

FILED

IN THE SUPREME COURT OF THE CHEROKEE NATION

2011 SEP 13 PM 12:15

CHEROKEE NATION
SUPREME COURT
CLERK

Cherokee Nation Registrar,
Appellant,

vs.

Raymond Nash, et al,
Appellees.

Supreme Court Case No. SC-2011-02

C.N. District Court Consolidated Case Nos
CV-07-40, CV-07-41, CV-07-42, CV-07-43,
CV-07-44, CV-07-45, CV-07-46, CV-07-47,
CV-07-48, CV-07-49, CV-07-50, CV-07-53,
CV-07-56, CV-07-65, CV-07-66, CV-07-72,
CV-07-78, CV-07-85, CV-07-86, CV-07-99,
CV-07-100, CV-07-112, and CV-07-116

MOTION TO RECONSIDER ORDER OF AUGUST 22, 2011

Comes now Ralph F Keen II, Appointed Class Counsel for your Freedmen Class of Cherokee Citizens in the above matter who respectfully moves the Court to withdraw its order of August 22, 2011 and reconsider its findings and conclusions in light of recent extraordinary developments, in support thereof would show the Court as follows:

1. On August 22, 2011 this Honorable Court handed down its decision reversing the prior ruling of the district court and immediately terminating the temporary injunction that maintained the citizenship rights of the Cherokee Freedmen.

2. On or about August 31, 2011, the Department of Housing and Urban Development ("HUD") denied Cherokee Nation access to over 33 million dollars in funding citing the Court's decision and the agencies unwillingness to engage in or fund federal programs, which openly engage in discriminatory practices.

3. On September 2, 2011, the Freedmen Association filed a renewed Motion for Preliminary Injunction in Vann v. Salazar, et all (D.C. District Action No. 1:03cv01711), seeking expedited federal injunctive relief to include the following:

[A]n order enjoining the Cherokee Nation Defendants from

denying Plaintiffs and the other Freedmen their full citizenship rights and from holding any election as to which Plaintiffs and other Freedmen are denied the right to vote based solely upon their status as Cherokee Freedmen. The Freedmen Plaintiffs also respectfully request that this Court enjoin the Federal Defendants from taking the following actions until the Cherokee Nation restores full citizenship rights to the Freedmen Plaintiffs and other Freedmen and complies with the Principal Chiefs Act, which requires that the Federal Defendants review the Cherokee Nation's election procedures and ensure that they comply with all legal requirements, including the Cherokee Freedmen's right to vote: (1) distributing funds to the Cherokee Nation; (2) recognizing any Cherokee Nation election; and (3) recognizing the government-to-government relationship with the Cherokee Nation.¹

The Court has scheduled a hearing on the Freedmen's motion Monday, September 20, 2011, four days before the Cherokee Nation Special election is scheduled.

4. On September 9, 2011, the Assistant Secretary of Indian Affairs, Larry Echo Hawk, dispatched a correspondence to Acting Principal Chief, S. Joe Crittenden, attached hereto as Exhibit "A." In unequivocal terms, this letter expressed the B.I.A.'s disagreement with the Court's ruling of August 22, 2011, and advised Acting Chief Crittenden that it would not recognize any future elections, which denied the Cherokee Freedmen their right of suffrage.

Assistant Secretary Echo Hawk stated:

We are concerned that the recent decision from the Cherokee Nation Supreme Court, together with 2010 election procedures that have not been approved by the Secretary of the Interior as required by the Principal Chiefs Act, will be the basis for denying Cherokee Freedmen citizenship and the right to vote in the upcoming election. The Department's position is, and has been, that the 1866 Treaty between the United States and the Cherokee Nation vested Cherokee Freedmen with rights of citizenship in the Nation, including the right of suffrage.

I urge you to consider carefully the Nation's next steps in proceeding with an election that does not comply with Federal law. The Department will not recognize any action taken by the Nation that is inconsistent with these principles and does not

¹ Complete copies of the Freedmen's Motion and Brief are available on request.

accord its Freedmen members full rights of citizenship. We stand ready to work with you to explore ways to honor and implement the Treaty.

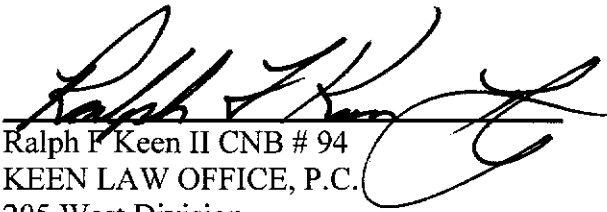
ARGUMENTS AND AUTHORITIES

These actions by federal authorities are unprecedented, far-reaching, and potentially place Nation's government-to-government relationship in jeopardy. The Court's decision of August 22, 2011 is clearly at odds with federal interpretation of the Cherokee Freedmen's citizenship rights vis-à-vis the Treaty of 1866. Moreover, the Court's decision has placed the Cherokee executive branch in a precarious and undesirable position of either honoring the Court's decision under the Constitution, or defying the Court's order by opening diplomatic negotiations with the federal government for reconciliation and continuation of the tribe's government-to-government relationship with the United States.

