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## CONSTITUTIONAL CRISIS

### Chief lacks authority to call special election

The newspaper reporters were all abuzz yesterday regarding the question of whether or not the Principal Chief has the constitutional authority to call for a special election.

When asked in general terms, the answer is yes. The Principal Chief does have the authority to call a special election.

Article XV of the 1999 Constitution provides for three kinds of petitions. The first is the referendum. This petition is circulated by citizens of the Cherokee Nation for the purpose of referring measures (laws) passed by the Council to the people. Section 4 of this same article provides that the Principal Chief has the authority to call for a special election on measures referred to the people by petition.

This same article does not provide for this power regarding initiative petitions either for proposed laws or constitutional amendments. There is a grand reason why the power to call a special election is granted to the chief on referendums and not on initiatives.

First, it is possible under our form of government that the people might circulate a petition to vote on the fiscal budget passed by the council. The tribe would then be required to operate under continuing resolutions until such time as a vote is taken. The Cherokee people wisely gave the chief the power to bring such a question to the people quickly. Or, the people may circulate a petition to stop a law the chief believes is in the best interest of the tribe, or perhaps a petition does not really reflect the views of the whole Cherokee population. The chief could then bring such a

question to a vote quickly. Second, the chief does not have the power to place constitutional provisions on the ballot himself, either through an administratively supported petition (as in the one now in controversy) or directly by executive order. The people of the Cherokee Nation have reserved the power to propose amendments to the constitution to themselves and the council, not the chief.

That the chief could get a handful of well funded petition proponents to go out and lie to the people and garner enough signatures to place something on the ballot is a given. We have now seen it happen. For the Principal Chief to presume he has the power to call a special election for an initiative question speaks loudly about either his desperation to get rid of the Freedmen or his inability to properly read the constitution, or both.

The people of the Cherokee Nation have not reserved to themselves the power to call a special election. They wisely delegated that power to the Council, and in this instance, the Council has rejected the notion twice. The people did not grant the power to call special elections on initiative questions to the Principal Chief and for him to assume that authority is a violation not only of his oath of office to uphold the constitution, but is also a violation of the separation of powers clause.

We will be challenging the Principal Chief's actions in the District Court of the Cherokee Nation within the week.

### \$804,300 - stolen from employees



October 17 2006

As promised, 2,100 Cherokee tribal employees received bonus checks Thursday, along with a letter from Principal Chief Chad Smith.

Cherokee Nation Tribal Council on Sept. 21 passed the Comprehensive Fiscal Budget Act for 2007, which included a \$2.1 million allotment for employee bonuses which were proposed above and beyond merit increases recommended by the administration.

Prior to passing the budget, the bonus was the subject of a heated debate between Smith and District 1 Councilor Bill John Baker.

Baker proposed the bonus to the council, which was dismissed by Smith as "rumor" in an interoffice memo distributed to tribal employees. In the same memo, Smith indicated the bonus would come under scrutiny if the bonus was approved, and claimed a number of deductions would be withheld, in addition to state and federal taxes.

Baker disputed Smith's opinion, saying the only deductions required to be withheld would be the standard state and federal taxes.

In Smith's letter accompanying the checks, he took full credit for proposing the bonuses.

"I requested this amount earlier in the year in order to recognize your contributions," wrote Smith. "Fortunately, the council agreed and passed the appropriation."

According to Baker, checks distributed Thursday did indeed include a \$383 deduction for "indirect costs." At press time, it was unconfirmed as to what, exactly, constituted indirect costs and where that money would go. The total indirect costs withheld from the 2,100 checks is \$804,300.

"We were not required by any law to withhold indirect costs from these bonuses," said Baker. "The administration had the loophole available to them and chose not to exercise it. Most employees ended up receiving approximately \$500 of the \$1,000 bonus."

One longtime tribal employee was thrilled to receive the windfall.

"Please let Bill John and whoever else voted for this how much I appreciate it," an interoffice memo stated. "After 30 years, I finally know what it feels like to be getting a bonus. It's exciting!"

In his letter to employees, Smith encouraged employees to celebrate success, but remain realistic about tribal revenue.

"As we celebrate our success, we should be mindful of the challenges ahead," said Smith. "The gaming industry is volatile and under attack, meaning we cannot rely continuously on gaming for revenue. But by continuing to work together for a joint vision of healthy and self-sufficient citizens, families and communities, we can all move forward and prosper."

Watts of Claremore used deceit to obtain signatures, and the petitions should be declared null and void, or in the alternative signatures they submitted should be disqualified. Reach Donna Hales at 918-684-2923



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### Tribal employees receive bonuses, with steep deductions

Teddye Snell  
Tahlequah Daily Press

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In my experience, **indirect costs** are what the financial dept charges for writing a check, and it goes directly to the gen fund. In most private corporations that are up and going, idc or administrative costs are generally about 2%. Here at CNO, idc range from 14% to 30%. - Wai ya

### Council acts to ensure Cherokee employees receive full bonus

By Donna Hales  
Phoenix Staff Writer

A Cherokee Council committee added \$1.5 million to the employee bonus pool to ensure employees would receive a total bonus of \$1,000 each, as intended by an earlier council vote.

The \$1.5 million was part of a \$15 million budget modification that included \$1 million for self-help water lines.

Councilor Bill John Baker proposed the amendment to add the \$1.5 million and the \$1 million for water lines.

The council earlier had put \$2.5 million in the budget for merit raises and \$2.5 million in carryover to ensure all tribal employees took home a \$1,000 bonus.

However, the administration held out a considerable amount for fringe benefits and the expected state and federal taxes from the original \$1,000 bonus, Baker said.

That left employees with between \$500 and \$600.

The \$15 million budget modification also includes an additional \$3.8 million on the gymnasium at Sequoyah School.

