
14 have a war chief and we also have a ceremonial  
15 chief. The ceremonial chief and war chief aren't  
16 involved with our governor. The governor's not  
17 involved with our war chief or ceremonial chief.  
18 So there's different ways to look at how you  
19 govern yourself.

20 One of the things that comes up is tribes get  
21 into conflict, or whatever, and the next thing you  
22 know you hear we have a hereditary council, we  
23 have a traditional council, and they're wanting us  
24 to do this, so we're not going to follow our  
25 constitution anymore. I don't know about you, but

1 I'm not going to tell anybody they're not  
2 hereditary chief or they're not hereditary  
3 council, because I'm not from that tribe, so I  
4 don't know what their traditions are, what their  
5 culture is. I'm not about to tell anybody they're  
6 not native.

7 The bad thing for the Bureau is we have to  
8 follow your constitution even though your council  
9 may be not following your constitution correctly  
10 or they may be tweaking things here and there  
11 without really following procedures. We have to  
12 follow the constitution the way it's written.

13 So those things that you need to keep in  
14 mind, too, when you're looking at your documents.  
15 It's not just a piece of paper that's you're going  
16 to change. You have to look at it, see why it was  
17 written that way, see what things have changed,  
18 and how you can improve that to meet your needs of  
19 today.

20 Did you have a question?

21 MR. SMITH: Steve Smith, Kiowa tribe. This  
22 is just about something you just said about your  
23 tribe, the Shawnee. That you had a war chief and  
24 a ceremonial chief. I don't know how much  
25 involvement with your expertise you have with the

1 Shawnee constitution, but I'm just curious how are  
2 those two, the war chief and the ceremonial chief,  
3 is that mentioned in your constitution?

4 MS. SPRINGER: No.

5 MR. SMITH: So that kind of stuff doesn't  
6 have to go in?

7 MS. SPRINGER: No, that doesn't have to go in  
8 at all. Like I said, our governor and our  
9 legislative body is something that's there because  
10 the government said they had to have somebody to  
11 negotiate with. Our ceremonial chief and our war  
12 chief is the traditional side.

13 MR. SMITH: I guess when I was thinking about  
14 this -- so then if your ceremonial chief were to  
15 tell somebody to do something contrary to your  
16 constitution --

17 MS. SPRINGER: They're not political.

18 MR. SMITH: They're not political?

19 MS. SPRINGER: No.

20 MR. SMITH: But you were saying that you've  
21 heard from some tribes where they said, you know,  
22 this hereditary council or somebody told us we're  
23 not going to follow this, but the government is  
24 not really going to go --

25 MS. SPRINGER: We're not going to tell them,

1 no, you're not the hereditary chief. What we have  
2 to tell them is we have to follow the  
3 constitution. If that is not in their  
4 constitution, we don't know how that hereditary  
5 council came about, we don't know who appointed  
6 it, what authorities they have. All we have is  
7 what is written in the constitution, and that's  
8 what we have to follow.

9 MR. SMITH: So what if a tribe were to  
10 include some -- you're a citizen of the Shawnee,  
11 but if a tribe were to delineate some sort of  
12 authority to those more ceremonial or traditional  
13 things, if that was clearly stated in the  
14 constitution, then would that be recognized?

15 MS. SPRINGER: If it's in the constitution  
16 and it's not contrary to federal law. Basically,  
17 what we're looking at when we're looking at the  
18 constitution is we're looking to see that it's not  
19 contrary to federal law. The other thing we're  
20 looking for is that it's technically sufficient.  
21 So if you say we're going to do this, then it has  
22 to be one answer. We're going to do this, and  
23 this is going to be the outcome. If you write  
24 your amendments or you write your constitution to  
25 where we're going to do this, this, this, and this

1 can happen. That's where you get into tribal  
2 dispute. That's where you start having conflict.  
3 Because you said this, this, or this could happen  
4 when you don't have a clear line of what your  
5 authorities are and what your outcome is going to  
6 be.

7 I have seen constitutions that have like a  
8 peacemakers council or an elders council or some  
9 kind of advisory council that may be made up of  
10 elders where they really don't have governing  
11 authority but they may be a conflict-resolution  
12 type group. So if there's two people arguing over  
13 here about this, or whatever, you can go talk to  
14 the elders, and they can talk about it and give  
15 them advice. But still the decision is going to  
16 be from the elected leadership. They're just  
17 seeking advice from this other group.

18 So there is no right or wrong just as long as  
19 you define what authority these different groups  
20 are going to have. One of the things I'm kind of  
21 dealing with Alaska right now is a lot of their  
22 constitutions say, and traditional law.  
23 Traditional law is going to trump their  
24 constitution. We don't know what that traditional  
25 law is. We only know what the constitution says.

1           So what I've been telling them is that they  
2           need to define how far that traditional law goes  
3           and when the constitution is going to apply. Is  
4           traditional law just advisory and the constitution  
5           is what you're really going to follow or what?  
6           There are still a lot of questions out there that  
7           these tribes are going to have to answer for  
8           themselves and then tell the Bureau where the  
9           authorities lie. We're not here to tell you how  
10          to govern yourselves. We're just here to try to  
11          make the process easier for you, because the  
12          process has been out there for a long time.  
13          Hopefully, with the way we wrote the regs and the  
14          way we structured them, that they flow better and  
15          it's an easier process for everybody.

16                 MS. DAUGHERTY: As you can tell, De has a  
17          long history of working on documents.

18                 We're going to go ahead and cover the  
19          portions of the regulation that discuss how this  
20          process works.

21                 De is going to take a break here, and she'll  
22          come back and chime in when she returns.

23                 It's broken into six subparts. Subpart A,  
24          which just describes the purpose and scope, which  
25          De addressed a little bit initially.

1           Subpart B, which is the definitions. We  
2 spent a lot of time in the definitions area.  
3 Maybe the definitions are the same, but I'll  
4 highlight some here in a minute that have changed  
5 and why they changed or how we summarized those  
6 conversations and that effort.

7           Subpart C is the general provisions.

8           Subpart D is the secretarial election process  
9 of the IRA, and subpart E is under OIWA. De's  
10 going to present that portion as somebody who's  
11 really familiar with Oklahoma. So her break  
12 better not be longer than subpart E.

13           Then subpart F is formulating petitions to  
14 request a secretarial election. That is the one  
15 unique part to all of this. Up until that point,  
16 we're just talking about conducting -- in subpart  
17 C and D particularly, we're talking about just how  
18 does conducting the secretarial election process  
19 work.

20           Then the last thing is F where the tribe  
21 might have in its governing document the  
22 possibility that members can petition for a change  
23 typically to the constitution. That's where we  
24 see most of these types of elections occurring is  
25 when a tribe that already has their constitution,

1 that a secretarial election is required to amend  
2 the constitution, that that language is already in  
3 there, that's where we see the most of our  
4 secretarial election action across the country.

5 Let's go ahead into subpart A here. I'll  
6 also click on my slides. As I mentioned, the  
7 second bullet is where we see the most action.  
8 Where it's already a tribe's document that the  
9 secretary is required to be involved in amending,  
10 adopting, or revoking the tribe's governing  
11 document.

12 Then the first bullet will let you know that  
13 sometimes it's required by federal law. The best  
14 example I can think of is a restoration act.

15 Let's say a tribe is restored and in restoration  
16 act it requires secretarial involvement. That's  
17 where you might see "as required by federal law."

18 Then you will see it also for ratification of  
19 the federal charter, the charter itself requires  
20 it or that it's being ratified under the OIWA.  
21 Here's the interesting part. Prior to 1990 there  
22 were charters that were issued before that time  
23 because at that time, this only applied to tribes  
24 that had been involved in the IRA process. But  
25 after 1990, all tribes were invited to adopt



1       charters. We do see some tribes doing this fairly  
2       actively. De commented that tribes were adopting  
3       charters. That there were a lot of tribes that  
4       were working on charters right now. So we see a  
5       lot of tribes looking at this as a mechanism to  
6       create an economic development arm of the tribe.

7               So after 1990, the amendments of the charter  
8       itself requires a secretarial election for  
9       amendments. But after 1990, the tribe can not  
10      require it. They can just say our charter -- the  
11      governing council, the governing body, has that  
12      authority, but sometimes it will still opt to put  
13      that in there where it's a secretarial election  
14      requirement. If I were the attorney for the  
15      tribe, I wouldn't require that, but if you choose  
16      to do that, that's your right to do so.

17             Then either federal or tribal law requires a  
18      secretarial election prior to any other action. I  
19      don't have an example of that. I don't think I've  
20      been around long enough. But if you want to ask  
21      De when she comes back about the bullet on slide  
22      No. 9, you can go ahead and ask her that. Like I  
23      said, the bulk of the work I've seen, in the seven  
24      years I've worked for the Bureau, have been  
25      amendments to constitutions that have the

1 requirement already in their amendment section to  
2 have secretarial involvement in the election.

3 For the definition section, which is subpart  
4 B, I just highlighted a few of the definitions  
5 that either changed or were clarified. I'm going  
6 to go over those briefly. The regulations this  
7 time require that the voting can be done via a  
8 mail-out ballot unless the tribe's constitution  
9 requires otherwise. Keep in mind, that's what the  
10 present constitution might say in the amendment  
11 section, a lot of times the amendment sections  
12 don't have a lot of details within them, but  
13 that's certainly something you could consider  
14 going forward as well is to amend the amendment  
15 section either to remove our involvement in your  
16 election processes, to remove our involvement when  
17 you want to change your constitution as an  
18 example. But I suppose if you want to keep the  
19 BIA involved in your election process, but want to  
20 provide more guidance, such as we want polling  
21 sites even though you don't require it now, that's  
22 something that can be done as well. It will be up  
23 to the individual tribe whether they want either  
24 of those things. Our continued involvement in  
25 your election or if you do want our involvement in

1 an election, that you would like to have polling  
2 sites as part of that process, but unless it's in  
3 the amendment section, the regulations going  
4 forward will be all by mail out.

5 Then also if the polling sites are required  
6 in your constitution, there will be the option of  
7 having some absentee voting. We'll be talking  
8 about that in a little more detail further in the  
9 presentation where we discuss that a little more  
10 specifically. That absentee voting will only be  
11 in force or be necessary if the election itself  
12 requires polling sites.

13 The next deposition was eligible voter. We  
14 had gone back and forth on this issue and wouldn't  
15 expect it to be a problem, but there was a lot of  
16 debate. It just came down to the point where the  
17 definition is it's a member of the tribe we don't  
18 get into (indecipherable), because an Indian who  
19 is not (indecipherable), to have some proposals  
20 early on and have those discussions, but we just  
21 got right down to it that the eligible, the person  
22 who could possibly vote in the election would be a  
23 member of the nation. Once again, that definition  
24 would back up to a member.

25 Now, tribal request was one of the areas

1 where the definition -- you can look at that in  
2 81.4 of the regulation as they're published, those  
3 are provided to you -- is what De mentioned  
4 earlier. I'll just elaborate on that a little bit  
5 more.

6 What we were seeing, and it's really -- I  
7 think it's fascinating -- I see all sorts of  
8 ranges of documents that come in for changes to  
9 the constitution. I'll see the tribe hire a very  
10 sharp attorney, and when they come in the door,  
11 they are ready to go. They even have articulation  
12 accompanying them saying, hey, our intent was to  
13 do this. So you'll see some very solid documents.  
14 We propose to remove the entire Article 5 and  
15 replace it with this Article 5 language, and it's  
16 very well written and very well thought out.

17 Sometimes when we get these requests, they  
18 come in literally in the form of a resolution that  
19 says, we want to increase our membership blood  
20 quantum requirement. That's all it says in the  
21 resolution. There's no draft language proposed to  
22 replace the existing membership criteria of the  
23 constitution. And then everything in between.  
24 Unfortunately, it actually makes me kind of mad  
25 when I see these ones come in, but we'll see ones

1 that come in from attorneys that were hired, and  
2 they'll be riddled with typos and incorrect  
3 cross-references. That's not a requirement that  
4 we review. As De said, we look to see if it's  
5 contrary to federal law or if the proposed  
6 language -- another thing we see sometimes is the  
7 proposed language comes in and it changes one  
8 section, but then it creates a conflict in another  
9 section. So we check for those two things  
10 particularly. But we also provide technical  
11 comments on everything else we see, and we let  
12 people know right out of the gate. These are just  
13 suggestions. These are things we noticed. These  
14 are typos, incorrect cross-references, and you can  
15 leave them in or you can fix them. That's  
16 entirely your call. The only place where you  
17 would hear us say, well, you can't do that --  
18 you'll never hear it out of my lips, hopefully --  
19 but is if it's contrary to federal law or a  
20 conflict within the constitution.

21 So the tribal request, after that long story,  
22 gets you back to tribal request has to include the  
23 language that's going to be voted on. So if I get  
24 just a general resolution that just says we want  
25 to change the membership requirement without

1 specific language that says exactly how you're  
2 going to change it, then that request isn't  
3 complete, because you have to get to the point  
4 where you have actual language that can be voted  
5 on to be replaced in a constitution.

6 The other part of the tribal request will  
7 have to be, basically, authority from the  
8 governing body that that's what the tribe seeks to  
9 do. In most cases where I come from, that's a  
10 resolution, but I know there are other ways that  
11 tribes declare what their intent is. Some operate  
12 off a voice vote or you have only this oral  
13 recording of what the intent was of the governing  
14 body, whatever that mechanism is. That's the  
15 other thing we need is the authorization from the  
16 governing body that the tribe intends to modify  
17 its document. The example I've been using, for  
18 example, their constitution.

19 Then the last portion of the tribal request  
20 is we need a mailing list, as De articulated, from  
21 the tribe itself. They're the best resource of  
22 that information. This is just my little  
23 sidenote, you can take or leave it, but one of the  
24 things I've noticed in the years that I've worked  
25 for the Bureau is that when those mailers go out

1 from the lists that we get from the tribes, it is  
2 quite common -- and I don't know if this is true  
3 in every region, but I know it's true in the Great  
4 Plains region -- it's very common to get many,  
5 many, many of those mailers back. That's how the  
6 process works. We mail the information out.  
7 Oftentimes -- I don't know the exact percentage --  
8 I suppose we could collect some data on this --  
9 but for some reservations get literally hundreds  
10 of these mailers back. So if there's one thing  
11 that I can emphasize to tribes is to make sure  
12 that if you're thinking about doing a secretarial  
13 election process, have tons of foresight, and  
14 start the process early on to get the mailing list  
15 updated. Encourage people to update their  
16 addresses just months and months in advance of a  
17 constitutional amendment election or any type of  
18 secretarial election event that's required to make  
19 the changes as we described in the purpose section  
20 of this presentation. That's just my little  
21 pitch.

