EXHIBIT 1

TC/ms 6/12/06

CHEROKEE NATION
P.O. Box 948 • Tahlequah, OK 74465-0948 • (918) 453-5000

OFFICIAL
Chad "Corntassel" Smith
Principal Chief

JLC/A LEAD
Joe Grayson, Jr.
Deputy Principal Chief

June 9, 2006 Via Fax and Mail

James Cason
Acting Assistant Secretary of Indian Affairs,
Department of Interior
Bureau of Indian Affairs, Room 4160
1849 C Street, N.W.
Washington D.C. 20240

Fax (202) 208-1873

Dear Mr. Cason:

Please be advised that the Cherokee Nation is withdrawing its request for approval of the Cherokee Nation Constitutional Amendment which was approved by the Cherokee people on May 24, 2003.

We consider BIA approval to be a moot issue, pursuant to a ruling of the Cherokee Nation Supreme Court, JAT 05-04. I am providing a copy for your information.

If I can advise any further as to this issue, please call.

Yours,

Chad Smith
Principal Chief

cs:lr

cc: Council of the Cherokee Nation

EXHIBIT 2

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

MAY 21 2007

The Honorable Chad Smith
Principal Chief, Cherokee Nation
P.O. Box 948
Tahlequah, Oklahoma 74465-0948

Dear Chief Smith:

The Department of the Interior considered approval of the May 2003 amendment to the 1976 Cherokee constitution that would remove from the constitution the requirement that the Secretary approve all constitutional amendments for them to be effective. After thorough analysis, the Department hereby disapproves the 2003 amendment. The Secretary must, therefore, still approve constitutional amendments before they become effective.

I do not make the decision to disapprove the 2003 amendment lightly. I recognize the Cherokee Nation as a sovereign nation capable of managing its government without oversight of the Federal government. I also recognize that the United States 1866 treaty with the Cherokee Nation was somewhat unusual in its requirement that the Cherokee Nation recognize the rights of individual Freedmen in exchange for amnesty and the continuation of the government-to-government relationship between the United States and the Nation.

I am concerned that approval by the Department of the 2003 amendment at this time would be used by some as a validation or evidence of legitimacy of the Cherokee Nation's removal of its Freedmen members from the tribe in apparent violation of the 1866 treaty. Therefore, I cannot approve the 2003 amendment knowing it may provide the basis for violating the terms and intent of the 1866 treaty.

In its December 16, 2006, decision, the district court in the *Vann* litigation stated that the Department's failure to act on the 2003 amendment was final agency action for purposes of establishing the court's jurisdiction to hear the case. Nothing in the Cherokee Constitution or the Department's regulations imposes a time limit on the Department's responsibility to approve or disapprove amendments to the Constitution. The court's conclusion that the Department's failure to act until now constituted final agency action does not preclude me from making a decision now on whether to approve or disapprove the 2003 amendment.

In closing, I want to assure you that I have the utmost respect for the Cherokee Nation and its powers and right of self-government. As the Federal government works to honor and implement the 1866 treaty, we trust the Cherokee Nation will also honor the treaty that it entered into in the exercise of its powers of self-government.

Sincerely,

Carl J. Artman
Assistant Secretary – Indian Affairs

EXHIBIT 3

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 0 9 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,

Larry Echo Hawk
Assistant Secretary – Indian Affairs

Enclosures

EXHIBIT 4

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 15 2002

Honorable Chadwick Smith
Principal Chief, Cherokee Nation
P. O. Box 948
Tahlequah, Oklahoma 7446-0948

Dear Chief Smith:

This is in response to your letter of November 7, 2001, requesting my decision on the proposed amendment to the 1975 Cherokee Nation Constitution ("the 1975 Constitution") that, if enacted and approved, would remove the provision requiring the Secretary's approval of constitutional amendments.

Article XV, Section 10, of the 1975 Constitution 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." You have advised that the proposed referendum regarding the amendment that is at issue here would be presented to the Cherokee voters in the following form:

REFERENDUM ON CONSTITUTIONAL AMENDMENT

Article XV, Section 10 of the Cherokee Nation Constitution, adopted by the Cherokee people on June 26, 1975, states: "No amendment or new Constitution shall become effective without the approval of the President of the United States or his authorized representative."

SHALL ARTICLE XV, SECTION 10 OF THE CHEROKEE NATION CONSTITUTION BE STRICKEN TO ABOLISH THE REQUIREMENT OF FEDERAL APPROVAL OF THE AMENDMENTS OR NEW CONSTITUTIONS OF THE CHEROKEE NATION?

YES TO REMOVE THE FEDERAL APPROVAL REQUIREMENT

NO TO RETAIN THE FEDERAL APPROVAL REQUIREMENT.

We have no objection to the referendum as proposed and I am prepared to approve the amendment deleting the requirement for Federal approval of future amendments, subject to certain understandings. First, all members of the Cherokee Nation, including the Freedmen descendants who are otherwise qualified, must be provided an equal opportunity to vote in the election. Second, under current law, no amendment of the

Nation's Constitution can eliminate the Freedmen from membership in the Nation absent Congressional authorization. And, lastly, notwithstanding any amendment of the Nation's Constitution, the Act of October 22, 1970 (84 Stat. 1091), until it is repealed or amended, will still require Secretarial approval of the procedures for the election of the leaders of the Cherokee Nation and the other of the Five Civilized Tribes.

If you have any questions, please do not hesitate to call me.

Sincerely,

Assistant Secretary - Indian Affairs

cc: Regional Director, Eastern Oklahoma Region
Field Solicitor's Office, Tulsa

EXHIBIT 5

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

APR 29 2002

Honorable Chad Smith
Principal Chief
Cherokee Nation
P. O. Box 948
Tahlequah, Oklahoma 74465-0948

Dear Chief Smith:

This is in response to your letter of November 7, 2001, requesting my decision on the proposed amendment to the 1975 Cherokee Nation Constitution ("the 1975 Constitution") that, if enacted and approved, would remove the provision requiring the Secretary's approval of constitutional amendments. Before responding to the substance of your request, I want to clarify that I understand that you recently received a letter dated March 15, 2002, purportedly signed by me relating to this same subject. I did not sign the March 15 letter and did not authorize the use of the autopen to engross my signature on the letter. The letter is of no validity or effect and should be disregarded.

As to the substance of your request, Article XV, Section 10, of the 1975 Constitution 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." You have advised that the proposed referendum regarding the amendment that is at issue here would be presented to the Cherokee voters in the following form:

REFERENDUM ON CONSTITUTIONAL AMENDMENT

Article XV, Section 10 of the Cherokee Nation Constitution, adopted by the Cherokee people on June 26, 1976, states: "No amendment or new Constitution shall become effective without the approval of the President of the United States or his authorized representative."

SHALL ARTICLE XV, SECTION 10 OF THE CHEROKEE NATION CONSTITUTION BE STRICKEN TO ABOLISH THE REQUIREMENT OF FEDERAL APPROVAL OF THE AMENDMENTS OR NEW CONSTITUTIONS OF THE CHEROKEE NATION?

YES TO REMOVE THE FEDERAL APPROVAL REQUIREMENT.

NO TO RETAIN THE FEDERAL APPROVAL REQUIREMENT.

We have no objection to the referendum as proposed and I am prepared to approve the amendment deleting the requirement for Federal approval of future amendments. Until it is repealed or amended, the Act of October 22, 1970 (94 Stat. 1091), will, however, still apply.

If you have any questions, please don't hesitate to call me.

Sincerely,

Neal A. McCaleb
Assistant Secretary-Indian Affairs

EXHIBIT 6

Tribal Operations

MAY 8 2002

Honorable Chadwick Smith
Principal Chief, Cherokee Nation
P. O. Box 948
Tahlequah, Oklahoma 74465

Dear Chief Smith:

The Act of October 22, 1970, 84 Stat. 1091 ("the Act"), provides that the procedures for the election of the Principal Chiefs of the Five Civilized Tribes must be approved by the Secretary; however, in recent elections, these procedures have not been submitted for approval.

The United States District Court for the District of Columbia recently held that the Act remains in full force and effect: Seminole Nation of Oklahoma v. Norton, Case No. 00-CV-02384 (CKK) (D.D.C. Memorandum Opinion Sept. 27, 2001). Based upon the recommendation of the Field Solicitor, we are advising each of the Five Civilized Tribes that their election code, to the extent it sets forth procedures for the election of Principal Chief, must be approved.

If you have any questions regarding this matter, please contact Karen Ketcher, Tribal Operations Officer, at (918) 687-2313.

Respectfully,

Acting (Sgd.) Dennis C. Springwater

Director

EXHIBIT 7

Tribal Operations

JUN 30 2003

Mr. Raymond Vann
Member, Cherokee Nation Election Commission
P. O. Box 1188
Tahlequah, Oklahoma 74465-1188

Dear Mr. Vann:

This letter acknowledges receipt of a copy of a certification of results of the Cherokee Nation Election held Saturday, May 24, 2003. In this copy, the Election Commission certified that the results reflect the outcome of a recount conducted on May 30, 2003, and an appeal and ruling by the Judicial Appeals Tribunal held on June 17, 2003.

The Region respectfully requests that the original of the June 23, 2003 certification letter be forwarded to this office with the appropriate signature(s). In addition, in order to make a complete and thorough review of the referendum question, the Tribe must submit documentation of its compliance with the procedural and administrative requirements set forth in the Tribe's Constitution and Election Ordinance. The Bureau will act as expeditiously as possible on this matter.

If you have any questions or require further explanation of the required documentation, please contact Karen Ketcher, Tribal Operations Officer, at (918) 781-4685.

Respectfully,

(Sgd) Jeanette Hanna

Regional Director

KKETCHER:kk:06-24-03
File - Cherokee Election 2003
chron
mailroom
EORD

EXHIBIT 8

Tribal Operations

JUL 11 2003

Honorable Chadwick Smith
Principal Chief, Cherokee Nation
P. O. Box 948
Tahlequah, Oklahoma 74465

Dear Chief Smith:

This letter is regarding matters related to the Cherokee Nation Election of May 24, 2003. The Eastern Oklahoma Regional Office (EORO) is in receipt of a June 23, 2003 letter from the Cherokee Nation Election Commission certifying the results of the election for the offices of Principal Chief and certain Council representatives, certifying the results of the Referendum on Constitutional Amendments, and requesting a written response of approval or disapproval of this certification of results within thirty (30) days. The Region is aware of no requirement that the Department of the Interior certify the election as to Council representatives.

While the Region is aware of no requirement that the Department certify the Election for the office of Principal Chief, the Nation has been advised on two occasions regarding the requirements of the Principal Chiefs Act of October 22, 1970, 84 Stat. 1091. The Act provides that the procedures for the election of the Principal Chiefs of the Five Civilized Tribes must be approved by the Secretary. As you know the United States District Court for the District of Columbia held that the Act remains in full force and effect. Seminole Nation of Oklahoma v. Norton, Case No. 00-CV-02384 (CKK) (Memorandum Opinion of September 27, 2001). In the referenced correspondence, the Nation was asked to submit its current election laws and procedures for approval.

On May 31, 2003, the Executive Director, Cherokee Nation Government Resources Division, responded to the Region's request by referring the Department to the Cherokee Nation Constitution and Title 26 of the Cherokee Nation Code and advised that the code is available for public review and may be copied from the Cherokee Nation's internet web site. Please advise whether the referral was intended to constitute the extent of the Cherokee Nation's correspondence regarding this issue. It does appear that such review and approval is necessary before the Department can recognize the results of the May 24, 2003, election as it pertains to the office of the Principal Chief.

Further, it is presumed that the request to certify the election as it pertains to the Referendum on the Constitutional Amendment is a request for approval of the Amendment itself pursuant to Article XV, Section 10, of the Cherokee Nation Constitution.

Prior to his retirement, Assistant Secretary - Indian Affairs Neal McCaleb indicated a willingness to approve the amendment as it had been presented to him in draft form if proper procedures were followed by the Nation. In order to expedite the review of the Referendum on the Constitutional Amendment, please provide this office with evidence necessary to establish the Nation's compliance with the substantive and procedural election requirements set forth in the Cherokee Nation Constitution and the Cherokee Nation Code.

With the Amendment in mind, this office understands that a new constitution has been proposed and is slated to be presented to the Cherokee Nation voters during the run-off election scheduled for July 26, 2003. It should be noted that the Amendment, which would remove the requirement of Federal approval of constitutional amendments to the Cherokee Nation Constitution or a new constitution, has not been approved at this time. Accordingly, if the Cherokee Nation's presentation to the Cherokee voters of a new constitution is in some way premised upon the Amendment that the voters adopted on May 24, 2003, it is premature at this time.

Finally, the Acting Assistant Secretary - Indian Affairs has received the enclosed correspondence from an attorney who represents several Cherokee Freedmen. As part of the review of the Amendment, the Region would like to consider the Cherokee Nation's position regarding the issues raised in that correspondence. Please convey a position, if any, to the Region as soon as possible so that deliberations on this matter may proceed as expeditiously as possible.

Thank you for your continued cooperation regarding this matter. If you have any questions, please do not hesitate to contact this office.

Respectfully,

(Sgd) Jeanette Hanna

Regional Director

Enclosures

cc: Acting Assistant Secretary - Indian Affairs
Office of the Tulsa Field Solicitor
Attn: Charles R. Babst, Jr.

EXHIBIT 9

CHEROKEE NATION
P.O. Box 948
Tahlequah, OK 74465-0948
918-456-0671

Chad "Corntassel" Smith
Principal Chief

Hastings Shade
Deputy Principal Chief

July 14, 2003

Ms. Jeannette Hanna
Regional Director
Eastern Oklahoma Regional Office
P.O. Box 8002
Muskogee, Ok. 74401-6206

Re: Cherokee Nation Election of May 24, 2003

Dear Ms. Hanna:

This is in response to your letter apparently misdated June 11, 2003 concerning matters related to our election of May 24, 2003 that was received by fax on Friday, July 11, at 4:00 PM.

The matters addressed in your letter concern the fundamental rights of Cherokee self-government. Therefore, the Department of the Interior should speak as one voice and respond to the concerns of the Cherokee Nation. Accordingly, I have requested this matter of importance be immediately elevated to the Secretary for resolution.

For the record, I view this exchange of correspondence to be a precursor to a final decision for the Department and therefore, reserve all of the Cherokee Nation's right to appeal in any legal forum, if the decision is adverse to the interest of the Nation.

In this age of self-determination and self-governance, I am shocked to find the contents and tone of your letter to be both patronizing and very paternalistic. It appears that some officials in your Department desire to return to the era of "bureaucratic imperialism." In *Harjo v. Kleppe (1976)*, this is how the Court characterized the Department's actions over the affairs of the Five Nations for the majority of the 20th Century, and specifically referred to the interference in the election of the Principal Chief.

> *"During the period immediately following the approval of the Five Tribes Act, the Interior Department behaved as though it had been successful in its efforts to prevent the enactment of § 28 and the Congressional changes made in its draft of § 6. The available evidence clearly reveals a pattern of action on the part of the Department and its Bureau of Indian Affairs designed to prevent any tribal resistance to the Department's methods of administering those Indian affairs delegated to it by Congress. This*

> *attitude, which can only be characterized as bureaucratic imperialism, manifested itself in deliberate attempts to frustrate, debilitate, and generally prevent from functioning the tribal governments expressly preserved by § 28 of the Act."*
> *(Harjo v. Kleppe (1976))*

I would suggest that your attorneys review the above, consider the required canons of construction, and measure your proposed actions against solemn pronouncements of self-determination policy by the Congress and President that your agency appears to ignore.

It is my hope that a satisfactory resolution of these matters can be had. If not, we will seek a resolution in the courts as we have since the 1830's in order to obtain justice and right. I am saddened that the Department would hold hostage the Cherokee citizens' mandate to manage their own affairs. We have faithfully conducted our election under the terms of the Constitution of the Cherokee Nation and have honored our part of the government-to-government and trust relationships with the United States. We ask the Department of Interior to do the same.

I will address the specifics of your misdated letter paragraph by paragraph, as enumerated, which follows:

1. Page 1, Paragraph 1, you state, "The Region is aware of no requirement that the Department of the Interior certify the election as to Council representatives."

Response: The notice to your office and transmittal of the certification by the Election Commission of the results of the elected officers, i.e. the Principal Chief and Council members, was not for the purpose of requesting Departmental certification. The Department does not run Cherokee elections nor supervise them. The purpose of the notice was for recognition of leadership on a government-to-government basis with the United States.

It is a fact that the Cherokee people have decided their leadership and approved a constitutional amendment on May 24, 2003 by a democratic process in accordance with Cherokee law. On July 26, 2003 they will vote on a new constitution and for two remaining run-off races to complete this democratic process. It is neither for the Department's determination nor discretion to second-guess the most basic fundamental principle of self-governance. See *Wheeler v. Swimmer, 1987* and *Nero v. Cherokee Nation and the United States, 1989.*

I strongly recommend the Department of Interior adhere to the admonition of the US Court of Appeals for the Tenth Circuit in *Nero*,

> *"Indian Tribes have a right to self-government, and the Federal government encourages tribes to exercise that right. Consequently, while the Department may be required by statute or tribal law to act in*

intra-tribal matters, it should act so as to avoid any unnecessary interference with a tribe's right to self-government."

2. **Page 1, Paragraph 2**, states that, "the Nation has been advised on two occasions regarding the requirements of the Principal Chief's Act of October 22, 1970." You advise further that the procedures for electing the Principal Chiefs of Five Tribes must be approved by the Secretary and cite *Seminole v. Norton, 2001* as your justification and state the Nation was asked to submit its current election laws and procedures for approval.

In paragraph 3, you reference the "May 31, 2003" letter of Pat Ragsdale, Director of Government Resources, who responded in my behalf to your request that the Cherokee Nation submit its election laws for your approval. You state, "Please advise whether the referral was intended to constitute the extent of the Cherokee Nation's correspondence regarding the issue. Further you state, "It does appear that such review and approval is necessary before the Department can recognize the results of the May 24, 2003, election as it pertains to the office of the Principal Chief."

Response: As to your interpretation of the *Seminole* case's relevance to the Cherokee Nation, our Cherokee governmental relationship is distinguished from the Seminole relationship, as is our culture, traditions and history. The Cherokee Nation's Constitutional history dates back to the first Constitution of 1827, the Constitution of 1839, and the current Constitution that was pre-approved by the Secretary in 1975 and ratified by the Cherokee voters in 1976. The 1976 Constitution has been amended at least twice with the approval of the Secretary.

The *Seminole* decision concerns approval of Constitutional amendments. The Cherokee Nation has consistently complied with that requirement since 1975. The Secretary has exercised any responsibility under the 1970 Act by approving the Constitution in 1975 and the procedures set forth within the Cherokee Constitution. For over a quarter of a century, the Department has never to our knowledge required nor suggested that Cherokee Nation submit its internal election procedures for Departmental approval. Furthermore, the Department has recognized the elections of the Principal Chiefs of the Cherokee Nation without approving the internal laws governing such elections. The Nation has conducted six such elections:

1999 – Chadwick "Corntassel" Smith
1995 – Joe Byrd
1991 – Wilma P. Mankiller
1987 – Wilma P. Mankiller
1983 – Ross O. Swimmer
1979 – Ross O. Swimmer

In *Swimmer*, referenced above, the Court said,

> "*The right to conduct an election without federal interference is essential to the exercise of the right to self-government.*"

Cherokee and Seminole history is similar as far as the treatment and perfidy of the federal government during the Treaty period, however, it is different in the formations and development of our constitutional governments. I am dismayed by the inference that the Department may withhold the recognition of the Principal Chief's office in order to require submission to your demands.

Mr. Ragsdale's response was dated and delivered on May 13th not May 31st as stated in your letter. (The May 13th letter is attached). Mr. Ragsdale's letter was intended to be a courteous response to your personal request of me for information prior to the election. His response is a summary of the position of the Cherokee Nation. I note neither you nor your Department bothered to respond prior to the May 24 election. I also note that Mr. Ragsdale inquired of you and your office if the Department had a position to the contrary prior to the May 24th election and he was advised by you that there was no response from Washington.

I also wish to point out that we have had no direct government-to-government discussions on the issues to exchange our views. The brief phone conversations by me with Assistant Secretary Martin and you have revealed little. It is my understanding, based upon our conversations, that Departmental attorneys are directing this course of action.

