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Editorial

Who are the people making these decisions concerning our rights?

Federal Judge Rules Freedmen Can Continue Case and Add Chief to Suit

By Donna Hales

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Phoenix Staff Writer

A federal court in Washington, D.C., ruled against a Cherokee Nation motion Tuesday and provided a day in federal court for Cherokee Freedmen.

The Freedmen had filed suit against U.S. officials for breaching their fiduciary duty by failing to enforce the Treaty of 1866 and the 13th Amendment when Cherokee Freedmen were denied the right to vote in the Cherokee's 2003 election.

The Freedmen's suit seeks a court order declaring the 2003 elections invalid and enjoining the Secretary of the U.S. Department of Interior from recognizing the results of the elections until the Freedmen are permitted to participate in voting.

The tribe had sought to have the case dismissed. The court's ruling ensures the Freedmen's case can go forward.

The court said the Freedmen can amend their complaint to add the Cherokee Nation and Principal Chief Chad Smith. Smith has continued to ignore the BIA's refusal to recognize the 1999 constitution.

Calls to Cherokee Nation Communications Director Mike Miller, who is out of the office until Thursday, were directed to Leann Dreadfulwater, who did not return a late Tuesday afternoon call.

The Chief has set a special election for February 10 to remove the Freedmen citizens from the tribe.

"Ironically, the decision merely provides these American Indian citizens (the Freedmen) the basic rights others in

America take for granted — their day in court," said Freedmen attorney Jon Velie.

"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."

It should be a basic right in any democracy that a citizen can stand up for his or her rights when elected officials trample those constitutional rights to vote or threaten to remove such citizens from their tribe, Velie said.

Marilyn Vann, lead plaintiff in the federal case, said she was pleased the judge had held that the Cherokee Nation, a federally recognized tribe, is required to follow the laws of the U.S. Constitution and to follow the Treaty of 1866. Previous leaders swore to do so more than 140 years ago when they re-established government-to-government relationships.

The ruling said the Treaty of 1866 provides that the Cherokee Nation "hereby covenants and agrees that never hereafter shall either slavery or involuntary servitude exist in the (Cherokee Nation) and that all freedmen who have been liberated ... as well as all free colored persons ... and their descendants, shall have all the rights of native Cherokees."

Judge Kennedy wrote a 28 page ruling full of historical evidence in favor of the Freedmen, which can be viewed in full online at www.cornsilks.com.

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assessment of any and all history and relationships, which might present apprehension. Their background and character must demonstrate the integrity expected by the Cherokee people in their conduct and conclusions. For the appointment into such high ranking position over our Cherokee civilization affects each and every Cherokee.

First and foremost, should the federal Freedmen Lawsuit filed in Washington D.C. in 2003 prevail, which questions the validity of that election asking the court to cast it out because Freedmen were not allowed to vote, neither Wilcoxon nor Haskins are legally seated.

A recent letter from the Secretary of Interior states clearly that the 1999 Constitution has yet to be approved MUST be approved by the Secretary. If either of these two conditions find a decision then the JAT decision, (2-1), with Leeds dissenting, that approved the 1999 was in error and the CNO officially reverts back under the 1975 Constitution where only 3 Justices seats are provided.

The ruling of (2-1) against the Ketcher petition would be the order stopping, what would undoubtedly be determined by a Federal Judge within a Freedmen protest, to have been an illegal special election. However neither may occur in time to prevent the Cherokee Nation from moving any further out of compliance with the BIA into the danger zone where the Bureau finally shut off all federal program funds after the same scenario occurred in the Seminole tribe.

You Judge Our and Appointees:

Drew Wilcoxon and Jim Wilcoxon's are brothers and partners in Wilcoxon and Wilcoxon attorney firm in Muskogee who last year was paid by Cherokee Nation nearly a million dollars from of the Arkansas Riverbed Settlement. Drew sits as a Commissioner on the Election Commission while his brother is seated on the Supreme Court ruling if the Commission committed any errors in the verification of signatures on this petition. Both were appointed by this Chief.

In the 2003 election, Kyle Haskins, who also serves in Tulsa as a Special Judge for the State, was appointed by Smith and served as the Election Commissioner Chair over the hearing of the Chad Smith residency trial. That panel decided Smith was a legal resident of the Cherokee Nation although Haskins chose not to hear compelling evidence that showed otherwise. Haskins announced that the Commission would follow Federal rules of procedure, just as the hearing opened and gave the Protestant Robin Mayes, who ran for Chief, only fifteen minutes to present his case. Mayes was unable to present most of the argument and evidence because of the manner in which Haskins conducted the hearing. Neither a Secretary recording nor an audio recording was made of the official minutes with that important proceeding.

Upon an appeal into the JAT, the first issue was for the Protestant to ask Matlock to recuse, step aside, from the proceedings in the interest of justice for several reasons. Matlock was shown to have been a former law associate sharing offices with Smith in Tulsa prior to Smith becoming Chief. Of particular importance was that Matlock had participated with Smith in a similar residency trial within Cherokee courts prior to the 1999 election. Smith convinced Bobby Leach, of New Mexico to file a residency protest asking the court

to rule if residency was required to run for Deputy Chief.

