

Committee: Rules
Date: 6-25-09 Committee Date: 6-25-09

Author: Todd Hembree
Sponsor: Jodie Fishinghawk Jana Story-Jordan
Chuck Hoskin Jr.

VETO

7/20/09

DATE

COUNCIL OF THE CHEROKEE NATION

PRINCIPAL CHIEF

**A RESOLUTION AUTHORIZING THE CHEROKEE NATION TRIBAL COUNCIL TO
SUPPORT THE APPEAL OF COUNCILORS FISHINGHAWK AND JORDAN
CONCERNING TRIBAL COUNCILOR'S RIGHT TO INDIVIDUALLY HAVE ACCESS
TO COUNSEL OF THEIR CHOICE AND HAVE ACCESS TO THE COURTS**

BE IT RESOLVED BY THE CHEROKEE NATION TRIBAL COUNCIL:

WHEREAS, the Cherokee Nation, since time immemorial has exercised the sovereign rights of self-government on behalf of the Cherokee People; and,

WHEREAS, the Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America; and

WHEREAS, the Cherokee Nation Tribal Council consists of seventeen (17) members, each with equal duties and responsibilities; and,

WHEREAS, Cherokee Nation Tribal Council members opinions may differ from time to time concerning litigation positions; and,

WHEREAS, Cherokee Nation Tribal Council has specifically allocated funds for individual Councilors to hire independent attorneys in matters that affect the Cherokee Nation government; and

WHEREAS, in *Smith v. Cherokee Nation Election Commission*, et.al. CV-2009-65, Councilors have differing opinions as to issues presented; and

WHEREAS, the Cherokee Nation District Court ruled and denied Councilors Jordan and Fishinghawk the right to proceed with separate counsel; and

WHEREAS, said ruling impairs the authority of the Cherokee Nation Tribal Council members and should be appealed.

WHEREAS, the Cherokee Nation Judicial Appeals Tribunal (now Supreme Court) has ruled in *Phillips v. Eagle*, JAT 98-09, that:

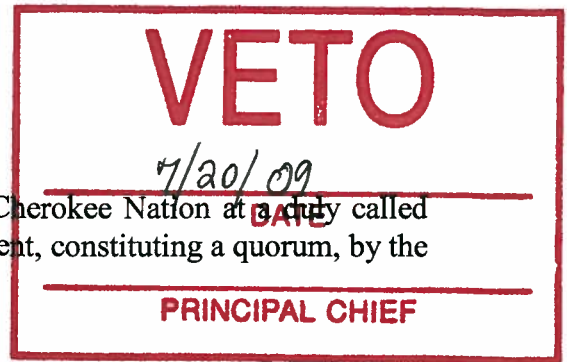
“To the extent the constitutional authority and powers of the Cherokee Nation Council are impaired, so too is the authority and power of each member of the Cherokee Nation Council, since the office of councilor confers a right to participate in the exercise of the authority and powers of the Council”

WHEREAS, it would be beneficial to the Cherokee Nation Tribal Council, as an institution, to protect the individual rights of its members.

NOW, THEREFORE BE IT RESOLVED by the Cherokee Nation through its Tribal Council, that supports the appeal of Councilors Jordan and Fishinghawk concerning the District Courts decision to deny them individual participation in *Smith v. Cherokee Nation Election Commission*, et.al. CV-2009-65.

CERTIFICATION

The foregoing resolution was adopted by the Council of the Cherokee Nation at a ~~regular~~ ^{7/20/09} called meeting on the 13th day of July, 2009, having 14 members present, constituting a quorum, by the vote of 14 yea; 0 nay; 0 abstaining.



Meredith Frailey
Meredith A. Frailey, Speaker
Council of the Cherokee Nation

ATTEST:

Don Garvin
Don Garvin, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this _____ day of _____, 2009.

Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:

Melanie Knight, Secretary of State
Cherokee Nation



GWYJDBJ
CHEROKEE NATION®

O'lgJ
Chad "Cornassel" Smith
Principal Chief

JLQw JChw
Joe Grayson, Jr.
Deputy Principal Chief

July 20, 2009

Meredith A. Frailey, Speaker
Cara Cowan Watts, Deputy Speaker
Council of the Cherokee Nation
Tahlequah, Oklahoma

07-20-09P02:23 RCVD

Dear Speaker Frailey and Council Members:

I am returning the enactments passed by the Tribal Council at the regular meeting held on July 13, 2009 as required by our Constitution. The Cherokee Constitution (Article VI, Section 10) requires that every enactment approved by the majority of the Council be presented to the Principal Chief before it becomes effective. I have carefully considered each enactment and I have approved all of them with the exception of one (1) vetoed enactment.

APPROVED RESOLUTIONS

1. Resolution No. 69-09, A Resolution Authorizing the Submission of a Rural Housing and Economic Development Grant for Renovation of the John A. Ketcher Youth Shelter and the Addition of Three Single Resident Occupancy Units.
2. Resolution No. 70-09, A Resolution Authorizing the Submission of a Grant Application to the USDA for a Housing Preservation Grant.
3. Resolution No. 71-09, A Resolution Authorizing the Submission of a Grant Application to the Department of Housing and Urban Development (HUD) for an Indian Community Development Block Grant (ICDBG) Application for the Nowata Food Distribution/Elderly Nutrition Building.
4. Resolution No. 72-09, A Resolution Adopting a Maintenance and Operating Policy for the HUD ICDBG Application for the Nowata Food Distribution/Elderly Nutrition Building.
5. Resolution No. 73-09, A Resolution Authorizing a Restaurant Lease on Trust Land at the Complex in Cherokee County.
6. Resolution No. 74-09, A Resolution Authorizing the BIA to Update the Nation's Transportation Improvement Program to Include the Addition of Seventeen (17) Projects to the List of Construction Priorities for Indian Reservation Roads Funding.
7. Resolution No. 75-09, A Resolution Confirming the Renomination of Johnnie Earp as a Board Member of the Economic Development Trust Authority Board of Directors.
8. Resolution No. 76-09, A Resolution Confirming the Nomination of Bill Andoe as an Advisory Committee Member of Cherokee National Treasures Program.
9. Resolution No. 77-09, A Resolution Confirming the Nomination of Alan Herrin as an Advisory Committee Member of Cherokee National Treasures Program.
10. Resolution No. 78-09, A Resolution Confirming the Nomination of Jane Osti as an Advisory Committee Member of Cherokee National Treasures Program.

11. Resolution No. 79-09, A Resolution Confirming the Nomination of Lori Smiley as an Advisory Committee Member of Cherokee National Treasures Program.
12. Resolution No. 80-09, A Resolution Confirming the Nomination of Mary Horsechief as an Advisory Committee Member of Cherokee National Treasures Program.
13. Resolution No. 82-09, A Resolution Rescinding Resolution 62-08 of the Cherokee Nation Tribal Council Which Authorized a Loan of \$300,000 to the Chilocco Benefit Association, Inc.
14. Resolution No. 83-09, A Resolution Authorizing the Submission of a Formal Grant Application to the United States Environmental Protection Agency for the Development of an Inter-Tribal Environmental Council Pesticides Management Program.
15. Resolution No. 84-09, A Resolution Authorizing the Submission of a Grant Application to the United States Environmental Protection Agency for the Development of a Cherokee Nation Pesticides Program.
16. Resolution No. 85-09, A Resolution Authorizing the Submission of a Fiscal Year 2009 Volunteer Income Tax Assistance (VITA) Grant Program to the United States Internal Revenue Service.
17. Resolution No. 86-09, A Resolution Authorizing Cherokee Nation Environmental Programs to Submit a Formal Grant Application to the U.S. Environmental Protection Agency for a Targeted Grant to Reduce Childhood Lead Poisoning Grant Package.
18. Resolution No. 87-09, A Resolution Requesting the Transfer of the Buildings and Grounds of the W. W. Hastings Hospital to the Cherokee Nation in Trust Status.
19. Resolution No. 88-09, A Resolution Authorizing Cherokee Nation Community Services to Submit an Application for Community Services Block Grant Appropriation of American Recovery and Reinvestment Act Funds.