**Councilors voting for the bonus amendment: Bill John Baker.**

**Audra Smoke Connor, Joe Crittenden, Taylor Keen, Johnnie Ketcher, Linda O'Leary, David Thornton and Phyllis Yargee.**

**Councilors voting against the amendment: Jack Baker, Meredith Frailey, Don Garvin, Bill Johnson and Jackie Bob Martin.**

Councilors absent at the time the vote was taken: *Buel Anglin, Cara Cowan, Chuck Hoskin and Melvina Shotpouch.*

The total budget modification goes to a vote of the full council Nov. 13. If it passes full council, there is no line item veto, so Cherokee Nation Principal Chief Chad Smith would have to veto the entire \$15 million modification in order to kill the additional \$1.5 million for employee bonuses.

Baker said the council has never voted down a budget modification, and no chief has ever vetoed a budget modification.

Smith earlier said he was for additional pay to employees, but wanted all the money to go into a merit pool so the best employees would get the money instead of every employee sharing the pot.

Councilor Don Garvin of Muskogee said the original intent was for everyone to get about \$1,000 from the bonus pool, but fringe benefits weren't figured in at that time.

### Cherokee Nation Industries CEO terminated

By Donna Hales - Phoenix Staff Writer - Nov. 2nd, 2006

Cherokee Nation Industries, Inc.'s board terminated CEO Jim Majewski this week, not citing any particular action or transaction in a written statement.

"Majewski will earn no compensation after his termination date (Oct. 30)," the statement says.

Majewski was placed on administrative leave with pay in June pending a review of his actions in connection with CNI's purchase of more than half interest in a failing penny stock company, Global Energy Group, in August 2005.

No one answered the phone at Majewski's Tahlequah home Wednesday afternoon, and he did not return a message.

Councilors announced at the time he was put on administrative leave that Majewski was earning \$15,000 per month from CNI. That pay continued until Oct. 30.

Majewski was the ramrod in GEG's purchase, despite GEG having a \$2.4 million deficit. It did not own the patent it was marketing and had no credit source.

The bulk of GEG's sales have been to entities of the Cherokee Nation.

The money CNI used to purchase GEG was a line of credit tribal councilors had approved in 2002 that was guaranteed by the Bureau of Indian

Affairs. The line of credit was intended to keep CNI afloat and guarantee jobs for Cherokees at CNI plants in Stilwell and Tahlequah.

Records show Cherokee Nation Principal Chief Chad Smith approved Majewski to vote CNI's shares in GEG before the CNI board voted to buy an interest in GEG.

Seven tribal councilors have sued Majewski, Benny Dixon, a former economic development executive for Cherokee Business Inc. who touted the purchase of GEG, and Smith in federal court in Muskogee on behalf of the Cherokee Nation in regards to the GEG sale.

A lower tribal court has ruled the councilors are in violation of the Cherokee Constitution for filing on behalf of the tribe. The district court also ruled legal fees of the plaintiffs in connection with the federal law suit can't be charged to the tribe.

Councils involved in the federal lawsuit have said they will appeal the ruling to the tribe's highest court, the Judicial Appeals Tribunal of the Cherokee Nation.

Meanwhile, the federal suit seeks a jury trial and the cost of CNI's investment in GEG.

Dixon, who also was put on leave in June, quickly resigned.



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### Protest filed to stop Cherokee election

By Donna Hales  
Phoenix Staff Writer

New Cherokee Nation member and freedman descendant Vicki Baker filed a protest with the tribe's highest court in an effort to stop a February special election.

Principal Chief Chad Smith scheduled the election last month after the Cherokee Nation Election Commission verified 2,000 signatures on a petition calling for election on a constitutional amendment that would outlaw freedmen as members of the Cherokee Nation.

The amendment calls for proof of Cherokee blood for membership in the tribe, with the exception of Delawares and Shawnees, already adopted into the tribe.

David Cornsilk, lay advocate counsel for the freedmen, said he and Marilyn Vann, spokeswoman for the freedmen, did 80 percent of the research for the legal filing.

"This special election is not a done deal," Cornsilk said. "I think the chief jumped the gun on calling a special election because there are aspects of this petition process that have yet to be determined. Everyone involved needs to remember that we have a process that must be honored."

Faulty petition gathering processes are among the complaints. The petition wording is vague and misleading, and the petition violates the constitution, Baker's complaint alleges.

"We believe at least 50 signatures are forgeries, they appear to be identical (in penmanship) to the name above or below on the petition," Cornsilk said.

Other complaints include the person who signed the petition as the can-

vasser is not the person who presented the petition, Cornsilk said.

The petition alleges petitions were left at two restaurants in Jay, and no one witnessed signatures, although people who picked up the petitions signed they did so.

Other irregularities involve no tribal registration number or no physical address, etc., as required.

"Hundreds (of signatures) don't have complete verification," Cornsilk said.

Baker is asking the tribe's highest court to void the order for a special February election that will cost the Cherokees about \$200,000. The tribe's regular election is scheduled for June.

Freedmen recently were again allowed citizenship in the tribe after the Judicial Appeals Tribunal of the Cherokee Nation ruled the freedmen eligible in March.

Since that time, more than 900 descendants of freedmen have enrolled. The amendment is aimed at excluding the freedmen before the June tribal election.

And all the freedmen trying to enroll won't be able to do so before February because, for reasons beyond their control — some must obtain delayed birth certificates, revised death certificates and perfect other documents in order to complete the tribal membership requirements.

Baker's petition states the speed in which the registration department can process freedmen applications and the speed with which the election commission can process their voting applications are outside the control of the freedmen. The petition alleges former Cherokee Deputy Chief John Ketcher and Councilor Cara Cowan-