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1866 Treaty as opposed to the intermarried whites that did not have such rights.

25. In 1907, the Dawes Commission closed the final rolls of the Cherokee Tribe. The Dawes Commission created two separate rolls for the Cherokee Nation. Individuals possessing African blood as unscientifically determined by the Dawes Commission official would place the individual on the Cherokee Freedmen Roll. If an individual was half Black and half Cherokee Native American, he or she would be placed on the Freedmen Roll with no notation of Indian Blood, however, if the individual was 1/2 White and 1/4 Cherokee Native American, he or she would be placed on the Cherokee by Blood Roll with a notation of percentage of Indian Blood. The Dawes Commission stated that the Negroes were on equal footing with the full-bloods.

26. BIA's Solicitor's Opinion, October 1, 1941, 1 Op. Sol. On Indian Affairs 1076 (U.S.D.I. 1979), addressed the question whether the Freedmen are entitled to vote on the acceptance of a Constitution in pursuance of section 3 of the Oklahoma Indian Welfare Act. The opinion states, in relevant part: "As the membership rights of the Freedmen in the Five Civilized Tribes have been fixed by Treaties, which are the equivalent of statutes, and by formal tribal action in pursuance of these treaties, the Secretary would not appear to be authorized to issue regulations which would deprive the Freedmen of their right to vote on constitutions to be adopted by the Five Civilized Tribes under the Oklahoma Indian Welfare Act."

27. The 1970 Principal Chiefs Act, Pub. L. 91-495, 84 Stat. 1091, enacted by Congress, states that, notwithstanding any other provisions of law, the principal chiefs of the Cherokee, Choctaw, Creek, and Seminole Tribes of Oklahoma and the governor of the Chickasaw Tribe of Oklahoma shall be popularly selected by the respective tribes in accordance with procedures established by the respective tribes in accordance with procedures established by the officially recognized tribal spokesman and or governing entity. It further mandates that such established procedures shall be subject to approval by the Secretary of the Interior.

29. On June 26, 1976, Cherokee Freedmen voted in a Cherokee

election on the adoption of a Cherokee Constitution ("1976 Constitution.").

30. Article I of the 1976 Constitution states that the Cherokee Nation is an inseparable part of the Federal Union, and that the Constitution of the United States is the Supreme law of the land, and therefore, the Cherokee Nation shall never enact any law which is in conflict with any Federal law.

31. Article II of the 1976 Constitution states, in pertinent part, that the appropriate protections of the Civil Rights Act of 1964 shall apply to all members of the Cherokee Nation.

32. Article III, Section 1, of the 1976 Constitution states: "All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls...." The Freedmen can prove direct lineage to the Dawes Commission Rolls. 33. Article V, Section 7 of the 1976 Constitution states, in pertinent part: "Laws or enactments which are required by Federal Statutes to be approved shall be transmitted immediately upon enactment provided by Section 11 of this Article to the President of the United States or his authorized representative."

34. Also in the 1976 Constitution, Article IX, Elections, Section 1, states in relevant part: "The Council shall enact an appropriate law not inconsistent with the provisions of this Constitution that will govern the conduct of the elections. . ." Section 2 limits the candidacy for Council to members by blood, but does not restrict voting to blood members only. Thus, pursuant to the 1976 Constitution the Freedmen are entitled to citizenship with voting rights.

The May 24, 2003 Election And Defendants' Reversal of Position

35. On March 15, 2002, Neal McCaleb, Assistant Secretary of Indian Affairs, wrote to Cherokee Chief Chad Smith ("March 15, 2002 Letter") that he had no objection to the Constitutional Amendment striking the approval of the President of the United States or his authorized representative from the Cherokee Constitution, subject to certain understandings. First, all members of the Cherokee Nation, including the Freedmen descendants who are otherwise qualified, must be provided an equal opportunity to vote in the

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election. Second under current law, no amendment of the Nation's constitution can eliminate the Freedmen from membership in the Nation absent Congressional authorization. And lastly, notwithstanding any amendment of the Nation's Constitution, the Act of October 22, 1970 (94 Stat. 1091), until it is repealed or amended, will still require the Secretarial approval of the procedures for the election of the leaders of the Cherokee Nation and the other Five Civilized Tribes.

55. In a series of subsequent letters Defendants: denied the validity of the March 15, 2002 Letter; informed Chief Smith, citing Seminole I, of the requirement that prior to an election of the Principal Chief the election procedures must be submitted to the Secretary and must be approved; advised Raymond Vann of the Cherokee Nation Election Commission that such compliance was required; notified Chief Smith on July 11, 2003, that the Nation had been previously advised on two occasions regarding the requirements of the Principal Chiefs Act of 1970 and asked the Nation to submit its current election laws for approval; stated later in July 2003 that the procedures for selecting the Principal Chief of the Cherokee Nation are subject to approval by the Secretary, and that the BIA v/as "aware of no evidence that the Secretary has approved the current procedures for the election of the Principal Chief." Importantly, this July 25, 2003 letter also stated that "the BIA views the situation to be identical to the one involving the Seminole Nation of Oklahoma " Copies of this correspondence are attached hereto as Exhibits 1-17.

