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The Cherokee Freedmen Story as of May 7, 2006

government subject to US law – including laws regarding age discrimination, etc. for tribal employees. .

In May 2003, a referendum was held regarding the constitutional amendment, and a vote was held in July 2003 on the proposed new constitution. Both were passed by those individuals who were allowed to vote. Descendants of Cherokee freedmen who tried to participate as voters were not given voting cards, or absentee ballots, and were given “challenged ballots” at the polls if they tried to vote in person.

In June, 2003; several descendants of Cherokee Freedmen, through the law firm Velie and Velie; contacted the Department of the Interior, challenging the 2003 elections, based on the rights of the freedmen in the 1866 treaty, the 1975 constitution, and the *Seminole nation versus Norton cases of 2001 and 2002* where Judge Kolar Kotelly had upheld the treaties of 1866 for the Seminole freedmen and their voting and membership rights in the Seminole nation. Several prominent Cherokee nation individuals such as then Deputy Chief Hastings Shade also sent a letter to the BIA questioning the validity of an election when the Cherokee freedmen were not allowed to vote. Various letters went from Chief Smith to the BIA accusing the BIA officials of “having a bias against the self government rights of the Cherokee nation.”

In late July 2003, the Muskogee BIA director wrote a letter, temporarily recognizing Chief Smith, but still withholding approval of the constitutional amendment, citing the Seminole nation cases. About 1 week later, another letter, written by the same Muskogee BIA official recognized Chief Smith as principal chief, but still not approving the constitutional amendment. On August 11, 2003, descendants of Cherokee Freedmen, thru the Velie and Velie law firm filed the lawsuit Vann et al Versus Norton (1:03 CV01711) in the District of Columbia Federal Courts to keep the US government from approving the constitutional amendment to remove the BIA approval requirements of new constitutions and constitutional amendments. . After the initial complaint was filed, various stays were granted by Judge Kennedy for the parties to attempt a resolution. In an effort to downplay the legitimacy of the Freedmen cause, Cherokee nation officials made false statements to the press such as “Freedmen had never voted in the history of the Cherokee nation (made by spokesman Mike Miller – which is obviously not true as such men as Freedmen Councilman Stick Ross even now has several streets, companies, etc named after him and there is even a plaque with his name on the grounds of the council house!). Even Chief Smith, an attorney, told the Muskogee Phoenix Newspaper on September 13, 2003 that “the Cherokee constitution requires CDIB cards.” However an

examination of Article III of the Constitution shows no such thing – the tribal constitution recognizes as citizens all Dawes enrollees and their descendants without reference to blood degrees or CDIB cards and does not exclude any person who was recognized on the Dawes Rolls as being ineligible for tribal membership. Other statements by tribal officials indicated that the supporters of the Freedmen were merely “sore losers” who were associated with the former Chief Joe Byrd . When the Daily Oklahoman in August 2003 raised the issue of descendants of Dawes enrolled Cherokee Freedmen being barred from tribal membership despite proven Cherokee blood, tribal spokesman Miller stated that “perhaps some cases needed to be looked at again”. However, no actions were ever taken by Cherokee nation officials to change the tribal code to give tribal membership to Cherokee by blood Freedmen individuals or recommend issuing CDIB cards to them as of May 2006.

Due to fears that a resolution had been reached between the Department of the Interior and the Cherokee Freedmen plaintiffs, in January 2005, the Cherokee nation, through its Washington law firm, Sonowsky et al filed motions to intervene in the lawsuit for the sole purpose of filing a motion to dismiss the Freedmen lawsuit. One of the CNO complaints was that they had not been allowed to participate in any negotiations. However, this was untrue, because during the summer of 2004, the Velie law firm had made contact with Cherokee nation chief and the general council through a Cherokee community leader. Indeed a phone conversation regarding the issues had taken place between Jon Velie and CNO general council Fite to set up a face to face meeting. After the single phone conversation, Fite refused to take phone calls from the plaintiffs’ attorney.

On February 7, 2005, the agenda for the upcoming February 17, 2005 CNO rules committee was posted on the council house door, and contained an agenda item titled “A Resolution Ratifying Intervention in Litigation in the US District Court for the District of Columbia.” This item was associated with a resolution to obtain council approval retroactively of the filing of the motions by the Sonowsky law firm to dismiss the freedmen lawsuit. Contacts made by various Cherokee citizens with tribal councilmen indicated that they had no idea that such a resolution was on the agenda, or that any motions had been already filed, or how much money was involved. The resolution indicated that the lawsuit was an attack on the sovereignty of the Cherokee nation, stated that the Cherokee nation had not been allowed to participate in negotiations between the Cherokee freedmen attorneys and the BIA.

