

IN THE MUSCOGEE (CREEK) NATION SUPREME COURT

SUPREME COURT
FILED

MAR 09 2026

CITIZENSHIP BOARD OF THE)
MUSCOGEE (CREEK) NATION,)
)
Appellant,)
)
vs.)
)
RHONDA K. GRAYSON and)
JEFFREY D. KENNEDY,)
)
Respondents.)

CONNIE DEARMAN *lm*
MUSCOGEE (CREEK) NATION
COURT CLERK

Case No: SC-2023-10
(District Court Case No.: CV-2020-34)

Respondents' Motion for Temporary Restraining Order and Preliminary Injunction

Damarion Solomon-Simmons, MCN # 354
SOLOMONSIMMONSLAW, PLLC
601 S. Boulder Ave., Ste. 602
Tulsa, Oklahoma 74119
918-551-8999 – Phone/918-558-8039 – Facsimile
dss@solomonsimmons.com

Jana L. Knott, MCN #1320
BASS LAW
252 NW 70th St.
Oklahoma City, OK 73116
(405) 262-4040 – Phone/(405) 262-4058 – Facsimile
jana@basslaw.net

M. David Riggs, MCN # 1239
RIGGS, ABNEY, NEAL, TURPEN ORBISON & LEWIS, P.C.
502 West 6th Street
Tulsa, Oklahoma 74119
(918) 587-3161 – Phone/(918) 587-9708 – Facsimile
driggs@riggsabney.com

Attorneys for Respondents

INTRODUCTION

On May 30, 2026, the Muscogee (Creek) Nation will hold a special election on amending the Muscogee (Creek) Nation Constitution (“May Special Election”). To register to vote in this election and others, Muscogee (Creek) citizens must show citizenship cards. *See* Muscogee (Creek) Nation Code Annotated (“M(C)NCA”) Title 19 § 4–108 (requiring Tribal enrollment number to register to vote). Through their continued failure to issue Respondents Rhonda Grayson and Jeffrey Kennedy citizenship cards, Principal Chief David Hill and the Citizenship Board have deliberately obfuscated this Court’s July 23, 2025 Order and Opinion, thereby denying Respondents’ court-ordered citizenship, and with it, their fundamental right to vote. *See* *Citizenship Bd. of the Muscogee (Creek) Nation v. Rhonda K. Grayson & Jeffrey D. Kennedy*, SC-2023-10 (Sup. Ct. Muscogee (Creek) Nation July 23, 2025) (“July Opinion”). With their lack of citizenship cards posing an administrative roadblock to their ability to register to vote, the May Special Election will mark the second election where Chief Hill and the Citizenship Board have denied Ms. Grayson and Mr. Kennedy their right to vote under the Muscogee (Creek) Nation Constitution.

To safeguard Respondents’ fundamental right to vote as citizens, the Court should intervene and issue a temporary restraining order and preliminary injunction halting the May Special Election and postponing the voter registration deadline until Respondents—and all other Muscogee (Creek) Freedman with pending applications—are rightfully granted their citizenship cards, permitting them to register and take part in the election. Alternatively, this Court should permit all Creek Freedmen with pending applications to cast a provisional ballot in the upcoming election, or at the very least, permit Respondents to cast a provisional vote.

The standard for a temporary restraining order and a preliminary injunction requires a showing of the following: “(1) a likelihood of success on the merits; (2) a likelihood that the

movant will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and (4) that the injunction is in the public interest." *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1208 (10th Cir. 2009); *see also Mdewakanton Sioux Indians of Minnesota v. Zinke*, 255 F. Supp. 3d 48, 51 (D.D.C. 2017); *Martin v. Crittenden*, 347 F. Supp. 3d 1302, 1308 (N.D. Ga. 2018) ("The standard for obtaining a temporary restraining order ('TRO') is identical to that of obtaining a preliminary injunction.") (citing *Windsor v. United States*, 379 F. App'x 912, 916-17 (11th Cir. 2010)). This Court follows the Tenth Circuit standard for injunctive relief. *See Ellis v. Bristow Muscogee Indian Cmty.*, No. CV 2009-33, 2009 WL 10270097, at *3 (Muscogee (Creek) D. Ct. Apr. 21, 2009) (adopting federal preliminary injunction standard).

Importantly, this Court has jurisdiction over this motion and the power to grant Respondents relief. Under Rule 18 A(5) of the Muscogee (Creek) Nation's Procedures and Rules, this Court may "require such other action or further proceedings as may be appropriate to each individual action." M(C)NCA Title 27, App'x 2, Rule 18 A(5). Further action is required because the Citizenship Board has failed to issue Respondents' citizenship cards despite this Court ordering Respondents' citizenship eight months ago. Since then, Respondents have filed three motions for contempt against the Citizenship Board and Chief Hill. Without further intervention from this court,¹ Respondents will yet again be denied their fundamental right to vote.

Respondents have met the preliminary injunction standard. First, Respondents can demonstrate there is a strong likelihood that they will succeed on the merits. The Muscogee (Creek) Nation Constitution and Code grant the right to vote to all citizens who are over the age of eighteen and registered to vote. Although this Court made clear that Creek Freedman are citizens, and consequently, hold the constitutionally protected right to vote, Respondents are still unable to

¹ Without tribal court intervention, Respondents are faced with no other option but to bring this motion in federal court.

register to vote because the Citizenship Board and Chief Hill continue to deny them their citizenship cards.

Second, if this Court does not grant injunctive relief, Respondents will suffer an irreparable harm. Being denied the right to vote in an election is a harm that cannot be undone—once the election takes place, a Court cannot retroactively grant Respondents the ability to exercise their fundamental right. Therefore, the Court should preserve such a right and halt the election.

Third, other interested parties, particularly other members of the Muscogee (Creek) Nation, will not suffer substantial harm if injunctive relief is granted. Enjoining the election, or simply postponing the registration deadline, are simply administrative burdens faced by government agencies. Such administrative burdens pale in comparison to the fundamental right Respondents—and all other Muscogee (Creek) Freedman—will lose if injunctive relief is not granted.

Fourth and finally, public interest favors granting injunctive relief. This Court's July Opinion qualified thousands of Creek Freedman to vote in this election. But such newly-recognized citizens will be denied the right to vote because of the Citizenship Board's and Chief Hill's obstructive conduct. Because Respondents have met their burden, injunctive relief should be granted.

This request does not require changing the Code or the Constitution. In fact, it does quite the opposite—it ensures compliance with the Muscogee (Creek) Nation Constitution and Code establishing a Muscogee (Creek) citizen's right to vote. Respondents are citizens. This Court's July Opinion made that clear. It is time to let them vote.

I. THERE IS A STRONG LIKELIHOOD RESPONDENTS WILL SUCCEED ON THE MERITS.

First, Respondents have a strong likelihood of success on the merits. Treaties between the Muscogee (Creek) Nation and the United States are the supreme law of the land. *See* U.S. Const.

art. VI; Muscogee (Creek) Nation Const. Art. I, § 2 (the “political jurisdiction of the [M(C)N] . . . is based upon those Treaties entered into by the [M(C)N] and the United States of America[.]”); *see also* M(C)NCA Title 27, § 1-101; *Foster v. Neilson*, 27 U.S. 253, 314 (1829).² Article II of the Treaty of 1866 mandates:

The Creeks hereby covenant and agree that henceforth neither slavery nor involuntary servitude . . . shall ever exist in the nation; inasmuch as there are among the Creeks many persons of African descent, who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said country, and may return within one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens [thereof], *shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe.*

(emphasis added). On July 23, 2025, this Court recognized Creek Freedmen’s citizenship rights under the Treaty, holding that “the Treaty of 1866 requires that Creek Freedmen, and their descendants, shall be granted ‘all the rights and privileges of the native citizens[.]’” July Opinion at 21 (citing Article II, Treaty of 1866). Specifically, this Court recognized that by striking “by blood” in Article III, Section 2 of the Muscogee (Creek) Constitution, “citizenship is *available* to any ‘Muscogee Creek Indians whose names appear on the final rolls as provided by the Act of April 26, 1906 . . . and persons who are lineal descendants of those Muscogee (Creek) Indians whose names appear on the final rolls as provided by the Act of April 26, 1906.’” *Id.* at 22. Because Respondents are lineal descendants of individuals who appear on the Dawes Rolls, they are citizens under the Court’s July Opinion. *Id.* at 23 (ordering the Citizenship Board to “issue citizenship to the Respondents”). Of course, the ability to vote in tribal elections is one such right and privilege enjoyed by citizens of the Muscogee (Creek) Nation. *See Courtwright v. July*, SC-93-01, 1993 WL

² *See* Ex. A(Chief Hill’s August 30, 2023 Letter to Governor Kevin Stitt about State of the State Address (Chief Hill stating the Treaty is “the supreme law of the land.”).

831884, at *5 (Sup. Ct. Muscogee (Creek) June 28, 1993) (“One guarantee granted to all citizens is the right to elect whom they choose and to pass what laws they want.”).

Chief Hill’s Executive Order violates the Treaty by explicitly treating Creek Freedman citizenship applicants different from all other citizenship applicants, effectively denying Creek Freedman equal protection of the laws. *See* Article II, Treaty of 1866 (“[T]he laws of the said nation shall be *equally binding upon and give protection to* all such persons [of African descent].”) (emphasis added). Yet the Executive Order purports to do exactly that, by directing the Citizenship Office to “not issue citizenship cards” to Creek Freedman descendant applicants while directing the Office “to maintain the status quo by continuing to accept, process, and issue determinations for applications” for all other applicants. Executive Order No. 25-05, ¶¶ 2.01, 2.02. These directives treat Creek Freedman as second-class citizens in clear violation of the Treaty. *See also* U.S. Const. amend. XIV, §1 (“[N]or shall any State ... deny to any person within its jurisdiction the equal protection of the laws.”). *See also, e.g., Schneider v. Rusk*, 377 U.S. 163, 165 (1964) (“[T]he rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive.”); *Knauer v. United States*, 328 U.S. 654, 658 (1946) (“Citizenship obtained through naturalization is not a second-class citizenship.”).

Although this Court’s July Opinion conferred citizenship on Ms. Grayson and Mr. Kennedy, the Citizenship Board—by way of Chief Hill and his Executive Order—has continually refused to grant Respondents their citizenship cards, which are required to register to vote. *See* M(C)NCA Title 19 § 4–108 (requiring Tribal enrollment number to register to vote). Article IV, Section 2 of the Muscogee (Creek) Nation Constitution confers the right to vote on citizens: “Every citizen of the Muscogee (Creek) Nation, regardless of religion, creed, or sex, shall be eligible to vote in the tribal elections provided that (a) they are registered voters for elections; (b) they are at

least eighteen (18) years of age at the date of election, with the registrant providing sufficient proof of age to the Election Board; and (c) **they hold citizenship.**” *See also* M(C)NCA Title 19 § 4–101 (establishing substantially the same requirements) (emphasis added).

