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December 19, 2006

Federal Judge Denies Cherokee Nation Motion to Dismiss Freedmen's Right To Vote

Federal District Court in Washington D.C. denied the Cherokee Nation's Motion and provides their day in court for Cherokee Freedmen to enforce provisions of Treaty of 1866 and the 13th Amendment against U.S. Officials, the Cherokee Nation of Oklahoma and Principal Chief Chad Smith.



Marilyn Vann

Judge Henry H. Kennedy handed down a ruling in the case of *Vann v. Kempthorne, 03-01711*, which denied the Cherokee Nation's Motion to Dismiss an action filed by a number of Cherokee Freedmen citizens against United States Officials for breaching its fiduciary duty by failing to enforce the Treaty of 1866 and the 13th Amendment when Cherokee Freedmen Citizens were denied the right to vote in the Cherokee Nation's 2003 election for Principal Chief and Amendment to the Cherokee Constitution.

The ruling also permitted the Freedmen to amend its complaint to add the Cherokee Nation and Principal Chief Smith who have refuted the U.S. refusal to recognize the amendment to the Constitution and have set an election in February of 2007 to remove the Freedmen citizens from the

Tribes subsequent to the filing of this action.

Jon Velie, attorney for the Freedmen states, "The decision to deny the Motion to Dismiss is important because it gives these Cherokee citizens a Federal judicial forum to contest a violation of the Treaty of 1866 by both the United States and Cherokee officials. Ironically, the decision merely provides these American Indian citizens the basic rights others in American take for granted, their day in court.

Although it may not be apparent to others in Indian Country, it is a positive outcome that the case was not denied because the effect would have nullified enforcement of Treaty rights. This is dangerous for all of Indian Nations because treaties are the

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Freedmen Prove Fraud on Black Friday

by Ed Crittenden

The Supreme Court of the Cherokee Nation will on a petition to oust the Freedmen, which would allow Chief Chad Smith to call a Special Election in February to propose a blood quantum requirement for membership.

The petition, proposing to disenroll Cherokee citizens with African ancestry, who, some allege compose a political block of votes against Smith in the June 2007 election, has been hotly contested in the tribal court.

Supreme Court Chief Justice Darrel Matlock served Cherokee citizens a taste of his due process with a twist, ironically on "Black Friday," when he set the petition protest for the day after Thanksgiving, a day that Christmas shoppers propel retailers into the black. The Cherokee Nation offices and the courthouse were officially closed.

Vicki Baker, a Freedmen descendant, alleged fraud, illegal actions during the drive and questionable procedures within the signature verification process by the Election Commission in her protest of the petition. Petition proponents, former Deputy Chief John Ketcher and Jody Fishinghawk, collected 3,000 plus signatures, but the Election Commission threw out about 900, leaving barely enough to succeed. Opponents of the petition only had to disqualify less than 130 signatures.

The petition, spearheaded by Ketcher and Fishinghawk, a tribal employee, demanded a special election to determine if a blood quantum should be a requirement for membership into the Cherokee Nation. The Cherokee Council has already placed the same question on the ballot in the June 2007 election.

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Cherokees may delay vote on Freedmen citizenship

Justice Leeds' Opinion "The majority has sent a clear message to the Cherokee people that our laws can be disregarded."

Portions printed in the Muskogee Phoenix - Staff Reporter December 21, 2006

A Feb. 10 special election set by Chief Chad Smith to vote on whether descendants of freed Cherokee Nation slaves will remain members of the tribe is likely to be postponed.

This week's decision by the tribe's highest court that the special election was valid, made doubtful that requirements for an election could be completed in a timely manner, a tribal official said.

Rick Doherty, Co Chairman of the Cherokee Nation Election Commission who is also a bail bondsman in Stilwell, confirmed that Commission Chair Patsy Morton wanted a later date set for the election.

Commissioner Jim Briggs, a Tulsa attorney, questioned if the dates Morton presented could even be accomplished without the Commission violating a dozen legal statutes. "I have found nowhere that authority is given to a Chief to set the date for a special election. That is a responsibility of the Commission. We do not have to abide by any such date and thankfully so when it proves impossible," Briggs said. "I am concerned that there is not a reasonable amount of time for the announcement of the election as required by law."

Morton replied that she didn't think that many Cherokee voters even knew there was to be an election.

Briggs said "I guess I place more confidence in the Cherokee electorate than that and I think it is the Commissions' duty to assure there is integrity within the election process."

Morton replied, "I don't care about integrity."

Doherty said Morton got upset at a Wednesday night Commission meeting and stormed out after threatening to quit if her proposal of a schedule of dates for the election did not pass. It

subsequently died for lack of a second.

Morton stood and told Doherty, "This is your deal now," and told Wanda Beavers to open the office so she could clean out her desk.

"I do not know that she resigned," Doherty said.

