

Freedmen descendants stage protest

By **S.E. RUCKMAN** World Staff Writer
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MUSKOGEE — About 20 freedmen descendants marched on Rep. Dan Boren's district office Friday in hopes of gaining a face-to-face meeting with the Oklahoma congressman.

Organizers said the march also was an effort to draw attention to their tribal citizenship efforts.

"We want Rep. Boren to sit down with us and discuss our concerns," Marilyn Vann, president of the freedmen descendants group, said. "Freedmen are his constituents, too."

Group members are the descendants of freed slaves who lived and intermarried within the Cherokee Nation after the Civil War.

Boren issued a statement Friday stating that he is supportive of the descendants and would welcome a chance to meet with them.

Verdie Triplett of Fort Coffee said Boren has not done enough to help his group.

"I haven't seen any indications that Mr. Boren has the freedmen's interests in mind," he said. "So far, he has not been a friend to the freedmen."

House Bill 2824 would cut federal funding to the Cherokee Nation unless freedmen descendants' citizenship is restored permanently. The bill is in committee.

Boren said he has lobbied

for the tribe to retain more than \$300 million that the bill would cut, which would benefit the freedmen descendants.

Cherokee Nation spokesman Mike Miller said the descendants have no claim to Cherokee Nation citizenship based on the law or history.

The tribe removed about 2,700 freedmen descendants from its rolls after 10,000 tribal members voted last year to amend their constitution to allow only people with Indian blood to be citizens.

A tribal judge temporarily reinstated the descendants' citizenship in May while they appeal the election.

Many Questions RE: Ross Swimmer

by David Comsilk

No one is really sure that Ross O. Swimmer is truly a Cherokee by blood. Questions surfaced during his term as the tribal attorney under W.W. Keeler regarding his paternity. His father is stated to be Robert Swimmer, who was an appointed community representative prior to the adoption of the so-called 1976 constitution. He was dismissed by his own son when Swimmer dismissed the Community Representatives because they wouldn't do his bidding.

It was alleged and Robert never denied that Ross' mother was pregnant by a white man when she took up with him. Under Oklahoma law a child born within a marriage is considered both legitimate and the child of the man married to the mother unless a court order states otherwise.

Interestingly enough, according to my sources, the enrollment files of Ross Swimmer, Philip Viles (also alleged to be adopted), Chad Smith and Wilma Mankiller are empty. It was alleged that they were placed in a vault for safekeeping. This has spawned other rumors that the records of Swimmer, Smith and Viles were hidden to keep anyone from seeing their birth certificates and the tortured method used to "prove" their Indian blood.

To sever United States' government relations with the Cherokee Nation of Oklahoma until such time as the Cherokee Nation of Oklahoma restores full tribal citizenship to the Cherokee Freedmen disenfranchised in the March 3, 2007, Cherokee Nation vote and fulfills all its treaty obligations with the Government of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

June 21, 2007

Ms. WATSON (for herself, Ms. NORTON, Mr. CUMMINGS, Mrs. CHRISTENSEN, Mr. BUTTERFIELD, Mr. CONYERS, Mr. CLAY, Ms. LEE, Mr. TOWNS, Mr. AL GREEN of Texas, Mr. FATTAH, and Mr. FALCOMA) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

ABILL

To sever United States' government relations with the Cherokee Nation of Oklahoma until such time as the Cherokee Nation of Oklahoma restores full tribal citizenship to the Cherokee Freedmen disenfranchised in the March 3, 2007, Cherokee Nation vote and fulfills all its treaty obligations with the Government of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds the following:

(1) In the 1830s, members of the Cherokee Nation were removed from their lands in the southeastern United States and forced to migrate to Oklahoma along a route known as the Trail of Tears. Among those persons forced to migrate were the Black slaves of Cherokees, free Blacks married to Cherokees, and the children of mixed-race families, known now as the 'Black Cherokees'.

(2) In 1861, the Cherokee Nation executed a treaty with the Confederate States of America, thereby severing its relations with the United States Government. Members of the Cherokee Nation held positions in the Congress and military of the Confederate States of America and waged war against the United States during the Civil War.

