

Committee: Council
Date: 7-7-08 Committee Date: 7-14-08
Revision 2

Author: Todd Hembree
Sponsor: Jodie Fishinghawk

An Act

VETO

07/21/2008

DATE

PRINCIPAL CHIEF

Legislative Act 14-08

A LEGISLATIVE ACT RELATED TO TITLE 26 "ELECTIONS", AS AMENDED BY LA#39-05; AMENDING REPRESENTATIVE DISTRICTS

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title:

This act shall be known as the "Election Code Amendment Act of 2008" and codified as Title 26 Sections 62(D), 73(B) of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to establish 15 council districts within the Cherokee nation.

Section 3. Legislative History

Title 26, "Elections", of the Cherokee Nation Code Annotated as amended by Legislative Act 39-05.

Section 4. Definitions

Representative Districts: means the geographical area within the Cherokee Nation Jurisdictional Boundaries that have a reasonably equal apportionment of citizen population.

Section 5. Amendment

Legislative Act 39-05 is hereby amended as follows:

§5 (A) District Boundaries. There shall be established ~~nine (9) representative districts~~ fifteen (15) representative districts within the ~~historical boundaries~~/jurisdictional boundaries of the Cherokee Nation. These districts include only that portion of any existing county which lies within the ~~historical~~ jurisdictional boundary of the Cherokee Nation and is established as follows:

District 1: Cherokee-East

District 2: Cherokee-West

District 3: Three Rivers

District 4: Redbird

District 5: Sequoyah

District 6: Trail of Tears-South

District 7: Trail of Tears-North

District 8: Delaware 1

*\$-11-08 Veto Overridden
13 yrs 4 mos*

District 9: Craig
District 10: Mayes
District 11: Delaware 2
District 12: Coowescoowee
District 13: Keeler
District 14: Tulsa County
District 15: Will Rogers

The boundaries of these districts are set out in particularly according to the map attached as Appendix A to the Act and made a part hereof.

§5 (C) Apportionment. Apportionment of representation having been first conducted in 1990, shall be conducted every twelve years thereafter, and shall be concluded no later than June 30 of the year preceding a regular election year. Apportionment shall be conducted by the Election Commission and approved by the Council by amendment of this Section. Said apportionment shall be attained by first dividing the combined total population of all citizens of the Cherokee Nation residing within the jurisdictional boundaries of the Cherokee Nation by fifteen (15). This figure must then be divided into the total population of all citizens of the Cherokee Nation residing within each district. ~~The resulting percentage shall determine the number of representatives per district. All percentage points .5 or higher shall be rounded upward to the nearest whole number and all percentage points less than .5 shall be rounded downward to the nearest whole number.~~

~~**§5 (D) Council Persons Elected by District.** In Council Districts that have two or more Council seats by apportionment, each apportioned seat shall be designated numerically. Candidates shall select the seat in which they wish to run for office. Each seat shall be elected separately for a four (4) year term as set forth in this Act.~~

Section 6. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

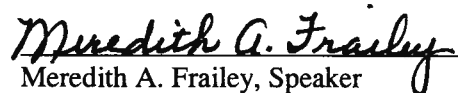
Section 7. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.


Section 8. Effective date

This Act shall be effective upon the next general election of the Cherokee Nation Tribal Council.

Enacted by the Council of the Cherokee Nation on the 14th day of July, 2008.


Meredith A. Frailey, Speaker
Council of the Cherokee Nation

ATTEST:


Don Garvin, Secretary
Council of the Cherokee Nation

VETO

Approved and signed by the Principal Chief this _____ day of _____, 2008.

