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

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| **MARILYN VANN, DONALD MOON, RONALD MOON, HATTIE CULLERS, CHARLENE WHITE, and RALPH THREAT,** | |
| **Plaintiffs,** | |
| **v.** | **Case No.: 1:03cv01711 (HHK)** |
| | **Judge: Henry H. Kennedy** |
| **DIRK KEMPTHORNE, Secretary of the United States Department of the Interior; UNITED STATES DEPARTMENT OF THE INTERIOR,** | **Docket Type: Civil Rights (non-employment)** |
| | **Date Stamp: 08/11/03** |
| **CHEROKEE NATION OF OKLAHOMA** | |
| **CHADWICKE SMITH, Individually and in His Official Capacity** | |
| **John Does, Individually and in their official capacity** | |
| **Defendants,** | |

## MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

The Cherokee Nation, one of the few Indian tribes to own slaves and fight with the Confederacy during the Civil War, agreed in the Treaty of 1866 to free its slaves and guarantee them and their descendents full citizenship rights. Since then, however, the Cherokee Nation systematically has turned its back on the Freedmen, most recently by amending its constitution in order to deny citizenship to the Freedmen, in blatant violation of the Thirteenth Amendment and of its obligations under the Treaty of 1866. Plaintiffs, six Cherokee Freedmen who are losing their citizenship rights, now seek a preliminary injunction against the Federal Defendants and the Cherokee Nation Defendants to prevent the Cherokee Nation from taking away their most fundamental rights.

**BACKGROUND**

On December 19, 2006, this Court held unequivocally that (1) the Thirteenth Amendment applies to the Cherokee Nation, (2) the Civil Rights Act of 1866 was intended to enforce the Thirteenth Amendment against all persons and entities under the jurisdiction of the United States, and (3) the Treaty of 1866 (which guarantees Cherokee citizenship to Cherokee Freedmen) incorporated the principles of the Thirteenth Amendment and the Civil Rights Act of 1866 and makes adherence to such principles a condition of the Cherokee Nation's existence within the United States. *Vann v. Kempthorne*, 467 F. Supp. 2d 56, 67-69 (D.D.C. 2006). This Court also held unequivocally that the Federal Defendants have a fiduciary obligation to protect the rights of Plaintiffs and other Cherokee Freedmen and under the Principal Chiefs Act of 1970 (the "Act of 1970") are obligated to review and approve the procedures by which the Cherokee Nation elects its principal chief. *Id.* at 71-72 and n.12.

Both the Cherokee Nation Defendants and the Federal Defendants have ignored this Court's December 19 Opinion and Order. After this Court issued its December 19 Opinion, the Cherokee Nation Defendants held a special election at which Cherokee citizens (including Plaintiffs and other Cherokee Freedmen) were permitted to vote on an amendment to the Cherokee Constitution that would deprive Plaintiffs and other Cherokee Freedmen of their rights to citizenship in the Cherokee Nation:[1]

> This measure amends the Cherokee Nation Constitution section which deals with who can be a citizen of the Cherokee Nation. A vote "yes" for

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[1] Before this court issued its December 19 Opinion, the Judicial Appeals Tribunal of the Cherokee Nation had held that the Cherokee Constitution protected the citizenship rights of the Plaintiffs and other Cherokee Freedmen. *See Allen v. Cherokee Nation Tribal Council*, No. JAT 04-09 (Cherokee Nation Jud. App. Trib., Mar. 7, 2006), attached as Exhibit 1 to Tribal Defendants' Notice of Additional Authority (Dkt. No. 35).

> this amendment would mean that citizenship would be limited to those who are original enrollees or descendents of Cherokees by blood, Delawares by blood, or Shawnees by blood as listed on the Final Rolls of the Cherokee Nation, commonly referred to as the Dawes Commission Rolls closed in 1906. *This amendment would take away citizenship of current citizens and deny citizenship to future applicants who are solely descendants of those on either the Dawes Intermarried Whites or Freedmen Rolls.* A vote 'no' would mean that Intermarried Whites and Freedmen original enrollees and their descendants would continue to be eligible for citizenship. Neither 'yes' or a 'no' vote will affect the citizenship rights of those individuals who are original enrollees or descendents of Cherokees by blood, Delaware by blood, or Shawnees by blood as listed on the Final Rolls of the Dawes Commission Rolls closed in 1906.