APPROVED LEGISLATIVE ACTS

1. Legislative Act No. 18-09, An Act Requiring Establishment of a “Reduce, Reuse and Recycle” Program for the Cherokee Nation.
2. Legislative Act No. 19-09, An Act Amending Legislative Act #19-08 Authorizing the Comprehensive Budget for Fiscal Year 2009 – Mod. 9; and Declaring an Emergency.

VETOED ENACTMENTS

1. Resolution No. 81-09, A Resolution Authorizing the Cherokee Nation’s Tribal Council to Support the Appeal of Councilors Fishinghawk and Jordan Concerning Tribal Councilor’s Right to Individually Have Access to Counsel of Their Choice and Have Access to the Courts.

I am vetoing this Resolution, which supports the appeal of Councilors Jordan and Fishinghawk, in *Smith v. Cherokee Nation Election Commission*, et al, CV-2009-65, concerning the District Court’s “...decision to deny them individual participation...” My reasons are:

This Resolution appears to interfere with proper impartiality of the Court. The matter of whether any party has standing in a case is properly the sole purview of the Court. The Council, by passing a resolution stating support for the notion that individual Councilors may participate in addition to the Council as a body, purports to dictate to the Court standing of such Councilors in a particular case. The Council could have simply stated support for individual Councilor’s rights, but rather chose to speak to this particular case. It is instructive that the Rules Committee, in the same meeting that this Resolution was passed (July 25, 2009), also

chose to unanimously table the renomination of Judge Bart Fite, the District Court Judge making the ruling, without any reasons given for doing so. In fact, following the passage of this Resolution from Committee on July 25th, the Court found it necessary on July 7th to clarify the record regarding denial of the two individual Councilors, with the following:

It has further been suggested to the Court that in its ruling granting the motion to dismiss the individual councilors that the Court has ruled that they were not proper parties. This is not the Court's ruling as the Court is of the opinion, upon proper application, that the individual Council members may in fact intervene individually because of differing interests in the issues presented. To the extent that the ruling gave the impression otherwise, this portion of this Order intends to clarify that for future purposes.

(Judge Fite order in CV-2009-65, July 7, 2009, Page 2)

The Court went on to say:

The individual Councilors' Briefs were therefore denied solely on the basis that they were not timely filed. Attached to this Order is a copy of the Scheduling Order entered on April 9, 2009.

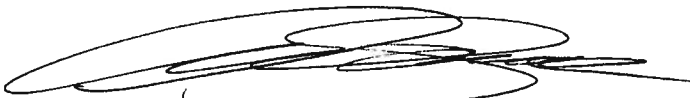
(Judge Fite order in CV-2009-65, July 7, 2009, Page 2)

Further, the Council specifically stated in the Resolution that the District Court ruling, "...impairs the authority of the Cherokee Nation Tribal Council members and should be appealed." This has the distinct appearance of interference with powers properly placed within the Judicial branch. These statements, along with the District Court's response on July 7, imply interference with the Court's duties.

The premise of using Nation funds to simultaneously argue individual legal interests alongside the interests of the Council as a body is not sound policy. Councilors cannot have the Nation fund duplicative legal counsel and interests. In each matter before it, the Council has the opportunity to decide as a body whether to participate in litigation, or not. If the Council participates as a body, then that determines how the Council is represented. Should the Council elect not to participate as a body, then members may choose to proceed without the body as individuals and seek standing. Individuals should not utilize public funds to circumvent the decisions or legal position of the body in any litigation. Further, the Resolution is misleading as to the authority for payment of individual Councilor's legal fees. It states, "Cherokee Nation Tribal Council has specifically allocated funds for individual Councilors to hire independent attorneys in matters that affect the Cherokee Nation government." This does not accurately restate the authority for payment of such attorneys. Resolution number 106-08 states that legal representation of individual Councilors may be allowed, "...provided that said representation/advice be utilized for matters before the Tribal Council..."

For these reasons, I must object to Resolution 81-09.

Sincerely,



Chadwick Smith
Principal Chief

cc: Legal & Legislative Coordinator, Council of the Cherokee Nation
Councilors (17), Council of the Cherokee Nation
Melanie Knight, Secretary of State