(3) Following the Civil War, the United States reestablished relations with the Cherokee Nation through the Treaty of 1866. The Treaty of 1866 declared that the Black Cherokees, also known as 'Cherokee Freedmen', were to be made citizens of the Cherokee Nation and to have all the rights of Cherokees.

(4) The Treaty of 1866 further guarantees the following:

(A) Laws 'shall be uniform throughout said nation' and that if 'any law, either in its provisions or in the manner of its enforcement, in the opinion of the President of the United States, operate unjustly in [the Freedmen] district, he is hereby authorized and empowered to correct such evil.'

(B) The Cherokee Freedmen are given the right to elect officials and to representation 'according to numbers' on the national council.

(5) Following the Treaty of 1866, the Cherokee National Council amended its constitution to guarantee the Cherokee Freedmen full rights as citizens of the Cherokee Nation.

(6) Also following the Treaty of 1866, the Courts upheld the Cherokee Freedmen's treaty rights, including—

(A) in 1895, the Court of Claims held that the Cherokee Freedmen were entitled to share in the tribe's land sale proceeds and 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); and

(B) in 1906, the Supreme Court noted that the Cherokee Freedmen are citizens of the Cherokee Nation entitled to the same property rights as other members of the Cherokee Nation under the Treaty of 1866 (Red Bird v. United States, 203 U.S. 76, 84).

(7) In a December 19, 2006, ruling in Vann v. Kempthorne, the United States District Court for the District of Columbia found that in 1906, the Dawes Commission registered members of the Cherokee Nation under separate categories: the 'Freedmen Roll' for the Black Cherokees and the 'Blood Roll' for other Cherokees. Individuals possessing African blood were placed on the Freedmen Roll, where no levels of Indian blood were recorded. Those possessing no African blood were placed on the Blood Roll, where levels of Indian blood were recorded. The Dawes Commission declared that persons recorded on the Freedmen Roll were on equal footing with those on the Blood Roll.

(8) In 1970, Congress passed the 'Principal Chiefs Act' requiring the Chickasaw, Choctaw, Creek, Seminole, and Cherokee Nations to obtain approval for their voting laws for selection of the principal chief. The Department of the Interior drafted a policy stating that it was not necessary that each of these groups have identical or similar regulations, but that three conditions are deemed fundamental to the democratic selection of a principal tribal official. One of the three conditions stipulated by the Department is that voter qualifications of the Cherokees must be broad enough to include the enrolled Cherokee Freedmen citizens.

(9) In May 2003, the Cherokee Nation held an election for its officers and ratification of a new constitution. The vote proposed to amend the 1999 constitution of the Cherokee Nation by removing the requirement that the United States Department of the Interior and Bureau of Indian Affairs approve amendments to the Cherokee Nation Constitution. The Cherokee Freedmen were not permitted to vote or run for office. The election violated the Treaty of 1866, the 13th Amendment to the United States Constitution, the Principal Chiefs Act of 1970, and the Department of the Interior's guidance on the ratification of a new constitution.

(10) In May 2003, the Cherokee Nation held an election for its officers and the ratification of a new constitution. The new constitution removed the requirement that the United States Department of the Interior and the Bureau of Indian Affairs approve amendments to the Cherokee Nation constitution. The Cherokee Freedmen were not permitted to vote in this election. The election violated the Treaty of 1866, the 13th Amendment to the United States Constitution, and the Principal Chiefs Act of 1970.

(11) The Department of the Interior has not recognized the May 2003 vote to amend the Cherokee Nation's constitution. The Cherokee Nation has subsequently removed its request for approval from the Department of the Interior.

H. R. 2824

(12) Currently, the Cherokee Nation operates under a Principal Chief elected in violation to the 1970 Principal Chiefs Act and Treaty of 1866, a National Council constituted without Cherokee Freedmen representatives in violation of the Treaty of 1866, and a Constitution not approved by the United States pursuant to Article XV, Section 10 of the 1975 Cherokee Nation Constitution.

