



Pawnee Nation of Oklahoma

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April 25, 2008

Dear Elected Official,

A provision is before Congress, found in H.R. 2786, H.R. 2895, H.R. 2824, and H.R. 3002, that cuts off federal funding for the Cherokee Nation in retribution for the Cherokee Nation's expulsion of Freedman from tribal citizenship. This action is contrary to 100 years of practice and sound public policy as it places a legal dispute before the legislative branch. And worse, no hearing has been held to even allow Cherokee Nation to air its side of the argument.

Historically, one practice has been for parties to bring a negotiated settlement for Congress to ratify. This happened when the Chilocco Indian School was closed and transferred to six tribes in accord with a previously negotiated agreement. See the Act of May 1, 1986, Pub. L. 99-283, 100 Stat. 404, and 52 FR 26747, July 16, 1987. When the Cherokee and Shawnees wanted to separate, they brought a negotiated settlement that was enacted as the Shawnee Tribe Status Act of 2000, @ Pub. L. 106-568, title VII, Sec. 702, Dec. 27, 2000, 114 Stat. 2913, 25 U.S.C. ' 1041.

But in situations such as the Cherokee Freedman dispute, where the parties cannot negotiate a settlement, Congress has referred the case to courts or deferred to a pending court case. When the Cherokee, Choctaw, and Chickasaw Nations could not agree on the interpretation of the treaty setting the boundaries of the Arkansas riverbed, Congress referred the dispute to federal court. PL 93-195 (HR 5089) December 20, 1973.

When the Delaware/Cherokee, or Delaware Tribe of Indians, attempted to separate from Cherokee Nation in 1996, Cherokee Nation sued the Secretary of Interior and later added the Delaware/Cherokee. Congress could have stepped in and simply recognized the Delaware/Cherokee as an independent tribe. The Tenth Circuit Court of Appeals resolved the case in 2005, *Cherokee Nation v. Norton*, 389 F.3d 1074, the Supreme Court denied certiorari, 126 S.Ct. 333, and Congress was not burdened with this dispute.

When a Cherokee Nation per capita payment was to be made in the late 1880's, disputes arose about entitlement to the payment pursuant to the 1866 treaty. On October 1, 1890, Congress passed an act to Refer to the Court of Claims Certain Claims of the Shawnee and Delaware Indians and the Freedmen of the Cherokee Nation, and for Other Purposes. 26 Stat. 636. Soon thereafter disputes arose about allotment of land and Congress again deferred to the courts in An Act for the Protection of the People of the Indian Territory and for Other Purposes. @ June 28, 1898, c. 517, ' 25, 30 Stat. 495. Having researched federal Indian law we have found no instance where Congress has made a determination of the relative rights of Indians without as much as a hearing. And in fact the practice has been to utilize the thorough fact finding and legal analysis powers of the federal courts. The above cited proposal bypasses this time honored process and should be rejected in favor of allowing the court case to reach conclusion before Congress takes action. If Congress were equipped to give due process dispute resolution then we wouldn't need courts.

Many tribes, including Pawnee Nation, have currently pending trust fund cases, such as *Nez Perce v. Kempthorne*, Case No. 06cv02239-JR (D.DC). We would strongly oppose Congress cutting off our funding in order to force us to accept a settlement. Such strong arm tactics are not characteristic of the type of relationship that tribes, states, and the federal government have today.

Pawnee Nation expresses no opinion as to the merits of the Freedman claims in *Vann v. Kempthorne*, Civil Action 03-01711 (HHK) (D.DC), as we await the conclusion of the court case. We note that Sec. 2 (b) of

H.R. 2786 stays the effect of the act until the court case is resolved in favor of the Cherokee Nation. However, this provision unfairly influences the court case and the parties' settlement positions. When the court case has concluded Congress can take a better informed action, if any action is needed at all.

This provision also spreads dissension and uncertainty among other tribes by making us worry about whether NAHASDA and other legislation will be passed or tied up in this unproductive dispute. We should not be forced to choose between getting important legislation passed and acquiescing to an unfair provision that then could be used against us someday. Please support the several pending Indian country re-authorization and appropriations bills but vote to remove the unfair Cherokee Nation provisions.

Sincerely,



*George E. Howell, President
Pawnee Business Council*