

Why Our Right to Referendum Matters

Hi, my name is Lexi. I am a creation of the Red Owl Group created to educate and inform the People concerning your rights under the Constitution & Bylaws of the Three Affiliated Tribes. Today, and in the future I will be speaking to you about our Constitution, the two cases that have been brought to enforce the People's rights under the Constitution and of other related matters. Today, I would like to speak to you about your right to referendum.

When our ancestors ratified the Constitution of the Three Affiliated Tribes in 1936, they made one thing clear: the People are the source of all sovereign authority. Our Tribal Business Council was created to govern, but only within the limits the People themselves established. Among those limits is the limits our ancestors reserved to the People, the right to overrule the Council through referendum vote.

This was not an afterthought by the founders. It was a deliberate design. Our Constitution includes the right to referendum not just once, but in at five different provisions—Article VI, Sections 1, 5, & 8; Article VIII; and once in Article II of the bylaws. No other tribal constitution in the United States entrenches this right so deeply.

The repeated reference to referendum in our Constitution reveals how important this right was to our People from the very beginning. Our research shows that among the 180 tribes that organized constitutions under the Indian Reorganization Act, the Three Affiliated Tribes stand alone in embedding referendum rights so strongly. Most IRA constitutions only mention referendum once. By contrast, our Constitution mentions it four times and it is mentioned again in our Bylaws.

Even more striking is the low signature requirement required to trigger a referendum. Only 10% of qualified voters from each community – our segments - are needed to sign a petition and compel

a vote. Most other tribal constitutions require anywhere from 20 to 50% of all eligible voters to sign a petition before a referendum can be demanded. This low bar is also a strong indication our founders wanted referendum to be a living, accessible tool of self-governance, to be readily exercised when needed as a check on the power of Council.

Compare this signature requirement to the number of signatures required to compel a Secretarial Election. A Secretarial Election requires “30% of those entitled to vote in an election” to sign a petition to require the Bureau of Indian Affairs to hold one. The substantial difference in required signatures suggests our founders meant for us to readily exercise our right to referendum to overrule the Council when needed.

History shows that our right to referendum has not always been honored. At least two petitions submitted to our Tribal Secretary in the past ten years have been completely ignored without any accountability to the People. This pattern underscores why judicial protection is needed. A constitutional right without enforcement is no right at all. As tribal members, we must all insist that the Council respect our Constitution’s command: that any power exercised by the Council be subject to referendum vote upon the submission of a valid petition by the People.

Enforcement of our right to referendum is one reason members of the Red Owl Group have sued the Tribal Business Council. The MHA Nation Supreme Court informed of the Council’s refusal to recognize the past two petitions at a recent hearing, and the Court expressly stated it could be called upon to intervene if it happened again. That is the good news. The other good news: the MHA Nation Supreme Court recognized that the Plaintiff’s efforts to compel a referendum vote to overturn Resolution No. 24-248-FWF was not futile even if though the \$250,000,000 has already been transferred.

Our referendum right is especially important when the Council acts on matters involving our Tribal assets, like the People's Fund. This Fund belongs to all our members collectively. It exists to benefit us now and for all generations to come.

When the Council makes decisions in secret—such as transferring \$250 million and later 90 million more from the People's Fund without notice or a meaningful chance for referendum—it strips the People of their constitutional right to oversee those decisions.

In conclusion, our right to referendum is the mechanism that enables the People to exercise their supremacy over the Council. It ensures that power rests not in the hands of a few, but in the voice of the many. It guarantees that our trust funds and resources are managed with accountability. And it affirms the truth our founders wrote into the Constitution: The People are sovereign, and the Council is their agent. But – only if we exercise this right. Defending and exercising this right is how we honor our past, protect our present, and safeguard the future for our children, grandchildren and their children for time and eternity. Isn't exercising our right to referendum worth this?