(13) In May 2003, the Cherokee Nation renamed its highest court, formerly named the Judicial Appeals Tribunal and newly renamed the Supreme Court, after the Judicial Appeals Tribunal ruled in a 2-1 decision that the Cherokee Freedmen were entitled to citizenship pursuant to the 1975 Cherokee Nation constitution. Pursuant to the new May 2003 constitution, which still has not been approved by the Department of the Interior, the illegally elected Principal Chief appointed two additional judges to the Supreme Court. The panel of five Supreme Court judges ruled in a 3-2 decision that the Cherokee Nation could hold a vote on the tribal status of the Cherokee Freedmen.

(14) Operating under the unapproved Constitution, the Cherokee Nation held an election in March 2007, to remove the Cherokee Freedmen from the Cherokee Nation. In a vote of less than 4 percent of the total Cherokee Nation population, the voters elected to remove Cherokee Freedmen not on the Dawes blood rolls from the Nation.

(15) In May 2007, the Cherokee Nation leadership determined that it would allow registered Freedmen to vote in the June 23, 2007 election for tribal officers. Despite the Cherokee Nation's decision to allow Freedmen to vote, Freedmen's rights as members of the Cherokee Nation are severely restricted: Freedmen are not allowed to run for office in the June 2007 election in violation of the Treaty of 1866; the registration of Freedmen entitled to Cherokee citizenship under the 1906 Dawes Rolls has been halted; and the election is to be held under provisions of an unapproved constitution and in violation of the 1970 Principal Chiefs Act that requires the Cherokee leadership to submit its voting requirements for the election to the Secretary of the Interior for his approval. Further, the actions of the Cherokee Nation in halting citizenship application processing and voter registration of Freedmen have disproportionately reduced the number of Freedmen voters that can participate in the election.

(16) The manner in which the Cherokee Nation is conducting the relationship between the United States and the tribal entity is not in the best interest of the United States Government, citizens of the Cherokee Nation, and violates existing treaties and laws governing the relationship between the United States Government and the Cherokee Nation.

(17) Current efforts of the Cherokee Nation to expel members of the Cherokee Freedmen from the tribal rolls and abolish Department of the Interior oversight are being pursued in violation of the treaty rights extended to the Cherokee Freedmen in a treaty agreement between the United States and Cherokee Nation in the 1866 Treaty and in violation of Freedmen citizenship under the federally approved Cherokee Nation constitution of 1975.

(18) The Department of the Interior has failed to uphold its fiduciary responsibility by recognizing the May 2003 Cherokee Nation election for Principal Chief in which Freedmen were not allowed to vote in violation of the Principal Chiefs Act and the Treaty of 1866 and by failing to take any administrative action against the Cherokee Nation leadership for its decision to sanction a referendum in March

2007 in which the Freedmen were expelled from the Cherokee Nation.

SEC. 2. SEVERANCE OF RELATIONS WITH THE CHEROKEE NATION.

(a) In General- The United States hereby severs all relations with the Cherokee Nation, including all financial obligations or otherwise, until such time as the Cherokee Nation is meeting all of its treaty obligations and other federal statutory obligations (including all obligations of the Treaty of 1866, the Principal Chiefs Act, holding elections for tribal leaders that are in compliance with the Act, and has restored the rights of all Cherokee Freedmen disenfranchised from the Cherokee Nation in the March 3, 2007, Cherokee Nation vote), as determined by a final certification under section 2(d).

(b) Compliance With the Requirements of the Act- The Secretary shall coordinate with all departments and agencies of the United States Government to ensure that every effort is being made by the United States Government to comply with this Act.

(c) Reports-

(1) FEDERAL AGENCIES- Not later than 30 days after the date of the enactment of this Act, and continuing annually until the final certification as determined under section 2(d), all departments and agencies under the jurisdiction of the United States Government shall submit a report to the Secretary describing—

(A) all Federal programs under their jurisdiction that provide financial assistance and other services to the Cherokee Nation; and

(B) the efforts that are being undertaken comply with all requirements of this Act.

(2) STATUS REPORTS- Until the Secretary certifies to Congress that the Cherokee Nation is in compliance with its treaty obligations, the Secretary shall submit monthly public reports to Congress on the status of the United States Government's efforts to ensure that all departments and agencies of the Federal Government are in compliance with the requirements of this Act.