Respondents satisfy the last two requirements but are prevented from establishing the first. As discussed above, this Court interpreted the Treaty of 1866 to presently confer citizenship on Respondents. *See* July Opinion at 23. Moreover, Respondents are both above the age of eighteen. However, through no choice of their own, Respondents cannot register to vote. To become a registered voter, an individual must complete a registration form and provide the “[v]oter’s full name and sex, date of birth, place of residence and mailing address; the voter’s Tribal enrollment number; the voter’s social security number, an oath of the voter’s eligibility to become a registered voter; and such other information as may be deemed necessary by the Election Board to identify said voter and to ascertain his or her eligibility.” M(C)NCA Title 19 § 4–108; *see also* M(C)NCA Title 19 § 9-104 (“Special elections shall be conducted under the provisions of this Title applicable to primary and general elections.”). Due to Chief Hill’s Executive Order halting any processing of citizenship cards, Respondents cannot obtain a Tribal enrollment number, and thus cannot register to vote and enjoy the “rights and privileges of native citizens” as guaranteed by the Treaty of 1866. This cannot be. *See, e.g., Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) (quoting *Williams v. Rhodes*, 398 U.S. 23, 30-31 (1968)) (“[T]he right of qualified voters, regardless of their political persuasion, to cast their votes effectively” “rank[s] among our most precious freedoms.”).

Moreover, the requested alternative relief of provisional voting has historical precedent. In 2011, the Cherokee Nation stripped Cherokee Freedman of their citizenship, and consequently, their right to vote, seeking to prevent them from voting in a special election. Ex. B at 2 (Freedman Pl.’s Mem. in Supp. of their Mot. for a Prelim. Inj., *Vann et al. v. Norton et al.*, No. 1:03-cv-01711

(D.D.C. Sept. 2, 2011) (ECF No. 146-1)). The Freedmen sued and sought a preliminary injunction against the Cherokee Nation to prevent the denial of their fundamental right to vote. *Id.* at 3, 23. Specifically, the Freedman asked the court to “enjoin the Cherokee Nation, Defendants from denying Plaintiffs and the other Freedmen their full citizenship rights and from holding any election as to which Plaintiffs and other Freedmen are denied the right to vote solely upon their status as Cherokee Freedmen.” *Id.* at 23. The court granted the preliminary injunction, recognizing Cherokee Freedmen citizenship pending litigation and allowing all Cherokee Freedman who were enrolled as citizens to vote and have their votes counted. Ex. C (Order, *Vann et al. v. Norton et al.*, No. 1:03-cv-01711 (D.D.C. Sept. 21, 2011) (ECF No. 153)). The Court reasoned that because “[t]hey are citizens of the Cherokee Nation, ...” they are “entitled to vote in the upcoming Principal Chief election and to have their vote counted in the same manner as all other Cherokee citizens.” *Id.* at 2.

This situation is analogous—this Court has decided all “applicant[s] who [are] able to establish a lineal descendant on the Creek by Blood Dawes Roll, or the Creek Freedman Dawes Roll” are citizens. July Opinion at 23. Therefore, any individual who has applied for citizenship since this Court’s July opinion should be able to vote in the May Special Election. This Court should order that Creek Freedmen be granted a provisional ballot to be cast in accordance with the deadlines set for the election. And once the Citizenship Board, and other proper parties, have determined that the individual is eligible, then the vote should be counted “in the same manner as all other [Muscogee (Creek)] citizens.” Ex. C at 2.

There is also strong support in United States constitutional and election law for allowing provisional voting for Creek Freedman whose citizenship applications are still pending. Under federal law and the U.S. Constitution, it has long been accepted that all citizens have a strong and

equal interest in exercising their “fundamental political right” to vote. *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (“[Each] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.”).

When there are questions about a voter’s eligibility to vote in a U.S. election, federal law requires that the voter be allowed to cast a provisional ballot, to be counted after their eligibility has been established. 52 U.S.C. § 21082. The entitlement to a provisional ballot derives from federal law but operates against the backdrop of well-established constitutional principles recognizing voting as a fundamental right. *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964) (explaining the U.S. Constitution protects the right of all qualified citizens to vote and the right to vote cannot be denied outright). The availability of provisional ballots serves as an important safeguard that helps protect the fundamental right to vote even when questions of eligibility arise. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197-98 (2008) (explaining the right to cast a provisional ballot adequately protects the constitutional rights of voters missing certain documentation).

Pursuant to the Help America Vote Act (“HAVA”), voters are entitled to cast a provisional ballot when their qualifications are still being considered. 52 U.S.C. § 21082. In enacting the Help America Vote Act, Congress recognized that the right to vote is fundamental and eligible voters should not be disenfranchised by mere administrative barriers. Accordingly, HAVA ensures that all voters are afforded an opportunity to cast a ballot even while their eligibility is in question, and that voters and election officials may then confirm eligibility after the provisional ballot has been cast but before it is counted, including during the period following an election. *See, e.g., Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 576 (6th Cir. 2004) (“HAVA is

quintessentially about being able to cast a provisional ballot. No one should be ‘turned away’ from the polls, but ... if the voter is not eligible, the vote will then not be counted.”).

Federal Courts have also found provisional ballots to be critical in ensuring that eligible voters are not disenfranchised due to administrative failures outside of their control. *See Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 245 (6th Cir. 2011) (expressing constitutional concerns regarding the disenfranchisement of eligible voters solely on the account of error by a state actor).

Chief Hill and the Citizenship Board’s continued denial of citizenship cards blatantly violates this Court’s July Opinion and the Treaty of 1866. The Muscogee (Creek) Nation Constitution and Code confer the right to vote on any *citizen*, including Respondents. Issuing Respondents citizenship cards is nothing more than a simple, administrative task—yet this administrative task stands between Respondents and the exercise of their fundamental right to vote. Therefore, Respondents are likely to succeed on the merits.

II. RESPONDENTS WILL SUFFER AN IRREPARABLE HARM IF THE SPECIAL ELECTION PROCEEDS.

Second, Respondents will suffer irreparable harm absent the requested injunctive relief. An irreparable harm “is one which is ‘beyond remediation’—and for economic harms ‘[t]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm.’” *Mdewakanton Sioux Indians of Minnesota*, 255 F. Supp. at 52 (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297–98 (D.C. Cir. 2006)). Here, Respondents can show there is no remediation, no compensatory relief, and no corrective relief available for the denial of a fundamental right—the right to vote. *See Martin*, 347 F. Supp. 3d at 1309 (“[A] violation of the right to vote cannot be undone through monetary relief and, once the election results are tallied,

the rejected electors will have been disenfranchised without a future opportunity to cast their votes.” (internal quotation omitted)).

The right to vote has been deemed fundamental by many courts, including the United States Supreme Court. *See generally Harper v. Va. Bd. of Elections*, 383 U.S. 663 (1966) (holding poll taxes violate the fundamental right to vote); *Davis v. Schnell*, 81 F. Supp. 872 (S.D. Ala. 1949), *aff'd*, 336 U.S. 933 (1949) (holding literacy tests intended to disenfranchise Black voters violated the Fifteenth Amendment). Moreover, “[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury because once the election occurs, there can be no do-over and no redress.” *Majority Forward v. Ben Hill Cnty. Bd. of Elections*, 509 F. Supp. 3d 1348, 1356 (M.D. Ga. 2020) (quoting *Ga. State Conf. NAACP v. Georgia*, No. 1:17-cv-1397, 2017 WL 9435558, at *4 (N.D. Ga. May 4, 2017)). Respondents have already been denied the opportunity to vote in the September 20, 2025 National Council elections. *See generally The Muscogee (Creek) National 2025 General Election Saturday, September 20, 2025 Official Results* (last visited Mar. 7, 2025), <https://www.muscogeenation.com/wp-content/uploads/2025/09/2025-General-Official-Results.pdf>. If Respondents are denied their right to vote, and the May Special Election occurs, there will be no do-overs and Respondents will once again be left without redress.

Special circumstances exist in this case that warrant an injunction by this Court halting the election. While courts are reluctant to interfere in special elections or ballot referenda “when only one outcome of the election would allegedly impair the movants rights,” several amendments poised for consideration would be patently unconstitutional. *Mdewakanton Sioux Indians of Minnesota*, 255 F. Supp. at 53-54; *Nev. Rest. Ass’n v. Pest Comm.*, No. 3:08-CV-00118, 2008 WL 8225546, at *4 (D. Nev. July 15, 2008) (“Insofar as the few federal courts that have entertained

such challenges [to ballot measures pre-election] are concerned, those courts have only done so where the proposed measures were plainly unconstitutional.”).

On Wednesday, February 19, 2026, the M(C)N Business, Finance, and Justice Committee passed legislation to send to the full council. Meredith Johnson, *BFJ Passes Referendum Legislation*, MVSKE Media (Feb. 24, 2019), <https://www.mvskokemedia.com/bfj-passes-referendum-legislation>. If the full council votes to send this legislation to the ballot, this legislation would be part of the May Special Election: NCA 26-030 (amending Article VII, Section 2 of the Muscogee (Creek) Nation Constitution to permit Special Justices to be appointed if Supreme Court Justices recuse themselves to ensure seven justices hear each case); NCA 26-031 (amending Article IX of the Muscogee (Creek) Nation Constitution to read “The Special Election may be called by the Principal Chief and combined with a General Election if the constitutional amendment ordinance is enacted at least 90 days prior to a General Election.”); NCA 26-037 (amending Article V, Section 1(a) and (c) of Muscogee (Creek) Nation Constitution to “change the terms of office for Principal Chief and Second Chief from two consecutive terms (8 years) to three terms (12 years total, consecutive or non-consecutive).” *Id.*

Undoubtedly, these amendments are aimed at preventing Respondents from being able to vote anywhere in the near future. This Court already found an illegal court-packing scheme to prevent the issuance of the July Opinion granting Creek Freedmen citizenship. *See In re: the Constitutionality of NCA 24-077*, SC-2024-05 (Sup. Ct. Muscogee (Creek) Nation Apr. 22, 2025). Having been defeated once, the National Council and Chief Hill now look to enshrine their manipulation of the Supreme Court in this Nation’s Code. Moreover, Chief Hill is seeking to extend his term to continue interfering with and preventing the Citizenship Board from fully recognizing Respondents’ citizenship. Should Chief Hill succeed, Respondents may never be able

to enjoy the citizenship this Court ordered. *See Otey v. Common Council of City of Milwaukee*, 281 F. Supp. 264, 274-76 (E.D. Wis. 1968) (blocking the submission of a “palpably unconstitutional” resolution to a referendum). Both of these amendments affect Respondents’ rights and clearly violate this Court’s clear and unambiguous July Opinion.

As a result, this Court should not wait for the outcome of the election and seek to retroactively invalidate the election results.³ Instead, this Court should enjoin the May Special Election to preserve Respondents’ fundamental right to vote. In the alternative, this Court should order provisional voting for Creek Freedmen. Without the injunction or provisional voting, Respondents will suffer irreparable harm, meeting the second element.

III. THE BALANCE OF THE EQUITIES FAVORS INJUNCTIVE RELIEF.

Third, the harm to Respondents if the injunctive relief is denied outweighs the harm to other interested parties. “[T]he right to vote is a fundamental right and is preservative of all other rights. Denying an individual the right to vote works a serious, irreparable injury upon that individual.” *Majority Forward*, 509 F. Supp. 3d at 1357 (quoting *Common Cause/Ga. v. Billups*, 406 F. Supp. 2d 1326, 1376 (N.D. Ga. 2005)). “We cannot ignore the irreparable harm of this denial of the right to vote.” *Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016). Given the gravity of the harm done here, the scales already tip towards Respondents.

Thus, the harm other interested parties may suffer pales in comparison to the harm Respondents—and other Creek Freedmen overall—will otherwise suffer. *See Majority Forward*, 509 F. Supp. 3d at 1357 (“While the Court acknowledges that an injunction may burden

³ The deadlines for the May Special Election are rapidly approaching with the Voter Registration deadline on May 19, 2026. *See 2026 Special Election Dates & Deadlines* (last visited Mar. 7, 2026), <https://www.muscogeenation.com/wp-content/uploads/2026/01/Special-Election-Dates-Deadlines-2026.png>. Importantly, the deadline to receive an absentee ballot request form by mail has already passed. Without rapid intervention from this Court, Respondents will be left with no redress in a matter of months.

