

Committee: Rules  
Date: 2-23-07 Committee Date: 2-23-07

Author: Todd Hembree  
Sponsor: Taylor Keen

**VETO**

2/21/07

DATE

PRINCIPAL CHIEF

## An Act

### Legislative Act 23-07

### A LEGISLATIVE ACT AMENDING TITLE 20, "COURT AND PROCEDURES" OF THE CHEROKEE NATION CODE ANNOTATED; RELATING TO COURT RULES AND JURISDICTION; AND DECLARING AN EMERGENCY

#### BE IT ENACTED BY THE CHEROKEE NATION:

#### Section 1. Title:

This act shall be known as the "Judicial Reform And Jurisdiction Act of 2006" and shall be codified as Title 20 Chapter 1, et. seq. of the Cherokee Nation Code Annotated.

#### Section 2. Purpose

The purpose of this Act is to establish jurisdiction of the Supreme Court over Constitutional matters, provide for Tribal Council adoption of Court rules and codify the name change from Judicial Appeals Tribunal to Supreme Court in all laws and official documents of the Cherokee Nation

#### Section 3. Legislative History

- This Act amends certain sections of Title 20 of the CNCA
- Cherokee Nation Legislative Act 40-03
- Cherokee Nation Constitution Article VIII Section 4, which states:

"The original jurisdiction of the Supreme Court shall extend to a general supervisory control over all lower courts. General supervisory control does not include suspension, removal, or disciplinary action of any member of the judiciary. These powers are specifically reserved for the Court on the Judiciary as prescribed in Section 5 and/or Article XI.

The Supreme Court shall employ an Administrator, who shall have general administrative duties in the judicial branch. The Justices of the Supreme Court shall have supervisory authority over the Administrator.

In support of its original and appellate jurisdiction, the Supreme Court shall have power to issue, hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and such other remedial writs as may be provided by law and may exercise such other jurisdiction as may be conferred by statute. The appellate jurisdiction of the Supreme Court shall extend to all cases at law and in equity arising under the laws or Constitution of the Cherokee Nation.

The Supreme Court shall promulgate rules of procedure relating to its original and appellate jurisdiction to insure any litigant appearing before it receives due process of law and impartial justice, together with prompt and speedy relief. Decisions of the Supreme Court shall be published and indexed and shall be final insofar as the judicial process of the Cherokee Nation in concerned. (Emphasis Added)

**Section 4. Definitions**

- A. "Supreme Court" means the five (5) member court referenced in Article VIII Section 1 of the Cherokee Nation Constitution.
- B. "Jurisdiction" means power and authority of a Court to hear and determine a judicial proceeding.

**Section 5. Substantive Provisions**

**(1) Title 20 Sections 31 through 43 are hereby repealed in their entirety.**

**(2) Title 20 Section 51 is hereby amended to read as follows:**

Jurisdiction of the Supreme Court: The Supreme Court shall have original and exclusive jurisdiction over:

- 1. Writs of Habeas Corpus, mandamus, quo warranto, certiorari, prohibition and all other matters set forth under Article VIII of the Cherokee Nation Constitution.
- 2. Any case or controversy involving Cherokee Nation elections, disputes arising between the branches of government of the Cherokee Nation ~~and any disputes involving fiscal matters of the Cherokee Nation.~~

**(3) Title 20 Section 51.1 shall read as follows:**

Codification of the term "Supreme Court":

- 3. All statutes and official documents of the Cherokee Nation which contain the term Judicial Appeals Tribunal shall be changed to Cherokee Nation Supreme Court where applicable.

**(4) Section 20 Section 57 shall be amended to read as follows:**

- A. The Justices shall have authority to adopt rules of pleading, practice, and procedure applicable to any or all proceedings in the Supreme Court of the Cherokee Nation. In addition, they may adopt uniform rules for the admission of evidence and may require the use of standard forms for pleadings, motions and other papers filed in the Supreme Court by litigants, as well as for judgments, writs, and court orders.
- B. Any rule adopted by the Justices shall be transmitted to the Council, directing the codification of such rule.
- C. No rule adopted by the Justices shall be effective until approved under procedures adopted by the Justices and transmitted to the Council.

**(5) Title 20 Section 16 shall be amended as follows:**

"Salary for District Judges and Associate District Judges shall be fixed by the Office of the Principal Chief with approval by the Council. District Court Judges and Associate District Court Judges shall be considered a special class of employees for travel purposes. District Court Judges and Associate District Court Judges are exempt from any disciplinary action through the Human Resource Department Policy and Procedures. Such judges may only be disciplined or removed under the provision of the Constitution of the Cherokee Nation or applicable statute."

**Section 6. Provisions not cumulative**

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

VETO

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**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. Emergency Declared**

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

Enacted by the Council of the Cherokee Nation on the 14<sup>th</sup> day of May, 2007.

