

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

MARILYN VANN, RONALD MOON, )  
HATTIE CULLERS, CHARLENE WHITE, )  
and RALPH THREAT, )  
) )  
Plaintiffs, )  
) )  
v. )  
) )  
DIRK KEMPTHORNE,<sup>1</sup> )  
Secretary of the United States )  
Department of the Interior, )  
UNITED STATES DEPARTMENT OF THE )  
INTERIOR, )  
) )  
Defendants. )  
\_\_\_\_\_ )

Case No. 1:03CV01711 (HHK)  
Judge: Henry H. Kennedy  
Deck Type: Civil Rights  
(non-employment)  
Date Stamp: 08/11/03

**DECLARATION OF CARL J. ARTMAN  
ASSISTANT SECRETARY - INDIAN AFFAIRS**

I, Carl J. Artman, declare:

1. I am the Assistant Secretary - Indian Affairs, Office of the Secretary, U.S. Department of the Interior.
2. As the Assistant Secretary - Indian Affairs, I am the senior official within the Department primarily responsible for Advising the Secretary of the Interior on matters relating to Indian affairs.
3. I have held my position as Assistant Secretary since March 5, 2007.
4. Prior to serving as Assistant Secretary, I served as Associate Solicitor for the Division of

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<sup>1</sup>The plaintiffs filed this case against Gale A. Norton, in her official capacity as the Secretary of the Interior. She resigned her position and Dirk Kempthorne assumed the position of Secretary. Under Fed.R.Civ.P. 25, Secretary Kempthorne is automatically substituted for Secretary Norton as defendant.

Indian Affairs within the Office of the Solicitor for the Department of the Interior.

5. As the Associate Solicitor, I was the senior legal counsel within the Office of the Solicitor primarily responsible for providing the Solicitor, the Deputy Secretary and the Secretary with legal counsel on Indian matters.
6. As a result of my service as Associate Solicitor and now as Assistant Secretary, I am aware of the Department's positions with regard to the recent actions purporting to amend the Constitution of the Cherokee Nation of Oklahoma.
7. The Department's position is:
  - a. Article XV, Section 10, of the Cherokee Nation's Constitution, approved in 1975 and ratified by the qualified voters on June 26, 1976, provides:

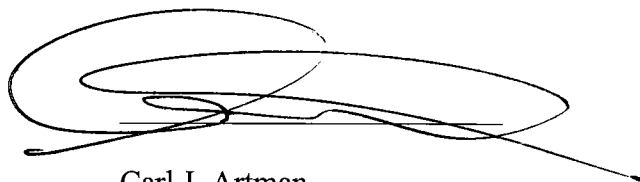
“No amendment or new Constitution shall become effective without the approval of the President of the United States or his authorized representative.”
  - b. In May 2003, the Cherokee Nation held an election that included the question of whether to remove from the face of the Cherokee Constitution the requirement for Presidential or Secretarial approval of future amendments.
  - c. Former Assistant Secretary - Indian Affairs Neal McCaleb indicated in correspondence to the Principal Chief of the Cherokee Nation prior to the election that he intended to approve the amendment.
  - d. The majority of Cherokee voters favored removing the requirement for Presidential or Secretarial approval of future amendments.
  - e. The Department disapproved the 2003 amendment on May 21, 2007, as evidenced

- by the attached letter. (Attachment A).
- f. Subsequent to the May 2003 election, the Cherokee membership purported to adopt an amendment of the 1976 Constitution, which is referred to as the “1999 Constitution.”
  - g. The adoption of the “1999 Constitution” has not been approved by the Department in accordance with Section 10 of Article XV of the 1976 Cherokee Constitution.
  - h. The Department considers the 1976 Constitution to be the governing document of the Cherokee Nation for the Department’s purposes.
  - i. The 1976 Constitution provides: “All members of the Cherokee Nation must be citizens as proven by reference to the Dawes Commission Rolls.” The Cherokee Judicial Appeals Tribunal interpreted this provision to include the Freedmen roll and concluded that the Freedmen are members of the Tribe. *Allen v. Cherokee Nation Tribal Council*, (JAT-04-09, March 7, 2006).
  - j. The March 2007 amendment to the “1999 Constitution,” which requires proof of Indian ancestry for membership effectively precluding Freedmen members from continuing their status as members, is an amendment of a Constitution that the Department does not recognize as the governing document of the Cherokee Nation.
  - k. The Department considers Secretarial approval of any constitutional amendment or new Constitution to be necessary before such amendment or new Constitution can be effective.

