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## CONSTITUTIONAL CRISIS

Assistant Deputy Secretary of Interior Says

### 1999 Cherokee Constitution Is Not Yet Valid

A Constitutional Crisis Exists in the Cherokee Nation

According to the attached fax received today dated August 30, 2006, the Associate Deputy Secretary of the Interior James Cason, states that the 1999 Cherokee Nation Constitution is not valid and in full force, as Principal Chief Chad Smith has said, until approved by the Secretary of Interior.

However Smith, within his State of the Nation Address on Saturday during the 54th Annual Cherokee National Holiday, told hundreds of Cherokees present that the Cherokee Nation "shall continue in full force and effect" and "is operating under the new 1999 Constitution."

In the Annual Report to the Cherokee people, that can be viewed at WWW.Cherokee.org, Smith and Deputy Chief Joe Grayson tell the story of the Cherokee Nation and how the new constitution is in full force and effect.

"What is really in full force and effect is a Constitutional Crisis," said Ed Crittenden, a 50 year Resident Cherokee from Tahlequah. "We have been rushed into the 1999 Constitution by the administration. We were forced to make a decision on an entire constitution by voting yes or no which was an unconstitutional manner to present the amendments to the Constitution. We are being convinced of a myth that serves the administration's political agenda and repeating almost exactly what occurred 30 years ago during the implementation of the 1975 Constitution," Crittenden stated.

Crittenden filed three petitions on Friday which carriers circulated for signatures at the Holiday to correct the absentee voting and require residence within the Cherokee Nation to vote by absentee ballot, to dissolve two seats added to the Council by the 1999 Constitution representing non-residents and to elect the Attorney General and prosecutor of the Cherokee Nation rather than the position being appointed by a Chief.

Crittenden filed the petitions exactly three years after he and former Deputy Chief Hastings Shade had filed four other petitions just prior to the 2003 Holiday. One of those petitions was a Recall of the 1999 Constitution. Crittenden says those petitions are hung up in the Cherokee Judicial System. Crittenden filed a motion to intervene in the JAT case that ruled the 1999 Constitution was valid but was told his motion was untimely.

Crittenden said, "It is almost impossible to believe that today a question still exists if the 1975 Constitution, voted on by the Cherokee people, was in fact the exact document that was ultimately signed by the BIA or if it was actually switched but there is good proof that has recently surfaced to substantiate the questions."

Did the Chief have full knowledge that the BIA will not recognize the 1999 Constitution when he announced and portrayed the 1999 Constitution to be in full force and effect on Saturday? Should this letter from the Deputy to the Secretary of Interior, clarifying the Constitution must be approved, have made clear to the Chief that the ruling by the tribal court was not considered binding on the BIA.

Only a month after the Judicial Appeals Tribunal had ruled in the Lucy Allen Case that Cherokee Freedmen were full citizens entitled to vote in all Cherokee elections, the same Court ruled that the 1999 Constitution had been valid since the July 2003 Election where Cherokee Freedmen were prevented from voting.

Marilyn Vann, President of the Descendants Of Freedmen Of The Five Civilized Tribes, filed suit in Federal Court in D.C. just following the 2003 Election asking the Court to cast out that election because Freedmen had been disenfranchised. The case is awaiting adjudication. Marilyn Vann can be reached at 405-818-5360 and her attorney Jon Velie 405-821-5959. see letter on page 8.  
FOR IMMEDIATE RELEASE - Ed Crittenden - 918-456-9559

### Tribal Council passes budget The Comprehensive Budget Act for 2007 includes a \$1,000 bonus for every tribal employee.

