

# Memo

**To:** Cherokee Nation Tribal Council Members, Principal Chief Chad Smith  
**From:** Todd Hembree, council attorney and A. Diane Hammons, Attorney General  
**Date:** 11/30/2010  
**Re:** Representative Districts, effect of 11/18/10 Supreme Court opinion

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## Message

The purpose of this memorandum is to give the current status of the representative district plan for the Cherokee Nation, and to answer the question presented to the Attorney General by Speaker Meredith Frailey in her email memo of 11/28/10.

Speaker Frailey has asked whether "the 5 district legislation . . . on re-districting remain effective, or does the S.Ct. Opinion rule it unconstitutional?" On November 18<sup>th</sup>, 2010, the Cherokee Nation Supreme Court ruled that the five district plan, as outlined under Legislative Act 22-10, was unconstitutional. Legislative Act 22-10 amended Legislative Act 06-10 inserting Section 5, which had been reserved under Legislative Act -06-10 for districts. The Court held that "Legislative Act 22-10 is unconstitutional *only* insofar as it created a district with a deviation of 22.8%" (emphasis added). We believe that the Court did not strike down the five districts, but only struck down the construction of the districts, as constituted with the impermissible deviation of over 20%. LA-22-10 contains a severability clause which states that if any part of the Act "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."

Further support for this interpretation is found in Legislative Act 32-10 which assigned seat designation for councilors for five (5) representative districts. As Legislative Act 32-10 has not been challenged or ruled unconstitutional, the interpretation of the Court's ruling which acknowledges that Act and the remainder of LA 22-10, is that the Cherokee Nation has five representative districts that must be configured to meet the constitutional requirements as outlined by the Supreme Court

The tribal council has a constitutional duty and right to establish representative districts within the jurisdiction of the Cherokee Nation as the Court acknowledged in its final directive – "The final decision on redistricting is for the Cherokee Nation Tribal Council and they should act immediately to readdress the issue of redistricting by legislation."