22 We talked a lot about different things. Some  
23 people at prior consultations asked for  
24 definitions of things like eligibility. They want  
25 us to to define what a resident looks like if that

1 was required in the amendment section for the  
2 people who could possibly be eligible voters.  
3 Just the sorts of things that we did not include  
4 in those definitions. Especially we didn't feel  
5 the need to include the definition of Indian,  
6 because we already said that eligible voters would  
7 be members, and the nations would decide who those  
8 individuals were, so we didn't feel it was  
9 necessary. If you think we're wrong, go ahead and  
10 submit a comment, and we'll definitely take a look  
11 at that.

12 That's one thing I would like to say. We're  
13 a team that worked on this. It's subject to any  
14 changes or proposals. Certainly let us know if  
15 there's something that you think should change and  
16 let us know what those reasons are. We'll  
17 definitely take a look at it. These are not a  
18 done deal just because we're doing this  
19 presentation.

20 Scope of technical assistance. I already  
21 touched on this a little bit, and I'm not going to  
22 read you all these slides, because much of this  
23 process has changed -- hasn't changed -- so I'm  
24 going to try to touch on the highlights for you.

25 One of the things that we've been working --



1 on these documents when they're submitted, when  
2 you turn in the language you intend to vote on,  
3 whether it's the entire document or just parts of  
4 the documents, we'll definitely provide technical  
5 assistance on that.

6 I've actually been working with tribes in our  
7 region, and I hope you consider us your partners  
8 in this effort, because I think we can do some  
9 amazing things when that happens. We've seen some  
10 really good examples in the Great Plains region.  
11 We've actually gotten to the point where tribes  
12 will -- in the Great Plains region -- will contact  
13 us before they even pass a resolution, and say,  
14 could you take a look at this before we take it  
15 the full tribal council, and let us know if you  
16 catch anything that you know might be problematic.  
17 That's not required in this process. You don't  
18 have to do it. I'm just saying it works really  
19 well in our region to take a first look at it  
20 before a resolution is sought. We can certainly  
21 provide that.

22 But at any point the tribe submits what they  
23 feel is the language that will be part of the  
24 tribal request as the definition defines it as the  
25 language that you're going to vote on, at any time

1 when you submit that, you will get a technical  
2 comment letter back from us in writing. We try to  
3 break ours up in terms of these are required  
4 changes. We very rarely have required changes,  
5 rarely. Every once in a while you'll see  
6 something. Just odd things, too. It'll be things  
7 typically like the attorney who drafted it did the  
8 work for another tribe and didn't change the name  
9 of the tribe, and we'll let them know that. You  
10 need to change that to actually your tribe's name.  
11 I make light of that, but people miss things. You  
12 see what you want to see. It's not a terrible  
13 reflection that, oh, you're so inadequate that you  
14 have these little errors in here. People are  
15 human, and it's always nice to have an extra set  
16 of eyes.

17 So we'll have suggested comments. This  
18 section talks about that technical assistance.  
19 I'm going to do De's pitch again. It's one of the  
20 things we do see. De is right about this. The  
21 election will occur, the tribe does a lot of work,  
22 we do a lot of work, the election is run, and then  
23 the amendments don't pass. That's very common.  
24 We see that happen far too often. So I would  
25 pitch too, here, is lots of voter education, lots

1 of public meetings. We don't see a lot of that  
2 all the time, and that really, I think, makes  
3 people fearful about why their governing body is  
4 trying to change something. So we really  
5 encourage that. There are some great examples out  
6 there of tribes that have done that work before  
7 this process occurs.

8 Just one highlight here is that there are  
9 times where there are parts of the regulations  
10 that may have a conflict with a federal statute or  
11 that there might be gaps. We'll definitely always  
12 resolve those in favor of the statute, because  
13 that's how all that type of interpretation works.

14 Who can vote in a secretarial election? I  
15 know Mr. Washburn already touched on this.  
16 Sometimes an amendment section of the tribe's  
17 constitution, as an example, you'll see that they  
18 only want 21-year-olds and older to vote. Or  
19 you'll see -- and this is a tricky part, and I'm  
20 going to call it out, because I know that it  
21 creates a lot of confusion -- but if you look at  
22 tribal governing documents, there will be an  
23 amendment section. How do I amend this document?  
24 How do I amend this charter? How do I amend this  
25 constitution. Then there will be another section

1           that says, here's how we conduct our tribal  
2           leadership elections. I think there's a lot of  
3           confusion between those two sections.

4           A tribe will assume that the pieces over here  
5           in the leadership election apply to the  
6           secretarial election where it's required. So  
7           that's one thing to remember, that when you're  
8           trying to make changes to your constitution and  
9           you want them to apply in the secretarial election  
10          context for amending the constitution, for  
11          example, you better make sure that language is  
12          proposed and put in an amendment section so it's  
13          clear that that's where that's intended to apply.

14          Mr. Washburn said it, and I'll say it again,  
15          that even if you put it in there and you say we  
16          only want 21-year-olds, people 21 years of age and  
17          older to vote, we're compelled as the Bureau  
18          conducting these elections by federal law that has  
19          to be 18 years of age or older no matter what. So  
20          if you want to change that, don't come to me, go  
21          do a United States Constitution amendment, which  
22          should be pretty simple to do, right? No, I don't  
23          think so. We're compelled by that law, we're  
24          constrained by that in the constitution.

25          So that's the main highlight from that one

1 that we just wanted to emphasize. It hasn't  
2 changed, we just wanted to emphasize it. We do  
3 actually -- when we have secretarial elections  
4 today, we'll have people file challenges to the  
5 election on that basis, and the IBA always says  
6 that's not a basis to challenge the election or  
7 invalidate the election.

8 This section, all these components have  
9 pretty much stayed the same. Obviously, you heard  
10 me say the definitions about polling sites if  
11 polling sites are required, once again, they'll be  
12 required if the amendment section of the  
13 constitutional document requires it, but  
14 otherwise, these elections will be conducted fully  
15 by mail-out ballot.

16 This section is the same, but I wanted to  
17 emphasize the one from 81.13. This language had  
18 in it -- the prior regulations and certainly the  
19 current regulations have this, but there used to  
20 be a long time ago when the Bureau was a little  
21 more paternalistic than they are now -- you guys  
22 can giggle or whatever you want on that point -- I  
23 like to think --

24 MS. SPRINGER: Me and her.

25 MS. DAUGHERTY: De and I, for sure, we're^

1 tribal-oriented tribal government staff, and we  
2 have a lot of influence in the country, I think,  
3 just because we're this tag team of expertise.  
4 But that's one thing we really worked on with all  
5 of the staff is to remember that we are advocating  
6 for what the tribes want to do as much as possible  
7 wherever we can.

8 The only reason this requirement was in there  
9 and why we emphasize it and why we think it's  
10 important is sometimes you'll have these elections  
11 side by side, and you'll have an election to vote  
12 on a document that requires registration as you'll  
13 see on later slides, and then you'll have an  
14 election for tribal leadership where there is a  
15 tribal election roll for the tribe that's  
16 different than ours, because we require that  
17 registration for the process to make sure that the  
18 people who are participating in the election that  
19 we're in charge of legitimately have a right to  
20 vote.

21 So then when you have those elections side by  
22 side, occasionally somebody can't vote in our  
23 elections because they haven't registered and  
24 polling sites are required. That's why the  
25 mail-out ballots were proposed, too, is to

1       eliminate that, "except for where polling sites  
2       are required." This largely shouldn't be an issue  
3       going forward, but there was some confusion  
4       between differences between the two elections.  
5       Previously, it was really discouraged to have the  
6       elections at the same time. Now with the mail-out  
7       ballots, that should be less of a problem, and  
8       even when there are polling sites, we'll just work  
9       with each of the nations to make sure that people  
10      are informed when people have questions about this  
11      issue that they understand the differences between  
12      the two types of elections.

13             For secretarial elections when they're  
14      conducted, the local agency there deals with the  
15      cost of that election. I know people believe that  
16      if they continue to have secretarial elections,  
17      where the Bureau's involved, there's some cost  
18      savings. I don't know if that outweighs in your  
19      mind the tribe being empowered to do its own  
20      amendments. From my perspective -- just my  
21      personal belief -- I don't care -- I wouldn't care  
22      if the Bureau was paying for an election. I would  
23      just want to do the amendments myself as a nation,  
24      but that's up to each tribe as to what their  
25      beliefs are in that area.

1           This is a fun one. We added 81.17, because  
2 of an experience we had in our region. We  
3 actually had a tribe way down the road in the  
4 secretarial election process that wanted to cancel  
5 the election. But at the point they wanted to  
6 cancel it, there was a lot of momentum, a lot of  
7 registration, so we made a rule -- and if you  
8 think this is wrong for you, we would really value  
9 your input on this particular section, because we  
10 did add it as reaction to a situation we had in  
11 our region was when can you stop a secretarial  
12 election after you have all of the voters  
13 registered that they want to vote in that  
14 election? Can the council then step in and stop  
15 that election after people have indicated their  
16 intent to participate in it?

17           So what we suggested -- so we'd love to hear  
18 your input on this, because it's a new one -- is  
19 that requests for secretarial elections may be  
20 withdrawn in the same manner in which they were  
21 requested. But if you look in your printout of  
22 the actual language of 81.17, we do emphasize "but  
23 not after the deadline for voter registration."  
24 What our discussion was was that at that point,  
25 the voters had registered and indicated that an



1 intent that they wanted that election to go  
2 forward, so you guys can let us know if you  
3 support that concept or if you support the concept  
4 that the governing body should be able to step in  
5 at that point and just withdraw the election  
6 anyway. So we value your comments in that area if  
7 you have a strong feeling one way or another.  
8 That's why we proposed it was because that issue  
9 arose. We had no guidance in the prior  
10 regulations. We did not know what to do, so we  
11 wanted to make a rule so we would know what to do.  
12 We value your input on that one.

13 MS. IRON CLOUD: What did you do?

14 MS. DAUGHERTY: At that point, it was even  
15 later than that point. It was right before the  
16 election. We looked at all of the processes at  
17 that point, and said that we were going to go  
18 forward with the election. I don't think they  
19 actually got an official resolution from the tribe  
20 conducting it. We just got a letter from the  
21 chairman at that point, and we told them that we  
22 needed a resolution, and I don't think they ever  
23 produced one.

24 MS. IRON CLOUD: Did the amendment pass?

25 MS. DAUGHERTY: It did.

1           We didn't have any guidance, so we put some  
2           in for ourselves, but we value your input on  
3           changing it to however you think it should go.

4           Steps to request an election. We've already  
5           covered this one a little bit. We talked about  
6           submitting the proposed document, and then you'll  
7           get a technical comment letter from us. I think  
8           I'll elaborate on tribal requests.

9           This has stayed pretty much the same, but we  
10          do have to provide technical assistance in  
11          writing -- which we always have done, at least 30  
12          days before the election, and we articulate any  
13          concerns we have about anything in there that  
14          might be contrary to federal law. Because De and  
15          I -- like I said, we've always done and always  
16          encourage other tribal members and other tribal  
17          government staff to give us suggestions. Where  
18          you see something, don't turn a blind eye to it.  
19          Just let the tribe know you're cross-referencing a  
20          subsection that doesn't exist. That happens  
21          sometimes when people are drafting things like  
22          that. We do provide suggestions, but it's not a  
23          requirement.

24          So this has pretty much all stayed the same,  
25          but one thing I did want to highlight on here is,

1           once again, like said, for a tribal request, we  
2           need a voters list, we need the exact language  
3           you're going to vote on, and we need the authority  
4           from the tribe's governing body, whether that's a  
5           resolution or another kind of document or voice  
6           vote or however the tribe conducts business as a  
7           nation.

8           Then as De mentioned, let's say we get all  
9           through that process and the language completed,  
10          we're all in agreement that the proposed language  
11          is final, and we're ready to say this election can  
12          go forward, then what happens? Well, the next  
13          step is that we -- when I say we, at our level  
14          it's typically the regional director -- will send  
15          a memo to the superintendent is what you most  
16          commonly see. What we will tell that individual  
17          is that you have 90 days to conduct this election,  
18          or if it's adopting a new governing document or  
19          revoking an entire existing document, you have 180  
20          days.

21          I'm not 100 percent sure why the difference,  
22          and my gut is that because of the -- when it's  
23          about adopting or revoking an existing one, it's  
24          such a significant act that you need more time for  
25          voter education to occur. This is also statutory,

1 too, so I don't think we can change this 90 and  
2 180 days. You're going to have to go to Congress  
3 to get those two numbers changed. So if you want  
4 to propose to change them, we'll definitely have a  
5 comment section on following up on these  
6 consultations is if the tribe proposed it be  
7 different than 90 days and 180 days, but we don't  
8 have the authority to change that one. That's why  
9 that's in there.

10 The secretarial election memo, this is the  
11 same as before. Just for your edification, when  
12 that memo comes down from the regional director to  
13 the superintendent telling him you have to call  
14 this election, the superintendent is often the  
15 leader of the board, because we do have,  
16 typically, one of our staff conduct the election.  
17 It's usually the superintendent. I don't know if  
18 we ever heard of a case where it wasn't. It is  
19 usually the superintendent.

20 Then he lets the tribe know, and we also let  
21 the tribe know that we sent that letter out, that  
22 the election is going to occur. We have 90 days  
23 to run it in most of the cases I've seen, because  
24 it's not to revoke the entire document or adopting  
25 an entirely new document.

1           So let's take the 90-days example. He will  
2           contact the tribe and say, who else do you want on  
3           the election board? The tribe has the opportunity  
4           to pick two additional people to add to the  
5           election board. The tribes almost always do that  
6           where I come from. Occasionally, they don't.  
7           They'll just leave it to the Bureau to pick the  
8           other two people. That happens, but most tribes  
9           participate, and say, we want this person and that  
10          person. So that's typically what happens.

11          If the tribe doesn't do so for 10 days, then  
12          we're empowered to select those two people. We  
13          won't do that silently. We'll keep asking, are  
14          you going to appoint two people to the board? We  
15          have until the last minute, because we really do  
16          believe that type of participation is so vital to  
17          this process.

18          I just put this in there just sort of to show  
19          you how this typically rolls out, especially as  
20          you're preparing for the election. We'll create  
21          what is called an eligible voter list. You can  
22          look at that in the definitions. I know we talked  
23          about eligible voter, qualified voter. We shied  
24          away from the qualified voter language, because  
25          that appears in a lot of constitutions based on

1 some of those boilerplates that included that when  
2 talking about leadership elections.