I reaffirm the Nation's previous answer, and I state for the record that the Nation has much more in response to what appears to be a demand that we compromise our rights of self-governance.

3. Page 1, Paragraph 4, states it is presumed that we request that the Department approve the amendment voted on and approved by the Cherokee voters on May 24th, as currently required by the Cherokee Constitution.

Response: The voters of the Cherokee Nation have spoken representing the will of the Cherokee Nation. We seek federal approval and fulfillment of the Department's previous commitment. If it is needed, your presumption is correct and Mr. Ragsdale has already delivered to you a detailed "Special Report" on the process leading up to the election and has enclosed documentation of the Constitutional Convention, voter education, the relevant resolutions, acts, and the election law governing the process. (The election act is not submitted for your approval but is submitted for your reference only to facilitate your review.)

4. Page 2, Paragraph 1, references Assistant Secretary McCaleb's willingness to approve the amendment, but adds, "...if proper procedures were followed by the Nation."

Response: As stated earlier, the Special Report delivered to your office last Friday provides you with comprehensive documentation as to procedural compliance with the Constitution and laws of the Nation as well as the involvement and education of the citizens of the Cherokee Nation regarding the referendums in question.

What former Assistant Secretary McCaleb actually wrote in his letter of April 23, 2002, was:

> *"We have no objection to the referendum as proposed and I am prepared to approve the amendment deleting the requirement for Federal approval of future amendments. Until it is repealed or amended, the Act of October 22, 1970 will, however, still apply."*
> (Exactly quoted)

I note Secretary McCaleb also acknowledged in this letter of April 23rd that a previous letter dated March 15, 2002 with an entirely different message had been sent out by unauthorized use of his autopen signature and that the letter dated March 15th was of no validity or effect and should be disregarded. It appears that now that the former Assistant Secretary is retired that there are others at work to rewrite policy determinations.

5. Page 2, paragraph 2, states, *"If the Cherokee Nation's presentation to the Cherokee voters is premised upon the amendment that the voters adopted on May 24, 2003, it is premature at this time."*

Response: The Cherokee Nation relied on the Department's word expressed by Former Assistant Secretary McCaleb, and has conducted an election in the good faith belief that the Department would keep its commitment regarding the amendment which was recently approved by an overwhelming majority of Cherokee voters.

Do you intend to break the previous commitment made by the Assistant Secretary on behalf of the Department?

The democratic process that has been followed, accompanied with numerous public announcements, forums and process leading up and to the election has not been a secret, and the Department has not been excluded from the process. This has been an expense to the Cherokee Nation of over several hundred thousand dollars.

The documentation demonstrating that the Nation has exercised due diligence and good faith is contained in the referenced report. Please review the documentation.

The Department should not break the previous commitment made by the Assistant Secretary on behalf of the Department.

6. Page 2, paragraph 3, you provide a copy of a letter from Velie and Velie, Attorneys at Law dated June 10, 2003 to Ms. Aurene Martin, Acting Assistant Secretary of Indian

Affairs. It alleges violations of the Treaty with the Cherokee Nation and requests the BIA hold the Cherokee Nation election of May 24, 2003 to be held invalid.

Response: Prior to making our comments on the allegations made by the law firm, we have some preliminary questions.

- Have the Velie clients exhausted all of the tribal and/or federal administrative remedies?
- If so, please provide the records for our review.
- If not, why should they not be required to do so?

Conclusion

It appears that this issue is about to be decided by the Assistant Secretary or the Secretary. Therefore, we request the decision and dialogue between the Nation and the Department be elevated to the Washington, D.C. level in the interest of seeking resolution and determining public policy on a timely basis. We regret that it appears that you have been chosen to state the bidding of other officials in the Department who appear to have a bias against the self-governmental rights of the Cherokee Nation. We believe it in the best interest of the Nation to hear one Departmental voice and deal with one decision maker to protect our interests and preserve our right to resolve this matter in the courts if it becomes necessary.

Sincerely,

Chad Smith
Principal Chief

Attachments:

(1) May 13, 2003 letter from Pat Ragsdale, Director, Government Resources, Cherokee Nation to Jeanette Hanna, Director, USBIA, Eastern Oklahoma Region

cc: Honorable Aurene Martin, Acting Assistant Secretary - Indian Affairs
Honorable Stephen Griles, Deputy Secretary, US Department of Interior
Honorable Gale A. Norton, Secretary

EXHIBIT 10

CHEROKEE NATION

P.O. Box 948
Tahlequah, OK 74465-0948
918-456-0671

Chad "Corntassel" Smith
Principal Chief

Hastings Shade
Deputy Principal Chief

July 14, 2003

The Honorable Gale A. Norton
Secretary
U.S. Department of the Interior
1849 C St NW
Washington, DC 20240

The Honorable Stephen Griles
Deputy Secretary
U.S. Department of the Interior
1849 C St NW
Washington, DC 20240

The Honorable Aurene Martin
Acting Assistant Secretary – Indian Affairs
1849 C St NW
Washington, DC 20240

Re: Urgent Request to discuss the Constitution of the Cherokee Nation and the Recognition of recent Cherokee Nation elections

Dear Secretary Norton, Deputy Secretary Griles, and Acting Assistant Secretary Martin:

I write to request your personal attention to a matter of great concern and highest priority to the Cherokee Nation, and request an immediate conference to discuss this matter directly with you, without lawyers, later this week or early next. The purpose of this meeting will be to attempt to resolve this matter before it escalates and results in costly and unnecessary litigation.

I have organized a small delegation from the Cherokee Nation to travel to Washington to meet with you. The delegation will consist of former Principal Chief Wilma Mankiller, Secretary-Treasurer Jay Hanna, Director of Government Resources Pat Ragsdale, a Tribal Council Member, and me. I wish to discuss the pending approval of the Cherokee Nation's constitutional amendment that former Assistant Secretary – Indian Affairs Neal McCaleb addressed and other matters involving the *Seminole v. Norton (2001)* case as that decision may apply to the Cherokee Nation.

In the spirit of the government-to-government relationship, I respectfully request that this conference be between the leaders of the Department and the Cherokee Nation and not our attorneys. If this matter is to be resolved quickly, it will rely upon our collective leadership and desire to avoid litigation and public controversy. I cannot emphasize enough that time is of the essence – the Cherokee people are to vote on a *new* constitution and two run-off seats on July 26.

EXHIBIT 11

CHEROKEE NATION
P.O. Box 948
Tahlequah, OK 74465-0948
918-456-0671

Chad "Corntassel" Smith
Principal Chief

Hastings Shade
Deputy Principal Chief

July 18, 2003

The Honorable J. Steven Griles
Deputy Secretary
U. S. Department of the Interior
1849 C Street N.W.
Washington, D. C. 20240

Re: Cherokee Nation Constitutional Amendments

Dear Deputy Secretary Griles:

Thank you for taking the time yesterday to visit with me over matters pertaining to the Cherokee Nation's 2003 elections, including the adoption and pending adoption of various constitutional amendments to the Cherokee Nation's 1976 Constitution.

As you requested, our attorneys have furnished a letter to Mr. Scott Keep of the Associate Solicitor's Office explaining that nothing in the pending Constitutional Amendments will substantively alter in any manner whatsoever existing rules under the 1976 Constitution governing citizenship in the Cherokee Nation. Our situation thus could not be more unlike the situation presented in the *Seminole Nation* case you mentioned, a case where the Seminole Nation plainly sought to expressly alter the citizenship rights of the Seminole Freedmen.

I appreciate yesterday's confirmation that the Department will shortly issue a letter recognizing the results of the Cherokee Nation 2003 election for Principal Chief. Based upon the enclosed letter from our attorneys, we also look forward to your Department's prompt approval of the constitutional amendment adopted by the Cherokee Nation voters on May 24, 2003, consistent with former Assistant Secretary Neal McCaleb's April 23, 2002, confirmation that the Department has "no objection to the referendum" and is "prepared to approve the amendment deleting the requirement for Federal approval of future amendments." If you foresee any further problem in this regard, I specially request that you contact me immediately so that we may discuss this matter further.

Sincerely,

Chad Smith
Principal Chief

EXHIBIT 12

LAW OFFICES
SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLP
1425 K STREET, N.W. SUITE 600
WASHINGTON, DC 20005
(202) 682-0240
FACSIMILE (202) 682-0249

MARVIN J. SONOSKY (1909-1997)
HARRY R. SACHSE
REID PEYTON CHAMBERS
WILLIAM R. PERRY
LLOYD BENTON MILLER (AK)
DOUGLAS B.L. ENDRESON
DONALD J. SIMON
MEEKA M. MENSON (AK)*
ANNE D. NOTO
MARY J. PAVEL
DAVID C. MIELKE
JAMES E. GLAZE
GARY F. BROWNELL (NM)*
COLIN C. HAMPSON

NICOLE D. ENSLEY (AK)*
JAMES T. MIGCHETTO
ANGELINA Y. ORTIZ-JACOBS
MELISSA K. ELLANBEET (AK)*
MELANIE B. OSBORNE (AK)*
MICHALYN STEELE

OF COUNSEL
ARTHUR LAZARUS, JR. P.C.
ROGER W. DUBROCK (AK)*
KAY E. MAARREN GOUWENS (AK)*
MATTHEW S. JABER
MARTA HOLLMAN
DOUGLAS W. WOLF (NM)*
R. SCOTT TAYLOR*

*NOT ADMITTED IN D.C.

July 18, 2003

VIA FACSIMILE: (202)208-3490 and
OVERNIGHT MAIL

Scott Keep, Esq.
Office of the Associate Solicitor
for Indian Affairs
U.S. Department of the Interior
1849 C Street, NW, MS 6456
Washington, D.C. 20240

Re: Cherokee Nation Constitutional Amendment

Dear Scott:

I write at the request of Cherokee Nation Principal Chief Chad Smith in follow up to Chief Smith's July 17, 2003, telephonic conversation with you, Deputy Secretary Griles and Assistant Secretary Martin. We understand that in yesterday's telephonic meeting Deputy Secretary Griles requested that the Cherokee Nation's attorneys explain in writing how the Constitutional Amendments to be voted upon in the upcoming July 26, 2003 election will not alter citizenship or voting rights in the Cherokee Nation, and thus do not implicate the issues addressed in *Seminole Nation of Oklahoma v. Norton*, No. 00-2384 (Slip. Op. Sept. 27, 2001) (mem. op. on cross-motions for summary judgment).[1]

[1] In doing so, however, we note that these Amendments have not yet even been adopted, and that they are also not pending before the Department. Rather, the only Amendment that has been adopted and is awaiting the Department's approval is the Amendment removing the 1976 Constitution's Secretarial approval requirement (Art. XV, Sec. 10). Issues pertaining to other Amendments, not yet placed before the voters, would thus appear to be premature.

We begin by summarizing that nothing in the proposed Constitutional Amendments to be presented to the Cherokee Nation electorate next week effects any substantive change in the Cherokee Nation's existing constitutional citizenship requirements. This is because both the existing 1976 Constitution and the proposed Amendments base Cherokee membership on the "Dawes Commission Rolls."

Specifically, Article III, Section 1 of the 1976 Constitution provides as follows:

> All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls, including the Delaware Cherokees of Article II of the Delaware Agreement dated the 8th of May, 1867, and the Shawnee Cherokees as of Article III of the Shawnee Agreement dated the 9th day of June, 1869, and/or their descendants.

The proposed Constitutional Amendment to this Section to be considered next week, reorganized as Article IV, Section 1, would change the word "members" to "citizens" and improve upon the grammar of the sentence, but otherwise contains no substantive change:

> All citizens of the Cherokee Nation must be original enrollees or descendants of original enrollees listed on the Dawes Commission Rolls, including the Delaware Cherokees of Article II of the Delaware Agreement dated the 8th day of May, 1867, and the Shawnee Cherokees of Article III of the Shawnee Agreement dated the 9th day of June, 1869, and/or their descendants.

The proposed Constitutional Amendment to be considered next week goes on to add the following additional paragraph in Section 1, recognizing the "basic rights" of the Cherokee Nation people:

> The Cherokee Nation recognizes the basic rights retained by all distinct People and groups affiliated with the Cherokee Nation, retained from time immemorial, to remain a separate and distinct People. Nothing in this Constitution shall be construed to prohibit the Cherokee-Shawnee or Delaware-Cherokee from pursuing their inherent right to govern themselves, provided that it does not diminish the boundaries or jurisdiction of the Cherokee Nation or conflict with Cherokee law.

No provision of the existing 1976 Cherokee Constitution speaks to voter qualifications, and likewise no provision of the proposed Constitutional Amendments to be considered next week addresses voter qualifications.

Even if next week's Amendments were adopted and were thereafter subject to Secretarial approval, the situation presented could still not be more unlike the situation that was presented in *Seminole Nation*. In the Cherokee situation, the Constitutional Amendments propose no change whatsoever in citizenship or voting rights. In contrast, in the *Seminole Nation* case, the pending sixth constitutional amendment proposed "to require one-eighth quantum of Seminole Indian blood to be a member of the Seminole Nation, subject to two exceptions." Under the seventh amendment, the Seminole constitutional amendment proposed in the alternative that "the term 'Seminole citizen' be changed to 'Seminole Indian citizen by blood.'" The eighth amendment would have provided that "all Council members representing Indian Bands must have at least one-quarter Seminole Indian blood by removing the exception to this requirement for Freedman Council members." Slip Op. 4-5 n.2. In partly sustaining the Department's disapproval of the amendments, the district court centrally relied upon the fact that the pertinent Seminole amendments sought to "remove the Freedman from membership in the Nation." *Id.* at 18 (describing the amendments). Again, in contrast to the situation presented in *Seminole Nation*, the proposed Cherokee Nation Constitutional Amendments to be considered next week do not purport to disenfranchise any citizen in any manner whatsoever.

We trust that this clarification helps to assure the Department that the present situation is entirely different than the situation presented in *Seminole*. Moreover, as pointed out in footnote, the only Constitutional Amendment awaiting Secretarial approval is the amendment to Article XV, Sec. 10, which does not address citizenship issues at all. Secretarial approval of that amendment will thus in no way implicate the *Seminole* decision, and will be fully consistent with that decision.

Before closing, we pause to note that the recent complaints of certain Freedmen do not appear to contest in any manner existing Article III, Section 1, nor to contest the non-substantive revisions to that section now pending before the Nation. Thus, the Freedmen's complaints are properly aired, not in connection with those Amendments, but in other fora, including the courts of the Cherokee Nation. So too, the Freedmens' complaints about the Bureau's decisions not to issue certificates of degree of Indian blood to certain Freedmen are properly raised within the Bureau's appellate processes for contesting such matters.

Please feel free to call upon either of us for additional information regarding this matter.

Sincerely,

SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLP

By: Lloyd Benton Miller
Arthur Lazarus, Jr.

LBM:alm
cc: Hon. Chad Smith, Principal Chief

EXHIBIT 13

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Eastern Oklahoma Regional Office
Post Office Box 8002
Muskogee, Oklahoma 74401

Office of the Regional Director

July 25, 2003

Honorable Chadwick Smith
Principal Chief, Cherokee Nation
P. O. Box 948
Tahlequah, Oklahoma 74465-0948

Re: Election of Officers and Constitutional Amendment

Dear Chief Smith:

This is in reply to your letter of July 14, 2003, which responded to the Region's letter of July 11, 2003. Following the July 17, 2003 teleconference, this office discussed these issues with the Acting Assistant Secretary - Indian Affairs and the Solicitor's Office, and is now providing the Cherokee Nation with additional information and clarification regarding the Department's position on the May 24, 2003 election.

As indicated in the July 11 correspondence, there is no express requirement in Federal law that the Department of the Interior certify the results of a Tribal election for Tribal officials, including the election of Principal Chief. The Act of October 22, 1970 (84 Stat. 1091) (commonly referred to as the "Principal Chiefs Act"), provides, however, that the procedures for selecting the Principal Chief of the Cherokee Nation are subject to approval by the Secretary of the Interior. We are aware of no evidence that the Secretary has approved the current procedures for the election of the Principal Chief.

The obligation to approve the procedures for selecting the Principal Chief is a different matter than certifying the actual selection of the Chief or any other officer. It is for the Tribe in the first instance to resolve internal disputes over election procedures and results. *See Wheeler v. Department of the Interior*, 811 F.2d 549 (10th Cir. 1987). There are only limited circumstances which would justify the Department's involvement in Tribal matters, *Id.* at 551-52. The Principal Chiefs Act establishes one such circumstance. Accordingly, in order to preserve the Government-to-Government relationship and avoid undue interference in Tribal matters, the Department will continue to recognize you as Principal Chief pending a fully informed agency decision regarding the Cherokee election laws and procedures pursuant to the Congressional mandate in the 1970 Act.

The July 11 letter also addressed the question of the referendum on the amendment to the Tribal constitution. Former Assistant Secretary McCaleb had stated his willingness to approve an amendment that would remove the requirement for Secretarial approval of future amendments, if the vote on that amendment was properly conducted. The proposed amendment that would remove the

requirement for Secretarial approval of future amendments or a new constitution has not been approved and is therefore not yet effective.

- This situation appears identical to the one involving the Seminole Nation of Oklahoma in which the Federal District Courts upheld the Department's position that the requirement on the face of the Tribal Constitution that amendments be approved could not itself be removed without Secretarial approval. *See Seminole Nation of Oklahoma v. Norton*, 206 F.R.D. 1 (D.D.C. 2001) (CKK) ("*Seminole I*") and *Seminole Nation of Oklahoma v. Norton*, 223 F. Supp. 2d 122 (D.D.C. 2002)("*Seminole II*"). It is understood that the Nation takes a different view of the Seminole cases and that the Nation's attorneys have corresponded with the Solicitor's Office directly on those issues. The attorneys representing the Cherokee Freedmen have also corresponded with the Solicitor's Office regarding those issues. A copy of that letter is attached. If the Cherokee Nation would like to respond to the letter from the Freedmen attorneys or would like to share with the Department any discussion regarding the possible effects of the *Seminole I & II* decisions on the May 24, 2003 election, please forward that information to the Solicitor's Office.

It is hoped that this has clarified the Department's positions with regard to the May 24 election. In the interim, this office will continue its review of the material provided by Mr. Pat Ragsdale on July 11, 2003. If there are any questions, please contact this office.

Respectfully,

Regional Director

EXHIBIT 14

Committee to Re-Elect
Chief Chad Smith

REC'D MAR 10 2003

FINANCIAL DISCLOSURE REPORT
SUMMARY OF CAMPAIGN OPERATIONS

Monthly (March 5/April 5/May 5/June 5/July 5) Final - August 6, 2003
(Please Circle One)

BEGINNING CAMPAIGN FUND BALANCE		
CAMPAIGN INCOME		
Contributions	31,755	
Direct Expenditures by others	18,649	
Fundraising Activities	16,710	
Interest Income	9	
Miscellaneous (Other Income)	0	
TOTALS CAMPAIGN REVENUES		67,123
TRANSFERS TO CAMPAIGN FUNDS		
Loans from Candidate	6,722	
Loans from Others	0	
TOTAL TRANSFERS		6,722
CAMPAIGN EXPENDITURES		
Advertisements	20,227	
Bank Fees & Charges	0	
Compensation to Individuals	7,576	
Fundraising	0	
Meals	494	
Office Expenses	0	
Office Supplies	714	
Postage	9,275	
Printing	1,235	
Rent/Leasing Payments	839	
Telephone	467	
Travel	380	
Utilities	42	
Miscellaneous	3,271	
TOTAL CAMPAIGN EXPENDITURES		44,520
TRANSFERS FROM CAMPAIGN FUNDS		
Repayments of Loans	0	
Reimbursable Payments		0
ENDING CAMPAIGN FUND BALANCE		29,325

I certify that this is valid and correct to the best of my knowledge and belief.