Meredith Frailey, Speaker  
Council of the Cherokee Nation

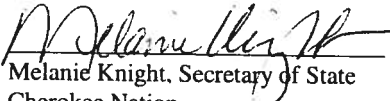
**ATTEST:**

Don Garvin, Secretary  
Council of the Cherokee Nation

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Chad Smith, Principal Chief  
Cherokee Nation

**ATTEST:**

  
Melanie Knight, Secretary of State  
Cherokee Nation

**YEAS AND NAYS AS RECORDED:**

Audra Smoke-Conner	<u>YEA</u>	Melvina Shotpouch	<u>YEA</u>
Bill John Baker	<u>YEA</u>	Meredith A. Frailey	<u>YEA</u>
Joe Crittenden	<u>YEA</u>	John F. Keener	<u>YEA</u>
Jackie Bob Martin	<u>YEA</u>	Cara Cowan Watts	<u>YEA</u>
Phyllis Yargee	<u>YEA</u>	Buel Anglen	<u>YEA</u>
David W. Thornton, Sr.	<u>YEA</u>	William G. Johnson	<u>YEA</u>
Don Garvin	<u>YEA</u>	Charles "Chuck" Hoskin	<u>YEA</u>
Linda Hughes-O'Leary	<u>YEA</u>	Taylor Keen	<u>YEA</u>
Jack D. Baker	<u>YEA</u>		



GWYJD3P  
**CHEROKEE NATION®**

**ChGJ**  
Chad "Comtassel" Smith  
Principal Chief

**JLCo JChCo**  
Joe Grayson, Jr.  
Deputy Principal Chief

May 21, 2007

Meredith A. Frailey, Speaker  
Charles "Chuck" Hoskin, 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 May 14, 2007 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 with the exception of one (1) vetoed act below.

**APPROVED RESOLUTIONS**

1. Resolution No. 40-07, A Resolution Authorizing the Submission of a Proposal to the U.S. Department of Health and Human Services, Administration for Native Americans, for a Program of All-Inclusive Care for the Elderly (PACE) Project.
2. Resolution No. 41-07, A Resolution Authorizing the Development and Submission of a Grant Application to the Department of Housing and Urban Development for a Resident Opportunity and Self-Sufficiency (ROSS) Family and Homeownership Program.
3. Resolution No. 42-07, 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.
4. Resolution No. 43-07, A Resolution Adopting a Maintenance and Operation Policy and Establishing a Set Aside for M&O Contingencies to the U.S. Department of Housing and Urban Development Community Building Application.
5. Resolution No. 44-07, A Resolution Authorizing the Submission of a Grant Application to Administer a Grant in Partnership with Communities to Build Community Buildings as Self-Help Projects and Construct the Kenwood Water Project.
6. Resolution No. 45-07, A Resolution Authorizing the Submission of a Grant Application to Administer a Grant in Partnership with Community Organizations.
7. Resolution No. 46-07, A Resolution Approving and Authorizing the Submission of the Amended Fiscal Year 2007 Indian Housing Plan to the U.S. Department of Housing and Urban Development.

8. Resolution No. 47-07, Authorizing the Approval of a Business Lease Between Cherokee Nation and the Kenwood Community Association on Trust Land.
9. Resolution No. 48-07, A Resolution Authorizing the Environmental Programs Group to Submit an Application to the U.S. Environmental Protection Agency for Clean Air Act Section 103 Funding.
10. Resolution No. 49-07, A Resolution Authorizing Cherokee Nation Environmental Programs to Submit an Application to the U.S. EPA for a Water Quality Monitoring Grant.
11. Resolution No. 50-07, A Resolution Authorizing Cherokee Nation Environmental Programs to Submit an Application to the U.S. Environmental Protection Agency for an Indian General Assistance Program Regional Tribal Operations Committee Support Grant.
12. Resolution No. 51-07, A Resolution Authorizing Cherokee Nation Environmental Programs to Submit an Application to the U.S. Environmental Protection Agency for an Indian General Assistance Program Training Grant.
13. Resolution No. 52-07, A Resolution Authorizing Cherokee Nation Environmental Programs to Submit an Application to the U.S. Environmental Protection Agency for an Indian General Assistance Program Grant.
14. Resolution No. 53-07, A Resolution Authorizing the Placement of Land in Trust – Ross Road 255.33 Acres.
15. Resolution No. 54-07, A Resolution Authorizing the Development and Submission of a Grant Application to the Department of Education for a Native American Career and Technical Education Program.

#### **APPROVED LEGISLATIVE ACTS**

1. Legislative Act No. 24-07, An Act Amending Legislative Act #26-06 Authorizing the Comprehensive Budget for Fiscal Year 2007 – Mod. 7; and Declaring an Emergency.

#### **VETOED LEGISLATION**

1. Legislative Act No. 23-07, A Legislative Act Amending Title 20, “Court and Procedures”, of the Cherokee Nation Code Annotated; Relating to Court Rules and Jurisdiction; and Declaring an Emergency.

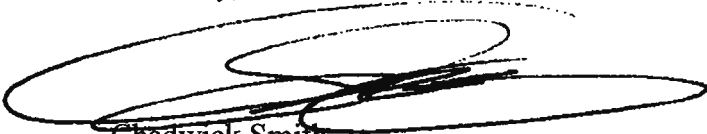
Although I agree with the premise, I must veto this Act due to some technical flaws. In Section 5(2) Item 1., this Act would provide that the Supreme Court have the exclusive jurisdiction over writs of Habeas Corpus. There are instances, most notably child custody cases, where the lower courts need this jurisdiction as well. In the same section, “all other matters under Article VIII of the Cherokee Nation Constitution” shall be the exclusive jurisdiction of the Supreme Court. This is problematic because the District Courts are authorized under this Article of the Constitution.

Finally, in Section 5(2) Item 2., this legislation would transfer any case involving Cherokee

Nation elections to the Supreme Court. We have a current case in the District Courts of the Nation involving elections, and it likely was not the intent of the lawmakers to disrupt or abruptly transfer that case to the Supreme Court.

Due to these issues, I would request that this Act be considered again in Committee and some study be conducted to make revisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Chadwick Smith", is written over a large, loopy scribble.

Chadwick Smith  
Principal Chief

cc: Legislative Aide, Council of the Cherokee Nation  
Councilors (17), Council of the Cherokee Nation  
Melanie Knight, Secretary of State  
File