Defendants in their role managing the ongoing election, the harm to voters whose right to vote is wrongfully impeded or denied is far greater.”). The smallest requested relief of allowing two people to register to vote is a small burden on the Citizenship Board and the Board of Elections, especially considering that this Court has already recognized their citizenship. *See* July Opinion at 23. Such administrative burdens cannot overcome the harm of being denied the right to vote. *See Fish*, 840 F.3d at 754 (finding balance of equities favored voters where “the administrative burden of altering the registration status of the roughly 18,000 applicants in question was limited to a largely automated process that would be neither unduly time consuming or costly”); *id.* at 755 (“There is no contest between the mass denial of a fundamental constitutional right and the modest administrative burdens to be borne by Secretary Kobach’s office and other state and local offices involved in elections.”).

Nor would the administrative burdens of allowing all Creek Freedmen with pending applications to cast provisional ballots outweigh the gravity of the mass denial of the right to vote. *See Fish*, 840 F.3d at 754-55. The Citizenship Board would simply need to transmit information on who has a pending application to the Board of Elections. As in *Fish*, adjusting the registration status of a group of people is a small inconvenience.

Similarly, postponing the registration deadline and enjoining the special election itself is no match for the denial of the fundamental right to vote. *Id.* Moreover, unlike a general election, a special election is not subject to a regular timeframe and can be rescheduled. That the election is in the future and not subject to any specific timeline reduces the potential harm to the rest of the Nation in postponing. Thus, the balance of the equities favors postponement in favor of allowing Respondents to exercise their right to vote.

IV. GRANTING THE TEMPORARY RESTRAINING ORDER AND INJUNCTION IS IN THE PUBLIC INTEREST.

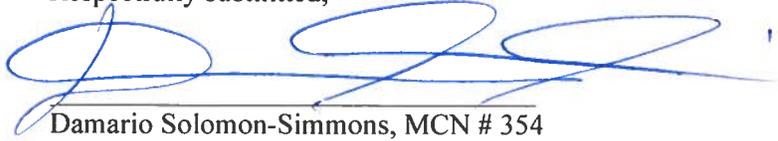
The public interest strongly favors granting the request injunctive relief. “[T]he right to vote is a fundamental right, and securing it is also in the public interest.” *Majority Forward*, 509 F. Supp. 3d at 1358. In other words, “[i]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Colorado v. DeJoy*, 487 F. Supp. 3d 1061, 1066 (D. Colo. 2020) (quoting *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1147 (10th Cir. 2013)). The Nation itself has said that “one guarantee granted to all citizens is the right to elect whom they choose and to pass what laws they want.” *Courtwright*, 1993 WL 831884, at *5 .

Not only are Respondents being disenfranchised, but so too are the thousands of Creek Freedmen whose citizenship is currently being held up by the Executive Order. There are an estimated 43,500 to 117,300 Creek Freedmen who would qualify for citizenship as of 2022. *See* U.S. Gov’t Accountability Office, Report to the Committee on Indian Affairs, U.S. Senate, *Tribal Programs, Information on Freedmen Descendants of the Five Tribes*, GAO-26-107118, at 15 (Dec. 2025). Thus, tens of thousands of people are being disenfranchised by the Executive Order and the upcoming special election. In fact, thousands of Creek Freedmen have submitted citizenship applications, which remain in purgatory under the unlawful Executive Order. Though not parties to the case, these Creek Freedmen have a strong interest in exercising their own right to vote. Creek Freedman, as a result, are deeply invested in the outcome of this motion, so granting the requested relief furthers the public interest. *See Fish*, 840 F.3d at 756.

CONCLUSION

For the reasons stated above, this Court should grant Respondents’ motion for a temporary restraining order and preliminary injunction.

Respectfully submitted,



Damarion Solomon-Simmons, MCN # 354
SOLOMONSIMMONSLAW, PLLC
601 S. Boulder Ave., Ste. 602
Tulsa, Oklahoma 74119
918-551-8999 – Phone/918-558-8039 –
Facsimile dss@solomonsimmons.com

Jana L. Knott, MCN #1320
BASS LAW
252 NW 70th St.
Oklahoma City, OK 73116
(405) 262-4040 – Phone/(405) 262-4058 –
Facsimile jana@basslaw.net

M. David Riggs, MCN # 1239
RIGGS, ABNEY, NEAL, TURPEN ORBISON & LEWIS, P.C.
502 West 6th Street
Tulsa, Oklahoma 74119
(918) 587-3161 – Phone/(918) 587-9708 – Facsimile
driggs@riggsabney.com

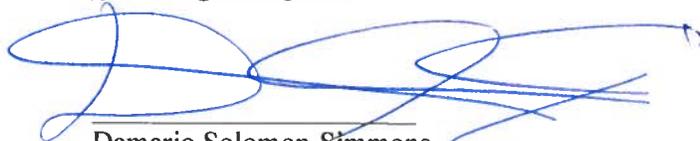
Attorneys for Respondents

Certificate of Service

I hereby certify that on the 9th day of March 2026, I caused the foregoing *Respondents'* *Motion for Temporary Restraining Order and Preliminary Injunction* to be transmitted to the following counsel of record via email and U.S. Mail, postage prepaid:

Rod W. Wiemer
114 North Grand
Okmulgee, OK 74447
Tulsa, OK 74120
rwattys@sbcglobal.net

Geri Wisner
Clinton A. Wilson
Jeremy Pittman
THE MUSCOGEE (CREEK) NATION
OFFICE OF THE ATTORNEY GENERAL
P.O Box 580
Okmulgee, OK 74447
gwisner@mcnag.com
cwilson@mcnag.com
jpittman@mcnag.com



Damario Solomon-Simmons

EXHIBIT A



Muscogee (CREEK) Nation

Executive Office

August 30, 2023

Office of Governor J. Kevin Stitt
2300 N. Lincoln Blvd., Suite 212
Oklahoma City, OK 73105

Governor Kevin Stitt:

Your recent lies and offensive claims made in last week's State of the State address at the Oklahoma Chamber of Commerce are comments unbecoming of the Office of Governor. Your remarks represent a new low, even for someone who has developed a pattern of baseless hostility towards tribes in Oklahoma and require correction for the public record. These lies will perpetuate hostility that will be felt on individual levels and directed toward tribal citizens. For example, the reckless comment you made regarding tribal tags—"Every time you see a tribal tag, just realize the state is losing about \$200 million in revenue annually"—is not only inaccurate, but it could result in physical confrontations against innocent tribal citizens for no other reason than having a tribal tag on their vehicle.

You also stated that "Tribal governments disbanded and allotted out all the land in 1907 at statehood." You say this as though it were a fact. However, every agency of the federal government--which has plenary authority to make laws governing Indian Country--and the United States Supreme Court has repeatedly found otherwise. On this matter, I would encourage you to listen to informed advisors on both history and the law so as to avoid the embarrassing mistake of saying such easily disproven things in the future. I would also remind you that the Muscogee (Creek) Nation has entered into numerous treaties with the United States, and, as you should know, Article VI of the U.S. Constitution clearly upholds these treaties as the supreme law of the land, and every judge in every state shall be bound thereby.

You also stated that "we are now in a jurisdictional and geographical fight for who has authority over our state" and characterized tribal efforts to assert their legal jurisdiction on their reservations as a "storm of injustice." There is no such struggle. We have always known the State of Oklahoma is our neighbor, and our intent has been to be good neighbors. We've demonstrated our patience and desire to be good neighbors.

The concept of tribal jurisdiction over reservations is not new, nor did it begin with the *McGirt* decision. It has always been the law of the land since before Oklahoma statehood, and *McGirt*

simply affirmed that fact. However, politicians of the past chose to ignore those laws and pretend they didn't exist-- just as you are attempting to do now.

Had the State of Oklahoma not illegally ignored tribal jurisdiction and instead developed a collaborative relationship with tribes, as the system is designed to be, neither the state nor the tribes would be in the place we find ourselves today.

Much of the work that tribes have done since the *McGirt* decision has been to repair the damage of those politicians' actions. We've made great strides these past few years to continue to strengthen our tribal systems that were illegally thwarted for decades. The result is more police on the streets, more courts to try cases, and more public safety on reservations.

Your efforts to ignore the law are just as harmful as those of the politicians of years gone by.

It is clear that state leaders of the past were influenced in their treatment of Indians by the shameful ignorance of their times. But here in 2023, there can be no excuse for resurrecting such sentiments and actions. Misrepresenting history, ignoring the law, and spewing false rhetoric is best left in the past.

Sovereign tribal jurisdiction should be treated as an opportunity, not a zero-sum game. Such a totalitarian perspective is not supported in this case and is Jacksonian type leadership that is designed to only serve an elite pool of people. Many other states work with tribes to the benefit of their citizens and their economies. That same collaboration and positive sovereign-to-sovereign cooperation is the only path that every citizen of Oklahoma, tribal or not, deserves.

Your words give the perception that you wish tribes didn't exist, but we do and will continue to do so. You may personally wish tribes didn't have any jurisdiction or authority, but we do and will continue to do so. So, I encourage you, as the elected leader of our state, to end your political campaign of baseless and damaging rhetoric, cease using Oklahomans' hard-earned money to fund baseless lawsuits, and forge a path to work with tribal leaders for the benefit of all.

As always, my door is open for constructive conversation and sovereign-to-sovereign negotiations. I hope to hear from you soon.

Sincerely,



David W. Hill, Principal Chief
Muscogee (Creek) Nation

cc: Lt. Gov. Matt Pinnell, Speaker Charles McCall, Pro Tem Greg Treat
Attorney General Gentner Drummond

EXHIBIT B

**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,

v.

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

**UNITED STATES DEPARTMENT OF THE
INTERIOR;**

**CHADWICK SMITH, Individually and in His
Official Capacity;**

**S. JOE CRITTENDEN, Individually and in
His Official Capacity; and**

**John Does, Individually and in Their Official
Capacity,**

Defendants.

**Case No: 1:03cv01711 (HHK)
Judge: Henry H. Kennedy
Docket Type: Civil Rights
(non-employment)**

**FREEDMEN PLAINTIFFS' MEMORANDUM IN SUPPORT OF
THEIR MOTION FOR A PRELIMINARY INJUNCTION**

The Cherokee Nation was one of the few Indian tribes to own slaves and fight with the Confederacy during the Civil War. After the Civil War ended, the Cherokee Nation agreed, in connection with restoring its relations with the United States Government in the Treaty of 1866, to free its slaves and guarantee them and their descendents “all the rights of native Cherokees” – including full citizenship rights.

Certain Freedmen, until recently (and with a couple of exceptions), had been permitted to exercise their Cherokee citizenship rights. The Cherokee Nation Constitution, in accordance with the Treaty of 1866, until 2007 granted full Cherokee citizenship rights to the Freedmen. In March 2007, however, the Cherokee Nation amended its Constitution to strip its Freedmen of their citizenship rights. On May 14, 2007, the Cherokee Nation District Court issued a temporary injunction restoring the Freedmen's citizenship rights. On January 14, 2011, the Cherokee Nation District Court held that the constitutional amendment was invalid because it violated the Treaty of 1866. The Cherokee Nation, observing the District Court's temporary injunction and later its final ruling, permitted certain Freedmen to exercise their citizenship rights, including their right to vote in the election for Principal Chief held on June 25, 2011.