DATE

Chadwick Smith, Principal Chief
Cherokee Nation

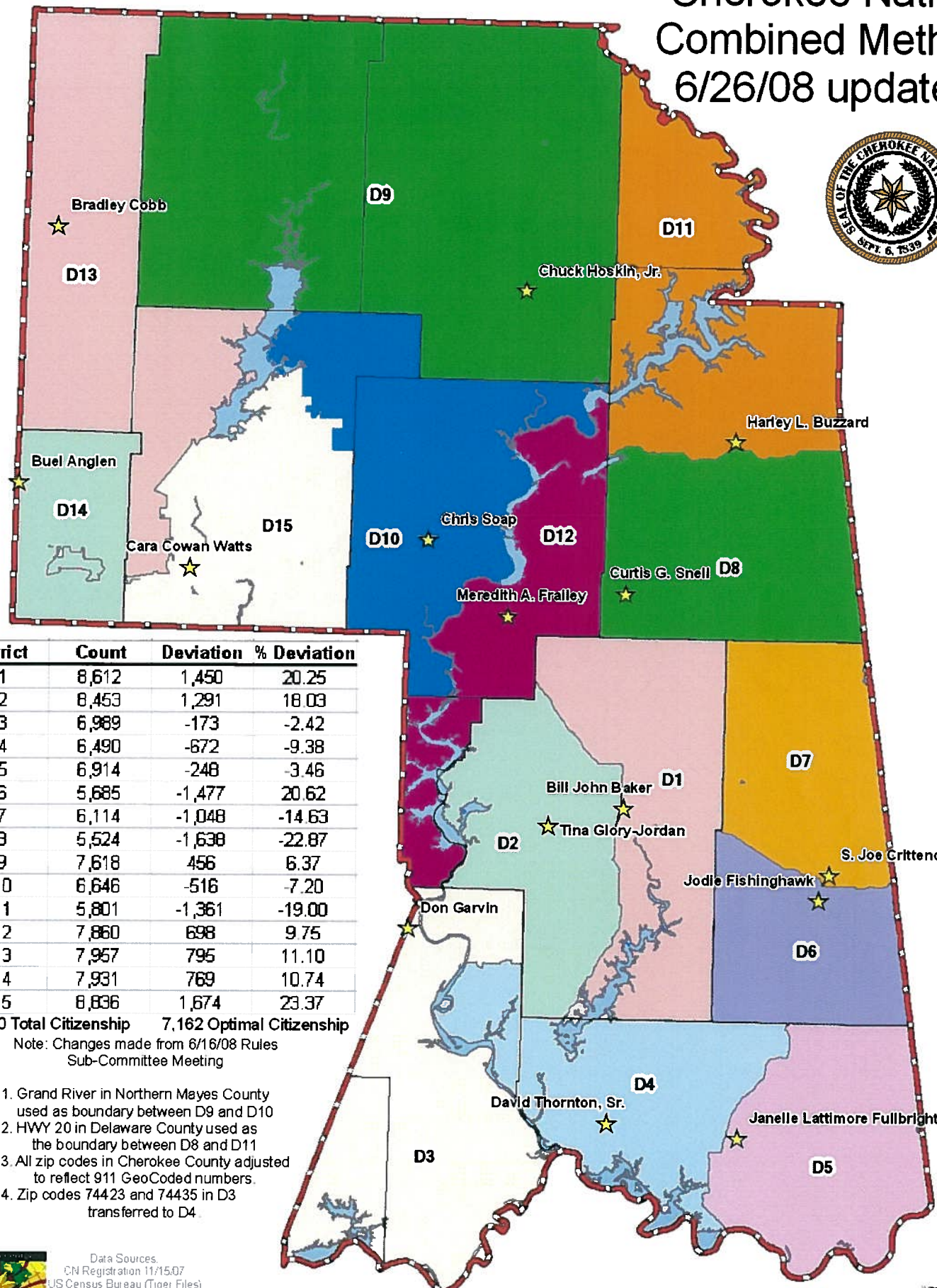
ATTEST:

Melanie Knight, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Bill John Baker	<u>Yea</u>	Chris Soap	<u>Nay</u>
Joe Crittenden	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinghawk	<u>Yea</u>	Buel Anglen	<u>Yea</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Bradley Cobb	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Charles Hoskin, Jr.	<u>Yea</u>
Don Garvin	<u>Yea</u>	Julia Coates	<u>Yea</u>
Harley L. Buzzard	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Nay</u>		

Cherokee Nation Combined Method 6/26/08 updated



District	Count	Deviation	% Deviation
D1	8,612	1,450	20.25
D2	8,453	1,291	18.03
D3	6,989	-173	-2.42
D4	6,490	-672	-9.38
D5	6,914	-248	-3.46
D6	5,685	-1,477	20.62
D7	6,114	-1,048	-14.63
D8	5,524	-1,638	-22.87
D9	7,618	456	6.37
D10	6,646	-516	-7.20
D11	5,801	-1,361	-19.00
D12	7,860	698	9.75
D13	7,957	795	11.10
D14	7,931	769	10.74
D15	8,836	1,674	23.37

107,430 Total Citizenship 7,162 Optimal Citizenship

Note: Changes made from 6/16/08 Rules Sub-Committee Meeting

1. Grand River in Northern Meigs County used as boundary between D9 and D10
2. HWY 20 in Delaware County used as the boundary between D8 and D11
3. All zip codes in Cherokee County adjusted to reflect 911 GeoCoded numbers.
4. Zip codes 74423 and 74435 in D3 transferred to D4



