



Choctaw Nation of Oklahoma

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Gary Batton
Chief

Jack Austin, Jr.
Assistant Chief

June 25, 2020

Honorable Nancy Pelosi, Speaker
U.S. House of Representatives
Washington, D.C. 20515

Dear Madam Speaker:

On behalf of the Choctaw Nation of Oklahoma, I write to ask you to exercise your leadership to oppose recent efforts by the Chairwoman of the Committee on Financial Services, the Honorable Maxine Waters, to insert – in house-related bills being shaped by the House in the aftermath of the killing of George Floyd – a provision requiring the Choctaw Nation to pay the price of resolving the federal government’s Freedman issue.

The Freedman issue is a problem caused by the United States, not the Choctaw Nation. Congress should not be permitted to abuse its power by forcing the Choctaw Nation to fix America’s longstanding problems of systemic racism rooted in America’s enslavement of African Americans.

Just as African Americans today struggle to survive and thrive after generations of slavery dispossessed them of the fruits of the labor stolen from their ancestors, so too the Choctaw Nation today struggles to survive and thrive after repeated and massive American thefts of Choctaw land dispossessed the Choctaw Nation of the fruits of the natural resources stolen from the Choctaw Nation. Today, it should shock the American conscience that Chairwoman Waters is asking Congress to force the Choctaw Nation to bear the heavy burden of repairing America’s breach with African Americans. America should solve its own problems.

Choctaw Nation representatives have tried without success to dissuade Chairwoman Waters to abandon her proposed bill language. We oppose it because it purports to over-ride the federally approved Constitution of the Choctaw Nation, subjugate the sovereignty, self-governance and self-determination of the Choctaw Nation to the control of the federal government, and by-pass tribal and federal judicial procedures.

There is no more fundamental element of tribal self-governance than the authority of a Tribe like the Choctaw Nation to determine our own citizenship. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55, 72 (1978); *See also Rice v. Cayetano*, 528 U.S. 495, 527 (2010) (Breyer, J. concurring) (“a Native American tribe has broad authority to define its membership”); *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 533 U.S. 316, 327 (2001) (Souter, J. concurring) (“as part of their residual sovereignty, tribes retain power to... determine tribal membership”); *Nevada v.*

Hicks, 554 U.S. 316, 327 (2008) (“Indian tribes retain their inherent power to determine tribal membership”).

Our Choctaw Constitution, adopted by the Choctaw citizens and subsequently approved by the United States government in 1983, requires every applicant for tribal citizenship to show direct lineal descendancy to a Choctaw citizen of Choctaw blood on the 1906 Choctaw citizen roll. The Choctaw Nation could not comply with Chairwoman Waters’ bill language without violating the Choctaw Constitution.

The history of relations between the United States and the Choctaw Nation endured many twists and turns from the early 19th century through the mid-20th century. Many of the dozens upon dozens of treaties and agreements and policies over this 150-year period reflected contradictory positions and confiscatory conduct. Since the 1970s, however, these relations have regularized into a self-determination and self-governance era of mutually respectful, government-to-government relations. The Choctaw Nation’s 1983 Constitution, adopted and federally approved in compliance with federal court supervision, reflects this new era.

It is untenable for Chairwoman Waters to ask the 116th Congress to reach back into indefensible and conflictive periods of history and impose just one portion of a treaty imposed upon the Choctaw Nation in 1866 without regard to the meandering mass of countervailing treaties, law and policy that followed the 1866 treaty. Likewise, it would be both unseemly and unfair for Congress to take the extreme step of holding hostage housing assistance otherwise due the Choctaw Nation in 2020 until the Choctaw Nation complies with a provision of the 1866 Treaty, especially since the United States itself has wholly breached its obligations under many other provisions of the same 1866 Treaty.

The heavy-handed penalty in Chairwoman Waters’ bill language – withholding federal housing assistance funds for under-privileged Choctaw families – is without precedent. The Choctaw Nation is not aware of any other instance in recent decades where Congress has held federal appropriations hostage, as Chairwoman Waters proposes to do, in an effort to force a sovereign Indian Tribal Government to violate or alter its own Constitution. It would be far more prudent and appropriate for Congress to defer to the courts to resolve such disputes and claims regarding Indian treaty interpretation and legal rights.

Madam Speaker, the Choctaw Nation appreciates the leadership you have shown in support of tribal self-determination and self-sufficiency over the years. Now, at this critical time in American history, the Choctaw Nation asks that you not permit the House to adopt any legislative provision that would so fundamentally destroy the self-determination authority of the Choctaw Nation.

We support your efforts, and those of Chairwoman Waters and many others, to shape real and meaningful ways to address the systemic racism that continues to consign African Americans to economic under-privilege and discrimination long after the Emancipation Proclamation. The responsibility to address systematic racism in America should be borne by all Americans, not just the Choctaw Nation. And while Congress looks at how America might repair the theft of the value

Letter to the Honorable Nancy Pelosi, Speaker

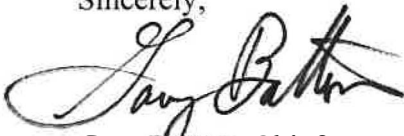
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of the labor of enslaved African Americans, we ask that Congress give equivalent consideration to how American might repair the theft of land and resources stolen from Indian tribes like the Choctaw Nation.

The Choctaw Nation understands more than many Americans what it is like to live today with the trauma and legacy of historical theft of freedom, labor and property. For that reason, I am interested in joining a conversation about how the Choctaw Nation can, together with you and Chairwoman Waters, find ways that the federal government might make appropriate amends and grant appropriate measures of redress to African Americans as well as Native Americans. Having the Secretary of Housing and Urban Development hold back our housing funds until he interprets one of our treaties and our compliance with it, as proposed by Chairwoman Waters, is a non-starter.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Batton". The signature is fluid and cursive, with a large initial "G" and "B".

Gary Batton, Chief
Choctaw Nation of Oklahoma

Attachment: Draft language distributed by Chairwoman Waters on June 9, 2020

cc: Hon. Maxine Waters, Chairwoman, Committee on Financial Services
Hon. Ben Ray Lujan, Assistant Speaker
Hon. Denny Heck, Member, Committee on Financial Services

Draft language sought by Representative Maxine Waters, Chairwoman, House Committee on Financial Services, distributed by Committee staff on June 9, 2020 and OPPOSED BY THE CHOCTAW NATION OF OKLAHOMA:

“The Secretary of Housing and Urban Development shall withhold all or partial funds to a tribe or tribal entity under this Act if, after consultation with the Secretary of the Interior and the tribe, the Secretary determines prior to disbursement that the tribe is not in compliance with obligations under its 1866 treaty with the United States as it relates to the inclusion of persons who are lineal descendants of Freedmen as having the rights of the citizens of such tribes, unless a federal court has issued a final order that determines the treaty obligations with respect to including Freedmen as citizens. For purposes of this subparagraph, a court order is not considered final if time remains for an appeal or application for discretionary review with respect to the order.”