By virtue of its own constitutional jurisdiction and inherent authority found in Article VIII Sections 1 and 4, this Honorable Court has the ability to reconsider its own actions, either by motion or *sua sponte* within a reasonable time. It is clearly in the best interest of justice and all the parties that this Court withdraw its decision of 8/22/11 and reopen this appeal for further consideration following full briefing and oral arguments of all issues, prior and new.

WHEREFORE, premises and precedents considered, the Cherokee Freedmen move that this Court withdraw its order of August 22, 2011, reopen the appeal, set this matter on a new schedule for briefing of new issues and oral arguments before the Court, and such other relief the Court deems just and equitable.

Respectfully Submitted,

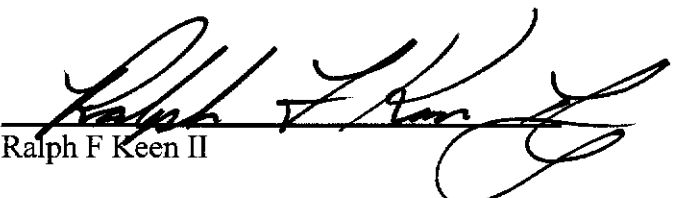


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CERTIFICATE OF MAILING

I certify that I mailed true and correct copy of the above *MOTION TO RECONSIDER ORDER OF AUGUST 22, 2011* on September 13, 2011, to:

Cherokee Nation Attorney General
Diane Hammons
P.O. Box 948
Tahlequah, OK 74465



Ralph F Keen II



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 09 2011

The Honorable S. Joe Crittenden
Acting Principal Chief, The Cherokee Nation
P.O. Box 948
Tahlequah, Oklahoma 74465-0948

Dear Chief Crittenden:

We have followed the news of the upcoming election for Principal Chief with interest and growing concern. I write to advise you that the Department of the Interior (Department) has serious concerns about the legality of the Cherokee Nation's actions with respect to the Cherokee Freedmen, as well as the planned September 24, 2011, election.

On August 22, 2011, the Supreme Court of the Cherokee Nation issued its decision in the matter of the *Cherokee Nation Registrar v. Nash*, Case No. SC-2011-02. In this decision, the Court vacated and reversed the earlier decision of the Cherokee District Court, as well as the temporary injunction that maintained the citizenship of the Freedmen. We have carefully reviewed this most recent decision. I am compelled to advise you that the Department respectfully disagrees with the Court's observations regarding the meaning of the Treaty of 1866, between the United States of America and the Cherokee Nation (Nation), 14 Stat. 799, as well as the status of the March 3, 2007, amendment to the Cherokee Constitution.

The Cherokee Constitution ratified by the voters in June 1976 expressly provides that "[n]o amendment or new Constitution shall become effective without the approval of the President of the United States or his authorized representative," which is the Secretary of the Interior. The Department declined to approve the 2003 amendments of the 1976 Constitution, as evidenced by the August 30, 2006, letter from Associate Deputy Secretary James Cason to Principal Chief Chad Smith and the March 28, 2007, letter from Assistant Secretary – Indian Affairs (AS-IA) Carl Artman to Principal Chief Smith, copies of which are enclosed. Although on August 8, 2007, AS-IA Artman approved a June 23, 2007, amendment to the 1976 Constitution that removes the requirement for Secretarial approval of amendments, that decision is not retroactive. Thus, the decision of the Cherokee Nation Supreme Court appears to be premised on the misunderstanding that both the unapproved Constitution adopted in 2003, and the March 3, 2007, amendment that would make Freedmen ineligible for citizenship, are valid. The Department has never approved these amendments to the Cherokee Constitution as required by the Cherokee Constitution itself.

Furthermore, we understand that in 2010 the Nation adopted new election procedures which will govern the upcoming election for Principal Chief. Those procedures were never submitted to, nor approved by, the Secretary of the Interior or any designated Department of the Interior official as required by the Principal Chiefs Act, (Pub. L. 91-495, 84 Stat. 1091). Pursuant to the Principal

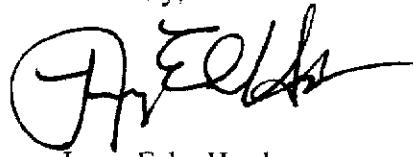


Chiefs Act, enacted by Congress in 1970, the Secretary is required to approve procedures for the selection of the Principal Chief of the Cherokee Nation.

We are concerned that the recent decision from the Cherokee Nation Supreme Court, together with 2010 election procedures that have not been approved by the Secretary of the Interior as required by the Principal Chiefs Act, will be the basis for denying Cherokee Freedmen citizenship and the right to vote in the upcoming election. The Department's position is, and has been, that the 1866 Treaty between the United States and the Cherokee Nation vested Cherokee Freedmen with rights of citizenship in the Nation, including the right of suffrage.

I urge you to consider carefully the Nation's next steps in proceeding with an election that does not comply with Federal law. The Department will not recognize any action taken by the Nation that is inconsistent with these principles and does not accord its Freedmen members full rights of citizenship. We stand ready to work with you to explore ways to honor and implement the Treaty.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Echo Hawk", with a large, stylized initial "L" and "E".

Larry Echo Hawk
Assistant Secretary – Indian Affairs

Enclosures