Stephanie J. Medearis
Signature

March 3, 2003
Date

Committee to Re-Elect
Chief Chad Smith

FINANCIAL DISCLOSURE REPORT

Monthly - March 5/April 5/May 5/June 5/July 5 (Please Circle One) Final - August 6, 2003

Financial Agent
(Please Print)
Name Suzanne Medearis Phone (918) 456-2589
Address 301 S. Muskogee Ave.
City, State, Zip Tahlequah, OK 74464

CONTRIBUTIONS

Name Jack A. Abramoff
Address 800 Connecticut Ave. NW
Washington, DC 20006
Date 12/26/02 Amount $1,500

Name Cherokee Builders
Address 2005 N. 167th East Ave.
Tulsa, OK 74116
Date 1/3/03 Amount $5,000

Name Renuard Strickland
Address 2993 Chandler
Eugene, OR 97403
Date 1/8/03 Amount $5,000

Name David R. Stewart
Address 517 S. 75th Street
Broken Arrow, OK 74014
Date 1/10/03 Amount $4,500

Name Robert & Kristina Kiehl
Address 2275 Summit Drive
Hillsborough, CA 94010
Date 1/26/03 Amount $5,000

Name Alison K. Friedman
Address 2275 Summit Drive
Hillsborough, CA 94010
Date 1/28/03 Amount $3,000

I certify that this is valid and correct to the best of my knowledge and belief.

Signature March 3, 2003
Date

No Financial Activities to Report.
I certify that this is valid and correct to the best of my knowledge and belief.

Suzanne Medearis
Signature

Date

Committee to Re-Elect
Chief Chad Smith

FINANCIAL DISCLOSURE REPORT

Monthly - March5/April 5/May 5/June 5/July 5 (Please Circle One) Final - August 6, 2003

Financial Agent
(Please Print)
Name Suzanne Medearis Phone (918) 456-2589
Address 301 S. Muskogee Ave.
City, State, Zip Tahlequah, OK 74464

LOANS

Lending Institution _____ Lending Institution _____
Address _____ Address _____
Date _____ Amount _____ Date _____ Amount _____

Lending Institution _____ Lending Institution _____
Address _____ Address _____
Date _____ Amount _____ Date _____ Amount _____

Lending Institution _____ Lending Institution _____
Address _____ Address _____
Date _____ Amount _____ Date _____ Amount _____

I certify that this is valid and correct to the best of my knowledge and belief.

_____ _____
Signature Date

No Financial Activities to Report.
I certify that this is valid and correct to the best of my knowledge and belief.

Suzanne Medearis
Signature

March 3, 2003
Date

EXHIBIT 15

00000532601

Clerk of the House of Representatives
Legislative Resource Center
B-106 Cannon Building
Washington, DC 20515

Secretary of the Senate
Office of Public Records
232 Hart Building
Washington, DC 20510

RECEIVED
SECRETARY OF THE SENATE
04 FEB 17 PM 5:25

LOBBYING REPORT

Lobbying Disclosure Act of 1995 (Section 5) - All Filers Are Required to Complete This Page

1. Registrant Name
Greenberg Traurig, LLP

2. Registrant Address ☐ Check if different than previously reported
Address 800 Connecticut Avenue, NW Suite 500
City Washington State/Zip (or Country) DC 20006

3. Principal Place of Business (if different than line 2)
City State/Zip (or Country)

4. Contact Name [redacted] Telephone 202-331-3160 E-mail (optional) 5. Senate ID #

7. Client Name ☐ Self
Cherokee Nation Enterprise 6. House ID #

TYPE OF REPORT 8. Year 2003 Midyear (January 1-June 30) ☐ OR Year End (July 1-December 31

9. Check if this filing amends a previously filed version of this report ☐

10. Check if this is a Termination Report ☒ >> Termination Date 10/1/2003 11. No Lobbying Activi

INCOME OR EXPENSES - Complete Either Line 12 OR Line 13

12. Lobbying Firm

INCOME relating to lobbying activities for this reporting period was:

Less than $10,000 ☐

$10,000 or more ☒ >> $ $40,000.00
Income (round to $20,000)

Provide a good faith estimate, rounded to the nearest $20,000 of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).

13. Organizations

EXPENSES relating to lobbying activities for this reporting period were:

Less than $10,000 ☐

$10,000 or more ☐ >> $
Expenses (round to $20,000)

14. REPORTING METHOD. Check box to indicate expense accounting method. See instructions for description of options.

☐ Method A. Reporting amounts using LDA definitions only

☐ Method B. Reporting amounts under section 6033(b)(8) of the Internal Revenue Code

☐ Method C. Reporting amounts under section 162(e) of the Internal Revenue Code

Signature [signature] Date 2/9/2004

000005326G2

Registrant Name: Greenberg Traurig, LLP

Client Name: Cherokee Nation Enterprise

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the registrant engaged in lobbying on behalf of the client during the reporting period. Using a separate page for each code, provide information as requested. Attach additional page(s) as needed.

15. General issue area code BUD (one per page)

16. Specific Lobbying issues
Appropriations, sovereignty.

000005326G2

17. House(s) of Congress and Federal agencies contacted ☐ Check if None
House of Representatives
Senate

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)	N
Abramoff, Jack A.		N
Vaeth, Shawn		N
Williams, Michael E.		N

19. Interest of each foreign entity in the specific issues listed on line 16 above ☒ Check if None

Signature _____ Date 1/9/2004

000000411429

Clerk of the House of Representatives
Legislative Resource Center
B-106 Cannon Building
Washington, DC 20515

Secretary of the Senate
Office of Public Records
232 Hart Building
Washington, DC 20510

SECRETARY OF THE SENATE
03 SEP -5 AM 11: 30

LOBBYING REPORT

Lobbying Disclosure Act of 1995 (Section 5) - All Filers Are Required to Complete This Page

1. Registrant Name
Greenberg Traurig, LLP

2. Registrant Address ☐ Check if different than previously reported
Address 800 Connecticut Avenue, NW Suite 500
City Washington State/Zip (or Country) DC 20006

3. Principal Place of Business (if different from line 2)
City State/Zip (or Country)

4. Contact Name Telephone E-mail (optional) 5. Senate ID #
Jack A. Abramoff 202-331-3100

6. Client Name ☐ Self 6. House ID #
Cherokee Nation Enterprises

TYPE OF REPORT 8. Year 2003 Midyear (January 1-June 30) ☒ OR Year End (July 1-December 31)

9. Check if this filing amends a previously filed version of this report ☐

10. Check if this is a Termination Report ☐ >> Termination Date _____ 11. No Lobbying Activit

INCOME OR EXPENSES - Complete Either Line 12 OR Line 13

12. Lobbying Firms

INCOME relating to lobbying activities for this reporting period was:

Less than $10,000 ☐

$10,000 or more ☒ >> $ $60,000.00
Income (round to $20,000)

Provide a good faith estimate, rounded to the nearest $20,000 of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).

13. Organizations

EXPENSES relating to lobbying activities for this reporting period were:

Less than $10,000 ☐

$10,000 or more ☐ >> $ _____
Expenses (round to $20,000)

14. REPORTING METHOD. Check box to indicate expense accounting method. See instructions for description of options.

☐ Method A. Reporting amounts using LDA definitions only

☐ Method B. Reporting amounts under section 6033(b)(8) of the Internal Revenue Code

☐ Method C. Reporting amounts under section 162(e) of the Internal Revenue Code

Signature _____ Date 8/27/2003

0000041430

Registrant Name: Greenberg Traurig, LLP

Client Name: Cherokee Nation Enterprises

LOBBYING ACTIVITY. Select as many codes as necessary to reflect the general issue areas in which the registrant engaged in lobbying on behalf of the client during the reporting period. Using a separate page for each code, provide information as requested. Attach additional page(s) as needed.

15. General issue area code BUD (one per page)

16. Specific Lobbying Issues
Appropriations, sovereignty.

17. House(s) of Congress and Federal agencies contacted ☐ Check if None
House of Representatives
Senate

18. Name of each individual who acted as a lobbyist in this issue area

Name	Covered Official Position (if applicable)	Ne
Abramoff, Jack A.		No
Varoli, Steven		No
Williams, Michael E.		No

19. Interest of each foreign entity in the specific issues listed on line 16 above ☒ Check if None

Signature [signature] Date 3/27/2003

00000252005

Clerk of the House of Representatives	Secretary of the Senate
Legislative Resource Center	Office of Public Records
B-106 Cannon Building	232 Hart Building
Washington, DC 20515	Washington, DC 20510

03 AUG 04 PM 1

LOBBYING REGISTRATION

Lobbying Disclosure Act of 1995 (Section 4)

Check if this is an Amended Registration ☐ 1. Effective Date of Registration 1/1/2003

2. House Identification Number _____ Senate Identification Number _____

REGISTRANT

3. Registrant Name Greenberg Traurig, LLP

Address 800 Connecticut Avenue, NW Suite 500

City Washington State DC Zip 20006

4. Principal place of business (if different from line 3)

City State/Zip (or Country)

5. Telephone number and contact name Contact E-Mail (optional)

202-331-3100 Jack A. Abernethy

6. General description of registrant's business or activities

Law Firm

CLIENT

A lobbying firm is required to file a separate registration for each client. Organization employing in-house lobbyists should check the box labeled "Self" and proceed to line 10. ☐ Self

7. Client Name Cherokee Nation Enterprises

Address P.O. Box 179

City Tahlequah State OK Zip 74465

8. Principal place of business (if different from line 7)

City State/Zip (or Country)

9. General description of client's business or activities

Tribal business

LOBBYISTS

10. Name of each individual who has acted or is expected to act as a lobbyist for the client identified on line 7. If any person listed in this section has served as a "covered executive branch official" or "covered legislative branch official" within two years of first acting as a lobbyist for this client, enter the executive and/or legislative position(s) in which the person served.

Name	Covered Official Position (if applicable)
Jack A. Abernethy	
Steven Vasell	
Michael E. Williams	

00000252006

Registrant Name: Greenberg Traurig, LLP

Client Name: Cherokee Nation Enterprise

LOBBYING ISSUES

11. General lobbying issue areas. Select all applicable codes listed in instructions and on the reverse side of Form LD-1, page two.

BUD, IND

12. Specific lobbying issues (current and anticipated)

Appropriations, sovereignty.

AFFILIATED ORGANIZATIONS

13. Is there an entity other than the client that contributes more than $10,000 to the lobbying activities of the registrant in a semiannual period and is a whole or major part plans, supervises, or controls the registrant's lobbying activities?

☒ No. Go to line 14. ☐ Yes. Complete the rest of this section for each entity matching the criteria above, then proceed to line 14.

Name	Address	Principal Place of Business (city and state or country)

FOREIGN ENTITIES

14. Is there any foreign entity that:

a) holds at least 20% equitable ownership in the client or any organization identified on line 13; or
b) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes activities of the client or any organization identified on line 13; or
c) has an affiliate of the client or any organization identified on line 13 and has a direct interest in the outcome of the lobbying activity?

☒ No. Sign and date the registration. ☐ Yes. Complete the rest of this section for each entity matching the criteria above, then sign and date the registration.

Name	Address	Principal Place of Business (city and state or country)	Amount of contributions for lobbying activities	Owners percen in clie

Signature: [signature] Date: 7/23/2003

Printed Name and Title: Michael E. Williams - Director of Governmental Affairs

THE CENTER FOR PUBLIC INTEGRITY
Investigative Journalism in the Public Interest

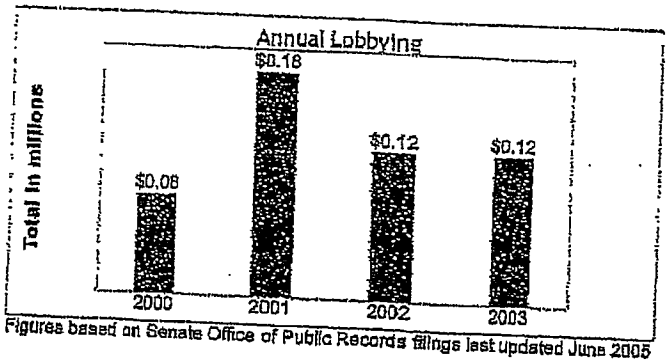
<< Go Back

Company or Organization

Cherokee Nation Enterprises

Rank: 3121st
Lobbying 1998-2004: $500,000
Lobbying 2004:

What these numbers mean



Figures based on Senate Office of Public Records filings last updated June 2005

Lobbying Firms

Firms representing this company or organization ranked by total spending	2003	2004	1998-2004
1) Ietan Consulting LLC — Wilson & Pipestem, Arlington VA	-	-	$300,000
2) Greenberg, Traurig, Hoffman, Lipoff, Rosen & Quentel	$120,000	-	$120,000
3) Wheat Government Relations — Pipestem	-	-	$80,000

Lobbyists

Lobbyists 2004 - present	Employer
1) Sbarina Long	CMA Strategies
2) Pat McFerron	CMA Strategies
3) N Nelson	CMA Strategies

By Industry

Issues this company or organization lobbied ranked by number of filings	2003	2004	1998-2004
1) Indian & Native American Affairs	3	0	10
2) Gaming, Gambling & Casinos	0	0	7
3) Federal Budget & Appropriations	3	0	3
4) Natural Resources	0	0	2

By Agency

Agencies this company or organization lobbied ranked by number of filings	2003	2004	1998-2004
1) U.S. Senate	2	0	7
2) U.S. House of Representatives	2	0	7
3) U.S. Department of Interior (DOI)	0	0	5
4) Indian Health Service	0	0	1
5) National Indian Gaming Commission	0	0	1

EXHIBIT 16

Tribal Operations

AUG 6 [illegible]

Honorable Chadwick Smith
Principal Chief, Cherokee Nation
P. O. Box 948
Tahlequah, Oklahoma 74465-0948

Dear Chief Smith,

This letter further clarifies the Department of the Interior's position with regard to the Cherokee Nation of Oklahoma election for Principal Chief of May 24, 2003.

As previously discussed, there is no express requirement in Federal law that the Department is required to certify the Tribal election results. In this regard, the Department is not certifying the election results of Tribal officials.

The Department has reviewed the correspondence from the Nation's counsel and the counsel for individuals asserting that they are Cherokee Freedman denied the right to vote in the May 24 Tribal election. The Department's role in this area is controlled by the decision of the Tenth Circuit Court of Appeals in *Wheeler v. Department of the Interior*, 811 F.2d 549 (10th Cir. 1987). In that case the Circuit Court noted:

> [T]he Department takes the position that, when the tribe provides a means for challenging elections, the Department has no authority to overrule the decision of the tribal government as to whether a candidate is legally elected. Plaintiffs admit that no Cherokee law or federal statute requires the Department to act in the present case.

Id. at 552.

The Court went on to conclude:

> Any election dispute can be resolved by Cherokee tribal forums, without any Department involvement. Once the Cherokee Tribal Election Board certifies an election result, the Department can carry out its statutory obligation to interact with the legal government, and does not need to reexamine the results of the tribal election.

Id.

In view of the holding in *Wheeler*, it is inappropriate and premature for the Department to question the validity of the election of Tribal officials.

Based on the Nation's Election Commission certification of the results of the May 24 election, the Department recognizes you as the Principal Chief of the Nation.

The Department continues to have under review the May 24 Tribal election results on the proposed amendment of the Tribal constitution that would remove the requirement that future amendments be approved by the Secretary of the Interior. This review is on-going.

Respectfully,

/s/ Jeanette Hanna

Regional Director

cc:

Lloyd B. Miller, Esq.
Sonosky, Chambers, Sachse, Miller & Munson
900 West 5th Avenue - Suite 700
Anchorage, Alaska 99501

Jon T. Velie, Esq.
210 East Main Street
Suite 222
Norman, Oklahoma 73069

Acting Assistant Secretary - Indian Affairs
Main Interior Building
1849 C Street, N.W.
Washington, D.C. 20240

Assistant Solicitor
Division of Indian Affairs, Room 6449
U. S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

SKEEP:AMARTIN:JHANNA:08-06-03
file - Cherokee Nation Election 2003
chrony, mailroom, BORD

EXHIBIT 17

VELIE & VELIE ATTORNEYS AT LAW

210 East Main Street, Suite 222
Norman, Oklahoma 73069
www.onlinevelie.com

Jonathon T. Velie
William Velie
Tanya L. Roland

Telephone: (405) 364-2525
Facsimile: (405) 364-2687
Toll Free: (877) 304-2525
Email: info@velieandvelie.com

June 10, 2003

Ms. Aurene Martin
Acting Assistant Secretary of Indian Affairs
1849 C Northwest
Washington, D.C. 20240
Mail Stop 4140
Main Interior Building
Via Mail and Facsimile: 202-208-5320

Re: Cherokee Freedmen membership in Cherokee Nation of Oklahoma

Dear Ms. Martin:

This firm represents Marilyn Vann, Ronald Moon, Donald Moon and Hattie Cullors. These individuals are direct descendants of individuals on the Cherokee Freedmen Dawes Rolls. Cherokee Freedmen are Cherokees of African Descent that were recognized by the Cherokee Nation and the United States as full members of the Cherokee Nation under the Treaty of 1866.

The Seminole Cases decided by Judge Kotar-Kotelly and Judge Walton in Washington D.C. determined that the Treaty of 1866 between the Seminole Nation and the United States protected the membership of the Seminole Freedmen. As the Kotar-Kotelly Court determined and the Walton Court confirmed the Seminole Treaty of 1866 is still valid, the Cherokee Treaty is as well. Therefore, the Cherokee Freedmen are entitled to membership in the Cherokee Nation. Membership includes voting rights and all other membership benefits afforded to other Cherokees.

However, the Cherokee Nation of Oklahoma has declined membership for these individuals. The denial of membership is made as a matter of policy for Cherokees who can trace only to the Cherokee Freedmen Rolls. As a result, Cherokee Freedmen were denied the right to vote in the election of May 24, 2003. Therefore, said election would be invalid as it preclude members of the nation from voting. Cherokee Freedmen are also denied the right to receive any benefits afforded to the other members of the Cherokee Nation.

These actions are violations of the Treaty and federal law and the individuals request that the Bureau of Indian Affairs perform its fiduciary duties to all Cherokees and enforce the membership rights including the right to vote in Cherokee Nation Elections for the Cherokees of African descent under the provisions of the Treaty of 1866.

The individuals request the Bureau of Indian Affairs take any and all actions to protect its right to membership in the Cherokee Nation including determining the May election invalid, requiring a new election that includes the Cherokee Freedmen's right to vote as well as inclusion in all other membership rights in the Cherokee Nation.

If there is any more information I may provide you so that you can adequately examine this issue please contact me.

Sincerely,

Jon Velie

Cc: Eastern Oklahoma Regional Director
P.O. Box 8002
Muskogee, OK 74401

VELIE & VELIE ATTORNEYS AT LAW

210 East Main Street, Suite 222
Norman, Oklahoma 73069
www.onlinevelie.com

Jonathan T. Velie
William Velie
Tanya L. Roland

Telephone: (405) 364-2525
Facsimile: (405) 364-2587
Toll Free: (877) 364-2525
Email: info@velieandvelie.com

July 21, 2003

Mr. Scott Keep
Attorney for the Bureau of Indian Affairs
1849 C Northwest
Washington, D.C. 20240
Via Mail and Facsimile: 202-208-3490

Re: Certification and recognition of Cherokee Nation of Oklahoma election results in light of Cherokee Freedmen inability to participate

Dear Mr. Keep:

This firm represents Marilyn Vann, Ronald Moon, Donald Moon and Hattie Cullors. These individuals are direct descendants of individuals on the Cherokee Freedmen Dawes Rolls. Cherokee Freedmen are Cherokees of African Descent that were recognized by the Cherokee Nation and the United States as full members of the Cherokee Nation under the Treaty of 1866.

I was advised by Ms. Aurene Martin that you and Charles Babat were the legal counsel handling the issues surrounding the matter of certification of the Cherokee Nation of Oklahoma election. As you may know, I wrote a letter to Ms. Martin addressing the issue that the Cherokee Freedmen were not entitled to vote in the recent election. This action is in direct violation of the Treaty of 1866 and the interpretation of a very similar treaty with the Seminoles by Federal Judges Kotar-Kotelly and Walton in actions that we were both involved in. I have attached a copy of that letter.

Ms. Martin advised me today that the individuals that desired the recognition of the election based their position on Wheeler v. U.S. and invited us to draft our position on that issue for your review.

Please excuse the abbreviated position statement. We understand that a decision on certification may be determined at any time and an immediate statement from the Cherokee Freedmen is neccessary. As we have not seen the brief of the parties seeking

certification, please accept this language as an aid to your determination regarding the Wheeler case and not a full brief on the position of the Cherokee Freedmen or a response to any party's position. We reserve the right to fully brief our position in the event litigation results.