Affidavits signed by Leech were presented testifying that Smith had talked him into filing the case and prepared all of the legal documents behind the scenes. The affidavit stated that Matlock had been the attorney of record representing Leech in the courtroom. Leech was never asked to pay either attorney for their services.

Smith who was living in Sapulpa ran for Chief in that election however no residency protest was filed during the 1999 election, although all of the Chief candidates accept Joe Byrd were non residents. Just prior to the 1999 election the Leech case received a ruling by the JAT. The court ruled that because the BIA had never approved, by signing, the question proposed on the 1995 ballot, it had not become the law. The question was approved by the overwhelming support of 85% of Cherokee voters stating loudly they wanted a Chief to live amongst them. However Smith, colluding with Matlock using the Leech case, was able to circumvent any residency question and never have his name mentioned.

Matlock refused to recuse in the residency trial stating "I can give the Cherokee people a fair decision." The other two justices chose not to recuse him.

During Smith's first term the residency law was submitted to the BIA and was signed into law. Smith knew well to have his domicile, his bona fide residence, within the Cherokee Nation boundaries at least 270 days prior to an election but instead chose to rent an apartment and attempt election fraud.

Evidence was presented to the court including Smith's pike pass receipts which showed that three fourths of the time reviewed that year, Smith stayed at his eloquent half million dollar residence in Sapulpa. Pike passes showed him getting off and on the Creek Turnpike, that ends about a mile from his Sapulpa home, around 8:00 AM each morning and exiting the toll road around 6:00 PM each evening constantly.

Other evidence proved his children were enrolled in school in Sapulpa, his wife, Bobbie Gail was registered to vote in Sapulpa and was employed in Tulsa and that the average total utility bill on the Tahlequah duplex he claimed to be residing in was \$35 a month compared to an average of \$95 for the same size apartment next door.

The JAT ruled that Mayes proved Smith had two residences but did not prove the apartment, a small 500 square foot duplex in downtown Tahlequah, was not his domicile. The definition of domicile in Black's Law Dictionary states that a new domicile can only be established if the previous domicile is relinquished with the intent of never returning.

After the 2003 primary election, a protest was filed by several candidates where their burden was to prove beyond a reasonable doubt that the evidence provided would have changed the outcome of the election. This is the same burden as murder. Extensive evidence, witnesses and irregularities were presented although only 10 days are allowed under law for a Protestant to gather witnesses and make a case.

Although compelling evidence was presented Matlock again refused to recuse. Kyle Haskins who was an

Election Commissioner became a defendant in Matlock's court.

Only last year it was discovered that approximately that same time Matlock defended a man in Tulsa who had shot a police officer three times while attempting to serve a warrant at the man's home. Matlock's client, later deemed a mental patient, died sometime after the trial. The jury awarded the police officer significant damages with the amount with interest growing to near \$750,000 by the time the settlement of the estate was handed to Special Judge Kyle Haskins.

Haskins sealed the case. However he allowed attorney fees to be paid to Matlock but did not allow money to flow out to either the officer or his attorney. The wealth of the remaining assets in the estate was depleted leaving nothing for either the police officer or his attorney. Neither Haskins nor Matlock disclosed their involvement as party within each others' courtroom.

Smith reappointed Haskins to the Election Commission this term. However Haskins resigned after the adjournment of a Commission meeting where his motion to hold the approval of Dr. Charles Hathaway to the Commission at bay failed. Smith had filed suit to circumvent Hathaway's appointment just prior to the Commission meeting. Haskin made ever effort possible to stop the appointment. After the meeting Haskins stated he did not have the time to devote to being a Commissioner and resigned.

The JAT ruled shortly afterward that Smith could not change his mind once he had signed the Council Resolution memorializing his approval. Evidence was presented showing that Smith had on numerous times in the past vetoed Council Resolutions. There is a question if a Chief has the authority under the Constitution to veto resolutions but that question was never asked. The court ruled Smith should be consistent in his business and could only remove Hathaway under the rules of removal provided within the Constitution requiring the support of 2/3 of Council.

Rita Bunch, another Chief appointment to the Commission, resigned within a month following Haskins' resignation. Smith filled their seats with Drew Wilcoxon, discussed above, and Patsy Morton, from Stilwell. The conflict surrounding both of these Chief appointments have been discussed but no one has taken the question to the court. By the following facts you can decide concerning Morton.

Morton has three direct relatives working directly for and under the administration. Her son is an attorney within the Law and Justice Department and her husband was hired by Smith over the Education Department after Patsy was appointed to the Commission. Morton's daughter-in-law is a public defender who contracts cases through the Cherokee Nation. The Election Commission is an autonomous body to assure the Cherokee people will have fair and impartial elections. Approximately \$250,000 per year is going into the first degree relatives of Election Commissioner Chair person Patsy Morton.

