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Cherokee High Court Overrules

Principal Chief's Motion

2005 urged the Court to stay the proceeding alleging the Chief was very close to getting approval from the Secretary. The motion went on to say that in the event of failure to achieve approval from the Secretary, the chief is prepared to initiate litigation against the U.S. government.

standing. He has since filed a motion for the Court to reconsider their ruling based on an alternative interpretation of the Cherokee Constitution. That motion is still pending.

A motion to deny the chief's request in the 1999 Constitution case was filed by David Cornsilk, a Cherokee citizen and member of the 1999 Constitution Convention. Petitioners Keen and Hannah also filed a motion to strike the chief's request. Both documents asserted that the JAT had offered ample time for the Principal Chief to become a party in the proceedings and he had not taken advantage of the Court's offer.

In a minute order, issued by Chief Justice Darell Matlock and filed with the Court on September 7, the JAT overruled the chief's motion for a stay, giving no reason for their decision. The minute order gave a deadline of October 28, 2005 to file any further motions and set a hearing date of November 10, 2005 at 3 p.m. for all pending motions, including a motion to dismiss filed by David Cornsilk.

The 1999 Constitution is at the center of a lawsuit filed in the Washington, DC Federal Courts by descendants of Cherokee Freedmen because they were not permitted to vote on the document. Smith filed a motion to intervene in that case, along with a motion to dismiss couched in CNOs allegation that it is an indispensable party, has sovereign immunity and cannot be sued.

Smith's intervention into the federal Freedmen lawsuit spawned a lawsuit in the JAT following the tribal council vote to approve the intervention after the fact, despite the fact that the CNO Constitution prohibits the council from passing ex pos facto laws.

The JAT ruled against that suit, filed by Cherokee citizen, John Cornsilk, citing a lack of

This is an open letter to the Cherokee people in response to Principal Chief Chad Smith's column in the June issue of the Cherokee Phoenix in his attempt to defend himself concerning a lawsuit that was brought by me, Linda O'Leary, a member of the Cherokee Nation Tribal Council. As a Councilor and as Chairperson of the Executive and Finance Committee, I have a responsibility to ensure that tribal funds are expended properly and that Cherokee people get full value for the dollars that are spent. However, most importantly I have a duty to the Cherokee people to ensure that our government functions openly and honestly by elected officials.

For some time, I have had concerns about whether the General Counsel was performing his duties consistent with his monetary pay after receiving inquiries from constituents and employees. That is why on January 3rd, I wrote to Principal Chief Chad Smith and President Larry Williams of Northeastern State University and asked the simple question of what was this individual's specific duties at their respective institutions. It was well known at that time this individual spent a considerable amount of time as a professor at NSU and spent a considerable amount of time being General Counsel for the Cherokee Nation, as well as Attorney for the Cherokee Nation Election Commission, Acting Attorney for the Cherokee Nation Gaming Commission, and Acting Attorney General but was never confirmed by the Council which is set out by Cherokee Nation law.

President Williams promptly and professionally responded to my letter seven days later stating that the individual was a full time professor at Northeastern State University and also performed legal work for the university. I appreciated Dr. Williams' response and it supplied the information that I requested, however, Chief Smith failed to give any response whatsoever.

On February 10th, some thirty days after my first request I wrote Chief Smith another letter specifically asking for the total salary of the General Counsel and time spent performing his duties. I requested this information pursuant to the Freedom of Information Act and the Governmental Records Act. These Acts give the Chief a time frame in which to answer these questions in writing. Chief Smith responded and stated that he would be willing to go into executive session to discuss these matters.

First, the laws in question do not call for such information to be given in executive session and secondly, the Cherokee Nation Constitution does not allow such topics to be discussed in executive session. Most importantly, the information I requested should be readily available to the Cherokee people. The Cherokee people have a right to know whom we are paying and what services they are getting in return. Had Chief Smith simply responded to my legitimate questions in a professional manner, this lawsuit would have been totally unnecessary. Chief Smith purports to be a proponent

of open government; however, a refusal to answer legitimate questions about the expenditures of the Cherokee Nation in a way provided for by law is not consistent with those goals.

To set the record straight, I did not bring this lawsuit for publicity or personal gain, I brought this lawsuit to have questions answered in accordance with the law and to gain information for my Cherokee constituents and to Cherokee Nation as a whole. As of today these questions remain unanswered. This suit was filed on May 17, 2005 over four months following the original request for information. Obviously, there has been a great change of circumstances since the filing of the lawsuit with the passing of the General Counsel, Julian Fite. This lawsuit was never about an individual; it is about being responsible and open with our government.

Chief Smith needs to understand that the Cherokee people have a right to know how their government functions and how their money is spent; however, most importantly the Cherokee people must know that their government officials are going to follow the law and that their Chief is open and honest with the people.