36. On August 6, 2003, the BIA completely reversed its position. It did so in a letter from Jeanette Hanna to Chief Smith, stating it is "inappropriate and premature" "for the Department to question the validity of the Tribal officials. Based on the Nation's Election Commission certification of the results of the May 24 election, the Department recognizes you as Principal Chief of the Nation."

37. In the same letter of August 6, 2003, Defendants stated: "The Department continues to have under review the May 24 Tribal election results on the proposed amendment of the Tribal constitution that would remove the requirement that future amendments be approved by the Secretary of the Interior."

38. The BIA has made a final agency decision on the election for Principal Chief. The BIA decided to not require the compliance of the 1970 Principal Chiefs Act and require submission of voter regulations. The BIA was on notice that the Freedmen citizens were not entitled to vote in the election.

39. The decision of the BIA to defer review of whether to acknowledge the Constitutional amendment is also a final decision, as the decision to recognize the Principal Chief in the same Election wherein the Freedmen were not permitted to vote indicates that Defendants do not find the stripping of voting rights as a basis for disavowing the Election results.

40. Prior to the BIA's abrupt reversal of position, Plaintiffs, through their counsel, notified Defendants that the Freedmen were denied the right to vote in the May 24, 2003 Election and, as a matter of policy, the Freedmen had been stripped of their membership rights. (Copies of June 10, 2003 and July 21, 2003 letters from Plaintiffs' counsel, Jon Velie, are attached hereto as Exhibit 18.)

41. Plaintiffs have exhausted their remedies before the BIA, and further, their pursuit of any such remedies would be futile in light of the well-documented and pervasive discrimination against them.

42. Plaintiffs have no adequate remedy at law.

AS AND FOR A FIRST CAUSE OF ACTION

(Violation of United States Constitution / Federal Law)

43. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 42 as though set forth fully herein.

44. The BIA has breached its fiduciary duty to protect the voting rights of the Freedmen so that as citizens they can participate in the fundamental right to elect their leaders and determine whether their Constitution should be amended. Their rights to participate in this solemn process has been stripped on the basis of their race, with the knowledge that the Cherokee Nation will be ruled by officials that will be recognized by the United States although citizens were forbidden to vote. The recognition will result in millions of dollars of United States funds being dispersed to officials empowered by an un-

lawful election despite the demands and requests for the BIA's protection of the oppressed Freedmen citizens and elected officials of the Cherokee Nation.

45. Defendants' acts violate, without limitation, the United States Constitution, the 1920 Principal Chiefs Act, the Cherokee Constitution, the Treaty Between the United States and the Cherokee Indians, March 21, 1866, 14 Stat. 755, and the Indian Civil Rights Act, 25 U.S.C. §§ 1301, et seq. 46. By reason of the foregoing, a ripe and justiciable controversy exists, and Plaintiffs have standing to assert their rights.

47. As a result of the foregoing, Plaintiffs are entitled to declaratory and injunctive relief to preserve their rights as members of the Cherokee Nation.

AS AND FOR A SECOND CAUSE OF ACTION (Judicial Review of Agency Action Under the APA)

48. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 - 47 as if set forth fully herein.

49. Defendants are responsible for protecting the interests of the Cherokee Nation, including the interests of the Freedmen.

50. By failing to require the filing of procedures prior to the Election, Defendants have breached their fiduciary duty.

51. By recognizing Chad Smith as Chief of the Cherokee Nation, as well as other officials elected to office in the illegal Election, Defendants have approved the racially discriminatory and unlawful disenfranchisement of the Freedmen. 52. By deferring consideration of the legality of the amendment of the Cherokee Constitution, Defendants have given it de facto approval, despite its having been effected illegally because of the unlawful preclusion of the Freedmen's voting rights.

53. By failing to follow the law as set forth in the Seminole I and Seminole II decisions, Defendants have failed to follow their own recognized laws and policies and have discriminated against the Cherokee Freedmen to their injury and prejudice.

54. Plaintiffs require and request a declaration, pursuant to 28 U.S.C. § 2201, that pursuant to 5 U.S.C. § 701 et seq., the complained of actions of the

Defendants are arbitrary, capricious, an abuse of discretion, and not in accordance with law.

WHEREFORE, Plaintiffs respectfully pray for judgment granting declaratory and injunctive relief as follows: 55. Declaring that the United States government (including Defendants and the BIA), in its capacity as fiduciary and trustee, may not approve any election or other act by the Cherokee Nation in derogation of the rights of its Freedmen citizens.

56. Enjoining Defendants and the BIA from recognizing the Election results of the May 24, 2003 Election or the subsequent run-off until such time as a lawful election that includes all citizens of the Nation.

57. Directing the BIA to recognize the hold-over officials until such time a lawful election is held.

58. Directing the BIA to appoint a Trustee to ensure the civil rights of the Freedmen are not violated in the future.

59. Awarding Plaintiffs their reasonable attorneys fees, costs and disbursements from the parties, including but not limited to recovery of fees and costs from the United States pursuant to the Equal Access to Justice Act.

60. Awarding such other relief as accords with Plaintiffs' causes of action herein and as the Court deems just and proper.

Dated: August 11, 2003

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Blast from the Past



Robin Mayes, Cherokee citizen and activist, getting ready to speak to a group of Cherokees.



Cherokee Observer Staff in 1993, David Cornsilk, Tom Fourkiller, Robin Mayes, Linda & Marvin Summerfield, Franklin McLain (Not Pictured)

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