3 We really talked about two different types of  
4 voter. The first one is eligible voter, and  
5 that's going to be every member of the tribe. In  
6 the first instance, every member of the tribe  
7 could conceivably vote if they register. So you  
8 create the eligible voters list. Then we get that  
9 from the tribe, because that's the list they give  
10 us when they first put in their formal request.

11 Then once we have that, we assemble a notice  
12 packet. These have gotten very nice. We actually  
13 have a great sample if you ever get in the  
14 position where you're having a secretarial  
15 election and you want to see that sample, you have  
16 our contact information now, you can get it from  
17 us. It's just a pamphlet now. We have everything  
18 that's required by the regulations and statutes  
19 right in one pamphlet. So you get all the notice  
20 information out in one document. It's very nice.

21 So we mail that to each of the persons on the  
22 eligible voters list at least 60 days before the  
23 date of the election. Again, I've also been  
24 involved in processes where we're scrambling to  
25 help make this happen and make sure we meet that

1 requirement. It's a lot of paper sometimes. In  
2 some of the instances, I don't know who's the  
3 biggest tribe in the room that would participate  
4 in a process like that, but we have some tribes  
5 that have tens of thousands of members, so you can  
6 imagine we're doing mailers for 30,000 or more in  
7 the example of my tribe, so that can be quite a  
8 process. We mail to everybody. Everybody on that  
9 list 18 and older that the tribe provided to us,  
10 we mail it everybody.

11 They all have the opportunity to register, so  
12 they send in their registration form -- and we'll  
13 talk a little bit more about these on the slide  
14 coming up -- we collect all those registrations  
15 that come in before the registration deadline,  
16 because there will be a registration deadline  
17 created during this process. Then we create and  
18 post a registration voters list. So that's the  
19 third from the bottom.

20 I did want to point out that we're going to  
21 cover in another part of the regulations. There  
22 is a challenge process for the registered voters  
23 list. I'll cover that, but basically it's people  
24 get to look at the list. We post it without  
25 information like addresses and things like that.

1 We want the tribe to create a process where people  
2 can make sure that the registered voters list is a  
3 valid list, but still trying to protect privacy as  
4 best as we can.

5 So in that challenge process, people can come  
6 forward and say, we think you left somebody off  
7 the list that was properly registered. I  
8 registered, so I should be on that list. Or the  
9 other version is, why is that person on the list,  
10 they're not even an enrolled member? So we  
11 investigate each one of those things to make sure  
12 the final list is proper.

13 Then if this is an election that's conducted  
14 entirely by mail, then we keep a version of that  
15 list where we keep track of those ballots as they  
16 come in. It's a very thorough documentation  
17 process. People -- in advance, we get a lot of  
18 people become trained to write down the dates on  
19 everything as they come in and collect things in  
20 batches. It's a very rigorous process.

21 Then if polling sites are required, then you  
22 have to also notate by the names on the registered  
23 voters list if anybody requested an absentee  
24 ballot. So that's sort of how the process rolls  
25 out. Certainly during establishing the voters



1 list and conducting the basics of the election.

2 I already touched briefly on the notice  
3 packet, but you can go down and vote on this  
4 without being (inaudible). This will be largely  
5 the same as it has been. The one thing I do want  
6 to point out is in the first dark bullet -- what  
7 did you call these, De? You have a word for this.  
8 The dark bullets and the hollow bullets. Well,  
9 the first dark bullet in the second column from  
10 the bottom, it's just pointing out that as part of  
11 the notice packet because of this change in the  
12 regs regarding polling sites, it'll explicitly say  
13 in there whether the election will be conducted  
14 entirely by mail out, or whether polling sites  
15 will be utilized for the election. So that's the  
16 only significant change to this part of the  
17 regulations.

18 This is also the same. We are required by  
19 regulations in the regulations to post the notices  
20 and the outcome of the election when the lists  
21 come out -- or list, I should say one list --  
22 They're posted at the local Bureau office and the  
23 tribal headquarters. Then sometimes the board  
24 designates other places that they can be posted.  
25 But these two sections haven't changed.

1 I will call this out just because I know  
2 there's come confusion about this, but this has  
3 not changed, but I'll mention it. The information  
4 on the registration form where you're registering  
5 to vote to participate in a secretarial election  
6 process, that's what we use it for, to determine  
7 voter eligibility. We have to tell the voters in  
8 the packet that their participation is voluntary.  
9 So nobody has to register to vote for that  
10 election if they do not want to. But we also let  
11 them know that if you want to participate, you do  
12 have to register. So that helps us track the  
13 people who are eligible to vote in, and then later  
14 on it helps us calculate whether the proper  
15 threshold was met for the election.

16 I touched briefly on the registered voters  
17 list, so I won't spend a lot of time on this.  
18 Where it's posted, how it's prepared, what's  
19 included on it, and why we exclude addresses and  
20 things like that for privacy. I already discussed  
21 challenges to the registered voters list. I will  
22 call out especially that the challenges should be  
23 in writing. That they detail the name of the  
24 person and the rationale as to why the person  
25 should be included or excluded and any supporting

1 documentation that the person has to show -- to  
2 support their challenge of their inclusion or  
3 exclusion. Then the challenges to the list are  
4 resolved by the secretarial election board, so  
5 that would be typically the superintendent and  
6 whoever else the tribe added to that board to make  
7 that decision on whether the person's name should  
8 remain on the list or whether a name should go off  
9 the list or whether new names should come on the  
10 list before it is finalized for the actual  
11 election ballot process.

12 That takes us to ballots. This is also  
13 unchanged. I just wanted to emphasize a couple of  
14 things. Sometimes we'll get proposals for  
15 membership as an example. I'll use that as an  
16 example. They'll say, can we have an election  
17 that says, do you want the membership blood  
18 quantum to remain 1/4 or do you want it to go up  
19 to 3/4 or do you want it to go down to 1/8 or do  
20 you want it to go down to 1/16th or you want it to  
21 remain the same. Well, you can already tell that  
22 if that occurs, that would be a much more  
23 complicated ballot. We just want the ballots to  
24 be as simple as possible.

25 Then the other challenge becomes if you have

1 too many alternates on one ballot, you'll start to  
2 see that the vote won't achieve a successful  
3 outcome. It's very common that that can occur.  
4 So we just try to keep the ballot simple so we  
5 left this regulation the same. Once again, if  
6 there's something that you want to propose that's  
7 different, we'll certainly look at that. That's  
8 the one we see sometimes is they'll come in with  
9 very complicated ballots that will come in the  
10 door. You can already tell that it might be a  
11 challenge.

12 We did address this, because it's never been  
13 addressed in the regulations before, but more and  
14 more tribes are starting to encourage the use of  
15 voting machines, and there are companies that are  
16 much more available to do this type of work,  
17 especially in the larger urban areas. So we just  
18 wanted to emphasize that in the regulations to let  
19 them know that's certainly a valid way that we may  
20 conduct the election just to give you that  
21 awareness.

22 Honestly, I think you'll see that --

23 We've got a question. I missed the hand. I  
24 thought Steve Smith was bold enough to jump up to  
25 the mic and stop me.

1           MR. SMITH: What you were just saying  
2           about -- you were talking about voting machines,  
3           so I'm assuming if -- if you do a mail out, the  
4           Bureau -- a secretarial election will always be  
5           electronic, or what?

6           MS. DAUGHERTY: No. If you do a mail out, it  
7           will be cheaper, but when I talk about voting  
8           machines -- yeah, I'll clarify that, thanks for  
9           asking the question -- would be if polling sites  
10          are required. The Bureau itself might contract  
11          with a company, especially where those companies  
12          are more readily available some of the times, to  
13          conduct the election. So we might actually do the  
14          government procurement process. Normally it goes  
15          by, because it's so difficult I want to pull my  
16          hair out some days. But the Bureau itself, this  
17          is a federally run election, so if polling sites  
18          are required, as we described earlier, because  
19          it's in the amendment section, the Bureau might  
20          contract to have an election conducted  
21          electronically.

22          MS. SPRINGER: There have been quite a few  
23          done secretarial elections done by a third party,  
24          and they follow our regulations. They may have  
25          polling sites, they may have voting machines, or

1           they may do the whole thing by absentee ballot or  
2           by mail-out ballot, but then they have tabulating  
3           machines that they run the ballots through.

4           Being old-school before they had voting  
5           machines, we did it by hand. When I started  
6           working for the Bureau, I worked out of the  
7           Shawnee Agency, and our smallest tribe was 200  
8           members. Our largest tribe at 15,000. Like I  
9           said, we did five elections in two years, so we  
10          did elections for both tribes, and we did them by  
11          hand.

12          MR. SMITH: In our tribe, I guess it was 15  
13          years ago, the Cayugs Indian Council decreed that  
14          it will all be electronic, so we do have absentee  
15          voting as well as polls, but they get the same  
16          ballot. So then the absentee ballots that go out  
17          by mail, when they're received they're run through  
18          the machine just like the ballots from the poll.  
19          The ballot itself is identical.

20          MS. DAUGHERTY: Even from the Bureau, imagine  
21          that going forward we're going to possibly see  
22          more and more of this type of effort.

23          MR. MELENDEZ: The question I have is trying  
24          to meet the threshold of 30 percent. We see a  
25          difference if they didn't go to that polling spot,

1 do we have any information whether or not you just  
2 don't use a polling spot and everybody does it by  
3 mail. Do we see the possibility of not meeting  
4 the threshold. Is there any research on the idea  
5 that lessens the amount of participation based on  
6 people not answering mail?

7 MS. DAUGHERTY: That's a good question. If  
8 we shift to that, there's not -- I know we haven't  
9 done the data collection of returns. As I  
10 mentioned, one of the challenges with this process  
11 has always been whether it's polling sites or mail  
12 out, is that we don't get good addresses a lot of  
13 times. So there's really going to have to be a  
14 tribal push on that end of things. But you're  
15 right, we do have data regarding -- and we could  
16 collect it and maybe summarize it as a sample to  
17 see how many people mail back in their  
18 registration packets, as an example. We know it's  
19 less. We know the registration. Oftentimes, it  
20 mirrors the participation in the leadership  
21 election process. As many of you know, far fewer  
22 people participate in leadership elections, too.  
23 To answer your question, no, we don't have a lot  
24 of data on that. We do have data we could  
25 analyze, but if this is a new proposal of the

1 regulation and we do it for all of them, we kind  
2 of collect some data and look at that and see what  
3 those outcomes are and make sure. We have a bunch  
4 of elections that aren't meeting the threshold,  
5 and that certainly is a challenge. We do have a  
6 lot of people that might be able to participate  
7 better when they don't have to go to a polling  
8 site, especially for some of the larger  
9 reservations.

10 MR. MILLER: One of our concerns is -- I'm  
11 kind of deviating a little bit. In reference to  
12 the ballots in Nebraska, when meeting your  
13 (inaudible) and have a voter registration list  
14 provided by the tribe and talk about mailing the  
15 ballots out, I know that's part of our  
16 constitution, the ballot has to be mailed out and  
17 not a polling site. In Nebraska, a concern that  
18 the majority of our tribal members have is they  
19 want physical address when you're getting your  
20 tribal names -- a street address is required in  
21 the state of Nebraska -- because that's an  
22 obstacle that if you're going to get anything, it  
23 has to have a street address on it.

24 Well, in my community, there's (inaudible)  
25 which is a prominent (inaudible) where a majority



1 of our tribal members also live, we have street  
2 addresses, but our mail's not delivered to that,  
3 so we have to use a P.O. box. And the state of  
4 Nebraska won't accept a P.O. box as a valid  
5 address on any IDs. That's why our tribal members  
6 will put a P.O. box. When you're mailing these  
7 ballots out, it comes back to you because of that  
8 that reason. So I'm not sure how we can overcome  
9 that, I guess, because we toe the line with the  
10 state of Nebraska in terms making our tribal  
11 elections as valid as possible to be used. So  
12 that's a concern of mine. I'm not sure how we can  
13 overcome that when we're getting our tribal list  
14 together, maybe we as a tribe can try to include  
15 mailing addresses when providing that to you, but  
16 like I said, that's also difficult to be in line  
17 with the state by providing a valid ID. When  
18 we're using it to vote in the state elections, it  
19 has an actual physical address and not the P.O.  
20 box. I think where an issue may be arising also  
21 when they mail it back to you "not valid as an  
22 address," because that physical address that  
23 oftentimes is going to be valid either.

24 MS. DAUGHERTY: I think we've probably all  
25 seen the media in just the past couple days about

1 the struggle in North Dakota where they're saying  
2 that same thing, that they're not allowing P.O.  
3 Boxes for voting. You can speculate as to why  
4 that is, but the bottom line is for this process  
5 wherever the person wants to receive their mail,  
6 they put it down there, this will go there. I  
7 mean if the tribe wants to maybe even, wherever  
8 they're going to receive their mail will work for  
9 this process.

10 MS. SPRINGER: Even though we send the  
11 election packet out to the last known address that  
12 we have or what the tribe sends to us, there's  
13 nothing that stops you from saying you have five  
14 brothers and sisters, you got the packet, but your  
15 brother and sisters didn't. There's nothing that  
16 says you can't make a copy of the registration  
17 form and give it to your brothers and sisters as  
18 long as they submit that and give us where they  
19 want their ballot to be sent to. Our registration  
20 forms don't have numbers on there, it's just a  
21 plain form that we -- when we do our registration  
22 form, that's what we're asking for, is where do  
23 you want your ballot sent.

24 MR. MELENDEZ: That's one of my questions  
25 with the new rule. Will there be a universal form

1 that specifically has on there mailing address,  
2 physical address so that way it does work through  
3 that. That could be a universal way of  
4 identifying where it's mailed to.

5 MS. DAUGHERTY: Yeah. If the whole process  
6 for you to receive your ballot, your information  
7 in the mail, polling sites, if you ask for an  
8 absentee ballot all in the mail. So it will be a  
9 mailing address.

10 MS. SPRINGER: When they see they don't have  
11 a post office box, do they have postal delivery in  
12 town?

13 MR. MELENDEZ: No. Everyone who has a post  
14 office boxes to get mail, because they don't  
15 provide mail service to our tribe. That's a real  
16 obstacle.

17 MS. IRON CLOUD: So for your tribe, do you  
18 have -- for your tribal information, do you use  
19 the P.O. box or the initial list of addresses,  
20 would that include P.O. box, or would that include  
21 the physical address?