Cherokee Nation Special Election Ballot (March 3, 2007) (emphasis added) (attached as Exhibit 1).

The Cherokee Nation citizens approved the amendment on March 3, 2007, and the Cherokee Nation Defendants began implementing the amendment soon thereafter. On or about March 21, 2007, Plaintiffs received letters stating that their citizenship status had been changed following the March 3 election. *See* Exhibit 2. On March 28, 2007, Plaintiff Charlene White received a letter stating that "because of the Constitutional Amendment you are no longer eligible to receive medical benefits from the Cherokee Nation." *See* Exhibit 3. Unless restrained by the Federal Defendants or this Court, the Cherokee Nation Defendants will deny Plaintiffs and all Cherokee Freedmen their right to vote and their right to run for office in the next election, which is scheduled for June 23, 2007.

The Federal Defendants, for their part, have done nothing. On March 28, 2007, Assistant Secretary of the Department of Interior Carl Artmen sent a letter to Cherokee Nation Principal Chief Chad Smith stating that the Department of Interior was still reviewing the March 3

amendment. *See* Exhibit 4. To date the Federal Defendants have taken no action with respect to the Cherokee Nation's approval and implementation of the March 3 amendment.[2]

Prior to the March 3 election, Plaintiffs asked this Court to issue a preliminary injunction preventing the Cherokee Nation Defendants from holding the election. This Court denied the motion because, among other reasons, it concluded that Plaintiffs failed to demonstrate that they would suffer irreparable harm in that they failed to show that the election itself – as opposed to the results of the election – would cause them harm. In so holding, the Court, however, noted that "[e]ven assuming arguendo that the outcome they fear come[s] to pass, the Freedmen have a remedy if the election results in the deprivation of their constitutional rights." Transcript of Preliminary Injunction Hearing at 41:2-4 (Feb. 21, 2007).

The outcome that Plaintiffs feared has come to pass. The Cherokee Nation citizens approved the March 3 amendment, and the Cherokee Nation Defendants are taking immediate, concrete steps to strip Plaintiffs of their citizenship rights, while the Federal Defendants are doing absolutely nothing to protect the rights of Plaintiffs and the other Freedmen. The expulsion of the Freedmen after the March 3 amendment is the latest in a series of actions the Cherokee Nation Defendants have taken – and the Federal Defendants have not acted to stop or reverse – in violation of the Thirteenth Amendment, the Treaty of 1866, and the Act of 1970. *See* Second Amended Complaint ¶¶ 1-3, 41-44.

Without action from the Federal Defendants, the Plaintiffs must now seek a preliminary injunction to protect their rights to remain as full citizens of the Cherokee Nation. Plaintiffs ask

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[2] Plaintiffs' attorneys have made extensive efforts through telephone calls and emails to obtain from counsel for the Federal Defendants the position of the Federal Defendants with respect to this matter. As of this date, the Federal Defendants have not developed their position regarding the March 3 amendment.

this Court to enjoin the Federal Defendants from taking the following actions until the Cherokee Nation restores Plaintiffs' full citizenship rights and complies with the Act of 1970: (1) distributing funds to the Cherokee Nation; (2) recognizing any Cherokee Nation election; and (3) recognizing the government-to-government relationship with the Cherokee Nation. Plaintiffs also ask this Court to enjoin the Cherokee Nation Defendants from denying Plaintiffs their full citizenship rights and from holding any election as to which Plaintiffs are denied the right to vote or run for office based solely upon their status as Cherokee Freedmen.

**ARGUMENT**

In order to obtain a preliminary injunction, Plaintiffs

> must demonstrate that (1) they are likely to prevail on the merits; (2) they will suffer irreparable harm absent the injunction; (3) an injunction would not substantially impair the rights of . . . other interested parties; and (4) an injunction would be in the public interest, or at least would not be adverse to the public interest.