Data Sources:
 CN Registration 11/15/07
 US Census Bureau (Tiger Files)
 ESRI StreetMap
 CN GeoData Center



K:\Registration\Registration_111507\Districting.gdb\Combined Districting Plan4_dxm\Plan4 mxd - 7/15/2008 @ 9:47 41 AM
 Map Disclaimer: Information displayed on this map is from multiple sources and is to be used for graphic display and general planning purposes only. Questions about this map, its sources, and intended use should be directed to the Cherokee Nation's GeoData Center



CHEROKEE NATION®

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Chad "Comtassel" Smith
Principal Chief

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Joe Grayson, Jr.
Deputy Principal Chief

July 21, 2008

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

Dear Speaker Frailey and Council Members:

I am returning the enactments passed by the Tribal Council at the regular meeting held on July 14, 2008 as required by our Constitution. The Cherokee Constitution (Article V, Section 11) 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 as follows, with the exception of one (1) vetoed legislative act.

APPROVED RESOLUTIONS

1. Resolution No. 58-08, A Resolution Authorizing the Department of Children, Youth and Family Services to Submit an Application for Funding to the Oklahoma Office of Juvenile Affairs, for Emergency Youth Shelter Services, and Prevention and Diversion Services.
2. Resolution No. 59-08, A Resolution Amending Resolution 23-90 Re-Naming the Sam Hider Community Clinic to the Sam Hider Health Center.
3. Resolution No. 60-08, A Resolution Confirming the Renomination of Dennis Springwater as a Commissioner of the Cherokee Nation Gaming Commission.
4. Resolution No. 61-08, A Resolution Confirming the Renomination of Jason Soper as a Commissioner of the Cherokee Nation Gaming Commission.
5. Resolution No. 62-08, A Resolution of Support of Refurbishment and Stabilization of Buildings Located at the Chilocco Indian Agricultural School.
6. Resolution No. 63-08. A Resolution Authorizing the Placement of Land in Trust – Sequoyah Schools Lands.

APPROVED LEGISLATIVE ACTS

1. Legislative Act No. 12-08, A Legislative Act Amending the Cherokee Nation Sovereign Immunity Act. LA#23-04. as Amended by LA#16-05.
2. Legislative Act No. 13-08. A Legislative Act Amending the Cherokee Nation Limited Mixed Beverage Sales Act – Legislative Act#41-03. as Amended by Legislative Act #09-04.

3. Legislative Act No. 15-08. An Act Amending Legislative Act #37-07 Authorizing the Comprehensive Budget for Fiscal Year 2008 – Mod. 9; and Declaring an Emergency.

VETOED LEGISLATION

1. **Resolution No. 14-08, A Legislative Act Related to Title 26 “Elections”, as Amended by LA#39-05; Amending Representative Districts.**

The Council has proposed radical changes to the voting districts, creating 15 distinct districts and in one case dividing a single district into thirds. There are several reasons to reject the legislation: A) The districts do not “afford a reasonably equal division of citizenship among the districts...” as called for by the Cherokee Nation Constitution; B) By some of the Council Members’ own admission, the proposed districts have been drawn up with the interests of incumbent council members in mind, rather than the best interests of the Cherokee people and our government; C) The next election for Cherokee Nation officials will not occur until 2011, allowing time for the Cherokee Nation government to put together a districting plan that has input from our citizens and meets Constitutional standards.

A. The proposed districts do not meet the Constitutional requirements

The Constitutional requirement to establish representative districts is included in Article VI, Section 3, quoted here in part:

“The Council shall establish representative districts which shall be within the boundaries of the Cherokee Nation. Fifteen of these seats shall be apportioned to afford a reasonably equal division of citizenship among the districts...”

The district map as proposed creates some very oddly shaped districts, with a wide range of population variance. According to the data the Council used to create the district, a truly equal district would include 7,162 citizens. However many of the districts vary widely from that number. For instance, District 8 (representing southern Delaware County) has only 5,524 citizens, nearly 23% less than a truly equal district; District 6 (representing southern Adair County) has more than 20% fewer citizens than a truly equal district would have. Likewise, District 11 (representing northern Delaware and the Cherokee Nation’s portion of Ottawa County) has only 5,801 citizens, 19% less than a truly equal district. On the other end of the spectrum, some districts have far more citizens than equal distributions would call for. District 1 (representing eastern Cherokee County) has 8,612 citizens, 20.25% more than a truly equal district. District 2 (western Cherokee Count) has a population more than 18% above what is truly equal and District 15 has more than 23% more citizens than a truly equal district would have.