22 MR. MELENDEZ: That's the issue, because the  
23 address we have on file is what's on your tribal  
24 ID card. For that to be valid in Nebraska, it has  
25 to have a physical address. They reject the P.O.

1 box on there.

2 MS. IRON CLOUD: That's, I guess, it will be  
3 the same situation with (inaudible) voters. I  
4 just recently heard from my family members that on  
5 their IDs, on their state-issued driver's license,  
6 for example, say 3 miles North BIA Highway 18,  
7 they try to send something to that, it's not going  
8 to be delivered. That is an issue.

9 MS. DAUGHERTY: So maybe we can do that just  
10 to be explicit. Put that as a comment that we  
11 need to have a uniform form that says where you're  
12 going to receive your mail to make sure people  
13 don't confuse that issue that's being raised in  
14 other types of elections.

15 MR. MELENDEZ: A thing that helps tribes,  
16 too, when they're going to that secretarial  
17 election, that they're going to provide the  
18 information to you, you can get that from the  
19 tribal members rather than just giving you  
20 whatever address they have. If that's a comment  
21 that I can provide, that that be provided also in  
22 this process, that may help.

23 MS. DAUGHERTY: Well, you just did.

24 We're taking that information down.

25 MS. SPRINGER: You're on the record.

1 MS. DAUGHERTY: As far as ballot packets, as  
2 I said, they're sent in the mail as soon as the  
3 list of registered voters is complete. Once  
4 again, we just want to emphasize the polling site  
5 issue that's changed in these regulations because  
6 of how we discussed that issue before.

7 Procedures of ballot counting is still the  
8 same. Where polling sites are required, when do  
9 we close those? Or if it's mail-out ballots,  
10 after the deadline for receiving mail-out ballots  
11 occurs is when counting occurs. The secretarial  
12 election rules that we emphasize is in that  
13 process, they must all be in the room while  
14 they're counting ballots for outcomes.

15 We put in these next couple of slides just to  
16 clarify this percentage of participation required.  
17 How we calculate the percentage of participation,  
18 which is 30 percent is the (indecipherable), but  
19 sometimes in the amended section of the tribe's  
20 constitution, they might want it to be higher than  
21 30 percent, so might do that in the amendment  
22 section of their constitution. But it just  
23 basically is to take care of the total voter  
24 participation, that includes all valid ballots and  
25 cast spoiled ballots. So sometimes somebody will

1 cast a ballot, and it'll be spoiled for some  
2 reason, like they'll select all the choices or  
3 things like that. You usually don't see too many  
4 of those. It's usually single digits, in my  
5 experience. Those are all the people who  
6 participated.

7 So that total number divided by the total  
8 number of registered voters, all the people that got  
9 those registration forms back, and then you get your  
10 percentage participation. The percentage  
11 participation, as I said, can fall to 30 percent, but  
12 if the amendment section has a different number, then  
13 it would be higher than 30 percent. There's just an  
14 example.

15 MS. SPRINGER: One of the things that  
16 happened a few years back is one of the tribes had  
17 an election, and their percentage of participation  
18 was 51 percent. So one of the things that we  
19 didn't realize at the time but we realize now is  
20 we cannot round up. This election ended up in the  
21 courts, and even though the bureau said, well,  
22 they got the 51 percent, when they did the  
23 numbers, it was 49.89.

24 MR. PORTER: It was not 51 percent.

25 MS. SPRINGER: It was not 51 percent, and the

1           tribe won and that constitutional election failed.  
2           So these are kind of things that we didn't even  
3           think about at that time. You say about five, you  
4           go up, and below five, you go down. That was just  
5           normal mathematics.

6                    Somebody actually took us to court on that  
7           and they won. Whatever your constitution says,  
8           that's the percentage you're going to be looking  
9           at. The IRA and OIWA both say at least 30 percent  
10          participation. So it's up to the tribe if they  
11          want to go up to or stay the same. It's still  
12          going to be at least 30 percent. There's no  
13          rounding in these numbers. We learned the hard  
14          way.

15                   MS. COEN: The other thing is it's 30 percent  
16          of the registered voters, not your total voters,  
17          but 30 percent of your registered voters.

18                   MS. DAUGHERTY: That's just an example that  
19          shows the math. How do you get posting votes? If  
20          you guys participated in our rapping session I was  
21          involved in, De and I had probably and Karen had  
22          like a 40-minute conversation at least about  
23          spoiled ballots. It was hilarious.

24                    What if it's mutilated? What if it's  
25          mismarked? We had all these definitions, and then

1 we came back full circle and said we're just going  
2 to have to keep spoiled ballots. So sometimes  
3 people realize they spoiled their ballot before  
4 they cast it. And so it's just a process for us  
5 to replace the ballot if the person realizes they  
6 made an error before they turn it in.

7 MS. SPRINGER: Before they actually cast it.

8 MS. DAUGHERTY: Right, right.

9 MS. SPRINGER: Once they cast it, it's in  
10 there.

11 MS. DAUGHERTY: Sometimes people do realize  
12 that they marked it incorrectly, and they want to  
13 change it. This just provides a process for that  
14 to occur if they realize it before they cast it.

15 Challenges to the election results. We  
16 clarified the number of days. That was the other  
17 thing, too, we also clarified that days means  
18 calendar days so that there is no question about  
19 how to count all of our deadlines, 90 days, 180  
20 days. Then of course if your deadline falls on a  
21 weekend or holiday, the challenge deadline will be  
22 extended to the next business day.

23 MS. SPRINGER: One of the reasons we did that  
24 is we had a challenge in one of the elections out  
25 in Minnesota. We did the disapproval on the



1 Friday, because the 45th day was on a Sunday. I  
2 was going on vacation, so I wanted this done. So  
3 that was my reason for getting done. Anyway, we  
4 got it done, got everything signed, got everything  
5 out to the tribes and the region offices and  
6 everything.

7 Then they challenged it. They took us to  
8 court. One of the things that the judge said in  
9 the decision was that we made the decision before  
10 the 45 days ended. And so even though the regs  
11 weren't clear that we went to the next business  
12 day, because it's not specifically stated in  
13 there, the way I was always taught is if it's not  
14 specifically stated in there and it falls on a  
15 weekend, too bad, so sad, you got to do something  
16 before that.

17 So what we wanted to do is to make sure  
18 that -- because secretarial elections aren't  
19 always on Saturday or Sunday, sometimes they're in  
20 the middle of the week, or whatever. So your 30  
21 days might end on the weekend. So if we give you  
22 to close of business the next business day, then  
23 that gives everybody a little more chance to file  
24 those challenges or anything to help get things  
25 taken care of. That's why we added that in there,

1           because it wasn't in there before.

2           MS. DAUGHERTY: For challenges, remember I  
3           had said earlier that if somebody challenges a  
4           registered list, does the election board decide  
5           that? Well, it's different at the end of the  
6           election. If there's a challenge to the entire  
7           election, you need that reviewed at a different  
8           level. The superintendent is the one that's  
9           conducting it, it gives you a different set of  
10          eyes looking at it to see if the election was  
11          conducted properly.

12          MS. SPRINGER: When we say it's usually the  
13          regional director, who is usually the one that  
14          will authorize the election is the one that also  
15          does the approval. One of the problems that are  
16          coming up with in the Bureau now is that, you  
17          know, regional directors do not have delegated  
18          authority to authorize elections. Where they're  
19          coming up in the Bureau now is that, you know,  
20          regional directors do not have delegated authority  
21          to authorize elections. So we may not have a  
22          superintendent for that region or there might not  
23          be an agent for that region. So we've actually  
24          had to go to other agencies and ask if that  
25          superintendent would be willing to be the election

1 board chairman and conduct the election.

2 Another problem that we've come up with is  
3 that not all tribes go to the agency. Some tribes  
4 go directly to the regional office. So we've had  
5 to actually divide the duties at the regional  
6 office so that if this person reviewed and was  
7 part of the group that authorized the election,  
8 they cannot conduct the election. So we always  
9 have at least somebody out there that was not a  
10 party to the review and everything else so that  
11 they can conduct the election.

12 The reason of authorizing an official is the  
13 challenges -- if you conducted the election, you  
14 can say whether you did something wrong. You  
15 can't review your own work and say, I did it right  
16 and expect everybody to agree with that if  
17 something went wrong during the election process.  
18 So we've been trying to maintain those levels of  
19 approval and who can do what.

20 When I started in tribal government in DC in  
21 1991, we had a branch chief, we had four  
22 specialists, and we had a secretary. By the end  
23 of 1995, I was the one elected from the  
24 government. And so we went through that much  
25 change, and I didn't even have a secretary, so we

1           were scrambling around to do stuff. So as the  
2           Bureau staff goes down -- because even tribal  
3           governments now don't have fully staffed agencies  
4           or offices.

5           So one of the pushes that we've been trying  
6           to make is that the Bureau start staffing the  
7           tribal government again. In fact, that's one of  
8           the things I did in Alaska is I asked for two  
9           positions in Alaska regional, you know, a tribal  
10          government officer and a tribal government  
11          specialist to get tribal government back on track  
12          there.

13          So one of the main things you cannot do is  
14          you cannot do a function and then do the review  
15          and approval of that same function. We're getting  
16          pretty crafty in the BIA on how to keep those  
17          things separate.

18          MS. DAUGHERTY: If you look at the regs  
19          throughout, they're written in terms of the local  
20          Bureau official. Most commonly that's the  
21          superintendent and then also the authorizing  
22          official typically (inaudible) the record is  
23          corrected if there's a couple of anomalies where  
24          you may not have a superintendent or maybe a  
25          different person, an authorized official, it's

1 typically the regional director and  
2 superintendent. There are some exceptions.

3 Finalizing the election results, if a  
4 challenge is sustained that may have an impact on  
5 the outcome of the elections, an example --  
6 there's some examples of that. Let's say they say  
7 that there is documented evidence of  
8 electioneering occurring that somebody told five  
9 people how to vote and somebody saw them. This is  
10 an outlandish example, but let's say they say we  
11 have documentation, we have pictures of this guy  
12 getting five people to vote one way or the other  
13 right close to the polling place, and the outcome  
14 of the election was only three votes apart, let's  
15 say. In that case, when you documented that you  
16 have video, you have pictures, or whatever --  
17 you're never going to have that much of  
18 evidence -- but let's say you did. Then that  
19 might be sustained if it does have an impact on  
20 the outcome of the election. Then, because it's  
21 only three votes apart, then you -- in that  
22 instance where it would change the outcome of the  
23 election, then there's a recount, in that  
24 description I just described is that a new  
25 election would be authorized and completed,

1           because that improper behavior could have  
2           influenced outcome of the election.

3           Now, that election, let's say you only got  
4           maybe one doing that, and the distance between the  
5           outcome was 100 votes or 200 votes, well, you can  
6           document that. You can say, well, that was an  
7           improper thing that occurred, but it doesn't  
8           affect the outcome of the election, so it's not  
9           sufficient to throw out the entire election. So  
10          then those would be some examples of where that  
11          might occur right now.

12          MS. SPRINGER: Usually, when challenges  
13          happen, somebody will say, I know so-and-so didn't  
14          get to vote, or I know this happened, or whatever.  
15          The thing we have to look at is substantiating  
16          evidence. Anybody can say anything, I saw this,  
17          or somebody told me this. Those are a lot of the  
18          things we hear.

19          I heard so-and-so did this, but what's your  
20          evidence? If they don't have anything, then nine  
21          times out of ten it's going to be dismissed.

22          MS. DAUGHERTY: But nobody ever has these  
23          conversations during an election about election  
24          fraud or improper behavior or anything.

25          MS. SPRINGER: You can make the claim, but

1           you also have to have evidence of what you're  
2           alleging.

3           MS. DAUGHERTY: That's not just in Indian  
4           country, this is just something that happens in  
5           elections. People are concerned about improper  
6           behavior. It happens in elections everywhere, not  
7           just in Indian country.

8           But if all the challenges are in, and there's  
9           an authorized official and regional director are  
10          looking at the challenges, they're either denied  
11          or dismissed, then he has to conduct a full review  
12          of the election as well -- he or she -- and  
13          determine if the amendments or the documents will  
14          be adopted or rejected.

15          If the election was conducted as it should be  
16          and the vote looks clean, the percentages are all  
17          met, you are not going to see the regional  
18          second-guessing that process here. You're not  
19          going to get this on a state level. Just double  
20          check with the (inaudible) requirements that he's  
21          required to check, he or she, and then the  
22          authorizing official will issue a decision letter.  
23          It will talk about the challenges if there were  
24          any progress. Sometimes there aren't any  
25          challenges.

1           He or she will give you the outcome of their  
2 review, the final election results, and then issue  
3 his approval or disapproval of the document. It's  
4 typically an approval if the election was  
5 conducted as it should be and it passes.

6           Your local Bureau official typically sends  
7 you a letter if it doesn't pass, then you know you  
8 don't need to do anything else. It'll just say it  
9 failed and there's no documentation that it failed  
10 because of the vote. To change it was less than  
11 vote to keep things the same. That happens, too.  
12 That's a successful election, too. I think some  
13 people think, oh, we failed, but it isn't it's all  
14 part of a process to decide whether we're going to  
15 changes things or not. I'm pleased with whatever  
16 the outcome is. If people made their best effort  
17 to take a look at changes, their document is all  
18 part of our process of being nations. It makes me  
19 happy to see it.

20           MS. SPRINGER: And there are cases where, you  
21 know, they'll pass by a lot. There are cases  
22 where they barely get by. One thing that I  
23 haven't seen before and I haven't seen since is I  
24 actually had an election that came to a tie. We  
25 recounted five times. I said, well, it failed



1           because you didn't get the majority of the vote.  
2           They say, no, it passed, because we didn't get the  
3           majority for no. So we argued back and forth and  
4           counted them again. Good thing it was a small  
5           tribe. We only had like 60 votes, 60 ballots we  
6           were counting.

7           So I called the regional office. I said,  
8           well, this is what happened. I'm saying it  
9           failed, so I need some guidance on how to move  
10          forward with this. About an hour later, they  
11          called back and said, we called central office.  
12          We never had this happen before. They eventually  
13          agreed with me. They didn't have enough to make  
14          it pass. Even though they didn't have enough to  
15          make it fail. The regs say you need a majority, a  
16          51 percent majority to pass. So I won that one,  
17          but I haven't had a tie since. Luckily it was my  
18          tribe with 200 people and not a tribe of 15,000.

19          MS. DAUGHERTY: Now that you touched on the  
20          tribal number, maybe that should be one of the  
21          comments that we should expressly say that it's a  
22          majority, 50 percent plus one. That's my comment  
23          for the record. These things can happen. Those  
24          things do happen, obviously.