Yet the Freedmen's citizenship rights will now be taken away permanently – unless this Court acts to preserve them. On August 22, 2011, the Cherokee Supreme Court ruled that the March 2007 constitutional amendment is valid and that the Cherokee Nation may deny citizenship rights to the Freedmen. The Cherokee Nation is now stripping the Freedmen of their citizenship rights. Freedmen who had been registered to vote in Cherokee elections – and who voted in the election for Principal Chief held on June 25, 2011 – are being removed from the Cherokee voter rolls and will be prevented from voting in the special election for Principal Chief to be held on September 24, 2011. In addition, Freedmen will be denied crucial benefits afforded to all Cherokee citizens, including health care, employment in the Tribe or its many companies, education assistance, and many other benefits.

The Freedmen now turn to this Court to seek a preliminary injunction against the Cherokee Nation Defendants and the Federal Defendants to prevent the Cherokee Nation from

taking away their most fundamental rights until this Court makes its final ruling on the merits of the Freedmen's claims.

BACKGROUND AND PROCEDURAL HISTORY

Historical Background

Prior to the Civil War, slaves of Cherokees, as well as free intermarried Blacks or children of mixed racial families, lived in the Cherokee Nation. Complaint ("Compl.") ¶ 24.¹ In 1861, the Cherokee Nation entered into a treaty with the Confederate States of America, thereby severing its relationship with the United States. The Cherokee Nation received seats in the Confederate House of Representatives and Senate and rank in its military. As part of the Confederate Army, the Cherokee Nation waged war against the United States in defense of the institution of slavery. The Cherokee Nation passed legislation enacting slave codes, regulating slavery within its borders.

In 1863, slavery was abolished through the Emancipation Proclamation, and in 1865 the Thirteenth Amendment of the United States Constitution was ratified. *Id.* ¶ 25. Following the Civil War, the United States and the Cherokee Nation entered into the Treaty of 1866, July 19, 1866, 14 Stat. L. 799 ("Treaty of 1866"), which, among other things, granted the freed Cherokee slaves (the "Freedmen"²) citizenship in the Cherokee Nation. *Id.* ¶ 26. After the Cherokee

¹ All citations to the Complaint refer to the Freedmen Plaintiffs' Fourth Amended Complaint, filed December 19, 2008. D.C. Action Doc. No. 115. The Freedmen Plaintiffs have filed a motion for leave to file their Fifth Amended Complaint on March 14, 2009, which is still awaiting decision. *See* D.C. Action Doc. No. 127.

² In July 2010, the related action *The Cherokee Nation v. Nash*, Civil Case No. 1:10-cv-1169 (HHK), was transferred to this Court from the United States District Court for the Northern District of Oklahoma. Except where necessary for procedural reasons to distinguish between the Freedmen Plaintiffs here and the Freedmen Defendants in the transferred action, both groups will be referred to herein collectively as "the Freedmen." Both groups are represented

Nation entered into the Treaty of 1866, the Cherokee National Council amended its constitution, implementing the Treaty's requirement that the Cherokee Nation guarantee the Cherokee Freedmen full rights as citizens.

In 1893, the United States government established the Dawes Commission for the purpose of creating authoritative membership rolls for all of the Native American tribes in Oklahoma, including the Cherokees. *Id.* ¶ 33. Although not required or authorized to do so, the Dawes Commission created separate categories of Cherokee citizens, including one for Cherokees "by Blood," also known as the "Blood Roll," and the "Freedmen Roll" for the Black Cherokees. *Id.* Persons on the Freedman Roll were typically former Cherokee slaves and descendants of Cherokee slaves, but it also included any other member of the Cherokee Nation having any Black ancestry, regardless of that individual's Cherokee ancestry "by Blood." *Id.* Although the quantum of Native American ancestry was recorded for each individual on the "Blood Roll," no effort was made to record the percentage of Native American ancestry of those persons listed on the "Freedmen Roll." *Id.* In 1907, the Dawes Commission completed its rolls of citizens of the Cherokee Nation. *Id.* ¶ 37.

by the same legal counsel and, as Judge Kern recognized in his Transfer Order, although the five individual Freedmen named as defendants in the transferred action differ from the named plaintiffs in this action, "[f]or purposes of deciding the questions presented in both lawsuits, it makes little difference which individual Freedmen are parties. [The] D.C. Individual Plaintiffs are simply other Freedmen asserting rights contrary to the declaratory relief sought by the Cherokee Nation in this case, and they could be readily substituted as defendants in this case without effecting any substantive change in the declaratory action. In addition, the presence of Freedmen Band as a plaintiff in the D.C. Action renders the parties in the two suits even more similar because all Freedmen Defendants are members of this political organization...[.]” Transfer Order at 16-17.

Previous Actions by the Federal Defendants To Protect the Citizenship Rights of the Cherokee Freedmen and the Freedmen of Other Tribes

In 1970, Congress enacted The Principal Chiefs Act, which permitted the Cherokee Nation and other tribes to elect their principal chiefs but required that the procedures established for any such election “shall be subject to approval by the Secretary of the Interior.” Pub. L. No. 91-495, 84 Stat. 1091 (1970). The Department of the Interior determined immediately that any such election procedures must permit the Freedmen to vote. *See* Letter from Harrison Loesch dated March 29, 1971 (“Voter qualifications of the Choctaw, Seminole, Cherokee and Creek people must be broad enough to include the enrolled freedmen citizens of the respective nations.”) (attached as Exhibit 1).

Over ten years ago, the Seminole Nation sought to deny citizenship rights to its Freedmen. The Federal Defendants, as they were obligated to do under the Thirteenth Amendment, the Seminole Treaty of 1866 (identical in substance to the Cherokee Treaty of 1866), and the Principal Chiefs Act, acted to protect the citizenship rights of the Seminole Freedmen. In particular, the Federal Defendants made clear to the Seminole Nation that the Seminole Freedmen were citizens of the Seminole Nation and were entitled to full citizenship rights.³

In response, the Seminole Nation sued the Federal Defendants in this Court, but the Federal Defendants prevailed. *Seminole Nation of Okla. v. Norton*, No. 00-2384, 2001 WL

³ *See* Letter from the Assistant Secretary of Indian Affairs to Chief Jerry Haney (dated September 29, 2000) (stating that the Freedmen became citizens of the Tribe pursuant to the Treaty of 1866; proposed constitutional amendments to remove the Freedmen from membership would violate the Treaty and the Indian Civil Rights Act; the Tribe did not submit the proposed revisions of removing the Freedmen to the United States for approval, as required; and the amendment to the Constitution removing the Freedmen from membership are “deemed disapproved and invalid”) (attached as Exhibit 2).

36228153 (D.D.C. Sept. 27, 2001) (memorandum opinion granting summary judgment in part to the Federal Defendants) (“*Seminole P*”). In *Seminole I*, this Court held that the Federal Defendants had acted properly to protect the citizenship rights of the Seminole Freedmen. In particular, this Court held that the Seminole Treaty of 1866 has not been abrogated and “continues to bind the United States and Seminole governments” *Id.* at *16.

While *Seminole I* was pending, the Seminole Nation held an election for Principal Chief and did not permit the Seminole Freedmen to vote. The Federal Defendants again acted to protect the citizenship rights of the Seminole Freedmen, the Seminole Nation again brought suit in this Court, and the Federal Defendants again prevailed. *Seminole Nation of Okla. v. Norton*, 223 F. Supp. 2d 122 (D.D.C. 2002) (“*Seminole IP*”). In holding that the Federal Defendants properly acted to protect the citizenship rights of the Seminole Freedmen, this Court stated as follows:

The Court acknowledges and appreciates the importance of the Nation’s right, as a sovereign body, to self-determination and self-government. However, as a sovereign, the Nation has the duty and the responsibility to respect the rights of all of its members, including the rights of its minority members, as guaranteed by the Nation’s Constitution. *See* Seminole Constitution Art. II (“The membership of this body shall consist of all Seminole citizens whose names appear on the final rolls of the Seminole Nation of Oklahoma approved pursuant to section 2 of the Act of April 26, 1906 ...). And, where the Nation evidences that it does not intend to respect those rights, the government, as part of “the distinctive obligation of trust incumbent upon [it] in its dealings with these dependent and sometimes exploited people,” *Seminole Nation*, 316 U.S. at 296, 62 S. Ct. 1049, (citations omitted), has a duty to ensure that its minority members are protected against the will of the majority that is being imposed in violation of its own Constitution. The United States has itself dealt with many of these same issues, where, if the will of the majority had prevailed, many minority members of this society would not have been able to enjoy the same privileges and benefits as other citizens. Where the Nation will not protect the Constitutional rights of its minority members, the BIA has the responsibility and indeed, the duty, to intervene and attempt to protect those rights through appropriate remedies. *Id.* at 296-97, 62 S. Ct. 1049.

Id. at 146-147.

Initial Actions of the Cherokee Nation to Deny Citizenship Rights to the Cherokee Freedmen

Nearly ten years ago, the Cherokee Nation, like the Seminole Nation before it, took steps to deny citizenship rights to its Freedmen. The Cherokee Nation Constitution provided that any amendment to the Constitution required the approval of the President of the United States or his authorized representative. The Cherokee Nation proposed amending its Constitution to remove that approval requirement. The Federal Defendants did not object to the removal of the approval right, *so long as the citizenship rights of the Freedmen were protected:*

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 provide an equal opportunity to vote in the election. Second, under the 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 (94 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.

Letter from Neal McCaleb to Chief Smith (dated March 15, 2002) (attached as Exhibit 3). The Federal Defendants also made clear to the Cherokee Nation that the Principal Chiefs Act, requiring that the Secretary of the Interior approve the Cherokee Nations election procedures, remains in effect. Letter from Dennis Springwater to Chief Smith (dated May 8, 2002) (attached as Exhibit 4).

On May 24, 2003, the Cherokee Nation held a special election to elect its Principal Chief, to elect other tribal officials, and to amend its constitution to remove the provision requiring

approval by the Federal Defendants of future constitutional amendments. Compl. ¶ 1. The Cherokee Nation did not permit the Cherokee Freedmen to vote in this election. On July 26, 2003, the Cherokee Nation held a run-off election for certain tribal officials and an election to consider further constitutional amendments. The Cherokee Nation did not permit the Cherokee Freedmen to vote in this election either. *Id.* ¶¶ 1, 46; *Vann v. Kempthorne*, 534 F.3d 741, 744 (D.C. Cir. 2008).

As of the election held on May 24, 2003, and as of the election held on July 26, 2003, the Federal Defendants had made clear that they would not approve the election procedures or the election results unless the Cherokee Nation protected the citizenship rights of the Cherokee Freedmen and permitted them to vote in the elections. However, on August 6, 2003, the Federal Defendants reversed their position and recognized the election of Chief Smith as Principal Chief – even though the Cherokee Freedmen had been denied the right to vote in the elections held on May 24, 2003, and July 26, 2003. Letter from Jeanette Hanna to Chief Smith (dated Aug. 6, 2003) (attached as Exhibit 5). The Federal Defendants stated that they were continuing to review the amendment to the Cherokee Constitution approved on May 24, 2003, an election in which the Cherokee Freedmen were not permitted to vote.