(3) OTHER FREEDMAN INDIANS- Not later than 6 months after the date of the enactment of this Act, the Secretary shall issue a public report to Congress on the status of freedmen in the Cherokee, Choctaw, Chickasaw, Muscogee (Creek), and Seminole Nations of Oklahoma. The report shall address whether each of those Indian tribes is complying with all treaty obligations and Federal laws with respect to its freedmen members, the level of participation of freedmen in tribal leadership positions, tribal benefits received by the freedmen, and previous or current efforts on the part of those Indian tribes to disenfranchise its freedmen members.

(d) Congressional Certification- After the Secretary has certified to Congress that the Cherokee Nation is in full compliance with all its treaty obligations and Congress approves the Secretary's certification by a vote taken on a resolution introduced in both chambers of Congress certifying that the Cherokee Nation is in full compliance with its treaty obligations, the final certification of the Cherokee Nation's treaty compliance shall take effect.

SEC. 3. SUSPENSION OF RIGHT TO CONDUCT GAMING OPERATIONS.

(a) In General- The Cherokee Nation's authority to conduct gaming regulated under the Indian Gaming Regulatory Act and to administer any funds from such gaming are suspended until such time that the Cherokee Nation is in

compliance with all treaty and other obligations with the United States, as determined by a final certification under section 2(d).

(b) Report- Not later than 30 days after the date of the enactment of this Act, the National Indian Gaming Commission shall submit a report to Congress detailing the actions that have been taken to enforce subsection (a).

SEC. 4. DEFINITIONS.

(a) 'Cherokee' and 'Cherokee Nation'- The terms 'Cherokee' and 'Cherokee Nation' mean the Cherokee Nation of Oklahoma.

(b) 'Cherokee Freedmen', 'Freedmen', and 'Black Cherokees'- The terms 'Cherokee Freedmen', 'Freedmen', and 'Black Cherokees' refer to individuals who can trace their ancestry to individuals listed on the 1906 Dawes Commission Roles for the Cherokee Freedmen.

(c) 'Other Freedman Indians'- The term 'Other Freedmen Indians' refers to individuals who can trace their ancestry to the 1906 Dawes Commission Rolls who are members of the Choctaw, Chickasaw, Muscogee (Creek), and Seminole Nations.

(d) Secretary- The term 'Secretary' means the Secretary of the Interior.

SEC. 5. NONCOMPLIANCE.

(a) Effective Date- Notwithstanding any decision by Congress under section 2(d) of this Act, the provisions of this Act shall again take effect if at any future date the Secretary certifies to Congress that the Cherokee Nation of Oklahoma is not in full compliance with its treaty obligations or Federal statutes that govern its relations with the United States Government.

(b) Private Action- Any Cherokee Freedmen shall have a private right to bring actions for injunctive relief, declaratory relief, or monetary damages against the Cherokee Nation of Oklahoma, officials of the Cherokee Nation of Oklahoma, or Federal officials for noncompliance with this Act or for violations of the terms of the Treaty of 1866, the 13th Amendment to the United States Constitution, or the Indian Civil Rights Act of 1968. The appropriate Federal courts shall have exclusive jurisdiction over actions brought under this subsection.

SEC. 6. DEPARTMENT OF JUSTICE.

The Attorney General shall issue a finding on whether the Federal civil rights of the Cherokee Freedmen have been violated by either the Cherokee Nation of Oklahoma or the Department of the Interior, or both. Individual Freedmen shall also have a private right of action to compel the Attorney General to investigate federal civil rights violations and provide a determination of whether a violation has occurred within 180 days of submitting a complaint describing the violation in writing.

SEC. 7. GAO REPORT ON EXPENDITURE OF FEDERAL FUNDS.

The Government Accountability Office shall issue a public report to Congress detailing for each of the 5 years ending immediately before the report was completed the Cherokee Nation's expenditure of all Federal funds. The report shall include an analysis of Federal funds allocated by the Cherokee Nation's leadership for its member benefits and services and for administrative and other purposes. The report shall determine whether or not the Cherokee Nation is in full compliance with all Federal regulations and laws regarding the management and disbursement of Federal funds.