

To: Members Cherokee nation Tribal Council Rules Committee

From : Marilyn Vann
President – Descendants of freedmen
Cherokee Citizen

Date: April 26, 2006

Esteemed Members of the Cherokee Nation Rules Committee:

I come before you humbly to request that the council not take part in any proposed legislation to support a constitutional amendment which would take away the citizenship rights of the Cherokee Freedmen tribal members. I in no way say that the council does not have the right to pass such a proposal or to place any amendment it so desires on the ballot, but I ask you is this the best thing for the Cherokee people as a whole? It is true that the people of any sovereign nation have the right to determine the citizenship as a vote of the people but the people being affected should be able to have a true voice in that matter, and this will not be the case if a special election is held in November 2006 or even if this is placed on the ballot in May 2007 by action of the tribal council because registration for tribal membership is taking approximately 7 months, according to the registrars office. Even those Freedmen citizens who received tribal membership and voting cards during the 1970s have been required to submit new applications.

I ask why is this matter of such urgency for the intervention of the council? Is not an election to be held in the first half of 2007? I have spoken to several people and they were unable to recall a special election in the history of the Cherokee nation government since 1976. The Tribal council spent more than 1 year deciding on how to rewrite the election law, holding community meetings and getting citizenship input – I myself went to 2 of them - 1 in councilman Garvins District and 1 in Councilwoman Frailey and Councilman Keeners district before any vote was taken by the council. Is not the matter of the rights of citizenship of equal consideration which should be discussed by the council at length before approving such measures? I can say for a fact, that no community meeting was held in my home district regarding this issue. Also, I must point out that issues regarding the rights of citizenship have been brought up by others of adopted classes – for example, former Delaware Chief Ketchum raised the issue of whether the Delaware peoples have Cherokee citizenship in the 2001 Spring Cherokee Phoenix newspaper. However neither Chief Smith nor the tribal council proposed a constitutional amendment to bring the citizenship rights of the Delaware before the Cherokee people to decide. Indeed, in the Summer 2001 Cherokee Phoenix newspaper, Chief Smith emphasized the Delaware peoples Cherokee citizenship was based on treaty and cited the Supreme Court case *Cherokee nation Vs Journeycake* ((155, US 196 (1894) as also affirming rights of the Delaware people to Cherokee citizenship. A petition went around the Cherokee nation last year regarding the rights of people outside of the 14 counties to receive absentee ballots. The council did not involve themselves so far as a proposed amendment – much less propose a special election and instead decided to wait to for an initiative petition to be passed. It would seem to me that the most fair thing for all citizens is that the council not be involved in this matter but to allow the Cherokee citizens themselves to determine the will of the people through an initiative petition if they feel so strongly on this matter regarding the freedmen peoples citizenship rights..

Some of you on the council may think that you may be criticized if you do not support this measure of a special election on the membership rights of the freedmen citizens. However, Not supporting this measure through action of the tribal council does not mean that you oppose the people voting on this matter if the people feel that it is important enough to put on the ballot through their efforts as an initiative petition.

Perhaps there are Cherokee citizens who really do believe that the freedmen do not have Cherokee blood ancestors, that freedmen received their allotments as slave reparations, or that the freedmen people have done nothing for the tribe in 100 years. However, if this proposed amendment is voted on to be placed on the ballot

for November or even May by the council, the freedmen people will not have enough time to have the opportunity to have dialogue with these members of the community who wrongly believe this way or who believe that the judges should have voted the way some people, not being familiar with the law, thought the law read rather than what the law –does read regarding who has citizenship rights in the Cherokee nation.

I must also point out another thing. In almost every instance, when votes have been taken by the people of a nation or by that nations legislative body regarding citizenship, those votes have been taken regarding granting citizenship to people who have not exercised the rights of citizenship and not to revisit the rights of people who have had tribal membership rights for many many years. . For example, people of Chinese and Japanese descent who were not native born were only allowed to become US citizens about 1950 by act of Congress. Or, certain Indian nations have granted citizenship to additional people by lowering their constitutional blood quantum. I can think of very few nations which voted to take away the rights of people who had been citizens for many generations – one being Nazi Germany and another being for example the Pechanga Indian nation of California –a gaming tribe giving out large per capita payments.