25          Once he or she has decided all of these

1 things in this last big bullet, then he has to  
2 issue a letter, but it has to occur within 45  
3 days. If it doesn't occur within 45 days, the  
4 secretary's approval shall be considered given.  
5 We try to avoid that 45 days. As a matter of  
6 fact, one of the regs, typically, with the work  
7 that we've done leading up to the election, that's  
8 usually much, much quicker than 45 days, because  
9 we already have reviewed the documents fairly  
10 thoroughly. In our region, it usually happens  
11 within just a couple days. Especially for some of  
12 the simple elections where they're voting on one  
13 or two small provisions, is typically within a  
14 couple of days. But 45 days is the outer limit,  
15 and we don't typically see us going out that far.

16 MS. SPRINGER: Unless by statute that we have  
17 to.

18 MS. DAUGHERTY: Exactly, yes, how it is in  
19 the statute, unless Congress makes a change.

20 MR. SMITH: I want to ask a question.

21 Going back to page 81.12, the holding the  
22 secretarial election at the same time as a council  
23 election. I mean -- and I didn't know if there  
24 was a rule on that or not. So many tribes either  
25 try to take it into consideration that might not

1 be so good an idea. Say a tribal election is in  
2 November, for example, so if you decide to hold a  
3 separate election in that same year, it seems to  
4 me you're trying to do it in spring. If you try  
5 to do it in the spring and have maybe three or  
6 four months in between the tribal election in  
7 November and say a secretarial election in March  
8 or something like this, well, seems to me you'd  
9 have to submit it in 2014 rather than 2015. I'm  
10 trying to get an idea even though you're saying  
11 it's okay to do it. Just to be practical, what  
12 would you suggest? Let's say for example, tribal  
13 elections, like my tribe is November of next year,  
14 and say we're looking at the tribal secretarial  
15 election and it's ready to be November right now,  
16 so wouldn't it be critical to do one in January  
17 when you submit, call for a secretarial election  
18 through the Bureau, or is it getting too close  
19 together?

20 MS. DAUGHERTY: Do you want them together?

21 MR. SMITH: No. We would like to see more  
22 separation, but it's late in the year. Otherwise,  
23 you wait until 2016 to have a clear separation,  
24 one in one year and one in the other. I know you  
25 say it's up to the tribe.

1 MS. SPRINGER: Yeah. It is up to the tribe.  
2 This is one of the things we were talking about to  
3 set up your time frames, and whatever. A lot of  
4 people will get confused, especially if your  
5 tribal elections have no registration process.  
6 So, you know, it's okay to ask -- talk to your  
7 Bureau folks out there, and say, you know, we're  
8 this far with this, and our election is here. We  
9 want to have it, you know, this far away to  
10 separate it. It can be worked out.

11 It's just when it's two elections that are  
12 held on the same day and they're having two  
13 different guidelines for you, you're supposed to  
14 vote or we have registration on one, and might not  
15 have registration on the other, that's where your  
16 tribal members get confused. They'll say, I just  
17 voted over here, and they didn't say anything  
18 about registering. They come to the secretarial  
19 election, and they find out. Well, you didn't  
20 register, so you're not allowed to vote.

21 In order to avoid the confusion, for the  
22 membership, it's best to work with your tribal  
23 government and have the tribal staff at the agency  
24 and figure out what's going to work best for the  
25 tribe. One of the things that you always want to

1 look at is when are you going to get the most  
2 voter turnout. If it's something the tribe really  
3 wants to pass, and they've got a lot of  
4 informational meetings and it's been explained to  
5 the membership, usually you don't have a problem  
6 with voter participation. If it's something that  
7 the tribe, you know, membership really wants  
8 governing -- but if it's something that, you know,  
9 the governing body may want but they really  
10 haven't explained it to the membership, then  
11 that's where you run into problems.

12 If the membership's starting to think, well,  
13 we didn't know anything about this. What are they  
14 trying to do to us? What are they trying to get  
15 away with? So they start getting suspicious, and  
16 then you lose that chance to really inform them  
17 openmindedly [sic]. So it's really best to be  
18 open with your membership when you're thinking  
19 about changing the constitution. You also need to  
20 know, well, this is the way it reads now. This is  
21 what we want it to read, and this is why. I don't  
22 know about you guys, but I'm always asking why.  
23 It's just better communication.

24 MS. DAUGHERTY: It is a challenge. You do  
25 have to make those decisions quickly to get the

1 maximum voter participation by putting It with  
2 this election that we know people are very  
3 interested leadership elections typically turn out  
4 for them heavily. Then the other school of  
5 thought is we really want to -- like what you were  
6 saying -- have the attention be on changing our  
7 governing body document that guides our nation.  
8 This is our supreme law of our land. It's  
9 definitely why we left that flexibility. You have  
10 to make those determinations about what is most  
11 important. I totally get that. I think that  
12 having the attention on just that and not be  
13 distracted by what's going on the leadership  
14 election is helpful. This allows that  
15 flexibility. It's a tough decision. It's all  
16 part of have -- you know, operating your tribal  
17 nation.

18 I guess my last thing was that you will make  
19 that decision, and if he waits too long after 45  
20 days, it will become deemed approved.

21 MS. DAUGHERTY: We'll take a break.

22 (A short break was taken.)

23 MS. DAUGHERTY: De, you get to take over just  
24 for two slides, because I'm stingy.

25 MS. SPRINGER: The next side deals with the

1 Oklahoma Indian Welfare Act. There are a few  
2 people here from Oklahoma.

3 Like I said earlier, the main difference  
4 between the IRA secretarial election process and  
5 the OIWA secretarial election process is that the  
6 proposed document, whether it's a proposed  
7 amendment or to the constitution, is approved  
8 before we have a secretarial election. So with  
9 the IRA, we do the election, and then we do the  
10 approval. Nobody's ever explained to me why, but  
11 that's just the way it is.

12 We follow the same steps. When we get that  
13 request, and get the voter list, get the  
14 resolution and everything, then we will go  
15 ahead -- with the request from the OIWA, we will  
16 go ahead and check and review and everything and  
17 then approve it. Then authorize the  
18 superintendent to conduct the election. So we go  
19 through all the same processes that are in part  
20 one. The only difference is when we conduct the  
21 election, and then we approve it.

22 We have election boards just like the other  
23 ones. We have election boards with two people  
24 from the tribe. All of the challenge periods, all  
25 of the registration periods, the way we conduct

1 the election for Oklahoma tribes is the same as we  
2 conduct elections for other tribes.

3 The only difference is when the Oklahoma  
4 tribes are having their election, they're actually  
5 ratifying that approval. So if it passes, then  
6 that amendment or document becomes effective on  
7 the date of ratification. We don't wait until 45  
8 to do an additional approval like we have 45 days  
9 in IRA constitutions. Because these elections are  
10 under two different statutes, the IRA is separate  
11 from the OIWA.

12 MS. DAUGHERTY: I think the other one, too,  
13 is that when the authorizing official does his  
14 level review, he's also just checking to see that  
15 the election is properly conducted just because of  
16 the issues De described. Steve is back.

17 MR. SMITH: Yes. I think our constitution --  
18 as far as amendments, our constitution Article 9  
19 Amendment, it has the two ways to propose, by  
20 business committee and then by petition. That's  
21 what I always tell Kiowa voters, and they, we need  
22 to change this or change that. I say, if you have  
23 a really good idea that you think up, don't go  
24 through the trouble of going out and getting 400  
25 voters to a the business committee meeting,



1 community because we can just submit it whenever  
2 we want to. But I don't think our constitution  
3 calls for secretarial election. That part isn't  
4 in it.

5 MS. DAUGHERTY: It may not.

6 MR. SMITH: So that was my question about the  
7 change in the regulation where tribes are going to  
8 be allowed to take out the part where we have to  
9 submit, you know, these amendments in the future.  
10 That says that will be conducted by a secretarial  
11 election.

12 MS. DAUGHERTY: If it's in there. If it's  
13 already in there.

14 MS. SPRINGER: If it's in there.

15 MR. SMITH: In our process -- I'll read it  
16 real quick -- this constitution and bylaws may be  
17 amended in an election -- it also has old  
18 language, it says, Commissioner of Indian  
19 affairs -- so we need to change that to Assistant  
20 Secretary of the Interior?

21 MS. DAUGHERTY: It still means the same  
22 thing, but, yes, it's old language.

23 MR. SMITH: There's other language that says  
24 he. You never know, it might be a she someday.  
25 These constitution and bylaws may be amended in a

1 general election authorized by the Commissioner of  
2 Indian Affairs and conducted by the general  
3 election board -- that's our election board --  
4 upon receipt of a resolution and enacted by the  
5 business committee, the Commissioner of Indian  
6 Affairs shall, if he approves the proposed  
7 amendment, authorize the general election board to  
8 conduct an election to permit qualified voters to  
9 either adopt or reject the proposal.

10 MS. DAUGHERTY: We've actually seen those  
11 with the solicitors where that occurs, where we  
12 authorize the election to occur when it has that  
13 kind of twist in the language, and we've actually  
14 had exactly what you're describing. Your general  
15 election board conducts it, and then it comes back  
16 to us to determine that the election was done  
17 right. We actually had one in our region that  
18 that's that way. It's not usual to see that  
19 explicit language like you have there, but it  
20 does. So that's what would occur. You're  
21 correct. Go to your solicitors in your region to  
22 have that discussion. I'm telling you in our  
23 region, we have something similar, and they do  
24 that exactly how it's described in there.

25 MR. SMITH: Then I guess we have to have at

1 least 600 people vote. That confuses some of our  
2 Kiowa voters. They think you have to have 600  
3 people vote to approve it. I think it means like  
4 if 600 people vote, if 301 approve it, then it  
5 passes.

6 My question was, if in the future if the  
7 KIWAs decided to, you know, amend this or remove  
8 the part about submitting it, would we be required  
9 to have a secretarial election, or would you be  
10 able to follow the process?

11 MS. DAUGHERTY: We'll follow that.

12 MS. SPRINGER: We would follow that.

13 MS. DAUGHERTY: That's an unusual twist. You  
14 don't always see that kind of language in there,  
15 but we do have a tribe in our region that does  
16 exactly that, yeah. You would have to come to us  
17 to authorize and call the election, but then you'd  
18 still follow that process.

19 MR. SMITH: I just wanted to comment on what  
20 you said earlier about clear language. We had  
21 that. It never should have gone on the ballot in  
22 November of 2011 -- I'm sorry, 2010 -- there was  
23 an issue vote. In our tribe, we do candidates and  
24 the budget in June, and then issues and/or  
25 amendments in November. So in November 2010,

1           there was a question like you said,  
2           multiple-choice about blood quantum. It was make  
3           everybody on the roll full-blood, 4/4, consolidate  
4           all of your Indian blood, whether it belonged to  
5           other tribes into one the tribe you belong to.  
6           Leave it at 1/4, which is what we are currently  
7           at, or lower it 1/8.

8           I wasn't in office yet, but why is there a  
9           multiple-choice question like this? The following  
10          June, I don't know why the election board put it  
11          on the ballot with the top two choices, which was  
12          leave it at 1/4 or lower it to 1/8. They put it  
13          on the ballot and if 600 voters voted in this  
14          election, this will be an amendment. I told the  
15          election board chairman, I was like, nobody's even  
16          submitted that to Washington. What you were  
17          saying earlier is like, if that was to go on the  
18          ballot to lower it from 1/4 to 1/8, then it should  
19          have on the question on the ballot shouldn't it be  
20          what the constitution currently says now, and then  
21          how that wording would be exactly changed to lower  
22          it.

23          MS. DAUGHERTY: That's typically the ballots  
24          we incur generally in our region would reflect  
25          that. We encourage them to have language as it

1 is, language of how it would change. That's how  
2 we encourage for sure.

3 MS. SPRINGER: You have to be careful when  
4 you're changing your membership criteria. Even  
5 though you want to change from, say you want to  
6 change from 1/4 to 1/8, you don't want to  
7 change -- say that was Article 2, Section 1B -- it  
8 said you had to be 1/4 Kiowa. Say you want to  
9 lower it 1/8, you're not going to change B to  
10 change it to 1/8. You want to add a section C  
11 which will say, after the approval of this  
12 amendment, those children possessing 1/8 or more  
13 Kiowa blood can be members. You want to keep the  
14 history of your tribe has developed through the  
15 years. Some tribes may start out with no blood  
16 quantum. Some tribes may start at 1/4.

17 In my tribe there was a period of time where  
18 there was no blood quantum, and we didn't realize  
19 that. Then when I used to work for the tribe and  
20 did enrollment, I noticed that these people aren't  
21 even 1/4, how did they become members? So I had  
22 to go back to the constitution. They were born in  
23 that time period where no blood quantum was  
24 required. So that's how they keep members.

25 So when you add in another section to change

1 that membership criteria, you're leaving your past  
2 membership intact. One of the things that's  
3 happened today and really makes me nervous is  
4 people think if they change the membership  
5 criteria and tighten it up, then they can go back  
6 and take people off the roll that don't meet  
7 today's criteria even though they met yesterday's  
8 criteria. They really shouldn't be doing that.  
9 Your amendment only goes from this day forward.

10 MR. SMITH: I understand. It's been  
11 confusing, because in that June of 2011 to lower  
12 it to 1/8, and we had 51 percent to lower it. So  
13 I believe my tribe definitely needs the voters, if  
14 it's that close, deserve the chance to vote on it  
15 in the right way. I'm always getting grandparents  
16 that, we passed that, we made the amendment, and  
17 my grandkids can't get on the roll. I have to  
18 tell them, actually that was on the ballot, but it  
19 wasn't an amendment.

20 The only other part in our constitution that  
21 specifically calls for secretarial election is if  
22 the business committee is permanently unable to  
23 raise a quorum, then the secretary will call the  
24 election. It says the secretary can conduct that  
25 election according to whatever rules they

1           prescribe.

2           So about a year ago, I was having informal  
3           discussions with people at both the regional and  
4           the agency. We were thinking that was going to  
5           happen. I remember him saying, we were thinking  
6           we would just make it that anybody who was over 18  
7           and if you have Kiowa ID, that you can vote. I  
8           was actually for that.

9           I was like, yeah, in a tribe of 12,000, we  
10          usually have 5- to 600 vote in elections. So I  
11          was like, if we can get anything over 1000, that  
12          would be great. Now that I'm seeing your  
13          presentation, if we did that, we wouldn't be able  
14          to make the threshold, because there is no way  
15          30 percent of all those people -- I'm glad that  
16          you have that in there, registered voters.