A Supreme Court Judge proposed for appointment by any President must pass a rigorous interrogation before Congress before they are approved to the bench. Such is the case because they are untouchable with lifetime appointments and their daily

judicial decisions affect the liberty and freedom of every citizen within America.

The Congressional body is composed of hundreds of members voting on these appointments. Although a partisan vote often occurs with the party supporting of the President confirming his selection, the number of Senators and Congressmen who filter the integrity of his appointments to our judicial is great.

Within the Cherokee Nation it is different where only a majority of the Council, 9 people, is required to confirm a Supreme Court Judge or a board appointment responsible for \$300 million a year in gaming profits. If a Chief has the influence of a simple majority he can in affect control who will hear any trial against him or any other Cherokee citizen.

We are watching as this Chief appoints non tribal members that the court has no jurisdiction over, to the boards of our corporations. These board members make decisions concerning hundreds of millions of dollars in non federal tribal revenue. In the recent CNI concern, on the GEG ruling involving \$6 million of securities fraud, a federal judge ruled that Councilors have no standing to attempt to recoup the Cherokee peoples' money. The judge ruled that only stock holders or members of the board who voted to purchase or sell would have the standing to bring forth the case. The only stock holder is the Chief and all of the board is his appointees. The only other person in the Cherokee Nation who could possibly bring forth a trial is the Attorney General who is also appointed by the Chief.

Because of the potential for a Chief to accumulate enormous power and become untouchable by anyone within the tribe, simply by controlling a small number of persons upon the tribal Council, this editor suggests that the requirement for any Chief appointment approval hereafter be increased to two thirds of Council.

Knowing that all governments historically have evolved toward corruption whenever enough good people fail to get involved, we must raise the bar to get the highest standard of people watching over our quality of life and our money or we will loose it. The only way that evil can ever win is for good people to do nothing.

In all professions there are persons practicing who have risen to their level of incompetence. However, Judges must be people who are beyond reproach. I have found few attorneys I really trust. Yet there are some who are by far above the rest. The Cherokee people must demand the best of people for any appointment to our judiciary, to our boards and our commissions. If one scoundrel gets through the appointment process, Cherokee citizens will ultimately end up paying a higher price for that mistake than all the Council combined would be willing to pay and stand in our place.

One stupid decision by a judge can change the basic rights for an entire civilization until that decision is overturned. The Supreme Court of the Cherokee Nation is our highest court. The expense of appealing their decision into the Federal Court makes most an impossibility. A single subtle decision which attempts to steal such an inalienable right as citizenship is as great an act of tyranny against that person as 911 was to the world.

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

paramount form recognition of the government-to-government relationship between Tribes and the United States. A technical defense eliminating enforcement of treaties could open legal challenges to others treaties, effecting the rights of Native Nations."

For individual Indians, such as Marilyn Vann and the other Plaintiffs, her rights preserved today are significant. It should be a basic right in any democracy that a citizen can stand up for her rights when her elected officials trample her constitutional rights to vote or threaten to remove her from her Tribe."

Marilyn Vann, lead Plaintiff states, "I am pleased that the honorable judge has held that the Cherokee Nation, a federally recognized tribe is required to follow the laws of the US Constitution and to follow the Treaty of 1866 as prior leaders swore to do more

than 140 years ago when they wished to re-establish government-to-government relationships with the United States. Various lawsuits filed by the Cherokee Nation, such as those involving the Delaware Tribe of Indians have invoked this same treaty, yet when it comes to its citizens, this treaty all of a sudden becomes null and void in the eyes of the Tribe. Principal Chief Chadwick Smith told the Daily Oklahoman on November 24, 2002: 'We have kept our word and promises in treaties.' The Cherokee Nation and the United States should continue to stand behind its treaties, I am happy the Federal Court in Washington will allow us to hold them to their word."

Goto
www.cherokeobserver.org
and www.cornsilks.com
to read the Federal Judges order that is on home page.



Cherokee Freedmen 1890



Vicki Baker, a Cherokee Freedman who lives in Claremore near the of Will Rogers original land allotment. A Cherokee Freedmen taught Will Rogers to rope. Rogers took his roping show on the road all over the world.

Cherokee Nation names new newspaper editor

Muskogee Phoenix - November 24, 2006

TAHLEQUAH — The Cherokee Nation recently named Bryan Pollard as the new editor of the Cherokee Phoenix, becoming the second editor to serve under the Cherokee Independent Press Act of 2000.

Pollard has served as assistant editor for the past two years and succeeds Dan Agent, who will serve as an associate editor during the transition.

"I'm excited and grateful for the opportunity to serve our Cherokee communities and people as editor," Pollard said. "My priorities are to launch a new Web site, refine and expand the newspaper, and integrate the use of more Cherokee language in our products."

Born in Stillwater, Pollard was raised in New Orleans and earned a bachelor of arts in anthropology from Louisiana State University in 1994. Pollard worked as a freelance photographer in Portland before establishing Street Roots, a newspaper that covered poverty-related issues in Portland.