*Tenacre Found. v. INS*, 892 F. Supp. 289, 292 (D.D.C. 1995), *aff'd* 78 F.3d 693 (D.C. Cir. 1996), *following Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-44 (D.C. Cir. 1977). Depending upon the circumstances, it may be appropriate for the Court to give certain factors more weight than other factors. Where "the balance of hardships tips decidedly toward [the] plaintiff" and the plaintiff has "raised questions going to the merits so serious, substantial difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation," a preliminary injunction is justified even if the plaintiff is "less likely than not to prevail on the merits." *Id*. at 844-45 (internal quotation marks and citations omitted). *Accord The Nation Magazine v. Dept. of State*, 805 F. Supp. 68, 72 (D.D.C. 1992).

In this case, Plaintiffs are likely to prevail on the merits because denying Plaintiffs their citizenship rights plainly violates federal statute, the Treaty of 1866, and the Thirteenth Amendment. Plaintiffs are entitled to relief against the Federal Defendants, who (a) have a fiduciary duty to protect the rights of Plaintiffs, Freedmen generally, and any other individual members whose rights are violated by the tribe or its majority members and (b) cannot act in an arbitrary and capricious manner. Plaintiffs also are entitled to relief against the Cherokee Nation Defendants, who are violating the Thirteenth Amendment and their treaty obligations.

Even if there were any doubt as to Plaintiffs' entitlement to relief on the merits, a preliminary injunction is appropriate here because the balance of hardships tips decidedly in favor of relief. Without relief from this Court, the Cherokee Nation, no later than June 23, 2007, will strip Plaintiffs and all Freedmen of all of their rights as Cherokee Nation citizens: their right to vote, to hold office, and to participate in government in any way, as well as their right to medical benefits and other substantial benefits the Cherokee Nation offers its citizens. On the other hand, the burdens, if any, a preliminary injunction would impose on the Federal Defendants and the Cherokee Nation Defendants would be negligible.

## I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

Plaintiffs are likely to succeed on the merits against both the Federal Defendants and the Cherokee Nation Defendants. The Federal Defendants, originally by waffling and now by simple neglect, have failed to fulfill their fiduciary duties to protect the rights of the Cherokee Freedmen and ensure that Cherokee Nation actions do not violate the Thirteenth Amendment or the Treaty of 1866. The Cherokee Nation has taken the audacious step of disenfranchising its most vulnerable citizens by enacting a constitutional amendment in blatant violation of the Thirteenth Amendment and its treaty obligations.

### A. The Federal Defendants Have Failed to Fulfill Their Fiduciary Duties to the Cherokee Freedmen

As the Court has already held, the Federal Defendants have a fiduciary duty to uphold the rights of the Cherokee Freedmen against abuses by the Cherokee Nation. *See Vann*, 467 F. Supp. 2d at 71. The Court held that such duty includes an obligation to ensure that "tribal leaders are truly representative of the members they purport to present in relations with the United States government," *id.* (citing *Seminole Nation v. United States*, 316 U.S. 286 (1942)), and that the Act of 1970 "unequivocally requires the Secretary to review and approve the procedures by which a principal chief of the Cherokee Nation is selected." *Id.* at 72. The election of June 23, 2007, from which the Freedman will be excluded, includes the election of the Cherokee Nation Principal Chief. In addition, the Court has cited with approval the Court's prior ruling in *Seminole Nation v. Norton* (*Seminole II*), 223 F. Supp. 2d 122 (D.D.C. 2002), which held that the Federal Defendants are "'charged not only with the duty to protect the rights of the tribe, but also the rights of individual members . . . whether the infringement is by non-members or members of the tribe.'" *Vann*, 467 F. Supp. 2d at 71 n.12 (quoting *Seminole II*, 223 F. Supp. 2d at 137).[3]

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[3] This Court in *Seminole II* set forth in greater detail the fiduciary duty of the Federal Defendants:

> The Court acknowledges and appreciates the importance of the [Seminole] Nation's right, as a sovereign body, to self-determination and self-government. However, as a sovereign, the Nation has the duty and the responsibility to respect the rights of all of its members, including the rights of its minority members, as guaranteed by the Nation's Constitution . . . . And, where the Nation evidences that it does not intend to respect those rights, the government, as part of "the distinctive obligation of trust incumbent upon [it] in its dealings with these

(Footnote continued on next page)

There is no question that the Federal Defendants, by failing to take any action whatsoever regarding the March 3 amendment, are breaching their fiduciary duty to Plaintiffs and all of the Cherokee Freedmen. There is also no question that the Federal Defendants' failure to act violates their obligations under the Act of 1970, which expressly requires the Federal Defendants to review and approve the procedures for electing the principal chief.[4]