Wheeler v. U.S. et. al. 811 F. 2d. 549 (1987) holds, "that Indian Tribes have a right to self-government, and the Federal Government encourages tribes to exercise that right. Consequently, while the Department may be required by statute or tribal law to act in intratribal matters, it should act so as to avoid any unnecessary interference with a tribe's right to self government."

While we agree that the Federal government should not unnecessarily interferes with a tribe's right to self-government, upholding the Treaty of 1866 granting the Cherokee Freedmen citizenship in the Cherokee Tribe is not merely unnecessary interference. Further, upholding the Freedmen's right to vote in tribal elections is the position the BIA took in the Seminole cases. These positions were supported by two Federal Judges and are directly on point with the Cherokee situation.

Another federal law that may require the involvement of the Department in the election is the Principal Chiefs Act of 1970, which states that certain procedures must be approved by the Department regarding elections. The Cherokee Nation never submitted the procedures disenfranchising the Cherokee Freedmen right to vote for Department approval, therefore, the Department never approved the procedures. The procedures disenfranchising the vote for the Cherokee citizens of African descent are in direct violation of the Treaty of 1866 and the recent Seminole cases.

I understand that the BIA may take the position that the election for Chief may be certified and recognized but not the election on the constitutional issue. These issues cannot and should not be distinguished. The election is fatally flawed because some citizens of the Cherokee Nation were not permitted to vote, therefore, no part of the election is proper. This is not merely an inter-tribal dispute but a direct violation of Treaty rights that protect the citizenship of the Cherokee of African descent.

The BIA must uphold its trust responsibilities to the Cherokee Nation, no matter what improper position the tribe takes. Seminole Nation v. United States, 316 U.S. 286, 297, 62 S. Ct. 1049, 1055 (1942) (Payment of funds to a faithless trustee would be a "clear breach of the Government's fiduciary obligation" and would be actionable); United States v. Mitchell, 643 U.S. 206, 224-28, 103 S. Ct. 2961, 2971-73 (1983) Failure of U.S. trust obligations gives rise to cause of action against trustee.

The Bureau of Indian Affairs has a fiduciary duty to protect Cherokee citizens against the Tribal Government's treaty violation in the same way the Bureau would have the fiduciary duty to protect the citizens against any other type of illegal act the Cherokee government performed against it's citizens. If the Chief or Council of the Tribe embezzled Federal Trust Funds the Bureau would not think twice about taking action. In this case, the stripping of a citizen's right to vote for who leads the Nation or whether the

constitution is altered is a theft of the most valued right a Cherokee citizen can possess. The Cherokee Nation's action has committed the highest form of impropriety it can undertake and stripped itself from being a democracy. Denial of the right to fair elections, the right to chose leaders and ratification of the treatise in which you are governed is a fundamental right all Cherokee enjoy and are of much higher value than misappropriation of funds. Yet the BIA takes pause on whether to take action.

The Cherokee Freedmen listed above respectfully request that the BIA uphold its fiduciary duty to protect their Federally protected right to citizenship in the Cherokee Nation of Oklahoma including their right to vote in elections. To uphold this right, the BIA must take the same course of action it did with the Seminole Nation and demand lawful elections that provide all citizens the right to participate.

If there is any more information I may provide you so that you can adequately examine this issue please contact me.

Sincerely,

Jon Velie

Cc: Mr. Charles Babst
BIA Field Solicitor's Office
918-669-7736

Ms. Aurene Martin
Acting Secretary of Indian Affairs
202-208-6334

EXHIBIT 18

CHEROKEE NATION

Office of the Principal Chief

Memo

To: Lela Ummerteskee, Registrar
Flossie I. Girty, Tribal Relations Officer

From: Chad Smith, Principal Chief

Date: March 23, 2006

Re: JAT Decision Regarding Citizenship

This memorandum is to document and memorialize former directives regarding operational procedures following the Judicial Appeals Tribunal Decision on March 7, 2006 in *Allen v. Cherokee Nation Tribal Council, Lela Ummerteskee, and Registration Committee*. This decision deemed 11 CNCA § 12 requiring proof of Cherokee blood for citizenship unconstitutional, and reversed its former decision in *Riggs v. Ummerteskee* in 2001.

With no requirement for proof of Cherokee blood, certain Registration procedures must necessarily be adjusted accordingly. Specifically, a CDIB will no longer be a requirement for citizenship in the Cherokee Nation.

Applications from prospective citizens without Cherokee blood are to be processed on the same basis as all other applications for citizenship. All applicants should be advised as to the estimated processing time for their application, and dealt with courteously and respectfully. I appreciate the exceptional efforts the Registration staff have already made in this regard.

Please revise forms, brochures and other materials necessary to make these changes, and ensure that your staff are fully informed of the JAT decision and these new procedures.

Thank you for your attention to this matter. Please contact me if you have any questions or need assistance.

EXHIBIT 19

Council limits retail-to-retail tobacco sales

By Travis Snell
Staff Writer

TAHLEQUAH, Okla. - The Tribal Council amended the Cherokee Nation's "Tobacco Tax" law to establish a surtax on retail-to-retail sales in order to limit them and to reduce smoking rates within the tribe's jurisdiction at its March 13 meeting.

Eleven of the 13 councilors present at the meeting voted to amend the law. Dist 3 Councilor (Adair County) David Thornton and Dist. 6 Councilor (Mayes County) Johnny Keener voted against the amendment citing the surtax would drive smaller CN-licensed smoke shops located near border smoke shops out of business.

According to the act, the surtax is intended to reduce smoking rates in order to lower overall CN health care costs, and revenues from the surtax will be earmarked for diabetes and cancer programs.

Thornton said one reason he voted against the act is because he doesn't know how revenues would be spent.

"I haven't really understood whether this money is for our (existing) clinics or to build a diabetes clinic. It's not real clear in there, and I certainly want to keep that money in the Cherokee Nation."

However, the bigger issue for Thornton is the limiting of retail-to-retail sales.

When the state government abandoned the tobacco compact with CN in 2005, many Indian smoke shops bought less expensive cigarettes from smoke shops located near state lines to resell them in a higher-tax market to maintain a price advantage over corporate tobacco retailers.

The Oklahoma Tax Commission has also adopted rules to eliminate retail-to-retail sales.

CN councilors voted to apply the new surtax on retail-to-retail cigarette transactions if the tribally licensed retailer is selling to other tribal retailers within the CN. The new surtax will add 15 cents for each package of cigarettes and $1.50 on each carton.

In order to help prevent some smoke shops from going out of business, the amended "Tobacco Tax" law also creates a fund not to exceed $1 million to make loans available to tobacco retailers who are adversely affected. The law states that CN will be repaid for such loans through the rebate amount the OTC sends to the tribe.

Also at the meeting, councilors unanimously sent a lobbying-related act back to its Rules Committee to better define lobbying and lobbyist.

The act known as the Corporation Lobbying Act of 2006 would have amended a related act passed in 1996 by requiring CN-owned corporations to acquire approval from the council before obtaining lobbying services.

Councilors also unanimously amended the tribe's fiscal year 2006 budget by adding more than $2 million for a total budget authority to $345 million.

The amendment added $1.8 million to the General Fund to fund new initiatives and government projects and $101,300 to the Self-Governance Fund to subsidize the tribe's Johnson-O'Malley Program. It also added $92,023 to the Native American Housing Assistance and Self-Determination Act Fund for carryover spending of certain activities contained in CN's 2005 Indian Housing Plan and $55,000 to the Motor Fuels Tax Fund for carryover spending of the Veterans Office's Warrior Memorial prior year's funding.

In a time-saving move, 12 councilors voted to approved Wathene Young, Jim Carson, William Grass and Tammy Keeter-Miller to the Cherokee Nation Industries board of directors. Dist. 1 (Cherokee County) Tribal Councilor Audra Smoke-Connor abstained from the vote because she works for Young.

The council also unanimously passed:

4a resolution authorizing the Bureau of Indian Affairs to update CN's inventory of Indian reservation roads,

4a resolution allowing CN's Department of Children, Youth and Family Services to apply for $150,000 in transitional living services from the U.S. Family and Youth Services Bureau for runaway and homeless youth,

4a resolution authorizing the administration to seek $500,000 in funds from the U.S. Department of Health and Human Services for the operation of the Program of All-Inclusive Care for the Elderly (PACE), which aims to provide elders economic and social self-sufficiency via community-based organizations,

4a resolution endorsing a self-governance compact with the HHS and the Indian Health Service, which allows the tribe to enter annual funding agreements with the IHS,

4a resolution authorizing a proposal to the Administration for Native Americans to seek funding to help save the Loyal Shawnee language from extinction,

4resolutions allowing right-of-way easements over tribal trust land in Adair County to allow tribal citizens use of a road and in Delaware County between the tribe and Northeast Oklahoma Electric Cooperative for an electricity distribution line,

4resolutions approving an oil and gas lease on tribal fee land in Red River County, Texas to Bartlett Resources for five years with a royalty rate of 16.67 percent and a sand and gravel lease on the Arkansas Riverbed to Arkhola Sand and Gravel Company in Fort Smith, Ark., for five years with a royalty rate of 20 cents per ton for sand and 25 cents per ton for gravel,

4a resolution allowing CN's Environmental Programs to apply to the U.S. Environmental Protection Agency for funding to establish a water program council to raise awareness on health-related issues in tribal communities and on aquatic resources and watersheds,

4a resolution allowing Environmental Programs to apply to the EPA for a tribal solid waste management assistance grant.

In his State of the Nation address, Principal Chief Chad Smith spoke about the Judicial Appeals Tribunal's March 7 ruling in the case of Lucy Allen vs. CN Tribal Council, where the JAT ruled that descendants of Cherokee Freedmen on the Dawes Rolls could enroll as CN citizens. The ruling states

that the 1975 Constitution wasn't clear enough when Cherokees voted by a ratio of 6-to-1 to exclude Freedmen, he said.

Smith said CN voters would probably have the opportunity to vote in 2007's tribal elections to see if the Freedmen descendants would remain citizens of the tribe.

"The issue at hand is what classes of people should be citizens of the Cherokee Nation, and who should make that decision, the courts or the Cherokee people themselves," he said. "The process to decide the issue of Freedmen citizenship is a constitutional amendment at the polls. The constitutional question to determine citizenship and especially whether to exclude Freedmen... may be placed on the next general election ballot by a referendum petition or by a constitutional question authorized by resolution of the council."

Smith said many Cherokees believe that Cherokee voters in 1975 understood that voting to approve the 1975 Constitution would exclude Freedmen from citizenship.

He said other Cherokees believe that citizenship should include the five culture/ethnic groups such as they were before Oklahoma statehood - Cherokees by blood, Delawares by blood, Shawnees by blood, inter-married whites and Freedmen. But regardless of one's viewpoint, Smith said, the decision re-enforces the principle that the CN is the same constitutional government formed in 1839.

"It properly destroys the falsehood that there is a new Cherokee Nation of Oklahoma created in 1975 and an older Cherokee Nation with a constitution dated in 1839," he said. "There is only one constitutional government of the Cherokee people since 1839 and that simply is Cherokee Nation."

Smith also honored Air Force veteran Dennis Groundhog Ogan as the month's sole veteran honoree. Born near Stilwell in 1917, Ogan joined the Air Force in 1941 after graduating Sequoyah Orphans Training School (now Sequoyah High School) and attending Bacone Junior College in Muskogee. He served in World War II in the Pacific Ocean Theater as an administrative and technical inspector.

Ogan was honorably discharged from active duty in 1948 and worked for the BIA for 35 years before retiring. He currently lives in Oregon with his wife Katherine. His niece Toxie Hamilton accepted a plaque in his honor.

Smith also honored the SHS basketball teams for making it to the Class 3A state playoffs for the 2005-06 season and introduced SHS girls basketball coach Bill Nobles, who coached the Lady Indians to their second straight state title.

travis-snell@cherokee.org • (918) 453-5358

Cherokee Nation Tribal Council

(918) 207-3900 or 1-800-995-9465

District 1 - Cherokee • Cherokee County

Bill John Baker • Bill-Baker@cherokee.org
Audra Smoke-Conner • Audra-Smoke-Conner@cherokee.org

District 2 - Trail of Tears • Adair County

S. Joe Crittenden • Joe-Crittenden@cherokee.org
Jackie Bob Martin • Jackie-Martin@cherokee.org

District 3 - Sequoyah • Sequoyah County

David W. Thornton Sr. • David-Thornton@cherokee.org
Phyllis Yargee • Phyllis-Yargee@cherokee.org

District 4 - Three Rivers McIntosh, Muskogee & Wagoner Counties

Don Garvin • Don-Garvin@cherokee.org

District 5 - Delaware • Delaware & Ottawa Counties

Linda Hughes O'Leary • Linda-Hughes-OLeary@cherokee.org
Melvina Shotpouch • Melvina-Shotpouch@cherokee.org

District 6 - Mayes • Mayes County

Meridith Frailey • Meridith-Frailey@cherokee.org
Johnny Keener • John-Keener@cherokee.org

District 7 - Will Rogers • Rogers County

Cara Cowan-Watts • cara@caracowan.com

District 8 - Tulsa • Washington County

Buel Anglen • buelanglen@sbcglobal.net
Bill Johnson • Bill-Johnson@cherokee.org

District 9 - Craig • Craig & Nowata Counties

Charles "Chuck" Hoskin • Charles-Hoskin@cherokee.org

Tribal Council meetings are held at 6 p.m., the second Monday of each month in the Tribal Council Chambers of the W.W Keeler Tribal Complex.
Meetings can be viewed live on the Cherokee Nation Web site at www.cherokee.org.
Videos of the Tribal Council meetings are accessible at the Cherokee Nation Web site at www.cherokee.org
The latest version of Windows Media Player is required.

EXHIBIT 20

Cherokee Nation Shadow Report to Committee on the Elimination of Racial Discrimination
Submitted by Principal Chief Chadwick Smith, February 5, 2008

INTRODUCTION

In General Recommendation XXIII, the Committee on the Elimination of Racial Discrimination has affirmed 1) that the situation of Indigenous peoples is a matter of international attention and concern, 2) that discrimination against Indigenous peoples falls under the scope of the *International Convention on the Elimination of All Forms of Racial Discrimination*, and 3) that all appropriate means must be taken to combat and eliminate such discrimination [CERD].

The Cherokee Nation is the second largest Indian nation in the United States and is the contemporary manifestation of the original Cherokee Nation. In June of 2007, HR 2824,[1] a bill "*[t]o sever United States' government relations with the Cherokee Nation ...*" was introduced in the U.S. House of Representatives "*until such time*" as the Nation would be forced to "*restore full tribal citizenship*" to the non-Indian descendants of the freedmen of 1866[2] (*see below*). This legislation claims that the Nation is in violation of its treaty obligations under the Treaty of 1866.[3] The bill is undemocratic and unjust - it is based on egregious errors and omissions; it assumes treaty obligations of the Cherokee Nation that were bilaterally abrogated more than 105 years ago; the legislative process leading to the introduction of the bill (and since that time) included no opportunity for full and effective participation by legitimate representatives of the Cherokee Nation; and further, rather than wait for ongoing litigation in U.S. and tribal courts to be completed, some members of Congress are trying to impose, through duress, their own directives to the detriment of the Cherokee Nation.

The legislation would, in effect, either allow Congress to determine membership in the Cherokee Nation or sever federal financial obligations to the Nation, close Cherokee businesses, and legitimize unfounded lawsuits against the Nation. It would force the Nation to capitulate or suffer these consequences indefinitely. The Nation, various citizens, Indigenous groups, and others have taken steps to address the inflammatory claims, to re-establish the facts of our Nation's history, and to bring attention to various human rights of Indigenous peoples that would be undermined or violated, should the legislation proceed.

Our purpose in turning to the Committee is to question **how such potentially damaging legislation, drafted and introduced without any participation by representatives of the Nation and *based on premises that are either distorted or untrue* could be consistent with the human rights obligations of the United States under CERD.** We call particular attention to the recommendation of the Committee "that the State party ensure effective participation by

---

[1] *See* enclosed copy of HR 2824: *To sever United States' government relations with the Cherokee Nation of Oklahoma until such time as the Cherokee Nation of Oklahoma restores full tribal citizenship to the Cherokee Freedmen disenfranchised in the March 3, 2007, Cherokee Nation vote and fulfills all its treaty obligations with the Government of the United States, and for other purposes.* 110th Congress, 1st Session, In the House of Representatives, June 21, 2007.

[2] *Noting that* over 1,500 present day descendants of freedmen (former slaves of 1863) who *also established Indian ancestry* were already enrolled citizens and will continue to be citizens of the Cherokee Nation.

[3] July 19 1866 - Treaty with the Cherokee, 1866.
At: http://digital.library.okstate.edu/KAPPLER/VOL2/treaties/che0942.htm

Indigenous communities in decisions affecting them ... as required under article 5 (c) of the Convention ...."[4]

As Principal Chief of the Cherokee Nation and acting on behalf of the Nation, we respectfully **request that the Committee recommend that the United States 1) not initiate any act to dispossess the Cherokee people of their human rights; 2) ensure democratic participation of the Cherokee Nation through its authorized representatives in any draft legislation that may significantly affect their fundamental rights; and 3) ensure that elected or appointed officials are fully apprised of their obligations under CERD.**

BACKGROUND AND RELEVANT HISTORICAL CONTEXT

The Cherokees are an Indigenous nation, with a government-to-government relationship with the United States based on an elaborate system of treaties, agreements, and executive orders. The first treaty between the Cherokee Nation and the United States was the Treaty of Hopewell (South Carolina) in 1785. This treaty defined the relationship of the Cherokee Nation with the United States as being "under the protection of the United States and no other sovereign." This treaty (and most subsequent treaties) required land cessions to the United States.

In 1835, a small dissident group of unauthorized Cherokee tribal members signed the now infamous Treaty of New Echota. Congress ratified the treaty over the protests of the vast majority of the people and the legitimate government of the Cherokee Nation. The Treaty of New Echota exchanged the southeastern homeland for land in the 'Indian Territory' (now Oklahoma). In 1838-39, the Cherokee Nation was forcibly removed from its homeland in the southeastern United States to 'Indian Territory', resulting in the deaths of over 4,000 men, women, and children. That forced displacement of Cherokee citizens became known as the "Trail of Tears." The Cherokees' last treaty, the Treaty of 1866, was the result of the Cherokee/U.S. government relations at the end of the American Civil War.

Beginning in 1794, federal agents and some missionaries began to actively promote the use of black slaves in their "civilizing" efforts to turn the Cherokees into farmers like their neighbors in the South (in Georgia and nearby states). Like many other Native American nations, the Cherokees had long been accustomed to a form of 'traditional' slavery related to captive enemies. The concept of slavery as a 'natural by-product' of one's birth or skin color was a foreign concept. Consequently, the Cherokee Nation, like the United States, was deeply divided over the institution of slavery and it was never accepted by the majority of Cherokee people, although Cherokee law did permit it. At its peak in 1860, less than 2 percent of the Cherokee people were slaveholders.[5]

As a result of these and other divisions, Cherokees fought on both sides in the American Civil War. However, at least two-thirds of Cherokee men served in the Union Army in opposition to slavery. The Cherokee Nation, in the middle of the Civil War, passed its own Act to voluntarily abolish slavery, almost *three years before* ratification of the 13th Amendment to the U.S.

---

[4] *Committee on the Elimination of Racial Discrimination* (A/56/18), *Concluding observations: United States of America*, August 14, 2001, para. 400

[5] 1860 Slave Federal Census Cherokee Nation, Indian Territory
At: http://www.rootsweb.com/~usgenweb/ok/nations/1860_federal_census_of_indian_te.htm

Constitution doing the same. Nevertheless, at the end of the Civil War, the Cherokee Nation entered into the Treaty of 1866 with the United States and was required to cede land, jurisdiction, and autonomy.

Article 9 of the treaty stated that the "freedman" and "other free colored persons" and "their descendants" according to certain residency requirements "shall have all the rights of native Cherokees." The Treaty did not grant citizenship. The Cherokee Nation voluntarily amended its Constitution in 1866 to add a citizenship provision. The freedmen and their descendants, according to certain residency requirements, had such rights until a 1902 act of Congress placed a cutoff date on *entitlements to enrollment.*

This was the Dawes era. Congress had adopted the 1898 Curtis Act[6], and the Cherokee Nation was being forced by the federal government to divide its territory into individual allotments and to agree to termination of its national government, in violation of prior treaty provisions. Maintaining *entitlement to enrollment* in an Indian nation that was, through duress, being divided into pieces lost importance at that time.

