

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

MARILYN VANN, RONALD MOON,)
HATTIE CULLERS, CHARLENE WHITE,)
And RALPH THREAT,)

Plaintiffs,)

v.)

GALE A. NORTON, Secretary of the United)
States Department of the Interior; UNITED)
STATES DEPARTMENT OF THE)
INTERIOR,)

CHEROKEE NATION OF OKLAHOMA)

CHADWICKE SMITH, Individually and in)
His Official Capacity)

John Does, Individually and in their official)
capacity)

Defendants,)

Case No.: 1:03cv01711 (HHK)

Judge: Henry H. Kennedy

**Docket Type: Civil Rights
(non-employment)**

Date Stamp: 08/11/03

PLAINTIFFS NOTICE OF ADDITIONAL AUTHORITY

Plaintiffs, MARILYN VANN, RONALD MOON, DONALD MOON, HATTIE CULLERS, CHARLENE WHITE and RALPH THREAT, citizens of the Cherokee Nation of Oklahoma, as the direct descendants of individuals enrolled on Dawes Commission Rolls of the Cherokee Tribe, under the inclusive Freedmen category of the Dawes Commission Rolls (hereinafter referred to as “Freedmen”), by and through their undersigned counsel, submit this Notice of Additional Authority.

Plaintiffs seek to submit and bring to the Court’s attention two recent develops that bear on the current suit. The first is a letter issued by the Department of Interior to the Cherokee Nation of Oklahoma. The second is an election scheduled by the Cherokee Nation of Oklahoma to remove the Freedmen from the Cherokee Nation.

The Defendant Secretary of Interior, through its Associate Deputy James E. Cason responded to the Defendant Chad Smith as the Principal Chief of the Defendant Cherokee Nation of Oklahoma regarding the Cherokee request to withdraw its 1999 from consideration for approval by the Department of Interior. A copy of the decision is attached as Exhibit 1.

The decision makes a number of determinations.

1. “That 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.”
2. That on June 9, 2006, the Cherokee Nation withdrew its request for approval of the Cherokee Nation’s Constitutional Amendment.
3. If the Cherokee Nation resubmits the constitutional amendment, the Nation must address the effect of a Cherokee Judicial Appeals case declaring that the voting requirements which prohibit the Cherokee Freedmen from voting are more restrictive than the Cherokee Constitution and therefore unconstitutional. The decision states, that “The *Allen* decision suggests that not all persons who were entitled to membership in the Nation were considered eligible to vote in the 2003 elections, which purported to adopt the constitutional amendments.

The decision by the Defendant Secretary of Interior clearly reflects its position that the election to amend the Cherokee constitution was improper because the Cherokee Freedmen were not entitled to vote because the Cherokee’s voting regulations were unconstitutional. Further, the Defendant Cherokee Nation is bound under the 1971 Principal Chiefs Act to submit its voting regulations to the Defendant Secretary of Interior.

The Cherokee Nation's failure to submit the voting regulations that precluded the Cherokee Freedmen from voting for the Principal Chief and to amend the Cherokee Constitution indicates that the Cherokee Nation elections of 2003 can not be recognized by the Secretary of Interior. Therefore, the United States can not recognize the government of the Cherokee Nation of Oklahoma until such time that a lawful election is held.

Despite the decision from the Department of Interior, the Cherokee Nation of Oklahoma has scheduled an election for February 10, 2007. The purpose of the election is to remove the Freedmen from the Cherokee Nation of Oklahoma. Copies of news releases from the Cherokee Nation website, the Daily Oklahoman and Tulsa World are attached as Exhibit 2.

The D.C. District Court has ruled on this exact issue involving the Seminole Nation's attempt to remove the Freedmen from the Seminole Tribe. *See Seminole Nation of Oklahoma v. Norton*, 223 F.Supp.2d 122 (D.D.C.,2002) (*Seminole II*); *Seminole Nation of Oklahoma v. Norton*, 206 F.R.D. 1 (D.D.C.,2001) (*Seminole I*). The Court upheld a Bureau of Indian Affairs' determination that amendments to the Seminole Constitution had to be approved by the BIA. Further, the Court acknowledged that the Treaty of 1866 and the Seminole Constitution protected the Freedmen's right to membership in the Seminole Nation.

Plaintiffs respectfully request that the Court incorporate the new evidence as part of the record for the purposes of Plaintiffs' pending motion for leave to amend the complaint.

Dated: October 11, 2006

Respectfully Submitted,

Alvin Dunn (D.C. Bar No. 423229)
Thomas G. Allen (D.C. Bar No. 484425)

PILLSBURY WINTHROP SHAW
PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037
Phone: (202) 663-8000
Facsimile: (202) 663-8007

Jonathan T. Velie
VELIE & VELIE
210 East Main Street, Ste 222
Norman, OK 73069
Phone: (405) 364-2525
Facsimile: (405) 364-2587

Attorneys for Plaintiffs, Marilyn Vann, *et al.*