The D.C. Action

On August 11, 2003, a group of six individual Cherokee Freedmen filed this action against Gale Norton, then Secretary of the Interior, and the United States Department of Interior (the “Federal Defendants”), Civil Case No. 1:03-cv-01711 (HHK) (the “D.C. Action”), seeking declaratory and injunctive relief requiring the Federal Defendants to protect the citizenship rights of the Freedmen. On January 14, 2005, the Cherokee Nation of Oklahoma filed a Limited Motion to Intervene for the purpose of moving to dismiss the D.C. Action. D.C. Action Doc.

No. 17. On September 8, 2005, this Court granted the Cherokee Nation's motion to intervene and deemed as filed on that date the Cherokee Nation's Motion to Dismiss. D.C. Action Doc. Nos. 22 and 23. In response, Plaintiffs moved to amend their complaint to add the Cherokee Nation and the Cherokee Principal Chief (the "Cherokee Nation Defendants") as party defendants. D.C. Action Doc. No. 38.

On December 19, 2006, this Court denied the Cherokee Nation's motion and granted Plaintiffs leave to add the Cherokee Nation Defendants as parties. *Vann v. Kempthorne*, 467 F. Supp. 2d 56 (D.D.C. 2006) ("*Vann I*") (D.C. Action Doc. No. 41). In addition, this Court held that (1) the Thirteenth Amendment applies to the Cherokee Nation, (2) the Civil Rights Act of 1866 was intended to enforce the Thirteenth Amendment against all persons and entities under the jurisdiction of the United States, and (3) the Treaty of 1866 (which guarantees Cherokee citizenship to Cherokee Freedmen) incorporated the principles of the Thirteenth Amendment and the Civil Rights Act of 1866 and makes adherence to such principles a condition of the Cherokee Nation's existence within the United States. *Id.* at 67-69. This Court also held that the Federal Defendants have a fiduciary obligation to protect the rights of Plaintiffs and other Cherokee Freedmen and, under the Principal Chiefs Act of 1970, are obligated to review and approve the procedures by which the Cherokee Nation elects its principal chief. *Id.* at 71-72 and n.12.

The 2007 Elections and the Freedmen Plaintiffs' Previous Motions for Preliminary Injunction

Following this Court's decision on December 19, 2006, the Cherokee Nation announced its intention to hold a special election on March 3, 2007, to decide the following ballot initiative to amend the Cherokee constitution in order to remove the Cherokee Freedmen from the Cherokee Nation of Oklahoma:

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 descendants of those on either the Dawes 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 ‘yes’ or a ‘no’ vote will affect the citizenship rights of those individuals who are original enrollees or descendants of Cherokees by blood, Delaware by blood, or Shawnees by blood as listed on the Final Rolls of the Dawes Commission Rolls closed in 1906.

Cherokee Nation Special Election Ballot (March 3, 2007) (emphasis added) (attached as Exhibit 6).

On February 1, 2007, the Freedmen Plaintiffs asked this Court to issue a preliminary injunction preventing the Cherokee Nation Defendants from holding the election on the proposed constitutional amendment. This Court denied the motion because, among other reasons, it concluded that Plaintiffs failed to demonstrate that they would suffer irreparable harm in that they failed to show that the election itself – as opposed to the results of the election – would cause them harm. That is, the possibility existed that the proposed constitutional amendment would not pass, in which case the Freedmen Plaintiffs would not be stripped of their citizenship right under the Cherokee Constitution. This Court noted, however, that “[e]ven assuming arguendo that the outcome they fear come[s] to pass, the Freedmen have a remedy if the election results in the deprivation of their constitutional rights.” Transcript of Preliminary Injunction Hearing at 41:2-4 (Feb. 21, 2007).

The outcome the Freedmen feared did come to pass. On March 3, 2007, the Cherokee Nation approved the constitutional amendment stripping the Freedmen of their Cherokee

citizenship (the “March 2007 amendment”). Compl. ¶ 67. On March 21, 2007, the Cherokee Nation sent letters to Freedmen informing them that their citizenship status had been terminated. *Id.* On March 28, 2007, the Cherokee Nation sent letters to Plaintiffs and other Freedmen informing them that the Cherokee Nation was terminating their medical benefits. *Id.*

On May 8, 2007, the Freedmen Plaintiffs filed a second motion for preliminary injunction in order to enjoin the Cherokee Nation from preventing the Freedmen from participating in an election for Principal Chief, Vice-Chief, and seventeen National Council members scheduled for June 23, 2007. D.C. Action Doc. No. 69.

Shortly after the Freedmen Plaintiffs filed their second motion for preliminary injunction, the Cherokee Nation District Court, on May 14, 2007, issued a temporary injunction staying implementation of the March 2007 Amendment, allowing those Freedmen who were citizens on or before March 3, 2007, to retain their citizenship rights and participate in the June 23, 2007, election. Compl. ¶ 69. This injunction was the result of a process initiated by the Cherokee Nation itself, which had provided to Cherokee Freedmen citizens who previously had been notified that their citizenship status had been terminated a document those Freedmen could use to challenge the termination of their citizenship rights. Individuals who submitted this challenge document were automatically determined to be members of the plaintiff class in an action in the Cherokee Nation District Court (“Tribal Court Action”).⁴

On May 21, 2007, Assistant Secretary of the Department of Interior Carl J. Artman sent a letter to Cherokee Nation Principal Chief Chadwick Smith stating that the Department of Interior disapproved the 2003 amendment to the Cherokee constitution that would have removed “the

⁴ *Raymond Nash v. Cherokee Nation Registrar*, 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 (D. Ch. Nat. 2007).

requirement that the Secretary approve all constitutional amendments for them to be effective.”

See Exhibit 7. Mr. Artman explained that he was

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 or 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.*

Id. (emphasis added).

On May 22, 2007, the Cherokee Nation, at the request of the Federal Defendants, submitted proposed election procedures for the June 23, 2007, election to the Federal Defendants for review and approval. The Federal Defendants approved these election procedures on May 25, 2007. *See* Memorandum in Support of Federal Defendants’ Partial Motion to Dismiss, D.C. Action Doc. No. 118-2 at 5-6.

On June 13, 2007, citing the temporary injunction issued by the Cherokee Nation District Court, which permitted the Plaintiffs and similarly situated Freedmen to vote in the June 23, 2007, election and the Federal Defendants’ subsequent approval of the Cherokee election procedures, this Court denied the Freedmen Plaintiffs’ second motion for preliminary injunction. D.C. Action Doc. No. 83. At the election held on June 23, 2007,⁵ the Cherokee Nation voters passed a constitutional amendment identical in substance to the 2003 amendment (removing the requirement for approval by the Secretary of the Interior of future constitutional amendments)

⁵ Approximately 1,000 Freedmen of the 2,800 Freedmen with Cherokee citizenship were able to register to vote. Compl. ¶ 69. Although their right to vote in the June 2007 election was nominally protected under the Cherokee District Court’s May 14, 2007, temporary injunction, the Freedmen voters were not treated equally with other registered voters. The Freedmen voters were notified by letter that they would only be permitted to vote in the “at large” districts, which restrict voting to absentee ballots only. *Id.* at ¶ 72. Freedmen ballots were segregated from other ballots and left on desks with no protection of the ballots; Freedmen voters were verbally abused by precinct workers; and other Freedmen voters were simply turned away from the polls. *Id.* at ¶ 73.

and re-elected Chadwick Smith as Principal Chief. On August 9, 2007, the Federal Defendants approved without comment the constitutional amendment approved at the June 23, 2007, election. *See* Exhibit 8.

*Partial Reversal and Remand by the United States Court of Appeals for the
District of Columbia Circuit*

The Cherokee Nation appealed this Court's ruling dated December 19, 2006. On July 29, 2008, the United States Court of Appeals for the District of Columbia Circuit determined that although the Cherokee Nation is a required party under Fed. R. Civ. P. 19(a), the Cherokee Nation could not be joined in this action because of its sovereign immunity. *Vann v. Kempthorne*, 534 F.3d 741, 749 (D.C. Cir. 2008) ("*Vann IP*"). At the same time, the Court of Appeals determined that Defendant Chadwick Smith was not protected by the tribe's sovereign immunity under *Ex parte Young* and therefore could remain a party to this suit. *Id.* at 750. The Court of Appeals remanded this action to this Court to "determine whether 'in equity and good conscience' the suit can proceed with the Cherokee Nation's officers but without the Cherokee Nation itself." *Id.* at 756.

On December 19, 2008, following remand of the D.C. Action to this Court, the Freedmen Plaintiffs moved for leave to file their Fourth Amended Complaint, which dropped the Cherokee Nation as a party in light of the Court of Appeals decision. D.C. Action Doc No. 115. This Court granted the Freedmen Plaintiffs' motion on January 7, 2009.

On January 30, 2009, Chief Smith filed a Motion to Dismiss Pursuant to Fed. R. Civ. P. 19(b), in the Alternative to Fed. R. Civ. P. 12(b)(6), and in the Further Alternative Pursuant to Fed. R. Civ. P. 12(b)(3). D.C. Action Doc. No. 119. Chief Smith argued that the Cherokee Nation is an indispensable party to this action, and because, as a sovereign entity, it could not be

joined to the action against its will, the case must be dismissed under Federal Rule of Civil Procedure 19(b).⁶ The Freedmen Plaintiffs opposed Chief Smith's motion, which remains pending.

Also on January 30, 2009, the Federal Defendants filed a partial motion to dismiss arguing, among other things, failure to state a claim and lack of jurisdiction. D.C. Action Doc. No. 118. The Freedmen Plaintiffs opposed Federal Defendants' motion, which remains pending.

The Oklahoma Action (now the Transferred Action)

On February 3, 2009, two business days after Chief Smith filed his motion to dismiss in the D.C. Action, the Cherokee Nation filed suit in the United States District Court for the Northern District of Oklahoma requesting a judgment declaring "that the Five Tribes Act and federal statutes modified the Treaty of 1866 thereby resulting in non-Indian Freedmen descendants, including the individual defendants, no longer, as a matter of federal law, having rights to citizenship of the Cherokee nation and benefits derived from such citizenship." *The Cherokee Nation v. Nash*, Civil Docket No. 4:09-cv-00052-TCK-PJC ("Oklahoma Action"). The Cherokee Nation in the Oklahoma action did not sue any of the individual Freedmen who are plaintiffs in this action. Instead, the Cherokee Nation sued five different Freedmen, as well as the Federal Defendants. On February 6, 2008, Chief Smith filed a Supplement to his Memorandum in Support of his Motion to Dismiss, informing this Court of the Oklahoma Action and asserting that the Oklahoma Action constituted a "procedurally appropriate avenue ... for Plaintiffs to judicially resolve their asserted and disputed claim that the Treaty of 1866 between

⁶ Chief Smith also argued for dismissal on other grounds, including failure to state a cause of action upon which relief can be granted and failure to allege facts establishing venue as to Chief Smith.

the Cherokee Nation and the United States currently entitles them to rights of Cherokee Nation citizens.” D.C. Action Doc. No. 120 at 2.

On March 14, 2009, the Freedmen Plaintiffs in the D.C. Action filed a motion for leave to file a fifth amended complaint, which seeks to add the Cherokee Nation of Oklahoma as a Defendant in the D.C. Action and to add the five individual Freedmen sued by the Cherokee Nation in the Oklahoma Action as additional Plaintiffs. (D.C. Action Doc. No. 127). The Freedmen in that motion argue that the Cherokee Nation, by filing the Oklahoma Action, waived its sovereign immunity and may now be added as a Defendant in the D.C. Action. The Cherokee Nation opposed that motion, and the Federal Defendants did not take a position on the motion, which remains pending.