The 1902 Act of Congress[7] provided in Sec. 26 that citizens living on September 1, 1902, be enrolled and that "*no child born thereafter to a citizen ... shall be entitled to enrollment.*"[8] This reflects the intent of Congress to terminate the very existence of the Cherokee Nation. The citizens of the Cherokee Nation, including the freedmen, the descendants of freedmen and inter-married whites, participated in a vote to approve the negotiated Act of 1902. Had it not been approved, the un-negotiated and even more destructive terms of the 1898 Curtis Act would have applied. The majority of the traditional Indian citizens of the Nation chose not to vote and the Act was approved. It also provided that each citizen would be allotted 110 acres of Cherokee land and their proportionate share of other tribal property. Further, the Act specifically stipulated that no previous "treaty provision inconsistent with this agreement shall be in force."

Thus, Article 9 of the Treaty of 1866 was *bilaterally abrogated* by the United States and the Cherokee Nation.[9] Additionally, the Cherokee Nation abrogation was the result of a democratic vote mandated by the United States.[10] The Five Tribes Act of 1906[11] also established a cutoff date according to residency requirements and extended the 'legal existence' of the Cherokee Nation's government.

---

[6] June 28 1898, *An act for the protection of the people of the Indian Territory, and for other purposes* (The Curtis Act). *At:* http://digital.library.okstate.edu/KAPPLER/Vol1/HTML_files/SES0646.html

[7] July 1 1902, *An act to provide for the allotment of the lands of the Cherokee Nation, for the disposition of town sites therein, and for other purposes. At:* http://digital.library.okstate.edu/kappler/vol1/html_files/SES0787.html

[8] *See* enclosed booklet to Congress, *The Cherokee Nation – Human Rights Overview (with regard to HR 2824 and amendment to HR 2786) Timeline – History Re-established*, pp. 4-10

[9] *See Garfield v. United States ex rel. Lowe*, 34 App. D.C. 70, 1909 WL 21538*4 (D.C. Court of Appeals 1909), aff'd sub mon, United States ex rel. Lowe v. Fisher, 223 U.S. 95 (1912)

[10] It is worth emphasizing that no such vote would have ever occurred had the United States not *unilaterally* abrogated prior treaties guaranteeing the Nation its lands and territories.

[11] April 26 1906, *An act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes. At:* http://digital.library.okstate.edu/kappler/Vol3/HTML_files/SES0169.html

As previously mentioned, HR 2824 was introduced in June 2007 to force the Cherokee Nation and its citizens to agree to the enrollment of the present-day non-Indian descendants of freedmen, even though this issue is currently being litigated and examined by U.S. and Cherokee courts. The legal complexities are further compounded by the brutal treatment of the Cherokee Nation in its past history. Upon consultation with the Cherokee Nation, drafters of H.R. 2824 would understand critical historic and legal issues such as the *Cherokee Nation has had no remaining obligation arising from the Treaty of 1866 on the issue of citizenship for over 105 years*. This in no way restricts the *inherent right* of the Cherokee Nation to enroll citizens according to the Nation's own requirements, since such acts would be different from 'entitlements' established and bilaterally abrogated by federal law.

It is important to note that the Cherokee Nation recognizes slavery is reprehensible, unjust, and morally unsupportable. Slavery is also contrary to Cherokee, United States, and international law. A tiny percentage of Cherokee citizens were slaveholders, but the entire Cherokee Nation took responsibility for the actions of these citizens. By extending entitlements to citizenship for almost 40 years, the Cherokee Nation ensured that the freed slaves and their descendants, according to certain residency requirements, received land and monetary considerations never given to the freed slaves in the United States. It further recognizes that land ownership and cash payments of percentages of tribal properties had a positive benefit on former slaves and their descendants, which translated into smaller gaps in wealth and income.

MODERN CHEROKEE REVITALIZATION

From 1906 until 1971, the President of the United States appointed the Principal Chief of the Cherokee Nation, and approved or disapproved of all Cherokee acts, ordinances, resolutions, payments or expenditures.[12] Cherokee self-governance existed only in Cherokee community organizations and sacred societies.

The Cherokee Nation began a period of revitalization in 1971 with passage of a federal law that acknowledged the right of the Cherokee people to elect their own Principal Chief. On June 26, 1976, the Cherokee people overwhelmingly ratified a new Constitution that replaced the 1839 constitution, noting in Article 16: "*provisions of this Constitution overrule and supersede the provisions of the Cherokee Nation Constitution enacted the sixth day of September 1839.*" It provided that citizenship includes Cherokee, Shawnee, and Delaware Indians. In 2003, the Cherokee people voted again on a new Constitution and affirmed that Cherokee citizens should be Cherokee, Shawnee and Delaware Indians. Both the Cherokee and federal courts affirmed the right of the Cherokee Nation to determine citizenship.[13]

---

[12] The last elected Principal Chief was 'retained' in the position until his death in 1917. For the next twenty-four years (1917-1941), various Presidents of the United States appointed a total of six Principal Chiefs, whose tenure in office collectively added up to 23 days (one serving 18 days, the other five serving one day each).

In 1941, Jesse Bartley Milam, a Cherokee citizen and co-founder of Phillips and Milam Oil Company, was appointed Principal Chief and was 'allowed' to remain in office until his death in 1949. In 1949, W.W. Keeler, a Cherokee citizen and Vice President of Phillips Petroleum Company, was the last Principal Chief to be appointed by a President of the United States. In 1971, he was also the first Chief 'allowed' to be elected.

[13] 10th Circuit Court of Appeals, *Nero vs. Cherokee Nation*, 1989 and Cherokee Nation Justice Appeals Tribunal (JAT), *Riggs vs. Ummerteeskee*, 2001

However, in 2006, the Cherokee Nation's highest court reversed itself. It held that the 1975 language was not clear enough and that if the Constitution "was intended to limit membership to citizens by blood, it should have said so" and required more "specific language." This ruling[14] overturned three decades of court decisions to the contrary, but repeatedly recognized that "the Cherokee citizenry has the ultimate authority to define tribal citizenship." However, the ruling allowed for immediate enrollment of non-Indians in the Cherokee Nation.

Cherokee citizens, in a March 2007 referendum vote to amend their constitution, provided the more "specific language" required by the Court. They reaffirmed what they had already believed to be true - that Indian ancestry is required for citizenship in their Indian nation - and they limited citizenship to those who were descended from Indian ancestors listed on the Dawes Rolls. In the meantime, the 2,867 non-Indians who had been enrolled since the 2006 ruling were no longer entitled to enrollment. This presented a dilemma that is being decided in three courts today.

The 2007 vote to amend its constitution was a crucial vote for the future of the Cherokee Nation and its own sense of identity. HR 2824, which provides for unlimited enrollment of non-Indians, would undermine the Nation's right to determine its own citizens (a right consistently recognized by the United States[15]), and therefore undermine the integrity of the Nation. This vote has been falsely characterized as racist, while, in fact, the vote was for an explicit clarification of who is a documented Indian in regards to citizenship in the Cherokee Nation.[16]

---

[14] Cherokee Nation Supreme Court, *Allen vs. CN Council, Registrar and Registration Committee*
At: http://www.cherokee.org/docs/news/Freedman-Decision.pdf

[15] *See for example: United Nations General Assembly* – United States explanation of vote, *UN Declaration on the Rights of Indigenous Peoples*, 13 September 2007:

> Under United States domestic law, the United States government recognizes Indian tribes as political entities with **inherent** powers of self-government as first peoples. In our legal system, the federal government has a government-to-government relationship with Indian tribes. In this domestic context, this means promoting self-government over a broad range of internal and local affairs, **including determination of membership, culture**, language, religion, education .... [emphasis added]

See also: *Organization of American States* – standard-setting proposal by the United States, Draft *American Declaration on the Rights of Indigenous Peoples*, 27 April 2007:

> States should recognize, for example, that **Indigenous peoples have the collective right to self-determination** within the nations in which they reside. This means the right to self-government in matters relating to their internal and local affairs, **including culture**, language, religion, education ... **economic activities**, lands and resources management, environment, **determination of membership** ... **as well as ways and means for financing these functions.** As Indigenous peoples are first peoples with the right to self-government, states should have political relationships with Indigenous peoples residing within their countries. [emphasis added] *Similar statements were made by U.S. government at the OAS in 2006, 2003, 2002 and 2001.*

[16] It is important to repeat that the over 1,500 present-day descendants of freedmen who have established Indian ancestry *are* citizens of the Cherokee Nation, and *will continue to be citizens of the Cherokee Nation. See for example*, enclosure: Heather Williams, *Let the Cherokees decide who's Cherokee*, Los Angeles Times, 10 July 2007. Heather Williams is a present-day descendant of a freedman who also established Indian ancestry and is a citizen of the Cherokee Nation. *Additionally*, a simple look at the 'complexion' of the Nation reveals that there are thousands of citizens who are African American, Hispanic American, Asian American, and Caucasian. All are citizens today because they each have one Indian ancestor listed on the Dawes Rolls.

It should be noted that, despite the referendum, the Nation supported a tribal court order to stay the effects of the Constitutional amendment until the litigation is resolved. Until that time, the 2,867 people affected will remain citizens with voting rights, access to social and health services, and expert genealogical research at no charge to learn whether they have an Indian ancestor listed on the Dawes Rolls in order to help them become a permanent citizen of the Nation.

In international law, the *UN Declaration on the Rights of Indigenous Peoples* also supports the right of an Indigenous people to determine their own citizens: "Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions."[17]

RIGHT TO FULL AND EFFECTIVE PARTICIPATION

In addition to HR 2824, in September 2007, the U.S. House of Representatives passed an amendment to exclude the Cherokee Nation from federal housing benefits *unless and until* they meet the demands of HR 2824.[18] The wording of the amendment itself denies housing funding *until* the Nation "is in full compliance with the Treaty of 1866 and" fully recognizes all present day non-Indian descendants of freedmen "as citizens of the Cherokee Nation." The amendment was then rightfully further amended to delay enforcement until ongoing judicial processes are concluded.

In noting the language of the Congressional floor debate, damaging misconceptions and misinformation about the Cherokee Nation, as alleged in HR 2824, were accepted as fact throughout the discussion. *Not one member* asserted the right of Cherokee representatives to fully and effectively participate in a decision which could gravely affect the Nation's ability to continue to exist as a distinct nation. The obligation of the United States' government to respect and uphold the human rights of Indigenous peoples under international human rights law was never mentioned. Indeed, the words 'human rights' were never used. Members of Congress seemed completely unaware of any obligation in this regard.

It is difficult to imagine that any other group in this country would be subjected to such far-reaching proposals without elected officials of the federal government, at the least, assuming a 'duty to consult'. Neither a 'duty to consult' nor the right of Cherokee leadership to "full and effective participation"[19] in decisions affecting the Cherokee people was recognized. This right

---

[17] *United Nations Declaration on the Rights of Indigenous Peoples* adopted by the UN General Assembly, 13 September 2007, Article 33 (1). See also: *Indigenous and Tribal Peoples Convention*, 1989, Article 1(2).

[18] HR 2786: *Native American Housing Assistance and Self-Determination Reauthorization Act of 2007*, H.AMDT.783 (A001). *At:* http://www.govtrack.us/congress/bill.xpd?bill=h110-2786

[19] *See also*: *Indigenous and Tribal Peoples Convention*, 1989, Art. 6 (1) "In applying the provisions of this Convention, governments shall: (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly" and (2) The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

See also: *United Nations Declaration on the Rights of Indigenous Peoples*, Art. 19, "States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative

is essential to democratic processes. Further, the provisions of HR 2824 would deny the Cherokee Nation's right to preserve and revitalize its own culture for its continued existence as a distinct people.

Rather than allowing the Cherokee people to make their own decisions regarding their own future through their elected government, judiciary, legislative branch, popular referendums, and public meetings – a Congressperson stepped in with her own *unilateral* directive. Although we vehemently reject the inflammatory misrepresentations made against our Nation, something more important is at stake.

Indian nations know their own history. Without respect for the right of "full and effective participation" of Indian nations in decisions affecting them, other rights can be ignored - such as our right to continue to exist as a distinct nation, our right to our own culture, our right to be different, our right to security,[20] and most importantly, our right of self-determination, including our right to self-government and to determine our own citizens. Article 4 (c) of CERD provides that State parties "shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination," a highly prejudicial, yet intentional effect of HR 2824. Members of Congress are inciting racial discrimination against the Cherokee Nation by unfairly branding the Cherokee Nation and its citizens as those who are committing the discriminatory acts. For instance, the Representative who introduced HR 2824 publicly claimed that the Cherokee referendum vote in March 2007 to amend its Constitution "equaled if not surpassed the most vitriolic attacks against African Americans in the once segregated South."[21]

Article 5 of CERD calls for State parties "to guarantee the right of everyone, without distinction ... to equality before the law." It is inequitable for a member of Congress to draft and introduce such legislation without allowing courts to complete their review fairly, based on all of the evidence, and to suggest that such legislation is justified to confirm alleged, but unproven, racial discrimination. By circumventing existing judicial processes, this legislation pre-determines draconian measures, such as severing the United States' government relations with the Cherokee Nation, and ignores the political, social, economic, and cultural implications that such measures would entail.

CONCLUSIONS

Paragraph 4(c) of CERD General Recommendation XXIII calls on States to "provide Indigenous peoples with conditions allowing for a sustainable economic and social development compatible

---

measures that may affect them." These rights and standards in international law serve to interpret the provisions of CERD, in regard to Indigenous peoples and individuals.

[20] *See, for example,* the *UN Declaration on the Rights of Indigenous Peoples*, Article 7 (1) "Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. (2) Indigenous peoples have the collective right to live in freedom, peace, and security as distinct peoples ..."; and Article 20 (1) "Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities."

See also: the *Universal Declaration of Human Rights* (UDHR), Articles 3 and 25 and the *International Covenant on Civil and Political Rights* (ICCPR), ratified by the United States in 1992, Article 9 (1)

[21] Representative Diane Watson (D-CA), *Jim Crow in Indian Country*, October 25, 2007. *At:* http://www.huffingtonpost.com/rep-diane-watson/jim-crow-in-indian-countr_b_69927.html

with their cultural characteristics." In this case, the United States would have the Cherokee Nation either surrender its inherent right of self-determination or face devastating financial consequences. By severing the government-to-government relationship, the proposed legislation would diminish, if not destroy, the Nation's ability to provide essential infra-structure, education, health and housing services to its citizens. It would eliminate 6,500 jobs. It would undermine the Nation's ability to determine its own future by denying the Nation its resources.

The introduction of HR 2824 and HR 2786, as amended, demonstrate that continued assertion of the "*plenary power of Congress*" can cause great harm (whether by intent or in effect or both) to an Indigenous nation in the United States. Such legislative claims seek to change the focus from the historically damaging acts of Congress to blaming the Cherokee Nation. Such claims attempt at least to imply (both in Congress and in an aggressive national media campaign) that the Nation is racist, to deprive it of its collective identity and its economic existence, and to terminate the Cherokee as a distinct people. Such acts of cultural genocide constitute grave violations of human rights under CERD and, more generally, international law.

In paragraph 390 of the Committee's *Concluding Observations* to the United States of 14 August 2001, the Committee "recommends that the State party undertake the necessary measures to ensure the consistent application of the provisions of the Convention *at all levels of government*." (emphasis added) In its Periodic Report to CERD, the United States pledges in paragraph 50 that copies "of the report and the Convention" will be "widely distributed within the executive branch of the U.S. government, to federal judicial authorities," and to "*relevant* members of Congress and their staffs ..." (emphasis added). Clearly "relevant" members would include those members of Congress who introduce such legislation as HR 2824 which would severely undermine the rights of the Cherokee Nation and its people.

Questions requested of the Committee:

- What concrete steps and measures has the United States taken to ensure that elected members of Congress are informed of the legally-binding obligations of the government regarding Indigenous peoples' human rights under CERD? Are the Concluding Observations of the CERD Committee furnished to members of Congress, including those relating to the collective and individual rights of Indigenous peoples and individuals?

- At least in respect to the United States, have relevant members of Congress (e.g. those addressing HR 2824) been made aware of CERD General Recommendation XXIII relating to Indigenous peoples?

- Has the U.S. government taken any steps to fully and fairly engage in discussion with the Cherokee Nation, since the intent of HR 2824 is "to sever" the relationship with the U.S. government until the Nation complies with the requirements of that bill?

Cherokee Nation Shadow Report to Committee on the Elimination of Racial Discrimination
Submitted by Principal Chief Chadwick Smith, February 5, 2008

Respectfully submitted,

Chadwick Smith,
Principal Chief
Cherokee Nation
PO Box 948
Tahlequah, Oklahoma 74465 USA

ENCLOSURES:

- HR 2824: *To sever United States' government relations with the Cherokee Nation of Oklahoma until such time as the Cherokee Nation of Oklahoma restores full tribal citizenship to the Cherokee Freedmen disenfranchised in the March 3, 2007, Cherokee Nation vote and fulfills all its treaty obligations with the Government of the United States, and for other purposes*, June 21, 2007
- Heather Williams, *Let the Cherokees decide who's Cherokee*, Los Angeles Times, 10 July 2007
- Booklet to members of Congress, *The Cherokee Nation – Human Rights Overview (with regard to HR 2824 and amendment to HR 2786) Timeline – History Re-established*, November 2007
- National Congress of American Indians (USA), Resolution #DEN-07-071, *Opposing Legislation Terminating the Government-to-Government Relationship of Federally Recognized Indian Tribes and Nations*, 16 November 2007
- Suzanne Jasper, *Disinformation Campaign Undermines Cherokee Rights*, Indian Country Today, 30 November, 2007
- Assembly of First Nations (Canada), *Resolution Opposing Legislation Introduced in the United States Congress Terminating the Government-to-Government Relationship of Federally Recognized Indian Tribes and Nations*, 13 December 2007

Cherokee Nation Shadow Report to Committee on the Elimination of Racial Discrimination
Submitted by Principal Chief Chadwick Smith, February 5, 2008

EXHIBIT 21

IN THE JUDICIAL APPEALS TRIBUNAL
OF THE CHEROKEE NATION

In re: The Status and Implementation of the 1999 Constitution of the Cherokee Nation,

Dennis Jay Hannah and Ralph F. Keen, Jr., in Their capacities as officers of the 1999 Cherokee Nation Constitution Convention And as citizens of the Cherokee Nation,

Petitioners,

NOTICE TO:
Chadwick Smith, Principal Chief of the Cherokee Nation;

and,

The Council of the Cherokee Nation;

and,

Jeanette Hanna, Regional Director of the Bureau of Indian Affairs,

JAT 05-04

For the Petitioners
Dennis Jay Hannah and Ralph F. Keen, Jr. — Ralph F. Keen, Jr.

For the Respondent Chadwick Smith, Principal Chief — A. Diane Hammons

For the Respondent Council of the Cherokee Nation — Todd Hembree

For the Respondent Jeanette Hanna, Regional Director of the Bureau of Indian Affairs — No appearance

Before: Darell R. Matlock, Jr., Chief Justice
Darrell Dowty, Justice
Stacy L. Leeds, Justice

Majority Opinion filed by: Chief Justice Darell R. Matlock, Jr.
Special Concurring Opinion filed by: Justice Darrell Dowty
Dissenting Opinion filed by: Justice Stacy L. Leeds

OPINION OF THE COURT

RECORD OF PROCEEDINGS

1. The Petitioners, Dennis Jay Hannah and Ralph F. Keen, Jr., on March 7, 2005 filed their petition for Declaratory Judgment by the Court, for determination of the legal status of the amendment to the Cherokee Nation Constitution of 1975, Article XV, Section Ten (10), and, whether the Cherokee Nation Constitution of 1999 is now the organic document of the Cherokee Nation Government, and, to establish a timetable for the implementation of the provisions of the Cherokee Nation Constitution of 1999.
2. Notice was given to the Respondents on March 8, 2005.
3. David Cornsilk filed a motion to intervene and motion to dismiss the petition on March 14, 2005, and, subsequently on November 10, 2005 withdrew his motion to intervene and motion to dismiss the petition.
4. The Respondent, Principal Chief Chadwick Smith, on March 23, 2005 filed a motion to stay the proceedings for 45 days which was granted by the Court on March 29, 2005.
5. The Respondent, Council of the Cherokee Nation filed their response on March 24, 2005.
6. The Respondent, Chadwick Smith, Principal Chief, filed a second motion to stay the proceedings on August 15, 2005 which was subsequently denied by the Court on September 7, 2005.
7. Respondent, Jeanette Hanna, Regional Director of the Bureau of Indian Affairs has failed to respond to the petition filed herein.
8. The Petitioners filed their motion for summary judgment on March 6, 2006 and served the motion on Respondents Chadwick Smith, Principal Chief, by General Counsel Diane

Hammons, and, Respondent, Cherokee Nation Council, by their attorney Todd Hembree on April 7, 2006.