1. In consultation with the Regional Director, Eastern Oklahoma Region of the Bureau of Indian Affairs, I reviewed the procedures for selecting the Principal Chief of the Cherokee Nation as required by the Principal Chiefs Act of 1970 (84 Stat. 1091) and approved the procedures on behalf of the Department.  
  
(Attachment B).

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 25 day of May 2007.

A handwritten signature in black ink, appearing to read 'Carl J. Artman', with a large, sweeping flourish extending to the right.

Carl J. Artman  
Assistant Secretary - Indian Affairs  
Department of the Interior



OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240



MAY 21 2007

The Honorable Chad Smith  
Principal Chief, Cherokee Nation  
P.O. Box 948  
Tahlequah, Oklahoma 74465-0948

Dear Chief Smith:

The Department of the Interior considered approval of the May 2003 amendment to the 1976 Cherokee constitution that would remove from the constitution the requirement that the Secretary approve all constitutional amendments for them to be effective. After thorough analysis, the Department hereby disapproves the 2003 amendment. The Secretary must, therefore, still approve constitutional amendments before they become effective.

I do not make the decision to disapprove the 2003 amendment lightly. I recognize the Cherokee Nation as a sovereign nation capable of managing its government without oversight of the Federal government. I also recognize that the United States 1866 treaty with the Cherokee Nation was somewhat unusual in its requirement that the Cherokee Nation recognize the rights of individual Freedmen in exchange for amnesty and the continuation of the government-to-government relationship between the United States and the Nation.

I am concerned that approval by the Department of the 2003 amendment at this time would be used by some as a validation or evidence of legitimacy of the Cherokee Nation's removal of its Freedmen members from the tribe in apparent violation of the 1866 treaty. Therefore, I cannot approve the 2003 amendment knowing it may provide the basis for violating the terms and intent of the 1866 treaty.

In its December 16, 2006, decision, the district court in the *Vann* litigation stated that the Department's failure to act on the 2003 amendment was final agency action for purposes of establishing the court's jurisdiction to hear the case. Nothing in the Cherokee Constitution or the Department's regulations imposes a time limit on the Department's responsibility to approve or disapprove amendments to the Constitution. The court's conclusion that the Department's failure to act until now constituted final agency action does not preclude me from making a decision now on whether to approve or disapprove the 2003 amendment.

In closing, I want to assure you that I have the utmost respect for the Cherokee Nation and its powers and right of self-government. As the Federal government works to honor and implement the 1866 treaty, we trust the Cherokee Nation will also honor the treaty that it entered into in the exercise of its powers of self-government.

Sincerely,

Carl J. Artman  
Assistant Secretary – Indian Affairs

**Declaration of Carl J. Artman  
Attachment A**



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

**MAY 25 2007**

Memorandum

To: Jeanette Hanna  
Regional Director, Eastern Oklahoma Region  
Bureau of Indian Affairs

From: Carl J. Artman  
Assistant Secretary - Indian Affairs

Subject: Approval of Procedures for Selecting the Principal Chief of the Cherokee Nation

After consulting with you and attorneys in the Solicitor's Office, I approve the procedures for selecting the Principal Chief of the Cherokee Nation that the Nation has provided us.

Please advise the appropriate tribal officials of my approval.

**Declaration of Carl J. Artman  
Attachment B**