The Federal Defendants have not always shirked their fiduciary duty to minority members of Indian tribes. As this Court has recognized, the Federal Defendants took action to protect the rights of the Seminole Freedmen when the Seminole Nation sought to disenfranchise the Seminole Freedmen. The Federal Defendants recognized that denial of citizenship rights of the Seminole Freedmen violated the Seminole Nation Treaty of 1866, which is identical in substance to the Cherokee Nation Treaty of 1866. In that case, the Federal Defendants cut off

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> dependent and sometimes exploited people," has a duty to ensure that its minority members are protected against the will of the majority that is being imposed in violation of its own Constitution. The United States has itself dealt with many of these same issues, where, if the will of the majority had prevailed, many minority members of this society would not have been able to enjoy the same privileges and benefits as other citizens. Where the Nation will not protect the Constitutional rights of its minority members, the BIA has the responsibility and indeed, the duty, to intervene and attempt to protect those rights through appropriate remedies.

*Seminole II*, 223 F. Supp. 2d at 146-147.

[4] From the moment that the Act of 1970 became law, the Federal Defendants recognized that it required them to protect the right of the Freedmen to participate in Cherokee Nation elections. In 1971, the Bureau of Indian Affairs issued a memorandum regarding the review of voting procedures pursuant to the Act stating that "[v]oter qualifications for the Choctaw, Seminole, Cherokee and Creek people must be broad enough to include the enrolled freedmen citizens…" *See* Exhibit 5.

the U.S.'s government-to-government relationship with the Seminole Nation. *See Seminole II*, 223 F. Supp. 2d at 125-26.

The Federal Defendants' failure to follow here the action they took to protect the rights of the Seminole Freedmen is another reason Plaintiffs are likely to prevail on the merits. "An agency's departure from its prior decisions can be considered to be arbitrary, capricious and an abuse of discretion…" *Id.* at 143 (quoting *Bush-Quayle '92 Primary Comm. v. Federal Election Comm'n*, 104 F.3d 448, 453 (D.C. Cir.1997); citing *Oglala Sioux Tribe of Indians v. Andrus*, 603 F.2d 707, 718-19 (8th Cir. 1979)). The United States Court of Appeals for the District of Columbia Circuit has held repeatedly that "an agency must treat similar cases in a similar manner unless it can provide a legitimate reason for failing to do so." *Independent Petroleum Association of America v. Babbitt*, 92 F.3d 1248, 1258 (D.C. Cir. 1996) (citing *National Association of Broadcasters v. FCC*, 740 F.2d 1190, 1201 (D.C. Cir. 1984)); *see also Transactive Corp. v. United States*, 91 F.3d 232, 237 (D.C. Cir. 1996); *Doubleday Broadcasting Co. v. FCC*, 655 F.2d 417, 423 (D.C. Cir. 1981). "Government is at its most arbitrary when it treats similarly situated people differently." *Etelson v. Office of Personnel Management*, 684 F.2d 918, 926 (D.C. Cir. 1982). The Department of Interior's reversal from the position it took in the Seminole Nation matter is arbitrary and capricious and cannot be permitted to stand in this case.

### B. The Cherokee Nation Defendants Have Violated the Thirteenth Amendment and the Treaty of 1866

The March 3 amendment constitutes a blatant violation of both the Thirteenth Amendment and the Treaty of 1866. This Court set forth the history, purpose, and intent of the Thirteenth Amendment and the Treaty in its December 19 Order. There simply is no doubt that both the Thirteenth Amendment and the Treaty were enacted to protect former slaves such as the

Freedmen "'not merely against slavery itself, but against all the badges and relics of a slave system.'" *Vann*, 467 F. Supp. 2d at 67 (quoting Akhil Reed Amar, *America's Constitution* 362 (2006)). The Treaty of 1866 requires no interpretation; its plain text provides that the Cherokee Freedman are granted "all the rights of native Cherokees," Treaty of 1866, art. IX, July 19, 1866, 14 Stat. 799, and that the Cherokee Nation shall enact no law "inconsistent with the Constitution of the United States, or laws of Congress, or existing treaty stipulations with the United States." *Id*. art. XII. As this Court has held, "[t]he Treaty of 1866 not only incorporated the principles of the Thirteenth Amendment and the Civil Rights Act of 1866, but it made such principles a *condition* of the Cherokee Nation's existence within the United States." *Vann*, 467 F. Supp. 2d at 68 (emphasis original).