Chief Smith made personal attacks in his column concerning this matter. He stated things that just weren't true. Accusations that Chief Smith made about me being unprofessional, grand standing for publicity and sending a letter to a local newspaper as he claims, is a blatant accusation and has no

validity. There is no truth in it. Chief Smith slandered me. I am a Council member who in carrying out my fiduciary duty am protected under the Freedom of Information Act to request such information. WHY wouldn't he just respond to the request? BECAUSE he did not respond, he violated these laws. I feel I have set the record straight in this matter. I will continue with this lawsuit because as I have stated this suit is not about a particular individual. It's about making the Chief follow the law! I have a solemn duty to answer my constituents. My constituents and employees want to know how could one individual perform two full-time positions at the same time. I have asked these questions to the Chief and he has failed to answer. I will continue until the Chief answers these questions in accordance with the law. My greatest fear is the next Councilor or Cherokee citizen who may want information will not be allowed to receive it. These same conditions attributed to the crisis within the Cherokee Nation in the past and it gives the persona of Chief Smith being above the law.

I will be forever diligent in making sure that the Cherokee Nation spends its money wisely, provides services to its people and is open and honest in its government. I will do everything in my power to ensure that these things happen. It is my hope and desire that Chief Smith would join me in these goals.



Creeks (as General Porter had been elected President).

organization for the government, put together a map showing the counties to be established, and elected delegates to go to the United States Congress to petition for statehood. The convention's proposals were then put to a referendum in Indian Territory, in which they were overwhelmingly endorsed.

Failure to obtain statehood
The delegation received a cool reception in Washington. Eastern politicians, fearing the admission of two more Western states, and no doubt unwilling to admit an "Indian" state, put pressure on the U.S. President, Theodore Roosevelt, who finally ruled that the Indian and Oklahoma Territories would be granted statehood only as a combined state. The hard work of the Sequoyah State Constitutional Convention was not entirely lost, however. When representatives from Indian Territory joined the Oklahoma State

Constitutional Convention in Guthrie the next year, they brought their constitutional experience with them. The Sequoyah Constitution served in large part as the basis for the constitution of the State of Oklahoma,

which came into being with the merger of the two territories in 1907.

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State of Sequoyah

The State of Sequoyah was the proposed name for what proved to be an abortive attempt by Native Americans in the early years of the 20th century to establish a U.S. state in the eastern part of what is now Oklahoma.

Nation, was selected as president of the convention. The elected delegates decided that the executive officers of the Five Civilized Tribes would also be appointed as vice-presidents: William C. Rogers, Principal Chief of the Cherokees; William H. Murray, appointed by Chickasaw Governor Douglas H. Johnston to represent the Chickasaws; Chief Green McCurtain



of the Choctaws; Chief John Brown of the Seminoles; and Charles N. Haskell, selected to represent the

The convention drafted a constitution, drew up a plan of

Background
Since 1890, the land that now forms the State of Oklahoma was made up of the Oklahoma Territory (to the west), and the Indian Territory (to the east). Indian Territory, as its name suggests, had a large Native American population; the territory itself had been reduced over time to its then size.

The movement to secure statehood for Indian Territory began in 1902 with a convention in Eufaula, consisting of representatives of the "Five Civilized Tribes". The representatives met again in 1903 to organize a constitutional convention.

The constitutional convention
The Sequoyah Constitutional Convention met in Muskogee, on August 21, 1905. General Pleasant Porter, Principal Chief of the Creek

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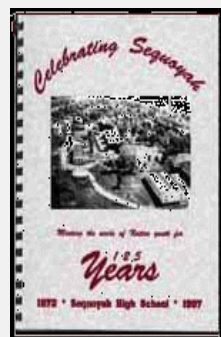
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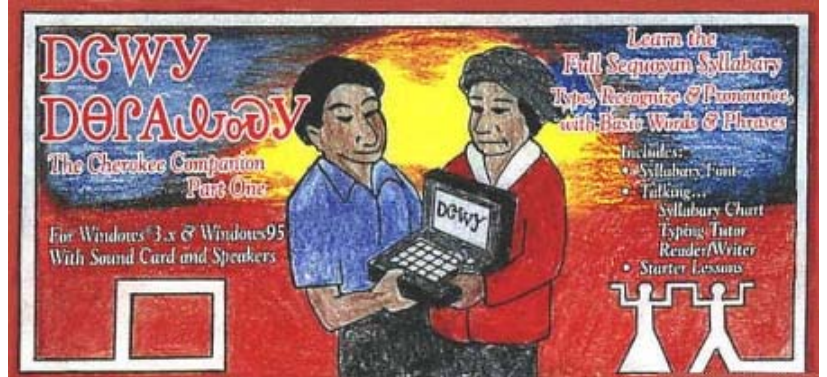
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