17          I would like to see in the future my tribe  
18          make it easier for more KIWAs to vote. I think  
19          currently you have to vote -- you don't have to  
20          vote in every election -- we have two elections a  
21          year -- but you can't miss two concurrent  
22          elections, or your name is taken off the voters  
23          roll. That probably needs to change, too.

24          You answered my question. If we do changes,  
25          we'll follow it as it is stated there. Thank you.

1 MS. DAUGHERTY: The last section is talking  
2 about the petitioning process. Once again, we  
3 were having a discussion up here. The petitioning  
4 process will also be in your amendment section if  
5 it's allowed. I can tell you right now, there are  
6 some constitutions that don't allow for a  
7 petitioning process. I think it's a good idea,  
8 because then you have a chance to have the people  
9 bring forth an amendment or a change or to revoke  
10 an entire document, replace the entire document.  
11 Sometimes it's not in there. There isn't a lot of  
12 constitutions, so if your constitution does allow  
13 for bringing forth a petition to make an amendment  
14 to whatever documents -- my example's always been  
15 constitutions -- if it does all the petitioning,  
16 this is the process to get that petition gathered  
17 and submitted so that an election can be called by  
18 a petitioning process.

19 For this process, it's very similar. It  
20 hasn't changed much. They're allowed in the  
21 governing documents or if the tribes doesn't have  
22 an existing governing document and the election to  
23 adopt such documents is initially under federal  
24 statute -- that's the example I gave you -- like  
25 perhaps a restoration would allow for that.



1           What may tribes petition for? Pretty much  
2           the same things: To amend or revoke the governing  
3           document, amend a charter, amend or ratify a  
4           charter under OAWA or other action authorized by  
5           its governing document or charter.

6           When you prepare the petition, it's just like  
7           many other petitions. There's just some special  
8           requirements that you have to make sure are in  
9           place. Once again, this is unchanged from before,  
10          but you submit the proposed document to the local  
11          Bureau official for technical comments. That's  
12          once again so we get to the point where we have  
13          the actual language to be voted on, so when people  
14          are signing the petition, they know exactly what  
15          the proposed change to the documents are or  
16          whether it's replacement or it's just a small  
17          sections that are amended. All the different  
18          things that you can do.

19          This process also requires that those  
20          petitioning appoint a spokesperson. So we can  
21          communicate with one person -- speaking to one  
22          person who's the leader of the petitioning  
23          process. Once again, the technical assistance is  
24          provided in the same way.

25          For who may petition? Any member of the

1        tribe 18 years of age or older whose governing  
2        documents or charger permits petitioning. Same  
3        thing for people that can sign. Who leads the  
4        petition process? I already discussed that.  
5        That's a spokesperson.

6                Here's what the petition must include. It  
7        must include a summary of the petition purpose,  
8        the proposed document, the proposed amendment,  
9        number of lines for each side to print their legal  
10       name. And then you have this process at the  
11       bottom of each page of signatures you're  
12       collecting, it's basically a declaration statement  
13       from a signature collector, you can have somebody  
14       go around and say, hey, I collected these  
15       signatures, and I'm going to tell you that --  
16       there's a statement on there -- that we can  
17       provide to you, whoever the petitioner is, when  
18       you're getting those documents ready to go around  
19       and start collecting signatures. Then it also has  
20       to be notarized. A notary says, hey, this person  
21       is signing that they agree that they collected all  
22       these documents. The notary will just witness  
23       their signature at the bottom of each petition  
24       page.

25                There is no limit on the number of pages as

1 long as the pages meet the requirements.

2 Here's the one interesting thing. This  
3 hasn't changed at all, but I'm just to highlight  
4 it, is that the spokesperson may ask the local  
5 Bureau official how many signatures are required.  
6 So what you do is your local Bureau official,  
7 typically the superintendent, the superintendent  
8 will work with the tribe to collect what that  
9 number is. Sometimes, honestly, there have been  
10 occasions when the tribe did not want to  
11 participate in this process. So we literally have  
12 gotten to the point where we write a letter and  
13 say, hey, look, according to our records, there's  
14 something you submitted to us, and we believe your  
15 membership is 10,000. Unless we hear from you in  
16 like 30 days, we are going to honor this  
17 requirement we have under our regulations. Let  
18 this petitioner know that they need at least this  
19 many signatures. Then sometimes we'll hear back  
20 from them to change the numbers, and sometimes we  
21 won't. That's sort of been our solution to that  
22 issue. Typically, that doesn't happen. There  
23 have been some occasions where it does, and that's  
24 how we address it.

25 Go ahead, Mr. Smith.

1 MR. SMITH: When the government decides  
2 numbers that way, is it a formula based on the  
3 size of the membership?

4 MS. DAUGHERTY: That's what it should be.

5 MS. SPRINGER: It depends on what your  
6 constitution says, too.

7 MR. SMITH: I'm assuming that when you do  
8 that, the constitution of that tribe doesn't say  
9 anything about it.

10 MS. DAUGHERTY: What we're talking about is  
11 getting the correct number to calculate the right  
12 number of signatures they need to collect on the  
13 petition. So they have to give us the original  
14 number to calculate the percentage.

15 MS. SPRINGER: If your amendment section says  
16 30 percent of your membership are 18 years of age  
17 and older, then say you've got 600 that are 18  
18 years of age and older, that 30 percent will be  
19 voting.

20 MS. DAUGHERTY: No. That's for the voting.  
21 I think the --

22 MR. SMITH: Our petition specifically says a  
23 number, 400 signatures.

24 MS. SPRINGER: They changed that. They moved  
25 it to 20 percent.

1 MS. DAUGHERTY: That leads me to my next  
2 point.

3 MR. SMITH: I assume what you're saying is  
4 for tribes that don't have a specific number in  
5 their constitution, and somebody has to figure it  
6 out.

7 MS. DAUGHERTY: This a good point to bring  
8 us, and I'm glad we're doing this, because this  
9 emphasizes this point. You have to know what  
10 you're calculating the percentage off of.

11 If you'll notice this next bullet -- I would  
12 highlight this, because we really do need your  
13 input on this -- for a tribe adopting a governing  
14 document for the first time, the petition -- this  
15 is how the regulation and how we wrote them -- the  
16 petition must have the signatures of 20 percent of  
17 the tribal members 18 years of age or older. The  
18 current regulations require 60 percent, because  
19 whoever drafted the first regulations clearly  
20 wanted some sort of emphasis that, hey, this is  
21 the first time this document is being adopted. We  
22 want a lot of participation to make sure this is  
23 the will of the people.

24 As it's drafted, we put 20 percent. That --  
25 I'm not going to say it wasn't me, but I do think

1 it needs to be higher than 20 percent. This isn't  
2 always my call. This is the perfect situation  
3 where commentary to the regs is an important  
4 thing. What do the tribes think?

5 MS. IRON CLOUD: We want to hear from the  
6 tribes on this.

7 MS. DAUGHERTY: You can tell us even right  
8 now, or I'll show you how you can also submit  
9 comments after the fact. We're curious what  
10 tribes think on this particular issue. When  
11 tribes adopt it for the first time, what should  
12 that percentage be for collecting of petition  
13 signatures. Otherwise, it might already be in the  
14 document, but we're going to have to come to some  
15 decision as to whether that reflects the  
16 percentages that he was referencing. Is there a  
17 minimum default amount, and then the tribal number  
18 can be higher? So we're looking for some input on  
19 that. Is there a minimum default amount for this  
20 figure? I believe the tribes should be allowed to  
21 be higher. We would totally agree with that. We  
22 definitely need your input on this one, because  
23 we're not quite sure what to do with it.

24 MS. SPRINGER: One of the things you're going  
25 to run into with such low percentages, you know,

1       you may have two groups that want to be the  
2       petitioning group. There are ones that want it to  
3       be known that they put this thing forward. They  
4       may be a group that is in the minority. The other  
5       80 percent may not like what they're proposing.  
6       But if they only have to get 20 percent of your  
7       membership, then that 20 percent is going to be  
8       guiding what everybody else does.

9               One of the things that happens is even though  
10       you have a chance to register to vote in this  
11       election and whatever, some people will say, well,  
12       it's not going to do any good, so I'm not going to  
13       register. I'm not going to vote. Then all of a  
14       sudden, there's a challenge. We can challenge  
15       that. If you didn't register to vote, you have no  
16       challenge.

17               So we need to make sure that these numbers  
18       are numbers that show the will of the people. To  
19       me, 20 percent was lower than I ever thought of.  
20       We all thought 60 was a good number, and it had  
21       been 60 for a thousand years. Then when we got  
22       this last version, it said 20 percent. I'm like,  
23       what? We're not the last say so, but it depends  
24       what the tribes want.

25               MR. SMITH: Is that 20 percent of membership

1 or registered voters?

2 MS. DAUGHERTY: 20 percent of membership.  
3 This is for adopting -- the special case where  
4 you're adopting the document for the first time,  
5 you're petitioning for that document for the first  
6 time, just keep that in mind. That's definitely  
7 where we're looking for some commentary.

8 As far as submitting petitions, one of the  
9 regulations we put in place was petitioners have  
10 one year from the date of first signature to  
11 gather the required signatures. This is just to  
12 make sure there is some eventual closure to the  
13 process, and that also -- here's an example, let's  
14 say you didn't have a deadline of a year, and the  
15 tribe has just recently passed an amendment to  
16 lower the blood quantum to 1/8. So if you wait  
17 five years to let people collect signatures, you  
18 may have a bunch of new members that come on board  
19 that aren't reflected in the process. It just  
20 prevents the process from getting stale. That's a  
21 requirement to prevent that from happening.

22 Then a spokesperson would submit the petition  
23 once it's completed to their local Bureau  
24 official. Then they check, you know, they write  
25 down when the petition was filed, post a copy of



1 the petition for 30 days with the challenge  
2 instructions, notify the petitioners in writing of  
3 the number of signatures received, and a statement  
4 that signatures may not be added or withdrawn,  
5 provide the tribe's governing body with a copy of  
6 the petition, and then providing technical  
7 comments if needed at that point.

8 Challenges to the petitions. Who may  
9 challenge? Any member of the tribe 18 years of  
10 age or older. It must identify the location of  
11 the signature, like which page is it on, provide  
12 supporting documents for what the basis is of the  
13 challenge, and then the local Bureau official must  
14 confirm that there are a valid number of  
15 signatures on that petition, and make sure the  
16 petitioning procedures are followed. So for  
17 example, that example I gave you of let's say  
18 somebody turns in a bunch of pages with  
19 signatures, and there's no certification at the  
20 bottom that the person collected those signatures,  
21 as an example.

22 Once the authorizing official makes a  
23 decision, they have to make a decision within 60  
24 days of the official filing date. So when a  
25 petition comes in, they put what's the official

1 filing date. The authorizing official has 60 days  
2 to make a decision whether to call that election.  
3 That decision is final for the department. So  
4 then once the authorizing official says, okay,  
5 we're calling an election, we're right back into  
6 the other process, that we just spent an hour and  
7 a half going through, where the election is  
8 conducted just like an election as if it had been  
9 called by the governing body of the tribe.

10 That petition is only valid for one  
11 secretarial election.

12 De, do you want to say something? I saw you  
13 waving a finger at me.

14 When De says jump, I say how high?

15 That's a brief overview of the petitioning  
16 process, how you collect petitions, and once that  
17 petition is turned in and it's valid, then the  
18 process just follows the regular secretarial  
19 election process.

20 MR. MELENDEZ: I was kind of looking at this  
21 whole change, you know, when we go back and  
22 explain it to our tribal councils, they're going  
23 to ask, what is the most significant change to  
24 everything you're talking about here? So are we  
25 saying that petitions weren't really allowed

1 before, and now we're entertaining that they can  
2 be allowed? Just general citizens can petition?  
3 As you know, some tribal councils have referendums  
4 in them, which really when you vote on that, I  
5 guess that's the secretary also if you have a  
6 referendum in your constitution.

7 MS. DAUGHERTY: No. A referendum is  
8 typically a whole separate process where what's  
9 most common for use of a referendum is to see if  
10 people either want to recall a resolution that the  
11 tribe has passed, or else to propose some sort of  
12 law. That's typically run by the tribes.

13 MR. MELENDEZ: I thought that still requires  
14 the --

15 MS. DAUGHERTY: It's possible there's a  
16 constitution out there that might say that.  
17 That's totally possible. Typically, a referendum  
18 vote is entirely a tribal process. Typically, to  
19 look at a resolution or ordinance, you know, of  
20 law of the tribe, to either propose it or if what  
21 has already been passed, to challenge it, so the  
22 people can challenge it. That's typically what a  
23 resolution is.

24 MR. MELENDEZ: So petitioning is not new?

25 MS. DAUGHERTY: Petitioning is not new. It

1 all depends on whether it's allowed in the  
2 amendment section. The amendment section will say  
3 if petitioning is allowed. A lot of constitutions  
4 allow for petitioning, and some do not. Some  
5 don't allow that option. So if the option's not  
6 allowed, this doesn't matter. If it is, then it  
7 does.

8 MR. MELENDEZ: So we have to look at our  
9 constitutions?

10 MS. DAUGHERTY: Exactly.

11 MS. SPRINGER: Look at your amendment section  
12 of your constitution. A lot of them will say, by  
13 resolution of the tribal council, or then it will  
14 say a petition by a certain percentage of the  
15 adult membership.

16 MR. MELENDEZ: Petitioning for what?

17 MS. SPRINGER: To amend the constitution.

18 MR. MELENDEZ: Amending the constitution,  
19 that might be something different than just people  
20 petitioning in general?

21 MS. DAUGHERTY: Exactly. Yes.

22 MS. SPRINGER: You would follow your tribal  
23 procedures for that. The secretarial election  
24 process is just for amending the constitution if  
25 your constitution requires that.

1 MS. DAUGHERTY: Or like a charter.

2 MR. MELENDEZ: The reason I say that is as  
3 soon as we go back to tell our councils that issue  
4 on petitioning, there's so much dissension from  
5 the international congress and our board meeting  
6 of recalls and so many things going down, we start  
7 raising petitions by just general citizens, I can  
8 already see the unrest that's happening that I see  
9 in different areas having to deal with us fighting  
10 amongst ourselves. As soon as you get at some  
11 point the petition to change the constitution to  
12 oust the regular council members -- I'm trying to  
13 sort this out as to what it actually means and  
14 push it to the forefront. The people that are  
15 factions on reservations jump at this the way to  
16 more so attack the sitting council. So I'm kind  
17 of looking at this in that light as, okay, what  
18 does this actually mean?