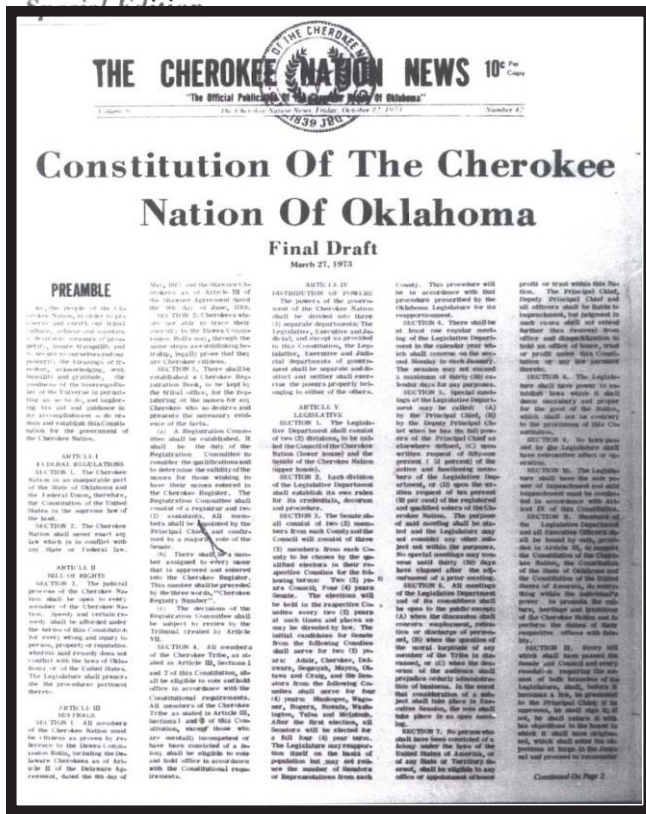
TAHLEQUAH — The Cherokee Nation Tribal Council passed the Comprehensive Fiscal Budget Act for 2007 by unanimous decision Thursday evening at the Tribal Complex. The budget featured a number of council-driven initiatives, in addition to proposals made by the administration. One such initiative was a \$2.1 million allotment for employee bonuses, above and beyond merit increases recommended by the administration. The bonus was the subject of heated debate between Principal Chief Chad Smith and District 1 Councilor Bill John Baker. At first, Baker was concerned the chief would veto the budget, but following the meeting - which concluded

in under half an hour, with very little debate - he was more optimistic. "I think he's seen the writing on the wall," said Baker, referring to Smith. "I don't feel like he'll veto the budget." According to tribal law, the chief has 10 days to veto. "The problem with a veto is we have to have the budget approved before Oct. 1," said Baker. "That means the chief would have to veto the budget tonight [Thursday], call a special meeting tomorrow, and the council would have to meet Saturday, Sept. 30."

In a recent memo Smith sent to tribal employees, he indicated the bonus

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The 1975-76 (Swimmer's) Constitution states in; Article XV, Section 10 requires that any new constitution or amendment receive the approval of the President of the United States or his authorized representative. While Section 9 helped to launch the Nation's process of political reform, Section 10 has been responsible for the Nation's difficulty in holding a referendum to approve the proposed constitution adopted by convention delegates.



The Chief and JAT in a 2-1 vote to put into effect the new 1999 Constitution does not have that Authority. The reason Chief Smith gave in an open meeting at Wichita, Kansas was the BIA was dragging their feet. So, he asked the JAT to put it into effect. The BIA dragging their feet does not give our JAT the authority to put the 1999 Constitution into effect.

One issues that is in Federal court in Washington DC right now is on the 2003 general election's where the freedmen tribal members were denied the right to vote.

Second, trying to remove the freedmen off of the roll. The freedmen are on the Dawes Final Roll of the 5 civilized tribes. They can't remove them, it is set to time indefinite. They want to remove all freedmen (even the ones that are Cherokee by blood), but not removal of the adopted whites, which have no Cherokee

blood. They keep saying it is not racial, but their actions speak louder than their words.

It appears that our current administration feels they are not accountable to anyone.

The President or BIA has that federal authority and they have not approved the 1999 constitution and the Federal Court could rule to nullify the 2003 elections and call for a new election, with all the officials that were in office before the elections back in. Then open up new elections with the freedmen getting to vote in those elections. The BIA would probably handle that election.

We, Cherokees need to be cautious in accepting what this administration is saying. Their track record is not very good. Their actions speak louder than their words. Keep an open mind and research for the truth.

### Ross O Swimmer's statements on Cherokee Constitution of 1975.

Swimmer said "So I had several people that I gathered together and we sat down and drafted a final version of the constitution and said 'this is it.' And we put it out for a vote and it got passed." Swimmer Interview (September 4, 2000).



So the 1976 version of the Cherokee Constitution was Ross O Swimmer's fabrication. So the Cherokee people complaints have been true all this time. Ross took the peoples involvement away from them, then put his own views into his version of the constitution we have been under for the last 30 years.

Swimmer said "I went ahead and took it to the Bureau of Indian Affairs, we got them to sign off on it, and in 1976 we took it to a vote and it was overwhelmingly adopted. I don't think the people had a clue as to what they were voting on."

Ed. Note: The Cherokee people were voting on the Constitution Final Draft of 1973, which was published in the Cherokee Nation News.

"The final document that was being considered as I recall would have two houses of the legislature and we would wind up electing around 100 people. And that's the part that I took out. I just said, 'look, we're not going to do that'". Interview with Ross Swimmer (September 4, 2000).