The March 3 amendment deprives Plaintiffs and all Cherokee Freedmen of their citizenship rights in the Cherokee Nation. As the text of the amendment itself states,

> [t]his amendment would take away citizenship of current citizens and deny citizenship to future applicants who are solely descendants of those on either the Dawes Intermarried Whites or Freedmen Rolls. A vote "no" would mean that Intermarried Whites and Freedmen original enrollees and their descendants would continue to be eligible for citizenship.

*See* Exhibit 1. The Cherokee Nation approved the amendment on March 3, 2007, and the Cherokee Nation is now taking action to implement the amendment, which would deprive Plaintiffs and all Cherokee Freedmen of their citizenship rights, solely due to their race and the status of their ancestors as slaves, in violation of the Thirteenth Amendment and the Treaty of 1866. *See* Exhibits 2-3.

## II. THE EQUITIES TIP DECIDEDLY TOWARD PLAINTIFFS

### A. Plaintiffs Will Suffer Immediate and Irreparable Harm Without a Preliminary Injunction

There simply can be no doubt that Plaintiffs will suffer immediate and irreparable harm if the Cherokee Nation strips them of their citizenship rights. Without injunctive relief, Plaintiffs will be deprived of the most sacred right of citizenship – the right to participate in government, including, most urgently, the right to vote in the upcoming election on June 23, 2007, at which Cherokee voters will elect a principal chief, vice-chief, and seventeen National Council members. Without injunctive relief, Plaintiffs will be deprived of other substantial benefits of citizenship, including health care benefits, housing, education, employment, and commodities.

The importance of the benefits of citizenship – particularly the right to vote – can hardly be overstated. As the United States Supreme Court has held, "[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). In addition, "[d]enial of the right to participate in an election is by its nature an irreparable injury." *Berks County, Pennsylvania*, 277 F. Supp. 2d 570, 578 (E.D. Pa. 2003).

### B. An Injunction Would Have Minimal Impact on the United States or the Cherokee Nation

An injunction preserving the status quo – Plaintiffs' citizenship rights – would not damage any legitimate interest of the United States or Cherokee Nation. The United States has a fiduciary duty to protect the rights of Plaintiffs in this case and cannot argue that it would be adversely impacted by a preliminary injunction that would help it fulfill its fiduciary duty. The impact of a preliminary injunction on the Cherokee Nation likewise would be minimal. Plaintiffs and their ancestors have been full citizens of the Cherokee Nation since the Treaty of

1866, a status that was re-affirmed as recently as last year by the Judicial Appeals Tribunal of the Cherokee Nation Supreme Court. *See Allen*. Preserving the status quo by allowing Plaintiffs to retain the citizenship rights that they have held for almost 150 years pending a final determination in the present case would not harm the Cherokee Nation.

**C. The Public Interest Would Be Served by a Preliminary Injunction**

Finally, a preliminary injunction will serve the public interest, which favors judicial review on the merits to ensure that the laws are properly enforced. *See Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1066 (D.C. Cir. 1998) (public's interest in "faithful application of the laws"); *Holiday Tours*, 559 F.2d at 843 (general public's interest in having legal questions decided on the merits). The public will benefit from the review of fundamental civil rights at issue in this case. *Segar v. Civiletti*, 516 F. Supp. 314, 320 (D.D.C. 1981) ("Assuming arguendo that some pubic interest would be disserved by the issuance of a preliminary injunction, it would be more than offset by the public's interest in full vindication of the rights codified in Title VII.").