19 I'll take this back to our tribal council and  
20 say, okay, are we going to see more petitions to  
21 change our constitution because they're not happy  
22 with the sitting tribal council, so they'll look  
23 at it as, hey, is this some way that we can change  
24 something to change whoever's in office now? I'm  
25 just saying, as we start to talk about petitioning

1 and all this stuff, the thought in my mind and by  
2 the tribal council is dissension now causing  
3 (inaudible) amongst ourselves? That's what I was  
4 wondering about this. Thank you.

5 MS. DAUGHERTY: That makes sense, and you  
6 really have raised an important issue. There is a  
7 lot of confusion about those issues about the  
8 processes and tribal processes that are recall,  
9 impeachment, those sorts of things for leadership.  
10 Then the other process, referendum, which is a  
11 vote, like I said, on an ordinance or resolution.  
12 Then this process, which is for different  
13 governing documents. Typically you see the most  
14 action constitutions. But there's a lot of things  
15 to know.

16 I have a friend named Tracy who has a story  
17 out there called Looking for Superheroes. Apply  
18 for this job, we're looking for superheroes.  
19 That's the challenge I think of leadership in  
20 Indian country. You're expected to learn and know  
21 a whole bunch of things, so if you're confused  
22 about where different things apply, that's only  
23 natural. There's a lot of different rules at  
24 different times. We have contact information in  
25 here for you, and you're free to contact any of us

1 at any time. I have some cards up here, and we're  
2 happy to help in any way we can help. Yeah, a lot  
3 of this does start and depend on what's in your  
4 governing document. So that will be something  
5 where you start is go back and look at your own  
6 documents and say, okay, does our document and  
7 amendment section require secretarial involvement,  
8 then we're going to take a look at these  
9 procedures.

10 Anybody else? Anybody else have questions?  
11 I will answer as many questions as you want. I'm  
12 not throwing anybody out.

13 MR. MELENDEZ: There's a lot of people that  
14 don't know less than I do about what we're  
15 talking. I saw where you're going to schedule  
16 some training in Rockland, California. I think  
17 that's November or something.

18 MS. DAUGHERTY: It's at the back of your  
19 packet.

20 MR. MELENDEZ: I'll try to get some people  
21 out of the west coast to come. I'll try to get  
22 some people from our election committees. In  
23 fact, I'll be calling them probably Monday to make  
24 sure we go to that. They work with this every  
25 day, so they know more know than I do about where

1           they stand as far as some of these changes. So  
2           we'll on pass that on. Will it be Sacramento and  
3           Rockland?

4           MS. DAUGHERTY: That's correct, yes.

5           MR. MELENDEZ: Thank you.

6           MS. IRON CLOUD: It's a consultation,  
7           actually.

8           MS. DAUGHERTY: It's a consultation. It's  
9           like training. You get to know what the new regs  
10          will look like.

11          MS. SPRINGER: You might want to talk to  
12          Charlotte Johnson out of Phoenix. She's your  
13          regional tribal officer. If you want  
14          constitutional training, I know they do give --  
15          BIA does give constitutional training out there.  
16          Just request it. I don't know when's the last  
17          time she's done it, but you might check with her  
18          and see if she's got it scheduled.

19          MS. DAUGHERTY: She's also got a lot of  
20          experience, too.

21          MS. GUERIN: Who does the training for the  
22          Portland area, constitutional training?

23          MS. SPRINGER: Check with Greg Norton. I  
24          know he has some kind of training set up. I'm not  
25          sure of the dates. He wanted me to come and help



1 him, but I wasn't available at that time. Check  
2 with Greg at the regional office, and he can tell  
3 you.

4 MS. DAUGHERTY: Honestly, when you get to the  
5 point where you're submitting language or thinking  
6 about submitting language, definitely contact your  
7 superintendent, your regional office, and let them  
8 know if you could come out and explain this  
9 process to us, because we're starting down this  
10 road. We come go out all the time to do that.  
11 Sometimes the tribe will start on the process, and  
12 they'll back off, which is okay. We don't  
13 consider it wasted at all. We're saying the  
14 process is here, they just decide not to engage  
15 right now. We're happy to do that either way.  
16 Whether it culminates in a vote or the tribe was  
17 just exploring it and then has other priorities.  
18 We're happy to do that.

19 MR. SMITH: So we have to go through that to  
20 follow the chain. It's like we could just contact  
21 these two knowledgeable ladies who seem to know so  
22 much about that?

23 MS. DAUGHERTY: Flattery will get you  
24 everywhere.

25 MR. SMITH: Seriously, if I have questions

1       about language, I would much rather be able to  
2       send you an e-mail with all of your experience but  
3       I guess as the way it is I have to go to my  
4       superintendent first, and then they have to  
5       forward it up to you?

6               MS. SPRINGER: You're in a good spot, too,  
7       because Terry Bruner is your deputy director out  
8       there. Terry's got a lot of years of tribal  
9       government service, too. Terry's been one of my  
10      go-to people. We've got Terry. Suzanne retired,  
11      so Sherry was still fairly new. When I say fairly  
12      new, I mean less than 10 years. You do have some  
13      good people within Southern Plains that could help  
14      you out.

15             MR. SMITH: Okay.

16             MS. DAUGHERTY: I assure you that when a lot  
17      of times people run into quirky stuff, they call  
18      De or I anyway, so if it's quirky, they'll  
19      probably call us anyway. They do a lot. Any  
20      other questions or comments, come on up.

21             MS. DARNELL: The question was if a tribe  
22      submits to get the consultation, get the technical  
23      assistance portion started and hopefully it  
24      wouldn't take very long, but if we started it  
25      under the current rule, but then the new rule went

1 through, would we be under old rule or the new  
2 rule once we requested to have the tribal council  
3 pass a resolution?

4 MS. DAUGHERTY: I certainly can't answer that  
5 on the fly.

6 MS. SPRINGER: I would say we would go ahead  
7 and process it even though -- technically we're  
8 dealing with problems with 90 days or 180 days.  
9 It's not necessarily the tribe, it's the tribal  
10 attorney. If the tribe submits a resolution with  
11 the request and everything, we're still going to  
12 have to process it. Whether we get it done today  
13 or tomorrow, we're still going to have to follow  
14 the process. Whether we get it done today or  
15 tomorrow, we're still going to have to go forward  
16 with that process.

17 We're basically in the same boat, because we  
18 wouldn't have your membership, so we'd still have  
19 to request that listing from you. So what we're  
20 trying to do with these regs is put all of the  
21 review and technical assistance, put it in the  
22 forefront so whenever the tribe has come forward  
23 with an actual request for the election, all the  
24 amendment language has been settled. You already  
25 know if it's contrary to federal law -- and

1           because the process, hopefully, your membership  
2           knows it's coming up and what the issues are, or  
3           whatever. So when you begin that resolution with  
4           the actual language and the membership list, we  
5           can just go about getting it done.

6           MS. COEN: I don't think that the change in  
7           the regs would change the kind of request that  
8           you're asking. I don't think that you would get  
9           foiled by the new regs unless it dealt with the --  
10          for instance, like this petitioning process, if  
11          you don't have an IRA constitution already, you  
12          would then have to follow the new regulations when  
13          they come in. As De said, if you already have an  
14          IRA constitution --

15          MS. GUERIN: Yes, but I think the technical  
16          assistance (indecipherable).

17          MS. COEN: I think that the technical  
18          assistance that the Bureau gives and the actual  
19          conduct of the election, that part, as far as your  
20          eligible voters, your registered voters, all of  
21          that is the same. The clarification on calendar  
22          days, for instance, and what happens if it's on a  
23          weekend. If the election is held after the new  
24          regs are adopted, those kinds of time frames would  
25          apply. I don't think -- De, you can confirm or

1 Danny -- I don't think that a tribe is going to be  
2 inconvenienced by the adoption of the new regs if  
3 you already have an IRA constitution.

4 MS. DARNELL: I think particularly what I was  
5 interested in was that how you talked about the  
6 difference in the polling place language. That  
7 seems like it kinda would be harder depending on  
8 whether the tribe wanted the polling places or  
9 they wanted the mail-out ballot. Anyway, that's  
10 just what I was kind of interested in.

11 MS. DAUGHERTY: We'll have to watch the  
12 timing on that, but for sure, that, to me, will be  
13 the biggest issue. So to me, if I was answering  
14 this question in front of the Supreme Court and  
15 they ask you something you don't know off the top  
16 of your head, I'll research that issue, and I will  
17 get back to you. We'll definitely have some  
18 conversation about that, because we do need to  
19 have a definitive answer if everybody's going to  
20 be in the process when we get to the point where  
21 this might be approved. I think you just kind of  
22 raised one where you're right, there's a funny  
23 issue there.

24 That's where the issue will come up. You'll  
25 have to decided at the mailing of the notice. So

1 if your notice packet has already gone out before  
2 the regs come in, then you won't be affected by  
3 it, because your voters' packet will already have  
4 said how that election will occur. That will be  
5 right after your registered voter list. I think  
6 that timing will work out, because the notice  
7 packet will have already been mailed out. But if  
8 it doesn't come to a place until the notice  
9 packet's out, then the regs come out, before the  
10 notice packet goes out, then it will be in the  
11 regs. That's where I think is where the turning  
12 point myself.

13 MS. COEN: I guess the question is: Is it  
14 that you want polling places as opposed to just  
15 mail out?

16 MS. DARNELL: I think that has been the  
17 question that has been raised by the council. It  
18 seems like if there's not a particular specific  
19 interest saying we want polling places in the  
20 response, but not that specific, but just the idea  
21 of are there going to be polling places or not.

22 MS. SPRINGER: Do you have polling districts  
23 in your constitution now?

24 MR. URBINA: No. So our original secretarial  
25 election had polling places on the reservation but

1           also in our traditional communities located in the  
2           state of Arizona. So they're trying to figure out  
3           whether these communities would be included rather  
4           than by mail out.

5           MS. SPRINGER: Do you have a reservation?

6           MR. URBINA: Because your polling places  
7           can't be outside of the reservation, and that  
8           would still be true after this? Okay.

9           MS. DAUGHERTY: Unless you make a comment  
10          that says, that shouldn't be true. We can address  
11          that situation. Absolutely.

12          MR. URBINA: They're considered Native  
13          American communities.

14          MS. SPRINGER: It's considered Indian  
15          country?

16          MR. URBINA: They're considered Native  
17          American communities.

18          MS. DAUGHERTY: So is that Indian country?

19          MR. URBINA: Maybe.

20          MS. DAUGHERTY: I would argue that case.

21          MR. URBINA: That's what we would argue for  
22          sure, especially if they want polling places.

23          Another issue is that there is a current  
24          petition out by a group of voters. There was  
25          opinion written a couple weeks ago that they would

1 be given, I don't know, as much time as they  
2 needed to come up with the signatures to start an  
3 election. This new regulation kind of cuts it off  
4 at one year. Would they be grandfathered, that  
5 specific group?

6 MS. SPRINGER: Have they started collecting  
7 signatures?

8 MR. URBINA: They have for about a year.  
9 They didn't get enough signatures, so that kind of  
10 died. However, they've been told that once they  
11 start again to collect signatures, they would have  
12 as much time as they did to collect the  
13 signatures.

14 MS. SPRINGER: I think they were asking for  
15 five years.

16 MR. URBINA: Five years, exactly.

17 MS. SPRINGER: Then I think they said two.

18 MR. URBINA: Okay. We don't have a copy of  
19 that letter.

20 MS. SPRINGER: That was a conversation I had.  
21 I don't know if it actually went out in writing.

22 MS. DAUGHERTY: What typically happens when  
23 we transmit the number of signatures needed, we'll  
24 also put a deadline in there now. That's why the  
25 regs have a specific deadline in there. The



1 conversation we're having now is how long before  
2 the signature-taking period gets stale. So as it  
3 is now, what typically happens is we set out the  
4 number of signatures you need for the petitioning  
5 process, and this is how long you have to gather  
6 them just to have an ending.

7 You're certainly free to submit that comment  
8 about those issues regarding both petition  
9 collections, signature collection time frame, and  
10 polling sites.

11 MR. URBINA: Can you maybe highlight the  
12 actual changes as well? I came here late, so I'm  
13 not sure if there's a way to designate.

14 MS. DAUGHERTY: Yes. If you want, we could  
15 even do it right after. One of the ones was a big  
16 one for us, from our perspective, is that we  
17 really finalized and highlighted the language of  
18 what a tribal request is, because there was a lot  
19 of confusion about that in the old regs about the  
20 when the time clock started ticking.

21 So that's why we put that as when we get a  
22 resolution from the governing body of the tribe  
23 and we get the exact language to be voted on and  
24 we get the voters list with the names and  
25 addresses. So the tribal request became a much

1 more clear definition so that we would know the  
2 election is ready to be initiated and then have  
3 the time frame to get it done within it so that it  
4 doesn't drag on forever. The tribal request was a  
5 biggie. Then the very issue she brought up, which  
6 was about the mail out and the polling sites only  
7 if it's in the tribe's document, I would say  
8 that's the other real big change.

9 MR. URBINA: When you say document, do you  
10 mean constitution or laws? This says laws. So if  
11 our election ordinance says polling places, would  
12 that be different than the document?

13 MS. DAUGHERTY: Is it your elections  
14 ordinance for leadership elections?

15 MR. URBINA: Yeah.

16 MS. DAUGHERTY: Which is different than these  
17 types of elections unless -- this is like a law  
18 school nightmare problem. Unless you have a  
19 constitution like Mr. Smith over here where it  
20 says otherwise. So really it can be complicated.

21 MS. SPRINGER: That's why we put it in there.

22 MR. SMITH: I was six when this was adopted.

23 MS. SPRINGER: That's my point. If your  
24 constitution's amendment section requires polling  
25 places. And then that only pertains to elections

1           regarding amendments. It doesn't pertain to your  
2           tribal elections or your referendum elections or  
3           whatever else you have in your document. We're  
4           only concerned about your amendments to your  
5           constitution.

6           MS. GUERIN: I'm alarmed that only the tribe  
7           can submit proposed documents and seek the  
8           technical assistance from the BIA. An authorized  
9           official -- I guess it's a regional director --  
10          but a tribal request. Okay.

11          The trouble I have with that is what I  
12          mentioned earlier. The people in my community do  
13          not trust our council now. They have a majority  
14          of six voting every time together, so they're  
15          always outvoting the ones who actually are  
16          advocating for us. So we the people would like to  
17          call for a secretarial election, and we're not  
18          going to get a majority vote with the council.  
19          There's no way we can get past that collective.