In a 1983 decision (*Brown v. Thomson*, 462 U.S. 835) the United States Supreme Court ruled that districts in which the population was less than 10% from truly equal representation were constitutional. In all, only six of the proposed 15 districts come within even 10% of the number of citizens required for a truly equal district, which constitutes a “reasonably equal division of

citizenship” as called for by our Constitution. With one district (District 15) representing approximately 60% more citizens than another district (District 8) it seems unlikely that the proposed districts are the fairest possible districts to our Cherokee citizens. Since nine of the fifteen districts are more than 10% off the truly equal number, it seems quite likely that Cherokee Nation Courts would find the current proposal invalid under our Constitution.

B. By some of the Council Members’ own admission, the proposed districts have been drawn up with the interests of incumbent council members in mind, rather than the interests of the Cherokee people.

The map the council approved identifies with a “star” the home residence of each council member. Under the proposed map, and even with two Councilors living within just a few miles of one another, no incumbent council member would have to face another incumbent council member. This is not likely a coincidence. In fact, at least one member of the Council has stated publicly that protecting the political interests of the current council members is a major factor. In the June 16 Rules subcommittee, A Council Member from District 1 said, in reference to one proposal: "I thought when we started this we were going to go with the idea that we would not make sitting council members run against each other."

A Council member from District 2 added a few minutes later: "... Trying to keep council people separated. Shows myself & (another council member) being separated by (a) Highway, and that's not actually a fact because we both live on the north side of the highway. We could tweak it where we would be separated."

At that same meeting another Council Member said: "My fear is someday that whoever challenges this raises the issue that is was politically motivated... I fear the plaintiff that says we were motivated by incumbency protection, but then again we have to draw this map some way, and if we can demonstrate that the tweaking still maintains the districts' integrity in terms of history and natural boundaries, that sort of weighs in favor of (the) motion."

The record of the discussion of proposed districting changes is riddled with this sort of language. It appears some council members consider the districts to be their own personal property, to be redrawn to protect their own interests, rather than a district of Cherokee people whose interests they represent.

A short sampling of other comments from Tribal Council members over the past few months:

“And I guess we're the only ones running against each other, or we might work on this map a little more, do you know what I mean? Before we finalize it.”

"I just want to make sure. (Council member). you and I aren't now running against each other, are we?" (Council member "No...") "Well, your name's up here in my little area." (Council member) "Well, that's a misprint. It should be over here on my side."”

“But my goodness! How many zip codes did I get? It looked like... I mean you put me in every

county but where I'd probably want to be!"

"Can anybody say if they're close or not? With their districts? Is it looking better? (asking if anyone was satisfied with the numbers on the maps so far)"

"...the district in Cherokee County - I mean, it's going to be cheap for me to run, and I know all these pig trails, but there's not many folks."

"I don't like it that I'm having to move to other counties, but I can live with it."

"That's gonna take a big chunk out of my population total. I think that's probably discussion for another time."

"...we can give either (Council member A) or (Council member B) enough to get their numbers back where they need to be. Because we're over our numbers already."

"That way we're not asking folks to carve their districts in half and they get to run where they've always run."

"I don't know what (another Council Member) thinks about it, but if we're going to divide by district boundaries or highways or section lines, I wouldn't want mine by (that) Highway. That doesn't bother me that much unless it bothers (the other council member)."

C. Voter districting and creating a district for each Council member radically changes the structure and operation of the Cherokee Nation government and should be based on sound principles as to what is in the best interest of the Cherokee people and Cherokee Nation government.

On several occasions, the council tabled a different set of principles that some members stated publicly that they were committed to following. Those principles, if passed by the Council, would have guided the discussions of the Council and given the tribal courts criteria to review the voter districting provisions. Those principles, first proposed on February 11, 2008 and tabled four (4) times, are:

1. Districting of Council representative seats must meet the requirements of Article VI Section 3 of the Constitution of the Cherokee Nation:
 - a. The Council shall establish representative districts which shall be within the boundaries of the Cherokee Nation. Fifteen of these seats shall be apportioned to afford a reasonably equal division of citizenship among the districts, and the remaining two shall be elected at-large by those registered voters residing outside the boundaries of the Cherokee Nation voting at-large in accordance with this section.
 - b. Equal representation based upon registered tribal citizens;
2. Districting must achieve voter understanding and be easy to define and implement:

3. Districting must endeavor to gain greater participation in the electoral process from voters and candidates;
4. Districting must balance National, Community and Individual interests;
5. Districting must utilize self-identified counties as provided on the application for Cherokee Nation citizenship;
6. Districting must identify and coordinate regional interests;
7. Districting must promote cooperation among elected officials;

Instead, the principles that seemed to guide much of the voter districting discussion by the Council were to protect the political interests of individual Council members.

