

Office of the Governor
Darrell Flyingman, Governor

November 29, 2007

Chad Smith
Chief of the Cherokee Nation
P.O. Box 948
Tahlequah, OK 74465



Re: Termination Bill H.R. 2824

Dear Chief Smith:

I am writing this letter in support of the Cherokee Nation's recent constitutional amendment to limit citizenship to those who descend from Indians listed on the U.S. census of 1906 known as the Dawes Roll. Tribes have been acknowledged to retain all powers not specifically limited by Congress. These inherent powers of self-government include the power to define conditions of tribal membership. Bills such as H.R. 2824 which was introduced on June 21, 2007 by Congresswoman Diane Watson proposing "to sever the United States' government relations with the Cherokee Nation" because of their constitutional amendment to limit citizenship to those who descend from Indians listed on the Dawes Roll not only affects the Cherokee Nation, but places all tribes imposing membership requirements in jeopardy. Nearly all tribes have defined criteria for membership, including blood quantum requirements, to establish Indian ancestry and the efforts taken by Congress to apply prohibitions on tribal membership would substantially interfere with a tribe's ability to maintain itself as a culturally and politically distinct entity. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

The most disconcerting aspect of H.R. 2824, is that it does not recognize the actions taken by the Cherokee Nation to follow the guidelines suggested by the Department of the Interior ("DOI") and the Bureau of Indian Affairs ("BIA"). The DOI and BIA have continually taken the position that Tribes should limit membership to persons who reasonably can be expected to participate in Tribal relations and affairs, such as those cited on a specific base roll. The DOI and BIA have also suggested that tribes strengthen membership admission to lineal descendants by degree of Indian blood in addition to the use of a base roll for enrollment, to prevent reduction of tribal membership to a "racial" category rather than a bilateral political relationship. Tribes are in the best position to determine what is best for their people and many of them have made decisions to follow the guidelines set forth by the DOI and the BIA. Passage of this Bill will not only punish the Cherokee Nation but will also result in a devastating blow to the self-governance of all Tribes who have adopted the suggestions promulgated by the DOI and the BIA, and as such will undermine confidence in these agencies.


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This issue is currently being litigated in the Cherokee tribal court and a federal trial and appeals court in Washington, D.C. I believe that Tribal courts, not Congress should decide the matter of non-Indian Freedman citizenship due to its inextricable link to the relegation of internal affairs within the Cherokee Nation. Tribal courts have repeatedly been recognized as appropriate forums for the adjudication of disputes affecting important personal interests of both Indians and non-Indians, including tribal membership. *Fisher v. District Court*, 424 U.S. 382 (1976), *Williams v. Lee*, 358 U.S. 217 (1959), *Ex parte Crow Dog*, 109 U.S. 556 (1883). Tribal governments must retain the ability to reach a resolution of this dispute, otherwise, their ability to maintain authority will be undermined.

Congressional legislation such as the H.R. 2824 proposal is an unnecessary response to a legal question of treaty interpretation which will only undermine tribal affairs and result in a loss of Federal funds which are used to support programs for Tribal children, elderly and other needy citizens.

Sincerely,


Darrell Flyingman, Governor
Cheyenne and Arapaho Tribes