On February 17, 2005, the resolution was presented by

Melody Knight of the Cherokee nation Justice Department. She stressed that the filing of the complaint was a direct attack on the Cherokee nation; and again, wrongly reiterated to the listeners that the Cherokee nation had been kept out of the negotiations, even though this had been refuted in the February 1, 2005 legal filing by the Velie law firm. A few questions were asked by a councilman, to clarify that the motions had already been filed, the validity of the expenditures, and the council’s right to review the expenditures. Councilwoman Cowan said she wanted a judge to make decisions and not the BIA. The resolution was approved in Committee.

Marilyn Vann, lead plaintiff in the federal lawsuit, at the request of a councilman, was allowed to speak for 5 minutes after the vote. She called for the council to do the right, legal and moral thing for the good of all the Cherokee people and that the Cherokee nation did not need to file motions to dismiss the Cherokee freedmen litigation in order to be able to negotiate with the Freedmen attorneys and the department of the interior.

After discussion with Councilman Joe Crittenden on February 14, 2005, Vann contacted tribal council employee Gina Blackfox who advised her of how to structure a letter to be placed on the agenda for the March 14, 2005 council meeting. This letter was faxed to Mrs. Blackfox on February 18, 2005. Marilyn Vann was later contacted by Councilman Crittenden, who indicated that the letter had been distributed to the council, as well as the tribal council attorney, Todd Hembree. Councilman Crittenden stated that Attorney Hembree had researched this issue and had stated that Marilyn Vann could address the council legally. Head of the tribal council, Deputy Chief Joe Grayson had been advised of this clearance and that Marilyn Vann would be addressing the council during the reports section. At the full council meeting on March 14, 2005 the resolution agenda item came up, Committee Chair Frailey began addressing the council regarding the reason to vote for the intervention (a key reason being the need for the tribe not being a part of the negotiations) and time was allowed for the council to discuss the issue. Mr Crittenden asked that Marilyn Vann be allowed to give a report. Councilwoman Cara Cowan objected, saying that Marilyn Vann was not a member of the council, was not actually listed on the agenda, and had not given 10 days notice for the council to be allowed to speak. She Said that Marilyn Vann could not be allowed to go back and forth with the council since she was not a council member and had addressed the council before regarding the freedmen issues (this is an incorrect statement – Marilyn Vann had never addressed the full tribal council – and has never debated with

any member of the tribal council on any issue).

Cowan said that Marilyn Vann had presented some information to the rules committee and that is where she should present her information she wanted to give the council. Joe Grayson said that Cowan was right and asked Vann what type of information she wanted to give the council. Vann said she wanted to address the litigation, the resolution, and the freedmen issue. Grayson said that the resolution was not about the freedmen and that Vann would not be allowed to speak. Since Vann was not allowed to speak, she was not able to present the council with written evidence that General Council Julian Fite and Principal Chad Smith had refused to meet with the freedmen attorneys for negotiation purposes after indicating interest in doing so by telephone and through emails and that there was no need to spend the Cherokee peoples money for a lawsuit. A vote was taken on approving the resolution to intervene in the DC lawsuit filed by the Cherokee Freedmen descendants and the full Council voted 7 to 6 to support the resolution. Later Vann was contacted by several parties who told her that the streaming video had been turned off almost as soon as the discussion on the lawsuit resolution agenda item came on. One tribal councilman said that he saw the streaming video being turned off of both cameras with his own eyes. Discussion with tribal members over the age of 45 who have been present at many tribal council meetings since the tribal council first began meeting again back in the 1970s said that **NO** tribal council member in the history of the Cherokee nation had ever been barred from having a person speak to the council who they felt had information to present to the tribal council on an agenda item.

In fall of 2005, Judge Kennedy agreed to accept the initial motion to intervene filed by the Sonowsky law firm in January 2005. He is currently reviewing the Cherokee nation’s motion to dismiss the federal lawsuit.