On May 29, 2009, the Freedmen Defendants and the Federal Defendants in the Oklahoma Action filed separate motions to transfer that action to the District of Columbia. *See* Oklahoma Action Doc. Nos. 18 and 20. On June 18, 2009, the Freedmen Defendants filed their Amended Answer, their Counterclaims Against the Cherokee Nation of Oklahoma, and their Cross-Claims Against Federal Defendants in the Oklahoma Action. *See* Oklahoma Action Doc. Nos. 31, 32, and 33. The Freedmen Defendants’ Counterclaims and Cross-Claims in the Oklahoma Action mirror the claims made in the Freedmen Plaintiffs’ fourth amended complaint and proposed fifth amended complaint in the D.C. Action.

On July 2, 2010, Judge Terence Kern of the United States District Court for the Northern District of Oklahoma entered an order transferring the Oklahoma Action to this Court (“Transfer Order”). Judge Kern, having found that the parties and issues in the Oklahoma Action were sufficiently similar to those in the D.C. Action, held that under the “first-to-file rule,” this Court should ultimately determine whether the Oklahoma Action should be heard in the District of

Columbia, where a parallel suit has been pending since 2003, or whether, based on the Cherokee Nation's claims of forum immunity, the Oklahoma Action must be transferred back to the Northern District of Oklahoma. Oklahoma Action Doc. No. 48, at 21. On July 12, 2010, the transferred action was initiated in this Court as Civil Case No. 1:10-cv-01169 (HHK) ("Transferred Action").⁷ The Freedmen Plaintiffs in the D.C. Action and the Freedmen Defendants in the Transferred Action each subsequently filed motions to consolidate the two actions on October 15, 2010. Chief Smith and the Cherokee Nation, respectively, opposed those motions; the Federal Defendants in each action, although they did not join in the motions, indicated that they supported consolidation, subject to the relief sought in their motions to dismiss filed in both cases. The motions to consolidate remain pending.

Recent Events Leading to Freedmen Plaintiffs' Current Motion for Preliminary Injunction

The temporary injunction issued by the Cherokee Nation District Court on May 14, 2007, preserved temporarily the citizenship rights of certain Freedmen. On January 14, 2011, the Cherokee Nation District Court issued a final order declaring that the March 2007 Amendment was "void as a matter of law" under the Treaty of 1866. Tribal Court Action (Jan. 14, 2011

⁷ On July 13, 2010, the Cherokee Nation filed its motion to dismiss or transfer the Transferred Action. Transferred Action Doc. No. 51. On August 30, 2010, the Freedmen Defendants and the Federal Defendants each filed their briefs in opposition to the Cherokee Nation's motion. Transferred Action Doc. Nos. 55 (Federal Defendants) and 57 (Freedmen Defendants). The Cherokee Nation's motion remains pending. On August 31, 2010, the Federal Defendants filed their Motion to Dismiss Cross-Claims. Transferred Action Doc. No. 58. On September 30, 2010, the Freedmen Defendants filed their brief in opposition to the Federal Defendants' Motion. On November 15, 2010, the Cherokee Nation's claims against Federal Defendants in the Transferred Action were dismissed without prejudice. Transferred Action Doc. No. 71. However, the Federal Defendants' motion to dismiss the Freedmen Defendants' cross-claims, which were not dismissed, remains pending.

Order) (attached as Exhibit 10). This order preserved the citizenship rights of certain Freedmen, pending the Cherokee Nation's appeal of the order to the Cherokee Nation Supreme Court.

The Cherokee Nation held a general election on June 25, 2011, for, among other elected positions, the office of Principal Chief of the Cherokee Nation. Freedmen who were registered Cherokee citizens and who had registered to vote were permitted to vote in this election.

The initial unofficial election results from the Cherokee Election Commission showed that challenger Bill John Baker defeated the incumbent Principal Chief, Defendant Chadwick Smith, by eleven votes. Following a recount, the Cherokee Election Commission subsequently reversed those results and declared Smith the winner in its official election results issued on July 27, 2011 – by seven votes. Following calls from Baker for a hand recount of the ballots, the Election Commission conducted a second recount and, on June 30, issued a revised official result declaring Baker the winner by 266 votes. On July 5, Chief Smith asked the Cherokee Supreme Court to declare a new election. On July 21, the Cherokee Supreme Court issued an order declaring the June 25, 2011, election for Principal Chief invalid, finding that “after consideration of all the evidence ... 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 the Matter of the 2011 General Election*, Case No. SC-2011-06 (Cherokee Nation Sup. Ct. July 21, 2011) (attached as Exhibit 10). Pursuant to Cherokee law, the Principal Chief is to set the date for a new election, should the result of an election be invalidated. Chief Smith set September 24, 2011, as the new election date. Chief Smith's term as Principal Chief came to an end on the previously-determined inauguration date of August 14, 2011, and duly elected Deputy Chief S. Joe Crittenden took office on that date as Acting Principal Chief of the Cherokee Nation.

On August 22, 2011, the Cherokee Nation Supreme Court, in a 4-1 decision, issued a ruling upholding the validity of the March 2007 Amendment and reversing and vacating the order of the Cherokee Nation District Court issued on January 14, 2011. The Cherokee Nation Supreme Court ruled that it lacked subject matter jurisdiction to determine the validity of an amendment to the Cherokee Constitution. *See Cherokee Nation Registrar v. Nash*, Case No. SC-2011-02 (Cherokee Nation Sup. Ct. Aug. 22, 2011) (attached as Exhibit 11). The Cherokee Nation Supreme Court ruled that the Treaty of 1866 did not grant citizenship rights to the Freedmen, but that such rights were granted only by the Cherokee Nation Constitution, which was amended in 1866 to grant citizenship to the Freedmen. As such, “[i]t stands to reason that if the Cherokee People had the right to define the Cherokee Nation citizenship in the [] 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.” *Id.* at 8.

Following the Cherokee Supreme Court’s decision, the Cherokee Nation and Acting Principal Chief began taking steps to strip the Freedmen of their citizenship rights. The Cherokee Election Commission began removing Freedmen from the voting rolls in advance of the September 24 election. *See D. E. Smoot, Cherokee Election Officials Scramble to Adjust Voter Rolls*, Muskogee Phoenix, Aug. 23, 2011 (“‘We’re going to be working our butts off,’ said Lloyd Cole Jr., the attorney for the Cherokee election commission. ‘We are going to find out who those people are and then remove them from the voting rolls before the upcoming election.’”) (attached as Exhibit 12); Letter from Kalyn Free to Cherokee Nation Election Commission (September 2, 2011) (Election Commission has coded 1233 registered Freedmen as “inactive” and has not sent absentee ballots to 354 registered Freedmen who requested them)

(attached as Exhibit 13); Email from Lloyd Cole, Jr. to Kalyn Free (September 2, 2011) (acknowledging that Freedmen are being removed from the Cherokee voter rolls and Cherokee Election Commission data base) (attached as Exhibit 14). The Freedmen Plaintiffs in the D.C. Action, the Freedmen Defendants in the Transferred Action, and all similarly situated Freedmen will be denied the right to vote in the September 24 election and subsequent elections if the Cherokee Nation is permitted to strip the Freedmen of their citizenship rights. *See, e.g.*, Declarations of Charlene White, Raymond Nash, Zenobia King-Howard, Melissa Chaplin, Shenedda Gaston, Verressa Gaston, Courtney Gaston, Debra Owens, Ashley Logan Knapper, Rena Logan, Johnny Toomer, Tommy Lee McNac, Jr., and Anna Nicholson (attached as Exhibits 15-26).

Cherokee Freedmen also will be systematically denied critical services available only to Cherokee citizens if the Cherokee Nation is permitted to strip the Freedmen of their citizenship rights.

Plaintiff Charlene White is being treated by at the Mankiller Clinic, operated by the Cherokee Nation, for glaucoma and cataracts. Her treatments provide costly eye drops and eye glasses every four months, and she is being tested every three months to determine whether she will need a costly cataract removal procedure. If she is stripped of her Cherokee citizenship and the health benefits provided to Cherokee citizens, she will lose these treatments and likely lose her sight as she cannot afford to pay for these services on her own. Declaration of Charlene White (September 2011) (attached as Exhibit 15).

Raymond Nash, who is a Freedmen Defendant in the Transferred Action, is a Freedmen citizen of the Cherokee Nation who is registered to vote, voted in the June 2011 election, has a Cherokee car tag, and has applied for Cherokee medical benefits. *See* Declaration of Raymond

Nash (September 1, 2011) (attached as Exhibit 16). Without Cherokee citizenship, he will lose his right to vote and his benefits.

Zenobia King-Howard, a Freedmen citizen of the Cherokee Nation, is registered to vote in Cherokee elections, voted in the June 2011 election, receives Cherokee health benefits, volunteers her time to Cherokee communities, and participates in the Cherokee Nation Parade. *See* Declaration of Zenobia King-Howard (September 1, 2011) (attached as Exhibit 17). Without Cherokee citizenship, she will lose her right to vote and her benefits.

Melissa Chaplin, a Freedmen citizen of the Cherokee Nation, is registered to vote in Cherokee elections, voted in the June 2011 election, has children who should be eligible to receive school supplies provided to Cherokee students. *See* Declaration of Melissa Chaplin (September 1, 2011) (attached as Exhibit 18). Without Cherokee citizenship, she will lose her right to vote and benefits for her children.

Shenedda Gaston, a Freedmen citizen of the Cherokee Nation, is registered to vote in Cherokee elections, voted in the June 2011 election, receives Cherokee health benefits, volunteers her time to Cherokee communities, and participates in the Cherokee Nation Parade. *See* Declaration of Shenedda Gaston (September 1, 2011) (attached as Exhibit 19). Without Cherokee citizenship, she will lose her right to vote and her benefits.

Verressa L. Gaston, a Freedmen citizen of the Cherokee Nation, is registered to vote in Cherokee elections, voted in the June 2011 election, receives Cherokee health benefits, receives scholarship funding through the Cherokee Nation, volunteers her time to Cherokee communities, and participates in the Cherokee Nation Parade. *See* Declaration of Verressa L. Gaston (September 1, 2011) (attached as Exhibit 20). Without Cherokee citizenship, she will lose her right to vote and her benefits.

Courtney Gaston, a Freedmen citizen of the Cherokee Nation, is registered to vote in Cherokee elections, voted in the June 2011 election, receives a Cherokee scholarship, receives Cherokee health benefits, and volunteers her time to Cherokee communities. *See* Declaration of Courtney Gaston (September 1, 2011) (attached as Exhibit 21). Without Cherokee citizenship, she will lose her right to vote and her benefits.

Debra Owens, a Freedmen citizen of the Cherokee Nation, is registered to vote in Cherokee elections, voted in the June 2011 election, receives Cherokee health benefits, volunteers her time to Cherokee communities, and participates in the Cherokee Nation Parade. *See* Declaration of Debra Owens (September 1, 2011) (attached as Exhibit 22). Without Cherokee citizenship, she will lose her right to vote and her benefits.

Ashley Logan Knapper, a Freedmen citizen of the Cherokee Nation, is registered to vote in Cherokee elections, voted in the June 2011 election, receives Cherokee health benefits, receives a Cherokee scholarship, and volunteers her time to Cherokee communities. *See* Declaration of Ashley Logan Knapper (September 1, 2011) (attached as Exhibit 23). Without Cherokee citizenship, she will lose her right to vote and her benefits and will be unable to continue her education.