There may be some individuals who believe that removing the freedmen from the tribe would return the tribe back to the “historic tribe”. This term of returning to the “historic tribe” was used in a letter by Chief Smith to the Department of the Interior in 2003. However, a study of history does not show that this will happen with this proposed constitutional amendment. A study of Cherokee history shows the Cherokee people never stripped citizenship from people already holding it. AS you know, in the historic tribe, almost every person had citizenship due to having a Cherokee mother. The 1827 Constitution began to allow those people with Cherokee fathers and white mothers to have citizenship without going before the tribal leaders to request citizenship for their children. It did not extend citizenship rights to those individuals whose fathers were Cherokee citizens with wives who were free women of African blood. But that 1827 constitution did not take away the citizenship rights of those individuals who had citizenship rights through their Cherokee mothers whose fathers were free men of African blood or those individuals of African blood who already had citizenship rights through adoption and approval of tribal officials. Neither did the 1839 constitution take away the citizenship rights of any person of African blood who already had citizenship in the tribe. A look at the 1835 Henderson roll shows that there were some individuals with mixed African Cherokee blood who had tribal citizenship. There was less than a 40 year period when people with mothers of African blood generally had no citizenship rights as opposed to people whose mothers were of Caucasian blood. Should we look at that short less than 40 year period as the “historic Cherokee nation”? Historically, Individuals did lose their citizenship when they left the Cherokee nation boundaries to live – however, this was the same regardless of the category of citizen – whether a colored citizen, native Colored, native Cherokee, or adopted Delaware, Creek or Shawnee. People moving for example to Colorado lost their citizenship on an individual basis – not on a “group” basis. Also in the historic tribe, women did not serve on the tribal council or as Chiefs of the Cherokee nation. Will then, the removal of the freedmen from citizenship return the tribe to the historic tribe – One where women did not hold office and almost every Cherokee was a citizen due to his matrilineal line of ancestry and citizenship was lost by those individuals who moved outside the tribal area boundaries to live? Perhaps there may be some people who believe that the Cherokee nation should be an “Indian nation” regardless of the promises made to the freedmen peoples ancestors in the 1866 treaty. Ratified July 27, 1866; proclaimed Aug. 11, 1866), 14 Stat. L. 799. I must point out that the same Supreme Court case *Journeycake* case cited by Chief Smith discussed above also upheld the citizenship rights of the Cherokee Freedmen people as well as the Shawnee people. I must also point out that in the case: *Cherokee Nation Vs. Babbit*: 117 F.3d 1489 DC, the Cherokee nation within the last 10 years cited the treaty of 1866 as part of the basis for the Delaware peoples continuing Cherokee citizenship – thus confirming that the Cherokee nation position is that this 1866 treaty is still in effect. Has the council satisfied itself as to how many of the freedmen are descendants of Cherokee Indians – based on Dawes Roll testimony, Guion Miller Roll Testimony, 1880 Cherokee authenticated census, etc.? I must remind the tribal council that Mrs. Bernice Riggs who sued the registrar in tribal court for Cherokee citizenship was found by the JAT to have Cherokee blood in their 2001 ruling. However, if this proposed constitutional amendment is passed through the support of the council, even those people whom the tribal courts have found to have Cherokee blood will lose their citizenship too although other people who were listed on the Dawes roll separately – i.e. Delaware people

will not have to establish Cherokee blood. Books by historians such as Kent Carter – an employee of the FT Worth National Archives and author of the “Dawes Commission” will confirm that almost all people of mixed African Cherokee blood were enrolled as “freedmen” by the Dawes Commission. This book also clarifies to all that based on Acts of Congress all citizens received a share of the tribal property of the Cherokee nation and that no citizen received “reparations”, and that the Commission greatly preferred to enroll citizens as freedmen tribal members to increase the number of people who had unrestricted land allotments which could more easily be acquired by white settlers.

I ask that the council to carefully consider the reputation of the tribe. The Cherokee nation has asked that Congress and the federal courts keep their word many times. Lawsuits have been filed because Congress did not keep its word over the fulfillment of contracts and treaties. Can Congress and the American people be asked to keep their word to the Cherokee people if the leaders of the Cherokee nation do not keep their word to the Freedmen citizens? People who came over the trail of Tears with everyone else? I ask, would any member of the council believe that it would be right and fair for Caucasian leaders to immediately put the citizenship rights or voting rights of Indian people on a ballot – particularly right after the Indian people received the right to vote or had their voting rights restored to them? I must remind the council that in many states, laws which restricted the rights of Indian people to vote or judges rulings favoring the restrictions of Indian peoples voting rights were based on misinformation and stereotypes of Indian people. (See *Allen Versus Merrell* – Supreme Court of Utah 1956 – 6 Utah 2d 32 305 P 2d 490) . Should the freedmen people lose their rights based on stereotypes and misinformation also?

The freedmen people of the Cherokee nation have only asked to be treated the same way as the other classes of adopted citizens of the Cherokee nation – the Delaware and the Shawnee who received their citizenship rights by treaty. For those who believe that Cherokee Freedmen should be barred from tribal membership based on a lack of “participation” in tribal affairs, is it not a matter of public record that only about 13,000 out of 230,000 tribal members voted in the last election in 2003? Are there not many people who do not “participate” in the affairs of the tribe? Yet no one is demanding that their membership rights be taken away from them. Freedmen citizens such as reverend Roger Nero, Mr Curtis Vann, Mrs Evelyn Ross, and Mrs Berniece Riggs voted until they were unable to do so after 1983. (I must also point out that Mrs Ross husband is a descendant of Stick Ross – a freedmen councilman who served in the 1890s in the Tahlequah district and who has a plaque with his name on it outside the council house door). Have not the freedmen people taught in tribal schools, worked in I HS facilities, and assisted in putting up community buildings within the last 100 years? Been members of the Cherokee historical society and Nancy Ward Society? Are not the freedmen people entitled to due process? The same due process that Chief Smith , Deputy Chief Joe Grayson, and others asked for in 1992 pertaining to an election at the United Keetowah band when these individuals sought and received intervention from the Department of the Interior when rules regarding the requirements to hold office in the band were changed by the tribal council just before an election (22 IBIA 075)?

The council can legally of course pass any proposed constitutional amendment that it chooses to do so. However if this is passed it will look to the freedmen people as well as to many of the other citizens of the tribe that the reason for this proposed special election this year and council intervention is to keep the freedmen people from voting in the 2007 elections – and a fear that the freedmen people may not support one or more current office holders if they vote in 2007 - and that the proposed amendment requiring the tribal council to pre-approve cases going to the tribal court is to keep the freedmen citizens from challenging any aspect of this constitutional election to remove their citizenship rights in the tribal court. We conclude by humbly asking the council to not pass these proposed amendments regarding the citizenship of the freedmen people or to limit the ability of citizens to seek justice in the tribal courts.

Marilyn Vann

Cherokee Citizen

Descendant of Dawes enrolled Freedmen Citizens

Descendant of Cherokee Citizens by blood listed on the 1835 Henderson Roll and 1852 Drennan Roll