9. That neither the Principal Chief, Chadwick Smith or the Council of the Cherokee Nation has responded to the Petitioners' motion for summary judgment.

FINDINGS

The Court has jurisdiction to determine the issues presented herein pursuant to Article VIII of the Cherokee Nation Constitution of 1999, and, the Petitioners' motion for summary judgment is considered under Rule 44 of the Rules and Procedures of the Judicial Appeals Tribunal (Supreme Court).

Proper notice of these proceedings has been given to the Principal Chief, Chadwick Smith, the Council of the Cherokee Nation and the United States of America by its Representative, Jeanette Hanna, Regional Director of the Bureau of Indian Affairs.

The Court finds there are no disputes of material facts and the material facts are determined as follows:

1. Article XV, Section Ten (10) of the Cherokee Nation Constitution of 1975 was a <u>self imposed</u> requirement that set forth:

> "no amendment or new constitution shall become effective without the approval of the President of the United States or his authorized representative"

2. The people of the Cherokee Nation by their inherent sovereign power had the right to remove the self-imposed requirement of Article XV, Section Ten (10) of the Cherokee Nation Constitution of 1975.

3. The United States Government by and through its agent, the Assistant Secretary of Indian Affairs, Neal A. McCaleb, on April 23, 2002 via a letter addressed to the Principal Chief Chad Smith did state in part:

> "We have no objection to the referendum as proposed and I am prepared to approve the amendment deleting the requirement for Federal approval of future amendments."

4. Neal A. McCaleb executed an affidavit on April 4, 2006 which sets forth in part:

> "In my capacity as Assistant Secretary, and on behalf of the Department of Interior, Bureau of Indian Affairs, it was my purposeful intentions that my correspondence of April 23, 2002, serve as full and final approval of the question, both as to form and Bureau policy and the same was approved under the requirements of Article XV Section 10 of the 1975 Cherokee Constitution for presentment to the Cherokee voters for their final approval or rejection at referendum election."

5. The proposed removal of Article XV, Section Ten (10) of the 1975 Constitution of the Cherokee Nation was properly submitted to the Cherokee people on May 24, 2003, and, was approved by the Cherokee people by a vote of 7,107 in favor and 4,223 against.

6. The elections of May 24, 2003 and of July 26, 2003 were had under the law of the Cherokee Nation Constitution of 1975.

7. The proposed 1999 Constitution of the Cherokee Nation was properly put to the Cherokee people on July 26, 2003 and the Cherokee people adopted the 1999

Constitution as the new Constitution of the Cherokee Nation by a vote of 3,622 in favor and 3,059 against.

8. The results of both the May 24, 2003 and the July 26, 2003 elections have been properly certified by the Cherokee Nation Election Commission on June 11, 2003 and August 7, 2003 respectively.

9. The Cherokee Nation Constitution of 1999 became the organic law of the Cherokee Nation on July 26, 2003 pursuant to Article XVIII of the Cherokee Nation Constitution of 1999.

10. The provisions of the 1999 Cherokee Nation Constitution overrule, supersede and repeal the provisions of the Cherokee Nation Constitution enacted the 6th day of September, 1839 and the provisions of the Constitution of the Cherokee Nation of 1975 enacted the 26th day of June, 1976. *Article XVI of the 1999 Constitution of the Cherokee Nation*

11. All actions taken by the three (3) separate branches of the government, Legislative, Executive and Judicial on and after July 26, 2003 have been done under and should be in compliance with the constitutional authority granted to each of them under the Cherokee Nation Constitution of 1999.

12. The present state of the Judiciary in order to conform to the Cherokee Nation Constitution of 1999 is as follows:

(a) Seat Two (2) of the Supreme Court of the Cherokee Nation is held by Chief Justice, Darell R. Matlock, Jr., and his appointment in October of 2003 was to complete the term of office for Seat Two (2) which ends on December 31, 2012.

(b) Seat Three (3) of the Supreme Court of the Cherokee Nation is held by Justice Darrell Dowty and his appointment in February of 2005 was to complete the term of office for Seat Three (3) which ends on December 31, 2014.

(c) In order to better implement the mandates of the Cherokee Nation Constitution of 1999, Justice Stacy L. Leeds, whose term under the 1975 Constitution of the Cherokee Nation and 20 CNCA 1985 § 33 would have expired on December 31, 2006, which is consistent with Seat Number Four (4) under the new Constitution, shall continue on the Supreme Court as Seat Four (4) under Article VIII, Section Two (2) of the 1999 Constitution.

(d) Seats One (1) and Five (5) shall be filled immediately as per Article VIII of the Cherokee Nation Constitution of 1999.

(e) The Judges of the District Court shall continue to serve under the 1999 Constitution of the Cherokee Nation Article Three (3) until the Cherokee Nation Council passes legislation defining their respective terms and the procedure set forth in Article VIII, Section Three (3) of the Cherokee Nation Constitution of 1999 is completed.

(f) The Court Rules adopted by the Supreme Court under No. JAT-06-01 shall remain in full force and effect until further order of the Court.

(g) The Court Administrator, Lisa Fields, shall remain the Court Administrator pursuant to Article VIII Section Four (4) of the Cherokee Nation Constitution of 1999 until further order of the Court.

13. The present Cherokee Nation Council members were elected to office under the authority of the 1975 Cherokee Nation Constitution and before the 1999 Constitution was adopted by the people of the Cherokee Nation on July 26, 2003.

14. To fulfill the mandates under the Cherokee Nation Constitution of 1999 and in order to achieve a stable continuative governmental transition under the 1999 Constitution of the Cherokee Nation, the Council of the Cherokee Nation shall proceed as follows:

(a) The Council shall within 60 days of this decision select two at-large Council members to serve until the next regularly scheduled election pursuant to Article VI, Section Three (3) of the Cherokee Nation Constitution of 1999.

(b) The Council shall before the next regularly scheduled election establish a system of staggered terms for all seats on the Council to be organized into elections every two years. *Article VI, Section Three (3) of the 1999 Constitution of the Cherokee Nation.*

(c) The Council shall in a timely manner proceed to put in place all that is mandated in the Cherokee Nation Constitution of 1999.

15. The Principal Chief and Deputy Chief were elected under the authority of the 1975 Constitution of the Cherokee Nation and before the 1999 Constitution of the Cherokee Nation was adopted by the people of the Cherokee Nation on July 26, 2003.

16. The Principal Chief of the Cherokee Nation shall in a timely manner put in place all mandates directed to the Executive branch by the Cherokee Nation Constitution of 1999.

IT IS THEREFORE ORDERED by the Court that the 1999 Constitution of the Cherokee Nation became effective on July 26, 2003.

IT IS FURTHER ORDERED by the Court that all the findings of the Court are the Court's Orders.

Executed this 7th day of June, 2006.

Darell R. Matlock Jr., Chief Justice

JUSTICE DOWTY, Specially Concurring:

I write separately in my concurrence with Justice Matlock to express my opinion that the Citizens of the Cherokee Nation cannot be unreasonably delayed in their exercise of sovereign power by the inaction of the federal government. The Citizens expressed clearly through their representatives on the Constitutional Convention that they wanted change in their governing organic document. They again spoke clearly by their vote removing the requirement of federal approval from the 1975 Constitution. And again, almost 3 years ago, the Citizens spoke clearly when they adopted and approved the 1999 Constitution.

I agree that the requirement of federal approval was self-imposed and that the same provision can be, and was, effectively removed from the 1975 Constitution by the vote of the Citizens on May 24, 2003. The actions of Mr. McCaleb by letter in his official capacity as representative of the federal government, and by his subsequent affidavit coupled with the federal inaction and non-appearance in this litigation is sufficient for this writer to find that the 1999 Constitution has been in effect from and since its approval by the voters on July 26, 2003.

Darrell Dowty, Justice

DISSENTING OPINION OF JUSTICE LEEDS:

The ruling in the Majority Opinion is contrary to the constitutional amendment requirements adopted by the Cherokee people in the 1975 Constitution. I respectfully dissent.

Article XV, Section 10 of the 1975 Constitution plainly states:

> No amendment or new Constitution shall become effective without the approval of the President of the United States or his authorized representative. (emphasis added)

By adopting this provision, the Cherokee people made it clear that the 1975 Constitution could never be amended or superseded by a new constitution without the approval of the federal government. There are no exceptions.

It is not the proper role of this Court to question the wisdom of federal oversight or to find creative ways around the federal approval requirement. The sole duty of this Court is to interpret the 1975 Constitution as it is plainly written. The 1975 Constitution clearly requires federal approval for all amendments and new constitutions.

The only issue before this Court is whether the federal government approved an amendment to Article XV, Section 10 of the 1975 Constitution. This is not the first time this Court has dealt with federal approval of a constitutional amendment. In *McClain v. Election Commission*, JAT 98-12, this Court faced a similar question.

In 1995, the Cherokee people voted to amend the 1975 Constitution imposing a residency requirement on the offices of Principal Chief and Deputy Chief. Despite the fact that the Cherokee people had voted to amend the 1975 Constitution, this Court ruled in *McClain*, that the residency requirement could not take effect because the federal government had not approved the amendment. Federal approval for the residency requirement was finally obtained in 2002. Although the Cherokee people had to wait several years for their will to become the law, the wait

was necessary because of the plain language of the 1975 Constitution. The amendment requirements of the 1975 Constitution must be taken seriously and cannot be set aside.

The words of the late Justice Keen from the *McClain* decision are equally fitting for the case at hand:

> The Cherokee Constitution is the organic document of the Cherokee government. It must not be trifled with. Any and all amendments to the Cherokee Constitution must be made to follow the strict, long-established procedure. (emphasis added)

In the Majority Opinion, the Court seems to have ruled that when the Cherokee people voted to amend Article XV, Section 10, federal approval was not required. The Court seems to take the position that the vote instantaneously amended the 1975 Constitution. Such a ruling has no basis in law and is contrary to the plain language of the 1975 Constitution. The ruling is also contrary to this Court's ruling in *McClain*.

The Majority fails to adequately address the sole question presented to this Court: whether federal approval was obtained. Instead, the Majority simply states that the "people of the Cherokee Nation by their inherent sovereign power had the right to remove the self-imposed requirement of Article XV, Section Ten (10) of the Cherokee Nation Constitution of 1975."

There is no doubt that the Cherokee people have the inherent right of self-government. The Cherokee people exercised that right when they adopted the 1975 Constitution. When the Cherokee people adopted the 1975 Constitution, they chose to subject themselves to all the provisions and requirements of the 1975 Constitution. The requirement that the federal government approve any and all constitutional amendments and new constitutions is one of those requirements the Cherokee people adopted. The requirement cannot simply be ignored.

Petitioners agree that under the 1975 Constitution, the federal government must approve all constitutional amendments. Petitioners base their entire case for federal approval on a letter

dated April 23, 2002. This letter was addressed to Principal Chief Chad Smith from Mr. Neal McCaleb while he was the Assistant Secretary of the Interior. The Majority never addresses whether the McCaleb letter constitutes federal approval.

The McCaleb letter, which was written before the Cherokee people went to the polls, contains the following statement:

> We have no objection to the referendum as proposed and I am prepared to approve the amendment deleting the requirement for the Federal approval of future amendments. (emphasis added)

This letter confirmed that the federal government had no objections to the language being presented to the voters and it indicates that at the time, the Department of Interior was "prepared to approve" the amendment to the 1975 Constitution if adopted by Cherokee voters.

A pre-election letter stating that a federal official is "prepared to approve" an amendment does not constitute final federal approval to satisfy Article XV, Section 10 of the 1975 Constitution. It suggests that at least one additional federal action must be taken, once the election is held. There was always the possibility that the federal government's position will change, or that the Cherokee people will reject the amendment. A federal official can be "prepared" to take certain action, and then never take such action.

When the 1975 Constitution was amended in the past, there was communication from the federal government, in no uncertain terms, that final federal approval had been obtained. When the Cherokee people voted to amend the 1975 Constitution to require the fifteen Council seats represent specific districts within the Cherokee Nation, federal approval was obtained the following year via a memorandum from the BIA area office. The approval language left no doubt:

> By copy of this memorandum, we are notifying the Cherokee Nation that pursuant to Article XV of the Constitution of the Cherokee Nation of Oklahoma, the

> Muskogee Area Director hereby approves the action taken by the Cherokee Nation's electorate to amend its constitution at an election held June 20, 1987. (emphasis added)

Likewise, when the Cherokee people voted to amend the 1975 Constitution to impose a residency requirement on the office of Principal Chief and Deputy Chief, the federal approval communication was unmistakably clear. The communication even included a formal "Certificate of Approval" signed by the appropriate federal official that stating:

> [b]y virtue of the authority granted to the Secretary of the Interior and delegated to me 10 BIAM 3, and by Article XV, Section 10, of the Constitution of the Cherokee Nation, [I] do hereby approve the foregoing Amendment to the Constitution of the Cherokee Nation . . . (emphasis added)

The McCaleb letter does not favorably compare to the previous federal approvals, in terms of finality or clarity. Being "prepared to approve" an amendment is clearly something less than final approval of an amendment. The McCaleb letter is the only evidence in this case to suggest final federal approval and it falls short.

To aid this Court's interpretation of the McCaleb letter, Petitioners submit an affidavit from former Assistant Secretary Neal McCaleb dated April 3, 2006. In that affidavit, Mr. McCaleb states that in his 2002 letter, he "approved the proposed question for referendum vote of the Cherokee people." He continues by stating that "it was [his] purposeful intention" that the letter serve as "full and final approval" for presentment to the Cherokee people for their final approval or rejection.

At the time Mr. McCaleb signed the affidavit, he was no longer a federal official. It is inappropriate for this Court to rely solely on the interpretative statement of a former federal official, particularly when there is no other evidence of federal approval. The McCaleb letter speaks for itself. Mr. Caleb was "prepared to approve" the amendment. Mr. Caleb never approved the amendment.

The federal government, in a correspondence provided in Petitioners pleadings, takes the position that federal approval is still forthcoming. On July 29, 2004, Regional Director of the BIA Jeanette Hanna provided to Principal Chief a letter indicating that the McCaleb letter was only a pre-referendum approval. Ms. Hanna notes that it is the regional office's recommendation to the BIA "headquarters" that the amendment be approved. This letter, dated a full year after the Cherokee people went to the polls, indicates the need for further federal action to approve the amendment. Although Ms. Hanna recommends that the amendment be approved, she indicates that federal approval has never been obtained.

The Principal Chief's office, although not intervening as a party to this lawsuit, responded by asking this Court for two extensions of time. He asked this Court to stay the proceedings because "negotiations are ongoing with the Bureau of Indian Affairs in Washington, D.C." Apparently the Cherokee Nation is still in the diplomatic and political process of obtaining final federal approval for the constitutional amendment.

The legislative branch also responded to this lawsuit by stating that the Council "operates and continues to operate under the 1976 Constitution, which was the last Constitution approved by the President of the United States and/or his designee." The Council's response states that they have "relied on statements of the Principal Chief and members of the Cherokee Nation Constitution Commission in their statements of continually seeking approval of the Bureau of Indian Affairs ratifying the amendments to the 1976 Constitution."

The pleadings and correspondence in this case indicate that it is the understanding of the federal government, the Cherokee legislative branch, and the Cherokee executive branch that federal approval has never been obtained. Despite the fact that the Cherokee people have spoken, the amendment cannot take effect until there is federal approval. In *McClain*, it took

several years for the will of the Cherokee people to become law. Yet in *McClain*, this Court properly exercised restraint and let the diplomatic and political process take its course.

It is no doubt frustrating for the Cherokee people who have voted on a constitutional amendment, or a new constitution, to wait for years and years for federal approval. It is even more frustrating in the present scenario when the Cherokee people have voted to finally free themselves of federal oversight, to once again wait several years for federal approval of that amendment. Once federal approval is obtained, the Cherokee people will be free from federal involvement. To obtain that freedom, however, the Cherokee people must faithfully follow their own laws.

The avenue for obtaining federal approval for this amendment is the diplomatic and political process between the Cherokee Nation and the United States. The Cherokee people empower their elected officials to negotiate for federal approval and to represent them in the process. The judicial branch is not empowered to declare that process void.

The judicial branch must interpret the 1975 Constitution as it is plainly written:

> No amendment or new Constitution shall become effective without the approval of the President of the United States or his authorized representative.

The result of the Majority Opinion is that both the amendment to the 1975 Constitution and the new 1999 Constitution are now effective, both without federal approval.

Although I strongly dissent to the Majority Opinion, this Court has spoken and the Cherokee government shall now operate under the 1999 Constitution. To effectuate the transition, the Judicial Appeals Tribunal is now the Supreme Court with the effective date of July 26, 2003. Article VIII of the 1999 Constitution set initial terms for the Justices which was designed to produce staggered terms, with one Justice's term expiring on December 31st of each even year. Because there was significant delay in placing the 1999 Constitution on the ballot,

two of the initial terms expired before the 1999 Constitution was ever voted on by the people. I agree with the Majority on the apportionment of the Supreme Court seats. The initial terms of seats one and two expired prior to 2003.

I was confirmed as JAT Justice under the 1975 Constitution with a term to expire December 31, 2006. This timeline is consistent with Seat 4 in the 1999 Constitution and my seat will end on the last day of this year. Two additional Justices should be confirmed as soon as possible.

Justice Dowty and Matlock, however, were confirmed to this Court after the 1999 Constitution took effect. They must necessarily be serving their first term under the new Constitution. Likewise, the elected officials who were sworn-in in August 2003 took office after the effective date of the 1999 Constitution. Each must necessarily be serving their first term under the 1999 Constitution.

Stacy L. Leeds, Justice

EXHIBIT 22

08/05/2006 14:51 FAX
08/01/2006 15:58 FAX

THE ASSOCIATE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON, DC 20240

AUG 30 2006

Honorable Chad Smith
Principal Chief, Cherokee Nation
P.O. Box 948
Tahlequah, Oklahoma 74465-0948

Dear Chief Smith:

Thank you for your letter of June 9, 2006, advising me that the Cherokee Nation was withdrawing its request for approval of the Cherokee Nation's Constitutional Amendment approved by the Cherokee people on May 24, 2003. Your letter indicated that you consider the approval of the amendment moot in light of the June 7, 2006, decision by the Cherokee Nation's Judicial Appeals Tribunal in the matter styled "In Re: The Status and Implementation of the 1999 Constitution of the Cherokee Nation," JAT 05-04.

I read the Tribunal's decision with interest. While we can appreciate Mr. McCaleb clarifying what he intended, his stated intention is not an adequate substitute for the necessary action of actual approval. As an elected tribal official, I am sure that you can appreciate the difficulties created when a former official attempts to bind his successor by stating what he had intended to do when he was in office. The Cherokee Nation's constitution requires Secretarial approval of amendments and neither the Secretary nor any authorized representative of the Secretary has approved the amendment.

If the Cherokee Nation would like the Secretary's approval of the proposed amendment, it should resubmit its request for approval. It would be helpful to our consideration of such a request, if the Nation would address the effect of the *Lucy Allen v. Cherokee Nation Tribal Council*, JAT-04-09, decision of March 7, 2006, which concluded that 11 C.N.C.A. § 12, governing the Nation's membership, was more restrictive than the Nation's constitution and therefore unconstitutional. The *Allen* decision suggests that not all persons who were entitled to membership in the Nation were considered eligible to vote in the 2003 elections, which purported to adopt the constitutional amendments.

If you have any questions, please don't hesitate to call on me.

Sincerely,

James E. Cason

James E. Cason

EXHIBIT 23

CERTIFICATION

TO: Tribal Council of the Cherokee Nation

WE, the Election Commission of the Cherokee Nation pursuant to Legislative Act 15-04, hereby certifies that the Ballot Title, that is attached hereto, marked, and incorporated into this Certification as Exhibit "A", complies with Legislative Act 15-04.