In Swimmer's view, a bicameral legislature, discussed at length in discussions leading up to the new

Constitution, would have been too "unwieldy" and not useful for the quick receipt and disbursement of federal funds: "[A bicameral legislature] would have meant about 60 or 75 people in the government of the tribe, and it was a personal privilege. I didn't like that. I thought we'd never get anything done. And so I said let's cut that out and let's just have a tribal council to act as a legislature. And we pegged the number at 15. There wasn't a lot of thought that went into that, but we decided on 15 as a good number."

more to come on Ross O Swimmer

### Cherokee chief vetoes wage hike

By S.E. RUCKMAN World Staff Writer - 9/20/2006

TAHLEQUAH — Cherokee Nation Chief Chad Smith vetoed legislation Tuesday that would have raised the minimum wage to \$8 an hour for Cherokee workers.

The measure passed the tribal council last week.



Smith said he believes that an incremental raise would better suit employees and would allow businesses to better absorb the associated costs, he said.

"First, the full effect on our businesses could be devastating," Smith wrote in his veto. "Any additional costs . . . will directly reduce the bottom line . . ."

Establishing a tribal minimum wage would affect employees of the Cherokee Nation and its related business entities, including Cherokee Nation Enterprises, Cherokee Nation Businesses and Cherokee Nation Industries, he said.

Councilors who favored the raise said employees who are paid less than \$8 an hour could use the money.

Councilor Bill John Baker, who sponsored the legislation, said some councilors will try to override Smith's veto.

"The proposal that would cost our companies the least is the one the chief is screaming about the most," Baker said.

He said Cherokee business viability is secure and that an immediate raise would pose no threat.

The veto can be overridden by a two-thirds majority, or 12 of the 17 councilors. The council's vote on the measure was 11-6.

"An override is possible, because it (the veto) affects too many of our people's lives," Baker said. "This is easy to see -- our legislative duty is to the people's well-being."

None of Smith's vetoes in his second term has been overturned.

In a press release issued Tuesday, Smith said: "This version of the law, as passed, would allow the next person who walks in off the street to make as much money as a dedicated employee who has worked here for three years. That isn't right."

Smith favors a proposal by Councilor Don Garvin that outlines a gradual raise implemented over a two-year period.

Cherokee councilors had debated both proposals at length.

Smith's veto puts the Muscogee (Creek) Nation in position to be the first American Indian tribe in the state to institute a tribal minimum wage that exceeds the federal rate, which is \$5.15 per hour.

The Creek National Council will vote on its proposal later this month. Creek Chief A.D. Ellis has indicated that he will not oppose the wage increase.

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### Cherokee Constitution in doubt

By Donna Hales - Phoenix Staff Writer - Published September 07, 2006

The Cherokee Nation's Constitution as amended by the people in May 2003 may be in question, according to the office of the Secretary of the Interior.

"The Cherokee Nation's constitution requires Secretarial approval of amendments, and neither the Secretary nor any authorized representative of the Secretary has approved the amendment," Cherokee Chief Chad Smith was told in an Aug. 30 letter.

Associate Deputy Secretary of the Interior James E. Cason notified Smith of two possible problems with the constitution.

The Cherokee Judicial Appeals Tribunal, the tribe's highest court, ruled in a 2-to-1 vote in June that the 1999 Constitution of the Cherokee Nation, voted on by the people in May 2003, is in effect.

"I read the Tribunal's decision with interest," Cason wrote.

Cason noted the former head of the Bureau of Indian Affairs, Neil McCaleb, had stated that he intended to approve the constitutional amendment while in office. But McCaleb's stated intention "is not an adequate substitute for the necessary action of actual approval," Cason wrote Smith.

"As an elected tribal official, I am sure that you can appreciate the difficulties created when a former official attempts to bind his successor by stating what he had intended to do when he was in office."

Smith issued a statement Wednesday that the Cherokees have a sovereign right to decide their constitution — that the tribe's highest court and a vote of the people made the decision on the constitution — "and it is no one else's decision to make."

Cason wrote that if the Cherokee Nation wants the Secretary's approval of the proposed constitutional amendment, it should resubmit its request for approval. Smith countered that is not a demand or even a request that the amendment be resubmitted for approval. Smith said it is only "if" the Nation wants the Secretary's approval.

"Since we do not need it (federal government approval), we will not request it..." Smith said.

Cason wrote that it would be helpful if the Nation would address the effect of a March 7, 2006, decision of the Tribunal in the Lucy Allen v. Cherokee Nation Tribal Council case. That decision suggests that not all persons entitled to membership in the Nation were considered eligible to vote in the 2003 election — which purported to adopt the constitutional amendments, Cason said.

The Cherokee Freedmen were not allowed to vote in the 2003 elections, confirmed David Cornsilk, a Cherokee lay advocate who represented the Freedmen in that case.

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