20          MS. SPRINGER: If you're going to petition  
21          for a secretarial election to amend your  
22          constitution, that petition comes to the Bureau.  
23          It doesn't go to the council, it comes to the  
24          Bureau, and the Bureau is actually the one that  
25          looks at the petition to make sure that it has the

1 correct number of signatures, there are not  
2 duplicates. That process, the petition process  
3 we're talking about here is our process.

4 MS. GUERIN: Okay. Well, our superintendent  
5 is buddies with that little group in tribal  
6 council. What happens is if there's misconduct on  
7 his part? Who do we go to?

8 MS. DAUGHERTY: You're talking about the  
9 petitioning process, though. You want to initiate  
10 a petitioning process? If you look, even though  
11 it says that in subpart D, we also have to look  
12 at -- and this just might be a lack of clarity on  
13 this particular slide, so we'll take a look at  
14 that -- but if you look at subpart F, which is the  
15 petitioning process, it talks about you submitting  
16 the petition.

17 Then also, if you don't feel safe, then you  
18 also go to section 81.4, which is the definition  
19 section. If you look not at the PowerPoint but  
20 look at the whole regulation that you've got also,  
21 81.4, the definition of a tribal request, covers  
22 both of those options. It covers the governing  
23 body bringing something, and it covers a  
24 petitioner coming forward. So the tribal request  
25 definition covers either option. So just because

1 subpart D PowerPoint says this, it doesn't mean  
2 that's not what a tribal request is. A tribal  
3 request can be either, and that's covered in the  
4 definitions.

5 MS. GUERIN: Thank you.

6 MS. DAUGHERTY: You're welcome.

7 MR. MELENDEZ: I know that for secretarial  
8 election, we had a draft and it was reviewed by  
9 Charlotte Johnson. It was actually sent there.  
10 That's on the tribal side. Now, on individual  
11 petitions, basically they would have to have a  
12 point person, wouldn't they? I mean because if  
13 the tribe sends it in and it's reviewed by  
14 whoever's in the area, and they can't say whether  
15 it lines up with the constitution or whether  
16 they're reviewing it, then it would seem to me  
17 that individual petitions would have to have a  
18 point person, and they would have to have that  
19 reviewed by an area or somebody to basically see  
20 if it lines up with the constitution similar to  
21 how the tribe has that technical assistance.

22 MS. SPRINGER: The petitioning process that  
23 the superintendent does or local Bureau official  
24 does, is to look at sufficiency of the petition  
25 whether or not they have enough signatures. They

1 actually review the petition, take off the  
2 duplicates, and also check to see if the person  
3 that actually signed the petition is a member of  
4 the tribe.

5 After they do all that, then they send that  
6 petition to the regional director. The regional  
7 director, then the regional director will decide  
8 whether or not that petition is sufficient. If he  
9 finds that it is sufficient, then we will take the  
10 proposed amendment language, and we'll go through  
11 the same process of legal review, and whatever.

12 We're also asking that if they're going to  
13 submit an amendment by petition, that that  
14 spokesperson for the petitioners start that  
15 process before they gather the first signature.  
16 You may spend a year gathering signatures just to  
17 come in with an amendment that makes no sense.

18 MS. DAUGHERTY: We do give technical  
19 assistance to spokespersons.

20 MS. GUERIN: Thank you.

21 MS. TIMECHE: We do work with a number of  
22 tribes on this whole issue about revising their  
23 constitutions. Two big things come up: One is to  
24 provide clarity on it. That has really to do not  
25 so much to me but spell it out in your documents

1 and in these hearings.

2 But when they make a decision to then remove  
3 that clause that is there, that's their  
4 responsibility. You know, under the referendums,  
5 it's the Bureau's cost. But when they make a  
6 decision to then remove that clause, then it's  
7 their financial responsibility. For future  
8 changes to their constitutions, once  
9 (indecipherable) is taken out, any change that  
10 they're going to make to their constitution is  
11 their financial responsibility.

12 I just wanted to make sure that we repeat  
13 that several dozen times for tribes and say, you  
14 know, once the BIA is out in terms of the election  
15 cost, that that becomes your process. So you got  
16 to have a really good election process in place  
17 currently. If you don't have an election code,  
18 you might want to think about creating an election  
19 code. That's one point.

20 The second thing that also gets raised -- and  
21 you provided this verbally at the very beginning,  
22 which I appreciate -- I noticed that there were  
23 some comments in the document that you gave us,  
24 the Federal Register document you gave us, what  
25 would be really helpful, I think, is helping the

1 tribes to understand about what happens when they  
2 decide to remove that clause the BIA is not going  
3 to fund them anymore, not going to recognize them,  
4 to alleviate all of those fears. I think that  
5 just needs to be an educational piece on that so  
6 that it gets said from your viewpoint. It's gets  
7 said, you know, it's publicized widely about what  
8 it is. That's a big issue that gets raised every  
9 time they want to talk about that. If you want to  
10 have full control, that's one of the ways you can  
11 do it. Those are my two comments and  
12 recommendations.

13 MS. DAUGHERTY: I agree with you on both of  
14 them, Joan, that we should add some sections.

15 MS. SPRINGER: We did talk about it, and we  
16 have talked about it. One of the things -- even  
17 the conduct of the secretarial election, if the  
18 tribe is contacted or contracted, they've gotten  
19 the money from the BIA to do that function. So  
20 unless regional offices kept some money back for  
21 secretarial elections, that cost really should go  
22 to the tribe. But if the Bureau has money on  
23 hand, they can go ahead and fund it. That's one  
24 of the things tribes need to keep in mind is once  
25 you contact or contract that function, your tribal



1 government function, you're responsible for the  
2 cost of the election. So if the BIA has money,  
3 sure, we'll try to help you out, but that's not  
4 always going to be a done deal. That's something  
5 you need to think about.

6 One of the questions that came up when she  
7 was talking about once we take secretarial  
8 approval out of the constitution, people are  
9 saying, well, if the IRA no longer applies to us,  
10 what about our land? What about this? What about  
11 that? When you take secretarial approval out of  
12 your constitution, it just makes that constitution  
13 a non-IRA constitution, which means we don't have  
14 to approve your future amendments. It doesn't  
15 have anything else to do the rest of the  
16 provisions of the IRA.

17 MS. TIMECHE: So then put that in writing  
18 someplace so that they see it clearly that that's  
19 what the BIA is saying.

20 MS. DAUGHERTY: I'm already drafting it up  
21 here, Joan.

22 MS. SPRINGER: We can talk about that. When  
23 we talk about the cost of it, and whatever, and it  
24 was like, well, if we really don't have money when  
25 an election comes up, we try to go to the tribe.

1 It just depends on your region. Some regions  
2 will, oh, yeah, we can do that. Just tell us what  
3 we need to do. Then the other ones are, you know,  
4 that's the BIA's responsibility. We don't care if  
5 we have the money. It's the BIA's responsibility.  
6 So it just depends on who you're working with,  
7 what region you're from, or whatever. It differs  
8 from one region to the next.

9 MS. PEWITT: I'm telling Dolly Pewitt with  
10 the Seneca Cayuga Nation. We just had a  
11 secretarial election last May. So just wanted to  
12 say a little bit about our experience. Really,  
13 everything you're proposing was pretty much the  
14 way we did ours. We started with working with our  
15 Bureau I think last summer. We would just meet  
16 with them, bring our proposed resolutions, they  
17 would sit down with us, we would have discussion  
18 on the language, why we needed it, what worked,  
19 did it work with other parts of the constitution.  
20 At the same time, we were working it through, the  
21 vote, through our newsletter and through a series  
22 of letters of our chief and other means. Then  
23 when we had our vote in May, all five passed.

24 This is something we've talked about doing  
25 for 15 years. But it also helped us, I think,

1 just in our election process overall, because you  
2 were talking earlier about when to schedule the  
3 elections. We were concerned because we had this  
4 election May 15th, and then we had our regular  
5 election June 7th.

6 We really had to make a big push to get the  
7 voter registration out, but also to get the word  
8 to our voters to discern what the two elections  
9 were, because we don't have voter registration for  
10 our tribal elections. But then when we did the  
11 summer one also is we went back and rewrote our  
12 election rules. We used a lot of the language  
13 from CFR 2581.

14 So now we're going to have another  
15 secretarial election I think this spring, so  
16 hopefully, we're all educating our voters and  
17 getting higher participation. We had 85 register  
18 in May. We still have not had even 700 vote in  
19 our regular elections. We had over 700 in the  
20 general election. We had a referendum vote  
21 yesterday, and we had over 1000, which is our  
22 highest voter turnout ever. Just our experience.

23 MR. SMITH: What's your membership?

24 MS. PEWITT: We have 5523. We have about  
25 3500 eligible voters, but we only have an address

1 for maybe 2800.

2 MS. DAUGHERTY: I love to hear stories like  
3 that.

4 MR. SMITH: Like I said, we're 12,000. I  
5 don't know how many are eligible, but we're  
6 getting between 5- and 600 voting in most  
7 elections.

8 MS. DAUGHERTY: Hopefully, you hear her  
9 story. That's what we like to see is that the  
10 more voter education you do, the more transparent  
11 the process, you're going to see higher and higher  
12 numbers. The more you involve people early on,  
13 those are the great stories I love to hear.  
14 That's tribal governance.

15 MS. PEWITT: That's a 15-year process. One  
16 thing we started about three years ago is we  
17 actually started our own political party, so we  
18 actually have another venue for pushing the vote  
19 rather than just our tribal leadership. It's a  
20 good venue, because it's not just tribal  
21 leadership who participates, it's our membership.  
22 Because we still have a lot of the turmoil as  
23 well, but we're working to educate our people and  
24 hopefully quell that a little bit.

25 MS. DAUGHERTY: Does anybody else have any

1 other questions. Just because it's 4:09 doesn't  
2 mean we're going to push you out the door.

3 MR. SMITH: Last comment, I promise. I just  
4 want to say the government's initiative to make  
5 the language clearer, I think is great. I think  
6 it works. I'm a reader, but I'm not a lawyer, so  
7 when I first got in government, I started going  
8 through CFR, and as much as I like to read, you  
9 know, it's hard, you know? So this technique -- I  
10 can't remember what the term is -- of addressing  
11 the reader rather than saying, you know, parties  
12 wishing to blah, blah, blah, when you want to do  
13 this, then you have to do this. For me, that  
14 worked. I could really see the difference. So I  
15 know we kick around all government agencies, but  
16 in this instance, I really think that was a good  
17 initiative. I just wanted to say put it  
18 everywhere. Thank you.

19 MS. GUERIN: Finding out if they met the  
20 minimum requirements for an election, it seems  
21 obvious to me, but it didn't happen this way.

22 In March my people circulated a petition. We  
23 were challenging a resolution that tribal council  
24 passed. So before we started the petition  
25 process, we got a tribal roll to see many eligible

1 tribal voters we have in March. Then we figured,  
2 okay, we have to have such-and-such number at  
3 least. We'll go over that by 100, just to be  
4 safe.

5 When we took our petition in, they said we  
6 needed 50 more, the council said we needed 50  
7 more. It seems obvious to me that before you  
8 start a petition, you find out how many eligible  
9 voters you have. Me, as an organizer for example,  
10 if I want to have a petition next year in June,  
11 for example, do I check tribal membership now as I  
12 begin this process?

13 MS. DAUGHERTY: If you're talking about  
14 petitioning for this purpose, the first purpose  
15 you're talking about is challenging a resolution,  
16 right?

17 MS. GUERIN: I was talking about numbers.

18 MS. DAUGHERTY: So that would have been a  
19 tribal process to challenge a resolution. For  
20 this process, yeah, as soon as you are advancing,  
21 like you think you're ready to start collecting  
22 signatures, I would check the numbers first.

23 MS. GUERIN: So just before you start  
24 printing and circulating petitions?

25 MS. DAUGHERTY: Exactly. That allows you to

1 plan and organize, as a community organizer, your  
2 effort.

3 Any other questions? Before everybody runs  
4 out the door, I can see you gathering your things.  
5 I just want to real quickly show you two quick  
6 things.

7 As you pointed out, you're going to go to  
8 another consultation. If you look at the back of  
9 your PowerPoint slides you have copies of, there's  
10 20 locations right now. It is possible other ones  
11 might be proposed, but they will be sent with a  
12 dear-tribal-leader letter. You can look on the  
13 new section of the BIA's Web site, they'll be  
14 there as well.

15 Then the last thing that's important is you  
16 can still submit comments. You can send them in  
17 up through December 17, 2014. There's a couple  
18 different ways you can do it. There's a Web site,  
19 you can e-mail them to Laurel here. And then you  
20 can also mail them or hand deliver them to Laurel  
21 at that address listed there. So if you if you  
22 think of things after you take this home and read  
23 through it some more, want to make additional  
24 comments, please do so in all these various ways  
25 that you can do that and make additional comments.

1           If you have any other questions or need further  
2           information about any other of this consultation,  
3           you also have Laurel's phone number available to  
4           you there at the bottom of the slide.

5                     Thank you, and thank you all for coming and  
6           we appreciate all of your comments and  
7           suggestions.

8   (The consultation was concluded at 4:16 p.m.)

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DISCLOSURE

STATE OF GEORGIA

COUNTY OF CHEROKEE

Pursuant to Article 8.B of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

Janice S. Baker & Associates, Inc., has no contract/agreement to provide court reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this consultation. The firm will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this consultation.

Mildred R. Hornblower  
Certified Court Reporter  
Certificate No. 2785

## C E R T I F I C A T E

STATE OF GEORGIA  
COUNTY OF CHEROKEE

I hereby certify that the foregoing consultation was reported as stated in the caption and the questions and the answers were reduced to writing by me; that the foregoing 136 pages represent a true, correct, and complete transcript of the consultation held on October 26, 2014.

I certify that I am not disqualified for a relationship of interest under O.C.G.A. 9-11-28(c); I am a Georgia Certified Court Reporter here as an independent contractor of Janice Baker & Associates court reporting firm; I will not be taking this consultation under any contract that is prohibited by O.C.G.A. 15-14-37(a) and (b) or Article 7.C of the Rules and Regulations of the Board; and by the attached disclosure form I confirm that Janice Baker & Associates is not a party to a contract prohibited by O.C.G.A. 15-14-37 or Article 7.C of the Rules and Regulations of the Board.

This, the 18th day of November,

*Mildred R. Hornblower*



Mildred R. Hornblower  
Certified Court Reporter  
Certificate No. 2785