Dated this 11th day of January, 2007

Patsy Morton

Patsy Morton, Chairperson
Election Commission of the Cherokee Nation

ATTEST:

Andrew Wilcoxen, Secretary/Treasurer
Election Commission of the Cherokee Nation

01-17-07P04:58 RCVD

Exhibit "A"

BALLOT TITLE AS REVISED BY THE ATTORNEY GENERAL'S OFFICE ON DECEMBER 29, 2006 (EXCLUDES SHOWING OF EDITS)

This measure amends the Cherokee Nation Constitution section which deals with who can be a citizen of the Cherokee Nation. A vote "yes" for this amendment would mean that citizenship would be limited to those who are original enrollees or descendants of Cherokees by blood, Delawares by blood, or Shawnees by blood as listed on the Final Rolls of the Cherokee Nation, commonly referred to as the Dawes Commission Rolls closed in 1906. This amendment would take away citizenship of current citizens and deny citizenship to future applicants who are solely descendents of those on either the Dawes Commission Intermarried Whites or Freedmen Rolls. A vote "no" would mean that Intermarried Whites and Freedmen original enrollees and their descendants would continue to be eligible for citizenship. Neither a "yes" nor a "no" vote will affect the citizenship rights of those individuals who are original enrollees or descendants of Cherokees by blood, Delawares by blood, or Shawnees by blood as listed on the Final Rolls of the Dawes Commission Rolls closed in 1906.

SHALL THE MEASURE BE APPROVED?

FOR THE MEASURE—YES
AGAINST THE MEASURE—NO

EXHIBIT 24

CHEROKEE NATION™
P.O. Box 948 • Tahlequah, OK 74465-0948 • (918) 453-5000

Chad "Corntassel" Smith
Principal Chief

Joe Grayson, Jr.
Deputy Principal Chief

Wednesday, March 21, 2007

CHARLENE WHITE
524 S LEE AVE
TAHLEQUAH, OK 74464

Dear CHARLENE WHITE,

We are writing to advise you that a recent constitutional amendment vote by the Cherokee Nation has resulted in a change in the status of your citizenship in the Cherokee Nation. The election was required by an initiative petition signed by Cherokee citizens. We regret to inform you that you are not eligible for citizenship in the Cherokee Nation based on the information currently available to us.

The constitutional amendment vote clarified the Cherokee community's position that citizenship in the Cherokee Nation must be based on lineage to an enrollee of the Final Rolls of Cherokee Citizens who is listed with a blood degree. It does not include individuals who only trace lineage to non-Indian rolls. The change was lawfully made according to the Cherokee Nation's constitutional amendment process and after a vote of the Cherokee people. The Constitution has been amended accordingly.

Your enrollment was previously permitted under a March 7, 2006 tribal court ruling which held that our Constitution allowed for enrollment of descendants of the non-Indian rolls. The recent constitutional amendment superseded this ruling.

If you believe your enrollment status has been changed in error, you may make an appeal to the Registrar, Cherokee Nation Registration Department, P.O. Box 948, Tahlequah, OK 74465 in accordance with the Legislative Act, Sections 9-12. (copy enclosed). Your notice of appeal must be filed in this office within 90 days of the date you receive this notification. The notice of appeal is considered to be filed as of the date it is postmarked or personally delivered to this office.

If you have any questions, please feel free to contact me at (918) 453-5315 or on email at registration@cherokee.org.

Respectfully,

Leda J. Ummerteskee

Leda J. Ummerteskee
Tribal Registrar
Registration Dept.
(918) 453-5315
lummerteskee@cherokee.org

EXHIBIT 25

CHEROKEE NATION™
P.O. Box 948 • Tahlequah, OK 74465-0948 • (918) 453-5000

Chad "Corntassel" Smith
Principal Chief

Joe Crittenden, Jr.
Deputy Principal Chief

3-28-07

Charlene White
524 S. Lee Street
Tahlequah, OK 74464

Dear Charlene White,

Based upon the March 7, 2006 decision by the Cherokee Nation Judicial Appeals Tribunal in Allen v. Cherokee National Council, JAT-04-09, Cherokee Nation Health Services (CNHS) began accepting patients that were eligible for citizenship as a result of the decision.

On March 3, 2007, the Cherokee Nation conducted a special election amending the Cherokee Nation Constitution regarding citizenship eligibility which was required by a petition of Cherokee citizens. The approved Constitutional Amendment limits citizenship to those individuals who are original enrollees or descendants of Cherokees by blood, Delawares by blood, or Shawnees by blood as listed on the Final Rolls of the Cherokee Nation. Individuals not meeting those requirements are no longer eligible for citizenship in the Cherokee Nation.

This letter is to inform you that because of the Constitutional Amendment, you are no longer eligible to receive health services through Cherokee Nation. The Cherokee Nation will continue to provide health services to you for a period of ninety (90) days. The ninety day period will commence from the date shown at the top of this letter. This period will allow us to continue any ongoing course of treatment, and will allow you ample time to identify alternative sources of care. Attached to this letter is a list of alternative health care resources located in our area.

To assist you in transferring your medical care, an "Authorization for Use or Disclosure of Health Information" form has been included. Please complete this form and return it to the Wilma P. Mankiller Health Center. Upon receipt, your medical records will be distributed to you, or your new health care provider, as per your request.

If we can be of any further assistance, please feel free to contact our office.

Sincerely,

Darrel O'Field
Clinic Administrator
Wilma P. Mankiller Health Center

EXHIBIT 26

08/09/2007 14:58 FAX

Exhibit 4

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

1849-1999

AUG 09 2007

The Honorable Chadwick Smith
Principal Chief, Cherokee Nation
P.O. Box 948
Tahlequah, Oklahoma 74465-0948

Dear Chief Smith:

On July 10, 2007, the Regional Director, Eastern Oklahoma Office submitted a memorandum to us recommending approval of an amendment to Article XV of the Cherokee Nation Constitution. The proposed amendment strikes Section 10 of Article XV, which requires the Cherokee Nation to submit amendments for review and approval by the Secretary of the Interior. The proposed amendment was presented to the voters at an election held on June 23, 2007, and it was adopted by a vote of 7,946 (66.77%) for and 3,955 (33.23%) against.

This constitutional amendment adopted by the voters of the Cherokee Nation on June 23, 2007, is hereby approved pursuant to the authority granted by the Cherokee Nation Constitution and by the authority delegated to me under 130 DM 3 (April 23, 2003). Nothing in this approval shall be construed as authorizing any action that would be contrary to Federal law.

Sincerely,

Carl J. Artman
Assistant Secretary—Indian Affairs

cc: Director, Eastern Oklahoma Region

EXHIBIT 27

IN THE DISTRICT COURT OF THE CHEROKEE NATION

RAYMOND NASH, et. al.,	)	
	)	**Cases No. CV-07-40, CV-07-41, CV-07-42,**
Plaintiffs,	)	**CV-07-43, CV-07-44, CV-07-45,**
	)	**CV-07-46, CV-07-47, CV-07-48,**
vs.	)	**CV-07-49, CV-07-50, CV-07-53,**
	)	**CV-07-56, CV-07-65, CV-07-66,**
CHEROKEE NATION	)	**CV-07-72, CV-07-78, CV-07-85,**
REGISTRAR,	)	**CV-07-86, CV-07-99, CV-07-100,**
	)	**CV-07-112, and CV-07-116**
	)	
DEFENDANT,	)	

ORDER

NOW, on this the 14th day of January, 2011, the above captioned and numbered action comes on for decision after having been taken under advisement to this date.

This matter arises from the above listed individual cases being certified as a class action wherein the Plaintiffs are deemed effected by the passage of an Amendment to the Constitution of the Cherokee Nation by vote of the members of the Cherokee Nation on March 3, 2007 which read as follows, to-wit:

"Notwithstanding any provisions of the Cherokee Nation Constitution approved on October 2, 1975, and the Cherokee Nation Constitution ratified by the people on July 26, 2003, upon passage of this Amendment, thereafter, citizenship of the Cherokee Nation shall be limited to those originally enrolled on, or descendants of those enrolled on, the Final Rolls of the Cherokee Nation, commonly referred to as the Dawes Rolls, for those listed as Cherokees by blood, Delaware Cherokees pursuant to Article II of the Delaware Agreement dated the 8th day of May, 1867, and the Shawnee Cherokees pursuant to Article III of the Shawnee Agreement date the 9th day of June, 1869."

This Constitutional Amendment was the result of the Order of the Supreme Court of the Cherokee Nation in "Allen v. Cherokee Nation," JAT-04-09 (March 7, 2006) wherein the Cherokee Nation was directed to begin processing citizenship applications for those individuals who could

establish descendancy from individual listed on the Dawes Rolls as "Freedmen." The individual designated as "Freedmen" were, by and large, individuals of African descent who had been freed from slavery pursuant to Cherokee law, or with the advent of the United States Civil War. On the Dawes Rolls, Freedmen were designated separately from those individuals who were characterized as Cherokee (or Delaware or Shawnee) by blood.

By virtue of the passage of the Amendment, the Cherokee Nation (hereafter "Nation") deems the holding of the Supreme Court abrogated by constitutional amendment which, in most instances, would be the correct belief according to law and the Constitution of the Nation.

It has long been held, and continues to be, that there is no prohibition against Indian Tribes making membership determinations based "on blood" and could be interpreted to allow certain blood quantum requirements. This is the current condition as it relates to the Cherokee Nation and shall continue to be unless it is restrained from such determination by limitation of treaty or statute. Such is the case in this instance.

At the conclusion of the American Civil War and the abolition of slavery, the Cherokee Nation, which had allied, for the most part, with the Confederacy, entered into a treaty with the United States of America on July 19, 1866. Article IX of the treaty addressed the status of freed slaves ("Freedmen") within the Cherokee Nation and provided that Freedmen and their descendants *"shall have all the rights of native Cherokees."* The Constitution of the Cherokee Nation was amended to provide that Freedmen and their descendants were to be citizens of the Cherokee Nation. Various Courts, including the Cherokee Nation Supreme Court, thereafter affirmed the Freedmen's admission in the same manner as Cherokee citizens of Cherokee blood. As a result of the above actions and rulings, the Freedmen were included on the Dawes Commission Rolls.

From time immemorial, the Cherokee Nation, and in its predecessor forms, has entered into agreements or Treaties and honored and complied with the provisions thereof on its part as part of its law and tradition. Upon the entry of the Europeans to the North American continent the Cherokee Nation abided by such agreements made with the different entities be they French, Spanish, English, or, eventually, the United States. In a number of instances, those nations failed to honor their agreements or treaties resulting in loss and harm to the Cherokee people. One of the most egregious, of course, being the seizing of Cherokee property and the removal of the Cherokee people from their ancestral homes to Indian Territory. This does not mean that the Cherokee Nation should descend into such manner of action and disregard their pledges and agreements.

The Cherokee Nation's entry into the hereinbefore mentioned Treaty of 1866 was an agreement which, to this date, has not been modified or abrogated by any action heretofore taken either through Constitutional change or Amendment thereto and the Nation is still bound by such provisions. The Cherokee Constitutional Amendment of March 3, 2007, by virtue of the provisions of the Treaty of 1866 and subsequent actions taken in furtherance thereof, are hereby determined to be void as a matter of law.

The Class Appellants to whom this Order extends are the original enrollees, or descendants of original enrollees, of the Dawes Commission Rolls designated Cherokee Freedmen, or Cherokee Freedmen-Minor Children and shall have the rights as previously entitled prior to the passage of the aforesaid Constitutional Amendment.

By virtue of the entry of the Temporary Order in this matter, the Appellants have been granted and authorized all privileges as previously granted and, therefore, have no further relief to be granted or awarded herein. The applications for citizenship as previously held in abeyance

herein shall begin to be processed by the Nation within thirty (30) days of date of the filing this Order.

IT IS SO ORDERED.

JUDGE OF THE DISTRICT COURT

EXHIBIT 28

IN THE CHEROKEE NATION SUPREME COURT

IN THE MATTER OF THE 2011 GENERAL ELECTION) Case No. SC-2011-06

FINAL ORDER

NOW ON THIS 21st day of July, 2011, the Court, pursuant to LA-06-10, *et seq*. at closed session, enters the following findings and orders:

This Court has received evidence in the form of sworn testimony from various witnesses, exhibits, and, multiple numeric counts of voting documents, and, has entertained oral arguments from the Petitioner and Intervenor; and,

The Court pursuant to LA-06-10 §102 after consideration of all the evidence FINDS that it is impossible to determine the election result with mathematical certainty or to certify a successful candidate for the Office of Principal Chief of the Cherokee Nation in this election.

IT IS THEREFORE ORDERED by the Court that all certifications of the Cherokee Nation Election Commission concerning the 2011 General Election for the Office of Principal Chief of the Cherokee Nation are vacated and held for naught.

IT IS FURTHER ORDERED by the Court that this election for the Office of Principal Chief of the Cherokee Nation is **invalid.**

IT IS FURTHER ORDERED by the Court that the Clerk of the Cherokee Nation Supreme Court shall immediately serve a copy of this Order on the Cherokee Nation Election Commission chairperson and counsel for all parties.

Darell R. Matlock, Jr., Chief Justice

Darrell Dowty, Justice

James G. Wilcoxen, Justice

Kyle B. Haskins, Justice

Troy Wayne Poteete, Justice

CERTIFICATION OF MAILING

I certify that a true and correct copy of the foregoing document, Order, was mailed and/or transmitted via facsimile on this 21st day of July, 2011 to the following:

Lloyd E. Cole, fax # (918) 696-2070
Cherokee Nation Election, fax # (918) 458-6101
Charles Hoskin, Jr. and Kalyn Free, fax # (949) 607-2914
Laurie Phillips, fax # (866) 436-0304
Dean Luthey, fax # (918) 594-0505
Casey Ross-Petherick, fax # (405) 735-5417
Tim K. Baker, fax # (918) 456-1983

Kendall Bird, Court Clerk

EXHIBIT 29

IN THE SUPREME COURT OF THE CHEROKEE NATION

CHEROKEE NATION REGISTRAR,
Defendant/Appellant,
vs.
RAYMOND NASH, ET AL.,
Plaintiffs/Appellees.

Case No. SC-2011-02

APPEAL FROM THE DISTRICT COURT OF THE CHEROKEE NATION
TAHLEQUAH, OKLAHOMA

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

HONORABLE JOHN CRIPPS, TRIAL JUDGE

REVERSED
AND
REMANDED WITH INSTRUCTIONS
TO DISMISS FOR WANT OF JURISDICTION

A. DIANE HAMMONS
Cherokee Nation Attorney General
P.O. Box 948
Tahlequah, Oklahoma 74465
918-458-5099 Fax: 918-458-6142
Attorney for Defendant/Appellant

RALPH KEEN, JR.
Attorney at Law
Keen Law Offices
205 West Division Street
Stilwell, Oklahoma 74960
918-696-3355 Fax: 918-696-3576
Attorney for Plaintiffs/Appellees

Before: Darell R. Matlock, Jr., Chief Justice
Darrell Dowty, Justice
James G. Wilcoxen, Justice
Kyle B. Haskins, Justice
Troy Wayne Poteete, Justice

Majority Opinion Filed By:	**Chief Justice Darell R. Matlock, Jr.**
Concurring:	**Justice James G. Wilcoxen**
	Justice Kyle B. Haskins
	Justice Troy Wayne Poteete
Dissenting:	**Justice Darrell Dowty**

Standard of Review

The Court reviewed "*denovo*" the issues of (1) of the right of the Cherokee people to define tribal citizenship and, (2) the interpretation of the language of the 2007 amendment to the Cherokee Nation Constitution which sets forth the requirements of citizenship in the Cherokee Nation. *Cherokee Nation v O'Leary* SC-2006-13 & 14.

OPINION

ANATOMY OF LITIGATION

On April 17, 2007, the Cherokee Nation Registrar, pursuant to Article IV of the Cherokee Nation Constitution, filed the timely letters of appeal concerning the removal of the appellees' names from the rolls of citizens of the Cherokee Nation after the passage of the Constitutional Amendment on March 3, 2007, by the Cherokee people by special election. Those letters represent the appeals lodged with the Cherokee Nation District Court under the numbers set forth herein above. The Petitions allege that the action of the Registrar was, in effect, a retroactive application of the mandates of the Constitutional Amendment dated March 3, 2007; that the March 3, 2007, Constitutional Amendment is, in and of itself, unconstitutional under the Cherokee Nation Constitution; that the Treaty of 1866 was a contract between the United States of America and the Cherokee Nation and the Treaty of 1866 created citizenship for the Cherokee Freedmen in the Cherokee Nation; that the Cherokee people are forever prohibited from amending their Constitution in a manner that excludes the Cherokee

Freedmen's citizenship in the Cherokee Nation; and, that exclusion of the Cherokee Freedmen from citizenship in the Cherokee Nation violates federal law. The appellants identified in the Cherokee Nation District Court's Final Order dated January 14, 2011, shall hereinafter be referred to as "Appellees". The Cherokee Nation Registrar shall hereinafter be referred to as "Appellant".

The Cherokee Nation District Court entered its order transferring "Appellees'" cases to the Cherokee Nation Supreme Court under Supreme Court Case No. SC-07-13. The Cherokee Nation Supreme Court after due consideration of all relevant facts and the law pertaining thereto remanded "Appellees'" cases to the Cherokee Nation District Court for full adjudication of the cases on April 23, 2007. The Cherokee Nation District Court, after entertaining various pre-trial motions, entered a Scheduling Order on September 18, 2008, and the parties responded by filing Joint Stipulations on November 28, 2008. The parties stipulated that, among other things, "the election of March 3, 2007, was conducted in compliance with Cherokee Nation election laws and procedures". "Appellees" filed their Motion for Partial Summary Judgment, and Brief in Support, in favor of the Cherokee Freedman on December 1, 2008. "Appellant" filed its Motion for Summary Judgment and Brief in Support on December 23, 2008. "Appellees" filed their Supplemental Arguments in Support of the Motion for Summary Judgment on July 31, 2009. The District Court on July 17, 2009, entertained oral arguments by the parties and requested proposed findings of facts and conclusions of law. "Appellees" filed their proposed Finding of Facts and Conclusions of Law on August 31, 2009, and "Appellant" filed its Proposed Finding of Facts and Conclusions of Law on September 3, 2009. The District Court on January 14, 2011, entered its Final

Order determining that, "the Cherokee Nation Constitutional Amendment of March 3, 2007, by virtue of the treaty of 1866 and subsequent actions taken in furtherance thereof, are hereby determined to be void as a matter of law." "The Class Appellants to whom this Order extends are the original enrollees, or descendants of original enrollees, of the Dawes Commission Rolls designated Cherokee Freemen or Cherokee Freedmen-minor children and shall have the rights as previously entitled prior to the passage of the aforesaid Constitutional Amendment." From that District Court Order this appeal has been lodged in this Court for review and relief.

Appeal Procedural Record

THE APPEAL TO THIS Court was lodged on January 25, 2011. The parties timely filed their respective pleadings. The Appellant, pursuant to Rule 60 of the Cherokee Nation Supreme Court rules, timely filed a motion for extension of time to file its reply brief which in part was required by the belated service of the Appellees' Answer Brief. There was no objection to the extension of time granted by this Court as ordered on June 21, 2011. The Appellant filed its reply brief on July 1, 2011, and the appeal became ripe for decision.

Court's Findings

The Court makes the following findings in conjunction with its *denovo* review of the issues raised by the record and those taken by Judicial Notice:

1. The Amendment approved by the Cherokee People on March 3, 2007, provides:

Notwithstanding any provisions of the Cherokee Nation Constitution approved on October 2, 1975, and the Cherokee Nation Constitution ratified by the

people on July 26, 2003, upon passage of this Amendment, citizens of the Cherokee Nation shall be only those originally enrolled on, or descendants of those enrolled on, the Final Rolls of the Cherokee Nation, commonly referred to as the Dawes Rolls, for those listed as Cherokees by Blood, Delaware Cherokees pursuant to Article II of the Delaware Agreement dated the 8th day of May, 1867, and the Shawnee Cherokees pursuant to Article III of the Shawnee Agreement dated the 9th day of June, 1869.

2. The election of March 3, 2007, was conducted in compliance with Cherokee Nation election laws and procedures.

3. The proposed amendment was approved by a majority vote of the Cherokee people on March 3, 2007.

4. "Appellant" interpreted the amendment language as applying the new criteria for citizenship to existing, enrolled citizens of the Cherokee Nation.