## III. THIS COURT HAS THE POWER TO HEAR THIS MATTER

The Cherokee Nation Defendants, through their counsel in connection with conversations counsel have had under Local Rule 7(m), have asserted that this Court does not have jurisdiction to hear this matter and that only the courts of the Cherokee Nation have the power to hear this matter. In so arguing, however, the Cherokee Nation Defendants ignore the prior ruling of this Court that the Court has jurisdiction to hear Plaintiffs' claims, which arise under the Thirteenth Amendment and the Treaty of 1866. *Vann*, 467 F. Supp. 2d at 70, 74 ("Congress clearly indicated its intent to abrogate the Cherokee Nation's immunity with respect to violations of the Thirteenth Amendment as evidenced by the Treaty of 1866."). Federal courts have indeed heard

claims arising under the Treaty of 1866. *See Whitmire v. Cherokee Nation*, 30 Ct. Cl. 138, 157 (Ct. Cl. 1895) (holding that the Cherokee Nation's "action can not control or abrogate the treaty obligations of the nation to the United States"); *Red Bird v. United States*, 203 U.S. 76, 84 (1906) (noting that "the overthrow of the Cherokee Nation and the treaty of peace, 1866, and the terms dictated by the United States, whereby their former slaves were made their political equals, and the common property of the Cherokees was to be shared in with their servants and dependents, was in effect a revolution").

The Cherokee Nation Defendants also may argue, as they did first in moving to dismiss the amended complaint and again in opposing Plaintiffs' motion for a preliminary injunction concerning the March 3 election, that Plaintiffs must exhaust their tribal remedies before brining their claims in this Court. Yet this Court already has rejected that argument as well. In denying the Cherokee Nation Defendants' motion to dismiss, this Court ruled that because Plaintiffs have brought a claim against the Federal Defendants – who cannot be sued in a tribal court – "exhaustion is not required." *Vann*, 467 F. Supp. 2d at 73. That ruling is law of the case and should not be reconsidered.

Exhaustion also is not required because the claims raised by Plaintiffs here have already been presented to the Cherokee courts and, accordingly, have been exhausted. Although the Judicial Appeals Tribunal in *Allen* held that the Freedmen were entitled to citizenship in the Cherokee Nation and that the membership requirements that denied them citizenship rights violated the Cherokee Nation Constitution, the Judicial Appeals Tribunal also held that the Cherokee Nation had the right to violate the Treaty of 1866 by amending the Cherokee constitution:

> This case poses an interesting question of whether the Cherokee Nation, like other sovereigns, has the internal power to unilaterally abrogate treaties. This Court sees no reason why the Cherokee Nation must be bound by a treaty until the end of time, particularly when that treaty has been broken by the other sovereign.
>
> However, if the Cherokee Nation is going to make a decision not to abide by a previous treaty provision, it must do so by clear actions which are consistent with the Cherokee Nation Constitution. A treaty provision cannot be set aside by mere implication. This treaty discussion leads to the same conclusion as the constitutional discussion. If the Cherokee people want to change the legal definition of Cherokee citizenship, they must do so expressly.

*Allen* at 20. This decision by the highest court within the Cherokee Nation satisfies any requirement to exhaust tribal remedies. *See Iowa Mut. Ins. Co.*, 480 U.S. at 16-17.

Finally, even if a tribal forum were available to Plaintiffs, exhaustion should not be required here. The doctrine is rooted in principles of comity and deference to tribal courts but does not deprive the federal court of its power to hear a matter in cases where both the federal court and the tribal court have jurisdiction. The federal court retains jurisdiction to hear and decide such cases where it concludes that it is appropriate to do so. *See Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 16 n.8 (1987) ("Exhaustion is required as a matter of comity, not as a jurisdictional prerequisite."); *see also Strate v. A-1 Contractors*, 520 U.S. 438, 453 ("Recognizing that our precedent has been variously interpreted, we reiterate that *National Farmers* and *Iowa Mutual* enunciate only an exhaustion requirement, a 'prudential rule' . . . based on comity.") (internal citations omitted). The Court should not stay its hand in this case, where such fundamental rights are at stake.

**CONCLUSION**

Based on the foregoing, Plaintiffs respectfully request that this Court enter an order enjoining the Federal Defendants from taking the following actions until the Cherokee Nation

restores Plaintiffs' full citizenship rights and complies with the Act of 1970: (1) distributing funds to the Cherokee Nation; (2) recognizing any Cherokee Nation election; and (3) recognizing the government-to-government relationship with the Cherokee Nation. Plaintiffs also respectfully request that this Court enjoin the Cherokee Nation Defendants from denying Plaintiffs their full citizenship rights and from holding any election as to which Plaintiffs are denied the right to vote or run for office based solely upon their status as Cherokee Freedmen.

Dated: May 8, 2007

Respectfully submitted,

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