In the November of 2004, Mrs Lucy Allen of Tulsa, whose ancestors were enrolled as Cherokee Freedmen despite their proof of Cherokee blood, filed a lawsuit in the Cherokee nation tribal court to challenge whether or not the Cherokee nation tribal council has the authority to strip citizenship from descendants of Dawes enrollees who are citizens based on the 1975 tribal constitution especially since such individuals were not allowed to vote on those actions of the tribal court. Despite the fact that former chief Ross Swimmer had called for the Cherokee Freedmen descendants to challenge all membership issues in the tribal courts, attorney for the current tribal council, Todd Hembree filed a motion to dismiss the lawsuit in December 2004. The plaintiff, Mrs Allen was threatened with court costs for

filing a “frivolous lawsuit.” The Court held on March 7th 2006 that the Freedmen have citizenship rights in the Cherokee nation based on the treaty of 1866 as well as the 1975 constitution; and that the tribal council had exceeded its authority during the 1980s when it set up statutory bars to keep them from voting and obtaining tribal membership cards. The 30 page ruling cited legal cases which put to rest those myths set out by various tribal leaders that the freedmen citizenship had been “forced on the tribe.”

On March 13, 2006, Principal Chief Smith addressed the Cherokee tribal council in his state of the nation address. He criticized the Allen tribal court decision regarding the rights of the Cherokee freedmen stating that many people disagreed with the decision and that it should be put to a vote of the Cherokee people regarding the Freedmen people’s citizenship rights. He stated that “many people believed that the freedmen had been gone and had done nothing for the tribe in the last 100 years and that their ancestors had been paid off when they received their allotments as slave reparations”. . Since that time, Chief Smith has gone from city to city, calling for a vote on the rights that the Freedmen tribal members have – rights promised by previous tribal leaders that all of them have had prior to the Delaware and Shawnee citizenship rights and for some Freedmen existing prior to 1866.

On March 27, 2006 Councilman Jackie Bob Martin introduced a proposed constitutional amendment for the council to approve which would remove the citizenship rights of the Cherokee freedmen people if approved by Cherokee voters. He further requested that a constitutional amendment be approved by the tribal council which would require tribal members (or any one else) to have approval by the tribal council before suing the tribal council, tribal employees or tribal officials in tribal courts and take this amendment to the Cherokee voters for approval. Councilman Martin requested that these items be approved by 2/3 of the council so that they could be voted on in a special election to be held on November 4 of 2006; rather than be placed on the June 2007 ballot. The rules committee defeated the proposed amendment to require council approval to sue in tribal court; but delayed any voting on the proposed constitutional amendment regarding the citizenship rights of the freedmen people for 60 days to get citizen input and for further study of the matter. Councilman Martin, Cowan, Buel Anglen, Bill Johnson, and Don Garvin were opposed to tabling the issue.

Some may say what’s wrong with such a vote? Many things are wrong! Current tribal officials are bound by previous treaties just the same as the United States. How can the

Cherokee officials demand that the United States government obey the letter of the law of every contract and treaty, yet say that they do not have to do the same thing? Would any Cherokee reading this article approve of a Senator, governor, or US President calling for a vote on the rights of Indians to vote to continue to hold US citizenship based on the fact that “many people believe that Indians don’t pay taxes?” The Cherokee government would call for an immediate halt to any such discussion in the halls of Congress or a state legislature, would they not? Cries of racism and demands for the resignation of such an official from public office would fill the airways would they not?

Discussions regarding the rights of citizenship involves granting citizenship to people who have never exercised it - for example new immigrants - rather than about people who have held legal citizenship rights for 140 years or more in a nation. People holding longtime citizenship rights should not have to continually fight off challenges to their citizenship. Nations which come to mind which have stripped long time citizens of citizenship rights include Nazi Germany and the Pechanga nation, a gaming tribe in California which has removed many people from its citizenship rolls to increase gaming payments to those left on. This is definitely not the Cherokee way. Breaking treaties should not be done by tribal officials as government officials. The enemies of tribal sovereignty most certainly will use these racist tactics against the tribe in the future and may even call for tribal termination if the tribe says that the basis for its government to government relationship with the US government is based on race.

It is not sovereignty to remove tribal members from the membership rolls because they may not support certain officeholders and to not allow the removed individuals to have any say in the matter. That is exactly what will be the case if the Cherokee freedmen citizenship rights are put to a “vote of the people” in November 2006 or even next May 2007 if this proposed amendment is approved. Others who are descended from the Dawes rolls have been registering as voters for the past 35 years while even the freedmen people who were recognized as citizens prior to 1983 now must reregister as tribal members and wait their turn for their applications to be processed along with others whose citizenship rights are not being challenged. The tribal newspaper, the phoenix states that there is a 7 month backlog to process tribal membership cards as of May 2006. I ask anyone, how fair is it to the freedmen to not have a voice in this proposed critical vote? Is this not similar to the situation in the 1830s when Supreme Court Judges held for the Cherokee peoples rights to