5. "Appellant" notified "Appellee" Class of its determination of ineligibility for continued membership in March of 2007.

6. "Appellees" Class was removed from the citizenship rolls of the Cherokee Nation, effective March 16, 2007, and was thereafter reinstated pursuant to the Cherokee Nation District Court Temporary Injunction Order dated May 14, 2007.

7. "Appellees'" Class during period of disenrollment was denied tribal services and rights as Cherokee citizens, except for a small number of critically ill people who continued to receive health services, paid for by tribal funds.

8. All unprocessed applications for citizenship in "Appellant's" possession received from "Appellees'" Class members are being held, in abeyance, without further processing pending the decision of this Court.

9. There is no subject matter jurisdiction for the Cherokee Nation District Court, or this Court, to determine that the March 3, 2007, Amendment to the Cherokee Nation Constitution is unconstitutional. And, subject matter jurisdiction cannot be waived.

10. There are Cherokee Freedmen, who are also descendants of Cherokees listed on the Dawes Rolls as Cherokees by Blood, who are citizens of the Cherokee Nation and who are entitled to be citizens of the Cherokee Nation.

11. There is no subject matter jurisdiction for the Cherokee Nation District Court, or this Court, to determine that the March 3, 2007, Amendment to the Cherokee Nation is void.

12. The Cherokee Nation District Court's finding that the Treaty of 1866, between the United States of America and the Cherokee Nation, by its provisions guaranteed citizenship to the Cherokee Freedmen in the Cherokee Nation would, in effect, deprive "Appellees" standing in these proceedings and consequently necessitate that the proper party would be the United States of America.

Discussion

The Trial Court's Order entered on January 14, 2011, raises an issue of Cherokee Nation Constitutional import and one that does not appear in United States Federal Jurisprudence or State Jurisprudence.

Simply put, do the Cherokee Nation Courts, or does any Court, have the jurisdiction or power to order what the constituents of a sovereign can set forth in their organic documents.

The Cherokee Nation Constitution in Article XV Initiative Referendum and Amendment sets forth in Section 1., "Notwithstanding the provisions of Article VI, the People of the Cherokee Nation reserve to themselves the power to propose laws and amendments to this Constitution...."

The declaration of the Constitutional Amendment, enacted by the Cherokee people on March 3, 2007, as void is not within the District Court's power, as such has not been delegated by the Cherokee Nation Constitution.

The Cherokee Nation Constitution in Article VIII Judicial Section 6 only grants the District Court jurisdiction to resolve disputes under the Constitution.

This Court has previously held in *Allen v Cherokee Nation*, JAT-04-09 (March 7, 2006) that the Cherokee people do have the right to make citizenship determination (whether to exclude Freedman and intermarried white descendants) for themselves.

The latest sovereign expression of the Cherokee people concerning the Freedmen is found in their amendment dated March 3, 2007, to the Cherokee Nation Constitution.

"Appellees" raise the issue as to their citizenship status after the passage of the March 3, 2007, Cherokee Nation Constitution amendment. They urge this Court to find that this amendment is somehow, by its nature, a retroactive instrument. The amendment does not affect their status prior to the passage of the amendment; the amendment only affects their status after. The Court finds no merit in the "Appellees'" position.

This Court's findings are dispositive of these appeals originally lodged with the Cherokee Nation District Court, however, the Court offers the following observations.

The Cherokee Freedmen were never afforded citizenship in the Cherokee Nation by the Treaty of 1866. A fair reading of the Treaty of 1866 indicates that it was an expression by the parties that the Freedmen would be treated as equals to the citizens of the Cherokee Nation under the federal law as it existed at that time. The Freedmen at that time gained citizenship status in the Cherokee Nation by the Cherokee People's sovereign expression in the 1866 Constitutional Amendment to the 1839 Cherokee Nation Constitution.

It stands to reason that if the Cherokee People had the right to define the Cherokee Nation citizenship in the above mentioned 1866 Constitutional Amendment they would have the sovereign right to change the definition of Cherokee Nation citizenship in their sovereign expression in the March 3, 2007 Constitutional Amendment.

This Court also takes cognizance of federal jurisprudence that Treaties are contracts between or among independent nations and are designed to protect the sovereign interests of nations, and, it is up to the offended nations to determine whether

or not a violation of sovereign interests occurred; And, generally, international treaties are not presumed to create rights that are privately enforceable. *United States v Zabaneh,* 837 F2d 1249 (5th Cir. 1988); *Goldstar (Panama) S. v United States,* 967, F2d 965, 988 (4th Cir. 1992); *Accord Argentine Republic v Amerada Hess Shipping Corp.,* 488 U.S. 428, 442 (1989) The Federal Courts have also ruled that Courts should interpret treaty provisions narrowly for fear of waiving sovereign rights that the government or people never intended to cede. *Kreimerman v Casa Veerkamp;* S. A. de C.V. 22 F3d 634, (5th Cir. 1994)

This Court does not find that the actions of the Cherokee people in defining their citizenship in the March 3, 2007 Constitutional Amendment would be a Badge or Incident of Slavery which violates the Thirteenth Amendment to the United States Constitution in light of the facts that there are Cherokee Freedmen who have and can prove they are also descendants of Cherokees listed on the Dawes Rolls as Cherokees by Blood and who are either citizens or eligible for citizenship if they so desire.

The Cherokee Nation Constitution does not exclude people from citizenship in the manner the 13th Amendment protects against. It includes for eligibility those whose verifiable ancestors are listed on the Dawes Rolls as Cherokees by Blood.

This Court takes judicial notice of the extensive racial diversity of the citizenry of the Cherokee Nation.

IT IS THEREFORE ORDERED by this Court that the Cherokee Nation District Court's Order is **reversed** and **vacated**.

IT IS FURTHER ORDERED by this Court that the Cherokee Nation District Court's Temporary Orders and Temporary Injunctions are **vacated** and shall have no further effect.

IT IS FURTHER ORDERED by this Court that this case is remanded to the District court with instructions to **DISMISS**.

IT IS FURTHER ORDERED by this Court that the Clerk of the Cherokee Nation Supreme Court shall serve a copy of this Opinion on the Cherokee Nation District Court and all parties.

Dated this 22nd day of August, 2011.

Chief Justice Darell R. Matlock, Jr.

Justice James G. Wilcoxen

Justice Kyle B. Hadley

Justice Troy Wayne Poteete

Dissenting:

Justice Darrell Dowty

CERTIFICATION OF MAILING

I certify that a true and correct copy of the foregoing document, REVERSED AND REMANDED WITH INSTRUCTIONS TO DISMISS FOR WANT OF JURISDICTION, was mailed and/or transmitted via facsimile on this 22nd day of August, 2011 to the following:

A. Diane Hammons, fax # (918) 458-5099
Ralph F. Keen, II, fax # (918) 696-3576

Kendall Bird

Kendall Bird, Court Clerk

Wilcoxen, J.

Specially Concurring Opinion

Plaintiff brings this petition as representative of a certified class below. Inasmuch as the action seeks enforcement of a treaty between the United States and the Cherokee Nation, Plaintiffs standing is suspect. The D.C. Circuit in *Vann v. Kempthorne, 534 F.3d 741, 748 (D.C. Cir. 2008)* recognized this.

> "Nothing in §1 of the 13th Amendment so much as hints at a federal court suit by a private party to enforce the prohibition against badges and incidents of slavery against Indian tribes . . . The 1866 Treaty similarly lacks any clear abrogation of tribal sovereign immunity, as the 10th Circuit correctly concluded in *Nero, 892 F.2d @1461*."

Treaties are agreements between sovereigns. Notwithstanding, because of the importance of the issues raised, this Court should now address the merits.

The Treaty of 1866 granted the Freedman "all the rights of Native Cherokees." The question now is whether or not the members of the Cherokee Nation today can amend their Constitution to redefine their membership. Specifically, can they do so when the same would arguably not be in comport with a treaty.

The Cherokee Nation argues that the Tribe is free to determine its own membership, including the imposition of a blood requirement. The Tribe contends that the Freedman seek in effect a super-citizenship right that can never be removed. Nash relies upon the plenary power of Congress to regulate the Cherokee Nation and the supremacy of federal law, the Treaty of

1866 itself, the Thirteenth Amendment and Equal Protection as guaranteed by the Cherokee Constitution.

The issue presented here is without precedence. It pits the Tribe's right to determine its membership against rights arising from the Treaty of 1866 between the Cherokee Nation and the United States. It also raises issues of the limits of tribal sovereignty in the modern context.

The Tribe can be subject to substantive constraints imposed by Congress. *Vann v. Kempthorne, 534 F.3d 741, 748 (D.C. Cir. 2008).* Even so, Congress has not explicitly prohibited the Tribe from amending its Constitution to redefine its membership. While the D.C. Circuit found that there was nothing in the 13th Amendment or the 1866 Treaty which worked an abrogation of the Tribe's sovereign immunity, the Circuit nevertheless found that the Tribe no longer had a sovereign interest in conducting discriminatory elections. This conclusion comes in sharp contrast to the Tribe's inherent right to determine its own membership today. Notwithstanding, the Circuit Court stopped short of finding that the tribe could not define its membership through constitutional amendment.

The Circuit Court decision in *Vann* was an appeal of the 2006 decision by the District Court of the District of Columbia. The Circuit Court did not have before it the impact of the Constitutional Amendment in question here.[1] Notwithstanding, the Circuit Court did state that while the Tribe's immunity is still intact,

> The Cherokee Nation simply has no interest in protecting a sovereignty concern that has been taken away by the United States. As the District Court went to great lengths to explain, *Vann, 467 F.Supp. 2d at 66-*

[1] The Court below did acknowledge that the Tribe was making preparation to submit the issue of "Indian blood" to a vote of the people thereby amending the Tribe's Constitution. *Vann v. Kempthorne, 467 F. Supp. 2d. 56 (D.C. 2006).@n.3*

> 70, the Thirteenth Amendment and the 1866 Treaty whittled away the Tribe's sovereignty with regard to slavery and left it powerless to discriminate against the Freedmen on the basis of their status as former slaves. The Tribe does not just lack a special sovereignty interest in discriminatory elections - it lacks any sovereign interest in such behavior. Vann, at 755-756.

Nevertheless, the determination by the District Court that the Tribe had no sovereign interest in conducting a discriminatory election came before the Tribe amended its Constitution. Moreover, this Court virtually invited the Cherokee people to vote on the issue. *Allen v. Cherokee Nation, JAT-04-09, p.2. (Mar. 7, 2006).* "The Cherokee citizenry has the ultimate authority to define tribal citizenship . . . . The Constitution could be amended to require that all tribal members possess Cherokee blood." The Cherokee people have now exercised their right to amend their Constitution. The Tribe has now redefined its membership and this Court cannot now in good faith tell it that it cannot do so.

> That the tribe might ultimately amend its Constitution to bring it into conformance with federal law is irrelevant to our sovereign immunity analysis, because any such change would not be the direct result of judicial compulsion. If the tribe pursues these changes, its discretion will not be steered by the judicial hand. *Vann at 754.*

Any constitutional change here is discretionary and simply cannot be dictated by this Court.

Haskins, J.

Specially Concurring Opinion:

While I join with the majority, I offer the following specially concurring opinion:

I respectfully suggest that the Freedmen should have timely raised their Constitutional and Treaty violation claims before passage of the Constitutional Amendment of March 3, 2007; however, they failed to do so. The Freedmen's failure to timely raise the issues at bar, until after March 3, 2007, has divested this Court and the lower court of subject matter jurisdiction.

Failure to properly and timely raise these issues denied this Court the opportunity to timely address these weighty issues and determine whether it should enjoin the vote which gave rise to the Constitutional Amendment of March 3, 2007. The March 3, 2007, special election was held in compliance with Cherokee law, and included voting members of the Freedmen. An overwhelming majority of the citizens of the Cherokee Nation voted to support the Constitutional Amendment.

Once the Cherokee Nation Constitution was amended by a popular vote of the people on March 3, 2007, it then became woven into the legal fabric of the Cherokee people - by which this Court must abide. This Court [The Supreme Court of the Cherokee Nation], is a *constitutionally created court*. Each Justice has individually taken an oath to defend our Constitution - *as a Whole*.

Regardless of how this Court's majority Opinion may be scrutinized and dissected, the issue at bar was not about race. The Court's majority Opinion neither supports nor rejects the

Freedmen's citizenship with the Cherokee Nation. We find only that the Cherokee Courts lack subject matter jurisdiction to now resolve the Freedmen challenge.

Whether the March 3, 2007, Cherokee Nation vote of self-determination of its citizenry violates the Treaty of 1866 between the Cherokee Nation and the United States of American is now an issue for the two governments to resolve. I would also like to point out that the United States of America never sought to intervene in these proceedings.

After lengthy delay, the Freedmen issue is now ripe for resolution. This Court is the gatekeeper of the integrity of the judicial branch of government. Any further delay in announcing the Court's majority Opinion is contrary to the will of the Cherokee people as expressed on March 3, 2007.

EXHIBIT 30

KALYN FREE
ATTORNEY AT LAW

September 2, 2011

election-commission@cherokee.org
colelaw@windstream.net
Cherokee Nation Election Commission
PO Box 1188
Tahlequah, OK 74465

Dear Commissioners:

On Tuesday, August 30, 2011, I attended the Special Meeting called by the Cherokee Nation Election Commission. One of the agenda items was: "Discussion and Possible Action Regarding Freedmen."

During the discussion, Wanda Beaver, the Office Administrator for the Commission stated that she was instructed by Lloyd Cole, Attorney for the Commission, to code the Freedmen as "inactive" in the Cherokee Nation Voter Database.

I asked whether the specific provisions of the Cherokee Nation's election laws had been complied with. Specifically Section 24 mandates that voters are only to be removed from the Voter List upon receipt of "satisfactory evidence of death or disenrollment as specified by the Cherokee Nation Registration Office." Mr. Cole stated that he had complied with the Cherokee Nation Supreme Court's order and had taken action to have the Freedmen removed from the Voter List immediately upon receiving the Court's Order.

I then asked if the Freedmen had been sent Absentee Ballots as Section 73 of the Election Code clearly states that all registered voters who have requested Absentee Ballots should have been sent a ballot on August 29 and 30. Mr. Cole and Ms. Beaver said that the Freedmen had not been sent ballots.

After the conclusion of the meeting, in the presence of Commissioners Susan Plumb and Curtis Rohr, Lloyd Cole and other staff, Ms. Beaver did state that 1233 Freedmen had been coded "Inactive" and removed from the Voter List and that 354 Freedmen who had requested Absentee Ballots had not been sent ballots.

I very much appreciate the Commission providing the numbers of Freedmen who are registered voters and who requested absentee ballots to vote in the September 24, Chief's Election. If you have any reason, since our discussion of Tuesday, to believe that the numbers of disenfranchised Freedmen are different than the ones you provided earlier, please advise immediately.

Sincerely,

Kalyn Free

2248 East 48th St. • Tulsa, Oklahoma 74105 • 918.916.0716 • 918.779.4276 (fax) • kfree@cwis.net

EXHIBIT 31

From: Lloyd Cole [mailto:colelaw@windstream.net]
Sent: Friday, September 02, 2011 1:24 PM
To: Kalyn Free
Cc: wanda-beaver@cherokee.org
Subject: RE: letter for Commissioners

Mrs. Free

I acknowledge receipt of your transmittal of September 2, 2011 concerning your visit to the Commission meeting August 30, 2011. In response, your letter fails to mention that the action being taken to remove the freedman from our data base is that Nation voter registration removed them from their database as result of the Cherokee Nation Supreme Court's ruling that the legislation of citizenship is soley based upon blood and therefore the lawsuit filed by the freedman contesting that legislation has been dismissed overruling the District Court judgment, thereby loosing their citizenship priviledges.

Having made this observation your request will be directed to the Commission at their next regular meeting and you will be advised. If you have any other questions regarding this matter please feel free to contact me or the Commission office. lecjr.

-----Original Message-----
From: Kalyn Free [mailto:kfree@cwis.net]
Sent: Friday, September 02, 2011 12:13 PM
To: election-commission@cherokee.org; Lloyd Cole
Subject: letter for Commissioners

Dear Election Commission Staff:

Please see that the Commissioners receive the attached letter.

Thanks much,
Kalyn

Kalyn Free
Attorney at Law
2248 E 48th St
Tulsa OK 74105
918.916.0716 (cell)
918.779.4276 (fax)

EXHIBIT 32

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARILYN VANN, RONALD MOON, DONALD MOON, CHARLENE WHITE, RALPH THREAT, FAITH RUSSELL, ANGELA SANDERS, SAMUEL E. FORD and THE FREEDMEN BAND OF THE CHEROKEE NATION OF OKLAHOMA,

Plaintiffs,

vs.

KEN SALAZAR, Secretary of the United States Department of the Interior;

UNITED STATES DEPARTMENT OF THE INTERIOR;

S. JOE CRITTENDEN, Individually and in his Official Capacity;

JOHN DOES, Individually and in their Official Capacities,

Defendants.

Case No. 1:03-cv-01711 (HHK)
Judge: Henry H. Kennedy
Docket Type: Civil Rights (non-employment)

ORDER

On September 2, 2011, the Plaintiffs filed a motion and brief in support of a preliminary injunction in this action and in Cherokee Nation v. Nash, Case No. 1:10-CV-1169 (HHK). Defendants Ken Salazar and the U.S. Department of the Interior, and Defendant Acting Principal Chief S. Joe Crittenden, filed responses to this motion. The Court heard argument on the motion on September 20, 2011. At that hearing, the parties informed the Court that an agreement in principle had been reached between the parties regarding the relief sought in Plaintiffs' Motion

for Preliminary Injunction. The parties have submitted a joint motion for entry of this proposed Order.

Having considered the parties' joint motion, Defendant Acting Principal Chief of the Cherokee Nation is ORDERED, notwithstanding any provision of tribal law to the contrary, to:

(1) Pending disposition of the case or further order of the Court, ensure that all Cherokee Freedmen who were enrolled as citizens as of August 22, 2011, are recognized as citizens of the Cherokee Nation.

(2) Ensure that all Cherokee Freedmen who were recognized as Cherokee citizens and entitled to vote prior to the August 22, 2011, Cherokee Supreme Court decision are permitted to vote in the upcoming election for Principal Chief in the same manner as all other Cherokee citizens, without intimidation or harassment, and to have their votes counted on the same basis as all other Cherokee citizens.

(3) Notify all registered Cherokee Freedmen voters, in a letter sent via overnight mail no later than September 21, 2011, that:

a. They are citizens of the Cherokee Nation, and will be entitled to vote in the upcoming Principal Chief election and to have their vote counted in the same manner as all other Cherokee citizens;

b. They may vote in the September 24, 2011 Special Election at their precinct site on September 24, 2011, on a walk-in basis at the Election Commission Headquarters on at least two additional designated dates between September 24 and October 8, 2011, or by absentee ballot as described in paragraph (4) below.

(4) Provide, in a letter sent via overnight mail no later than September 21, 2011, to all registered Cherokee Freedmen voters who requested an absentee ballot prior to August 12, 2011, a non-provisional absentee ballot and notification that this ballot will be accepted and counted if received by October 8, 2011.

(5) Secure, safeguard, and refrain from counting all ballots cast in the September 24, 2011, Special Election until after October 8, 2011.

(6) Submit no later than September 21, 2011, tribal election procedures to the Department of the Interior for review and approval or disapproval pursuant to the Principal Chiefs Act, Pub. L. 91-494 (Oct. 22, 1970). The Department of the Interior will notify the Acting Principal Chief whether it approves or disapproves these procedures no later than September 30, 2011.

(7) Pending disposition of this case or further order of the Court, ensure that all Cherokee Freedmen citizens have access to and receive rights and benefits on the same terms as any other Cherokee citizen, whether the benefits are provided by funds from the United States or from the Cherokee Nation, or any other source.

IT IS FURTHER ORDERED BY THE COURT that the parties will provide a status report to the Court on October 25, 2011.

IT IS FURTHER ORDERED BY THE COURT that this Order is entered without prejudice to the parties' pending motions, including the pending motions to dismiss.

SO ORDERED.

Date: September 21, 2011

Judge Henry H. Kennedy, Jr.
U.S. District Judge