Rena Logan, a Freedmen citizen of the Cherokee Nation, is registered to vote in Cherokee elections, voted in the June 2011 election, receives Cherokee health benefits, volunteers her time to Cherokee communities, and participates in the Cherokee Nation Parade. *See* Declaration of Rena Logan (September 1, 2011) (attached as Exhibit 24). Without Cherokee citizenship, she will lose her right to vote and her benefits.

Johnny Toomer, a Freedmen citizen of the Cherokee Nation, is registered to vote in Cherokee elections, voted in the June 2011 election, and receives Cherokee health benefits. *See*

Declaration of Johnny Toomer (September 1, 2011) (attached as Exhibit 25). Without Cherokee citizenship, he will lose his right to vote and his benefits.

Tommy Lee McNac, Jr., a Freedmen citizen of the Cherokee Nation, is registered to vote in Cherokee elections and voted in the June 2011 election. *See* Declaration of Tommy Lee McNac (September 1, 2011) (attached as Exhibit 26). Without Cherokee citizenship, he will lose his right to vote.

Anna H. Nicholson, a Freedmen citizen of the Cherokee Nation, is registered to vote in Cherokee elections, voted in the June 2011 election, receives Cherokee health benefits, volunteers her time to Cherokee communities, and participates in the Cherokee Nation Parade. *See* Declaration of Anna H. Nicholson (September 1, 2011) (attached as Exhibit 27). Without Cherokee citizenship, she will lose her right to vote and her benefits.

Plaintiffs must now turn to this Court to prevent the Cherokee Nation from depriving them of their citizenship rights pending a determination on the merits of their claims against the Cherokee Defendants and the Federal Defendants.

ARGUMENT

Following the recent Cherokee Nation Supreme Court order affirming the validity of the March 2007 Amendment stripping the Cherokee Freedmen of their citizenship rights, the Cherokee Nation Defendants have begun taking immediate, concrete steps to deny the Freedmen their citizenship rights, while the Federal Defendants continue to ignore their obligation to protect the rights of the Freedmen. The expulsion of the Freedmen is the latest in a series of actions the Cherokee Nation Defendants have taken – and the Federal Defendants have not acted to stop or reverse – in violation of the Thirteenth Amendment, the Treaty of 1866, and the Principal Chiefs Act of 1970.

The Plaintiffs now seek a preliminary injunction to protect their rights to remain as full citizens of the Cherokee Nation pending a determination of their claims on the merits. Plaintiffs ask this Court to enjoin the Cherokee Nation Defendants from denying Plaintiffs and the other Freedmen their full citizenship rights and from holding any election as to which Plaintiffs and other Freedmen are denied the right to vote based solely upon their status as Cherokee Freedmen. Plaintiffs also ask this Court to enjoin the Federal Defendants from taking the following actions until the Cherokee Nation restores full citizenship rights to the Freedmen and complies with the Thirteenth Amendment, the Treaty of 1866 and the Principal Chiefs Act, which requires that the Federal Defendants review the Cherokee Nation's election procedures and ensure that they comply with all legal requirements, including the Cherokee Freedmen's right to vote: (1) distributing funds to the Cherokee Nation; (2) recognizing any Cherokee Nation election; and (3) recognizing the government-to-government relationship with the Cherokee Nation.

In order to obtain a preliminary injunction, Plaintiffs must demonstrate that

(1) they are likely to prevail on the merits; (2) they will suffer irreparable harm absent the injunction; (3) an injunction would not substantially impair the rights of . . . other interested parties; and (4) an injunction would be in the public interest, or at least would not be adverse to the public interest.

Tenacre Found. v. INS, 892 F. Supp. 289, 292 (D.D.C. 1995), *aff'd* 78 F.3d 693 (D.C. Cir. 1996), following *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-44 (D.C. Cir. 1977). Depending upon the circumstances, it may be appropriate for the Court to give certain factors more weight than other factors. Where "the balance of hardships tips decidedly toward [the] plaintiff" and the plaintiff has "raised questions going to the merits so serious, substantial difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation," a preliminary injunction is justified even if the plaintiff is "less likely

than not to prevail on the merits.” *Holiday Tours* at 844-45 (internal quotation marks and citations omitted).⁸

In this case, the Freedmen Plaintiffs are likely to prevail on the merits because denying the Freedmen their citizenship rights plainly violates federal statute, the Treaty of 1866, and the Thirteenth Amendment. Plaintiffs are entitled to relief against the Cherokee Nation Defendants, who are violating the Thirteenth Amendment and their treaty obligations. Plaintiffs are also entitled to relief against the Federal Defendants, who (a) have a fiduciary duty to protect the rights of Plaintiffs, Freedmen generally, and any other individual members whose rights are violated by the tribe or its majority members; (b) are obligated to enforce the Principal Chiefs Act; and (c) cannot act in an arbitrary and capricious manner.

Even if there were any doubt as to Plaintiffs’ entitlement to relief on the merits – and there is not – a preliminary injunction is appropriate here because the balance of hardships tips decidedly in favor of relief. Without relief from this Court, the Cherokee Nation will continue to

⁸ Defendants may argue that the standard for preliminary injunction has been circumscribed by the Supreme Court’s recent decision in *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008), which emphasized that irreparable injury must be likely and not merely a “possibility.” Although the D.C. Circuit has noted that *Winter* “does not squarely discuss whether the four factors are to be balanced on a sliding scale,” it has yet to decide whether the sliding-scale approach should still be employed. *Davis v. Pension Ben. Guar. Corp.*, 571 F.3d 1288, 1292 (declining to address validity of sliding-scale approach because plaintiffs failed even under the more lenient sliding-scale analysis); *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011) (declining to address continued validity of sliding scale approach, but stating “we read *Winter* at least to suggest if not to hold ‘that a likelihood of success is an independent, free-standing requirement for a preliminary injunction,’” quoting *Davis*, 571 F.3d at 1296 (concurring opinion)). Several judges in this Court have ruled that *Winter* does not overturn the sliding-scale approach. See, e.g., *Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1, 12 (D.D.C. 2009) (Kollar-Kotelly, J.) (“the Court finds that the D.C. Circuit’s sliding-scale standard remains viable even in light of the decision in *Winter*”). In any event, as set forth more fully herein, Plaintiffs meet the test for preliminary injunction without the need to apply the D.C. Circuit’s “sliding scale” analysis. In this case, a preliminary injunction is appropriate regardless of whether *Winter* has changed the D.C. Circuit’s sliding-scale approach.

deny to Plaintiffs and all Freedmen their rights as Cherokee Nation citizens: their right to vote, to hold office, and to participate in government in any way, as well as their right to medical benefits and other substantial benefits the Cherokee Nation offers its citizens. On the other hand, the burdens, if any, a preliminary injunction would impose on the Cherokee Nation Defendants and the Federal Defendants would be negligible.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

Plaintiffs are likely to succeed on the merits against both the Cherokee Nation Defendants and the Federal Defendants. The Cherokee Nation has taken the audacious step of disenfranchising its most vulnerable citizens by enacting a constitutional amendment in blatant violation of the Thirteenth Amendment and its treaty obligations. The Federal Defendants have failed to fulfill their fiduciary duties to protect the rights of the Cherokee Freedmen, to enforce the Principal Chiefs Act, and to ensure that the Cherokee Nation's actions do not violate the Thirteenth Amendment or the Treaty of 1866.

A. The Cherokee Nation Defendants Have Violated the Thirteenth Amendment and the Treaty of 1866

The March 2007 Amendment constitutes a blatant violation of both the Thirteenth Amendment and the Treaty of 1866. This Court set forth the history, purpose, and intent of the Thirteenth Amendment and the Treaty in its December 19, 2006, Order. There simply is no doubt that both the Thirteenth Amendment and the Treaty were enacted to protect former slaves such as the Freedmen “not merely against slavery itself, but against all the badges and relics of a slave system.” *Vann*, 467 F. Supp. 2d at 67 (quoting Akhil Reed Amar, *America's Constitution* 362 (2006)). The Treaty of 1866 requires no interpretation; its plain text provides that the Cherokee Freedman are granted “all the rights of native Cherokees,” Treaty of 1866, art. IX, July 19, 1866, 14 Stat. 799, and that the Cherokee Nation shall enact no law “inconsistent with the

Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States.” *Id.* art. XII. As this Court has held, “[t]he Treaty of 1866 not only incorporated the principles of the Thirteenth Amendment and the Civil Rights Act of 1866, but it made such principles a *condition* of the Cherokee Nation’s existence within the United States.” *Vann*, 467 F. Supp. 2d at 68 (emphasis original).

The March 2007 Amendment deprives Plaintiffs and all Cherokee Freedmen of their citizenship rights in the Cherokee Nation. As the text of the amendment itself states,

[t]his amendment would take away citizenship of current citizens and deny citizenship to future applicants who are solely descendants of those on either the Dawes 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.

See Exhibit 7. The Cherokee Nation approved the amendment on March 3, 2007, and the Cherokee Nation is now taking action to implement the amendment, which would deprive Plaintiffs and all Cherokee Freedmen of their citizenship rights, solely due to their race and the status of their ancestors as slaves, in violation of the Thirteenth Amendment and the Treaty of 1866.

The position of the Cherokee Nation that the Treaty of 1866 did not require that the Cherokee Nation grant citizenship rights to the Freedmen ignores the plain language of the Treaty of 1866 and is contrary to the consistent holdings of the U.S. Supreme Court and the lower federal courts, including, in this case, this Court and the Court of Appeals.

Over 100 years ago, the Court of Claims held that the Freedmen were entitled to share in the tribe’s proceeds and that the Cherokee Nation’s sovereignty could not be exercised in a manner that breached the Nation’s treaty obligations to the United States. *Whitmire, Trustee for the Cherokee Freedmen v. Cherokee Nation*, 30 Ct. Cl. 138, 180 (Ct. Cl. 1895). The U.S.

Supreme Court thereafter confirmed that the Freedmen are citizens of the Cherokee Nation entitled to the same property rights as other members of the Nation under the Treaty of 1866. *Red Bird v. United States*, 203 U.S. 76, 84 (1906). Lower courts have concurred. *See, e.g., Keetoowah Society v. Lane*, 41 App. D.C. 319, 322 (App. D.C. 1914) (“We do not think the right of these freedmen to participate in the lands and funds of the Cherokee Nation longer open to question.”).

Moreover, it is the law of the case in this action that the Treaty of 1866 grants citizenship rights to the Cherokee Freedmen. This Court held that the Freedmen’s citizenship rights “must be protected by the Thirteenth Amendment and the Treaty of 1866. To conclude otherwise would be to deny effect to the Thirteenth Amendment as well as Congress’s repeated enactments to protect the Freedmen’s rights to full membership in the Cherokee Nation, which includes the fundamental right to vote.” *Vann I*, 467 F Supp. 2d at 70. The Court of Appeals similarly held that “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 their basis as former slaves. The tribe does not just lack a ‘special sovereign interest’ in discriminatory elections – it lacks any sovereign interest in such behavior.” *Vann II*, 534 F.3d at 756.