Morton did not return a message on her home phone Thursday.

The council, which can't set a special meeting without a 10-day advance, won't meet in a regular session until Jan. 15 and must first approve any schedule of dates for an election before the Commission can legally move forward. The Commission is legally required to advertise a special election in newspapers throughout the 14 Counties of the Cherokee Nation at least 14 days prior to an election.

The high court ruling was a split decision — 3 to 2, with Justice Darrell Dowty agreeing the chief had a right to call for a special election on an initiative petition.

But Dowty agreed with Justice Stacy Leeds that the initiative petition seeking the election didn't pass muster.

Smith originally had set the special election for Oct. 6, but Vicki Baker of Chelsea took her protest that the petition contained numerous instances of fraud to the tribal court.

Three justices on the five-member Cherokee Supreme Court — Darrell Matlock, James Wilcoxon and Kyle Haskins — ruled that the petition was valid.

The three concluded circulators of the petition gathered 2,217 signatures but rejected 42 questionable signatures, making the final total more than the 2,087 required to make the petition valid. Approximately 800 signatures had already been cast out by the Commission as not being registered voters.

The tribal Supreme Court ruled in March that freedmen had been citizens for 140 years with all rights and privileges of all citizens including voting. Cherokee officials say more than 1,500 freedmen have since began the registration process within the tribe but it is unknown how many have made it through the system and become registered voters.

The majority opinion in Tuesday's ruling states: "The court is charged with determining the validity of the process in these proceedings and not to punish a circulator's indiscretions by disqualifying all of his packets (of gathered names)."

In dissent, Justice Stacy Leeds said the petition had irregularities — including the filing of false affidavits on the authenticity of signers — that were "clear violations of Cherokee law" and that at the least, the court should have conducted a more thorough review of the petition process. "In the future, it may well come to pass that the freedmen or other classes of Cherokee citizens are excluded by majority vote," Leeds wrote. "To allow the initiative petition to move forward under this cloud of inequity is unconscionable. The majority has sent a clear message to the Cherokee people that our laws can be disregarded."

Justice Darrell Dowty's opinion filed Thursday that the process evidenced by the petitions "is so flawed that the sufficiency of signatures cannot be certified by this Court. Accordingly, I must respectfully dissent to the majority opinion."

He concurred with Leeds that the conduct of some of the petition circulators was such that their certification could not be relied upon, "and I agree that there should be referrals for further investigation and prosecution.

Editorial

Who are the people making these decisions concerning our rights?

Cherokee citizens being voted out of the tribe has raised a moral question to the level that much needs to be disclosed before any citizen can render a final decision.

This is the first Cherokee trial where five Supreme Court Justices have been seated as provided under the 1999 Constitution. The two new justices concurrence with Matlock without writing a word within the ruling, says much about their addition to the bench. This case presents an example of the seriousness that the new seats create over the balance of justice.

It is always the duty of every Cherokee citizen to assess and even question if such high level appointments within our government are people of character and honor that we can trust to protect and preserve our freedoms and liberties.

The majority of our highest court has chosen to look the other way and ignore crimes committed by petitioners who our constitutional rights to petition to abused and eradicate Cherokee citizens so they won't have the opportunity to vote out a racist Chief.

A decision by three people has compromised the citizenship of thousands of Cherokees people which now will be decided by another majority, this time a majority of voters of who most have nothing to lose by the outcome of their decision. The ruling has created such a radical condition within the Cherokee Nation that it risks the entire sovereignty of our tribe.

Justice within the Cherokee Nation is not blind but corrupt, when a majority of Supreme Court Justices place legal Cherokees' citizenship onto the political chopping block, while allowing the people to go free who committed crimes to accomplish it. What we have witnessed is a lobotomy on the law.

All Cherokee justices are appointed by a Chief and they are almost untouchable thereafter. These people must be held to the highest standards. Their backgrounds and past associations should be examined because their decisions will forever affect every citizen of the Cherokee Nation.

The recent decision by a majority of justices exemplifies this condition. The ruling on the Baker protest of the Ketcher petition involves potentially removing the citizenship of a sector of Cherokee people simply to block them from exercising their right to vote. The abomination of these citizens' rights has now been moved forward by the approval of the court of an action accomplished by what was proven within their courtroom to be a criminal element. Such a blunder triggers serious concerns into who are the majority of Justices concurring.

The two recent appointments under the 1999 constitution Justices, Jim Wilcoxon and Kyle Haskins along with Darrel Matlock all have a questionable history with Chief Smith. The importance of their present positions within the Cherokee judiciary demands the

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Vicki Baker the plaintiff in the protest of petition to ban Freedmen and Marilyn Vann President of the Decedents of Freedmen of the Five Civilized Tribes interviewing with Jenni Monet a journalist working on a documentary of the Freedmen issue.

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