One of the principles that drives me in this process is my duty to ensure that laws do not unfairly disenfranchise voters. The plan may significantly change the polling places and districts for almost every Cherokee. The proposed plan changes the number of districts from nine to fifteen. It will change precinct locations for Cherokees to vote. It is important to realize that the council districts will be in place for the Cherokee people for years to come. The opinion that the needs of “me and mine” surpass the needs of the entire Nation will not give us a districting plan to stand the test of time.

Other significant reforms to our election laws have been conducted over several years by the Council, with extensive community meetings and surveys to engage the Cherokee people and seek their input. Conversely, this plan has not involved direct participation by the Cherokee people. In this case, the Council didn’t even have the plan fully finalized until just a few moments before it was voted on in full council, amending the plan on the floor. Rather than the thoughtful consideration of the Cherokee people’s interests that such an important topic deserves with meaningful community input, the Council rushed through a districting plan without communicating the final version plan to the public in any way. After all it is a district for voters not for Council members.

Redistricting legislation deserves the opportunity for public comment. Such radical changes to voting districts, which can cause confusion to our voters, should be done only when the soundest principles of good government are at the core of the decision making process.

D. The next election for Cherokee Nation officials will not occur until 2011, allowing time for the Cherokee Nation government to put together a districting plan that has input from our citizens, and meets Constitutional standards.

The Constitution clearly says that “fifteen of these seats shall be apportioned to afford a reasonably equal division of citizenship among the districts.” (emphasis added). The current nine-district system, which provides one council member for three districts and two council

members for the other six, does not meet that standard, and I applaud the Council for attempting to correct the difficult situation in which some Cherokees have two council members representing them and others have only one. We have seen the mathematical and geographical difficulties that can be found in drawing up 15 districts with nearly equal population figures. The Council has looked at countless different proposals and all the proposals for fifteen districts end up cannibalizing the existing districts that Cherokees have known for decades. Those districts, for all their flaws, were clearly defined by county lines and the Cherokee Nation's own jurisdictional boundary. The Constitution does not, however, call for 15 districts. The Constitution calls for 15 seats to be divided equally "among the districts." The council could adopt three voting districts with reasonably equal division of citizenship and the citizens could elect five council members from each district. The Council could adopt five voting districts with reasonably equal division of citizenship and the citizens could elect three council members from each. I believe plans like these, which would balance constituent needs with National interests, were dismissed with little discussion due to too much focus on individual Councilor's territories and political bases. There are many possibilities yet to be explored, and objective third parties that could be consulted for independent recommendations. Therefore, I propose the Council reconsider adopting a set of principles that will be the foundation for future decision making on districting plans. I hope to meet with members of the council to discuss ways to create new voting districts that will be in compliance with our Constitution and are truly in the interest of the Cherokee people.

At the last council meeting, I submitted a letter asking the council to table the proposed re-districting plans, since neither I nor the Cherokee voters had had a chance to talk to the council about the proposal. Unfortunately, because the council rushed to pass this legislation, even though the next election is three years away, I must veto this Legislative Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Chadwick Smith". The signature is written in a cursive style and is enclosed within a faint, hand-drawn oval border.

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



CHEROKEE NATION®

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Chad "Comtassel" Smith
Principal Chief

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Joe Grayson, Jr.
Deputy Principal Chief

July 22, 2008

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

07-22-08P04:12 RCVD


Subject: Addendum to Veto Message of Legislative Act 14-08

Dear Speaker Frailey and Council Members:

The map the council approved at the July council meeting includes stars representing the residences of sitting council members, which makes it appear that exactly one council member lives in each of the 15 proposed districts. Jodie Fishinghawk has informed us that she does not live south of Highway 51 in Adair County, as the map indicates, but rather north of the highway, as does Mr. Crittenden. Unfortunately, the map the council passed at the full council—and which was enacted into law by the full council—still places Ms. Fishinghawk's residence south of Highway 51. Since the correction was not made, the map gives the appearance of creating 15 districts for 15 council members. In fact, Ms. Fishinghawk and Mr. Crittenden both acknowledge that, in the future, they may have to run against one another if they both continue to live north of Highway 51 and seek re-election, though Ms. Fishinghawk has acknowledged publicly that she may move south of Highway 51 into the proposed district.

Regardless, it appears to me through transcripts of the meetings where this legislation was discussed that many council members did use self-serving criteria, rather than setting districts based on any other criteria. Further, the wide variance of population between the districts makes the vetoed proposal unlikely to pass constitutional scrutiny. I welcome the opportunity to work with the council on this issue moving forward.

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