B. The Federal Defendants Have Failed to Fulfill Their Fiduciary Duties to the Cherokee Freedmen

As the Court has already held, the Federal Defendants have fiduciary duties to uphold the rights of the Cherokee Freedmen against abuses by the Cherokee Nation. *See Vann*, 467 F. Supp. 2d at 71. The Court held that such duties include an obligation to ensure that “tribal leaders are truly representative of the members they purport to present in relations with the United States government,” *id.* (citing *Seminole Nation v. United States*, 316 U.S. 286 (1942)),

and that the Principal Chiefs Act “unequivocally requires the Secretary to review and approve the procedures by which a principal chief of the Cherokee Nation is selected.” *Id.* at 72.⁹

The Federal Defendants have not always shirked their fiduciary duties to minority members of Indian tribes.¹⁰ As this Court has recognized, the Federal Defendants took action to protect the rights of the Seminole Freedmen when the Seminole Nation sought to disenfranchise the Seminole Freedmen. The Federal Defendants recognized that denial of citizenship rights of

⁹ In addition, the Court has cited with approval the Court’s prior ruling in *Seminole II*, which held that the Federal Defendants are “‘charged not only with the duty to protect the rights of the tribe, but also the rights of individual members . . . whether the infringement is by non-members or members of the tribe.’” *Vann*, 467 F. Supp. 2d at 71 n.12 (quoting *Seminole II*, 223 F. Supp. 2d at 137).

This Court in *Seminole II* set forth in greater detail the fiduciary duty of the Federal Defendants:

The Court acknowledges and appreciates the importance of the [Seminole] Nation’s right, as a sovereign body, to self-determination and self-government. However, as a sovereign, the Nation has the duty and the responsibility to respect the rights of all of its members, including the rights of its minority members, as guaranteed by the Nation’s Constitution And, where the Nation evidences that it does not intend to respect those rights, the government, as part of “the distinctive obligation of trust incumbent upon [it] in its dealings with these dependent and sometimes exploited people,” has a duty to ensure that its minority members are protected against the will of the majority that is being imposed in violation of its own Constitution. The United States has itself dealt with many of these same issues, where, if the will of the majority had prevailed, many minority members of this society would not have been able to enjoy the same privileges and benefits as other citizens. Where the Nation will not protect the Constitutional rights of its minority members, the BIA has the responsibility and indeed, the duty, to intervene and attempt to protect those rights through appropriate remedies.

Seminole II at 146-147.

¹⁰ From the moment that the Principal Chiefs Act of 1970 became law, the Federal Defendants recognized that it required them to protect the right of the Freedmen to participate in Cherokee Nation elections. In 1971, the Bureau of Indian Affairs issued a memorandum regarding the review of voting procedures pursuant to the Act stating that “[v]oter qualifications for the Choctaw, Seminole, Cherokee and Creek people must be broad enough to include the enrolled freedmen citizens...” *See* Exhibit 1.

the Seminole Freedmen violated the Seminole Nation Treaty of 1866, which is identical in substance to the Cherokee Nation Treaty of 1866. In that instance, the Federal Defendants cut off the U.S.'s government-to-government relationship with the Seminole Nation. *See Seminole II* at 125-26.

The Federal Defendants' failure to follow here the actions they took to protect the rights of the Seminole Freedmen is another reason Plaintiffs are likely to prevail on the merits. "An agency's departure from its prior decisions can be considered to be arbitrary, capricious and an abuse of discretion, especially where the agency 'has failed to explain its departure from prior precedent.'" *Id.* at 143 (quoting *Bush-Quayle '92 Primary Comm. v. Federal Election Comm'n*, 104 F.3d 448, 453 (D.C. Cir. 1997); *see also Oglala Sioux Tribe of Indians v. Andrus*, 603 F.2d 707, 718-19 (8th Cir. 1979)). The United States Court of Appeals for the District of Columbia Circuit has held repeatedly that "an agency must treat similar cases in a similar manner unless it can provide a legitimate reason for failing to do so." *Independent Petroleum Association of America v. Babbitt*, 92 F.3d 1248, 1258 (D.C. Cir. 1996) (citing *National Association of Broadcasters v. FCC*, 740 F.2d 1190, 1201 (D.C. Cir. 1984)); *see also Transactive Corp. v. United States*, 91 F.3d 232, 237 (D.C. Cir. 1996); *Doubleday Broadcasting Co. v. FCC*, 655 F.2d 417, 423 (D.C. Cir. 1981). "Government is at its most arbitrary when it treats similarly situated people differently." *Etelson v. Office of Personnel Management*, 684 F.2d 918, 926 (D.C. Cir. 1982). The Department of Interior's reversal from the position it took in the Seminole Nation matter is arbitrary and capricious and cannot be permitted to stand.

II. THE EQUITIES DECIDEDLY FAVOR THE FREEDMEN PLAINTIFFS

A. The Freedmen Plaintiffs Will Suffer Immediate and Irreparable Harm Without a Preliminary Injunction

There can be no doubt that the Freedmen Plaintiffs will suffer immediate and irreparable harm if the Cherokee Nation strips them of their citizenship rights. Without injunctive relief, Plaintiffs and all Cherokee Freedmen will be deprived of the most sacred right of citizenship – the right to participate in government, including, most urgently, the right to vote in the upcoming election on September 24, 2011, at which Cherokee voters will elect a principal chief. Without injunctive relief, the Freedmen will also be deprived of other substantial benefits of citizenship, including health care benefits, housing, education, employment, and commodities.

The importance of the benefits of citizenship – particularly the right to vote – can hardly be overstated. As the United States Supreme Court has held, “[t]he right to vote freely for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). In addition, “[d]enial of the right to participate in an election is by its nature an irreparable injury.” *U.S. v. Berks County, Pennsylvania*, 277 F. Supp. 2d 570, 578 (E.D. Pa. 2003); *see also Cardona v. Oakland Unified School Dist.*, 785 F. Supp. 837, 840 (N.D. Cal. 1992) (“abridgement or dilution of a right so fundamental as the right to vote constitutes irreparable injury”); *Spirit Lake Tribe v. Benson County, North Dakota*, Civ. No. 2:10-cv-095, 2010 U.S. Dist LEXIS 116827 at *14 (D.N.D. October 21, 2010) (“Once a citizen is deprived of his right of suffrage in an election there is usually no way to remedy the wrong. ... Once an election is over, it is over and it is little consolation to say that the problem will be remedied in the next election.”).

B. An Injunction Would Have Minimal Impact on the Cherokee Nation or the United States

An injunction preserving the status quo – the Freedmen Plaintiffs’ citizenship rights – would not damage any legitimate interest of the Cherokee Nation or the United States. The impact of a preliminary injunction on the Cherokee Nation would be minimal. Plaintiffs and their ancestors had been full citizens of the Cherokee Nation since the Treaty of 1866. Some Freedmen citizens had been permitted to vote in the 2007 election and, most recently, in the initial election for Principal Chief held on June 25, 2011. Preserving the status quo by allowing Plaintiffs to retain the citizenship rights that they have held for almost 150 years pending a final determination in the present case would not harm the Cherokee Nation. *See generally The Florida Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1082 (N.D. Fla. 2004) (“This irreparable injury to a voter is easily sufficient to outweigh any harm defendants may suffer from a narrow preliminary injunction requiring them to allow a person who asserts he or she is at the correct polling place to cast a provisional ballot.”). Likewise, the United States has a fiduciary duty to protect the rights of Plaintiffs in this case and cannot argue that it would be adversely impacted by a preliminary injunction that would require that it fulfill its fiduciary duty.¹¹

C. The Public Interest Would Be Served by a Preliminary Injunction

Finally, a preliminary injunction would serve the public interest, which favors judicial review on the merits to ensure that the laws are properly enforced. *See Mova Pharm. Corp. v.*

¹¹ The Freedmen Plaintiffs should not be required to post a bond in order to obtain a preliminary injunction. The question of whether to require a bond and, if so, in what amount, is within the discretion of this Court. *See, e.g., Federal Prescription Serv., Inc. v. American Pharm. Ass’n*, 636 F.2d 755, 759 (D.C.Cir.1980). “[O]nly a party seeking to change (not maintain) the status quo needs to post a bond.” *Laster v. District of Columbia*, 439 F. Supp. 2d 93, 100 n.7 (D.D.C. 2006). Plaintiffs do not seek to change the status quo. Instead, they seek to maintain the status quo, which is to preserve their status as citizens in the Cherokee Nation. Moreover, “indigents, suing individually or as class plaintiffs, ordinarily should not be required to post a bond under Rule 65(c).” *Bass v. Richardson*, 338 F. Supp. 478, 490 (S.D.N.Y. 1971).

Shalala, 140 F.3d 1060, 1066 (D.C. Cir. 1998) (public's interest in "faithful application of the laws"); *Holiday Tours*, 559 F.2d at 843 (general public's interest in having legal questions decided on the merits). The public would benefit from the review of fundamental civil rights at issue in this case. *Segar v. Civiletti*, 516 F. Supp. 314, 320 (D.D.C. 1981) ("Assuming arguendo that some public interest would be disserved by the issuance of a preliminary injunction, it would be more than offset by the public's interest in full vindication of the rights codified in Title VII.").¹²

CONCLUSION

Based on the foregoing, the Freedmen Plaintiffs respectfully request that the Court grant their motion and enter an order enjoining the Cherokee Nation Defendants from denying Plaintiffs and the other Freedmen their full citizenship rights and from holding any election as to

¹² As noted in the Background and Procedural History above, a number of procedural issues still await determination in this case, and in the related Transferred Action. One primary issue is whether or not this Court has jurisdiction over the Cherokee Nation, either in this action, based on the Freedmen Plaintiffs' argument that they have waived their immunity by filing suit in federal court in Oklahoma while this action was still pending, or in the Transferred Action, based on the Freedmen Defendants' argument that the Cherokee Nation, by filing suit in a federal court, waived its immunity in the federal forum, including this Court, on this matter, and not merely in the United States Court for the Northern District of Oklahoma.

To the extent that the Cherokee Defendants may argue that this Court does not have the authority to issue injunctive relief against the Cherokee Nation, that is incorrect. Even while the Cherokee Nation Defendants' renewed sovereign immunity argument remains pending, the Court "retains both the authority to determine its own jurisdiction, and the related power, until the jurisdictional issues are finally determined, to make orders to preserve the existing conditions and the subject of the petition." *Al Maqaleh v. Gates*, No. 06-1669, 2007 WL 2059128, at *2 (D.D.C. July 18, 2007) (internal citations and quotations omitted); *see also United States v. United Mine Workers of Amer.*, 330 U.S. 258, 292 (1947) ("In the case before us, the District Court had the power to preserve existing conditions while it was determining its own authority to grant injunctive relief."); *United States v. Shipp*, 203 U.S. 563, 573 (1906) ("Until [the Court's] judgment declining jurisdiction should be announced, it had authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition."). Therefore, the Court may grant Plaintiffs' motion without first ruling on whether the Cherokee Nation has waived its sovereign immunity in this forum.

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

Dated: September 2, 2011

Respectfully submitted,

/s/ Cynthia Cook Robertson
Jack McKay (D.C. Bar No. 159335)
Alvin Dunn (D.C. Bar No. 423229)
Thomas G. Allen (D.C. Bar No. 484425)
Cynthia Cook Robertson (D.C. Bar No. 995785)
PILLSBURY WINTHROP SHAW PITTMAN
LLP
2300 N Street, N.W.
Washington, D.C. 20037
Phone: (202) 663-8000
Facsimile: (202) 663-8007
jack.mckay@pillsburylaw.com
alvin.dunn@pillsburylaw.com
thomas.allen@pillsburylaw.com
cynthia.robertson@pillsburylaw.com

Jonathan Velie (*admitted pro hac vice*)
VELIE LAW FIRM
401 W. Main St., Ste. 310
Norman, Oklahoma 73069
Phone: (405) 310-4333
Facsimile: (405) 310-4334
jon@velielaw.com

Attorneys for the Freedmen Plaintiffs

EXHIBIT C

**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