



Council of the Cherokee Nation

Cherokee Nation Tribal
Council
17763 S. Muskogee Ave.
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Legislation Text

File #: 17-138, Version: 1

ACT RELATING TO APPEAL A FEDERAL DISTRICT COURT DECISION IMPACTING THE SOVEREIGNTY OF THE CHEROKEE NATION AND THE 566 OTHER TRIBES ACROSS THE UNITED STATES AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the 2017 Sovereignty Protection Act and codified as _____ (Title) _____ (Section) _____ of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this enactment is to require the Attorney General to appeal *Cherokee Nation v. Nash*, NDDC, Civil Action No. 13-0313 and any other case impacting the sovereignty of the Cherokee Nation to determine its own citizenship.

Section 3. Legislative History

A. In *Cherokee Nation v. Nash*, NDDC, Civil Action No. 13-0313, the federal District Court for the Washington DC District issued a Memorandum Opinion August 30, 2017 which diminished the right of the Cherokee people to determine citizenship in the Cherokee Nation.

B. The most fundamental and sacred aspect of sovereignty of any nation is that its people have the right to decide who is entitled to enrollment for citizenship. "The Act of Union of 1839." provides in part:

Whereas our Fathers have existed, as a separate and distinct Nation, in the possession and exercise of the essential and appropriate attributes of sovereignty, from a period extending into antiquity, beyond the records and memory of man. . . "

C. In its Memorandum Opinion dated August 30, 2017, the federal district court in *Nash* held that a post American Civil War 1866 Treaty between the United States and the Cherokee Nation provided a federal treaty right to descendants of Freedmen to *currently* enroll as Cherokee Nation citizens, although they are not eligible under the Cherokee Nation Constitution.

D. In 2011, the Cherokee Nation Supreme Court *held Cherokee Nation Registrar v. Nash*, SC-2011-02 the 2007 Constitutional Amendment was the expression of the Cherokee people *was binding on the entire Cherokee Nation including the Principal Chief*. The Cherokee Nation Supreme Court held:

This Court has previously held in *Allen v. Cherokee Nation*, JAT-04-09 (March 7, 2006) that the Cherokee people do have the right to make citizenship determination (whether to exclude Freedman (sic) and intermarried white descendants) for themselves.

E. As a result, over 2000 Cherokees signed a petition to bring a constitutional amendment for the

people's vote to clarify the restriction, which was passed by over 70%.

F. In the 2011 *Nash* case, the Cherokee Nation Supreme Court clearly stated, The latest sovereign expression of the Cherokee people concerning the Freedmen is found in their amendment dated March 3, 2007, to the Cherokee Nation Constitution. *Opinion* at page 7.

G. In *Nash*, the Cherokee Nation Supreme Court further held: It stands to reason that if the Cherokee people had the right to define the Cherokee Nation citizenship in the above mentioned 1866 Constitutional Amendment they would have the sovereign right to change the definition of the Cherokee Nation citizenship in their sovereign expression in the March 3, 2007 Constitutional Amendment. *Opinion* at page 8.

H. The Attorney General, Principal Chief, Deputy Principal Chief and Council took an Oath of Office to defend the Constitution of the Cherokee Nation and enforce decisions of the Cherokee Nation Supreme Court. See Cherokee Nation Constitution Article VI, Section 14.

I. The will of the Cherokee people was expressed clearly when they passed the 2007 Constitutional amendment (by 70%) to limit enrollment to Cherokee Nation citizenship to those persons with an Indian ancestor on the base roll.

J. The Attorney General Act, 51 CNCA 105 A. 16. limits the Attorney General's authority, "To settle any case or controversy on behalf of the Nation, except that a settlement involving injunctive relief which substantially impacts the operation or programs of a Nation agency or would impose obligations requiring the expenditure of funds in excess of unallocated unencumbered monies in the agency's appropriations or beyond the current fiscal year shall be reviewed prior to its finalization by the Principal Chief and the Tribal Council. The purpose of the review is to determine the budgetary, programmatic and operational impact of the proposed settlement."

K. The Council enacted Resolution -22-09 (3/23/2009) which provided, "BE IT RESOLVED BY THE CHEROKEE NATION, that litigation is hereby ratified in *Cherokee Nation v. Nash*, et al., Case No. 09 CV-052 (TCK) in the U.S. District Court for the Northern District of Oklahoma, and that the Attorney General is authorized to take such action as necessary to pursue such litigation and ensure that the Nation's interests are fully represented."

L. Attorney General Hembree, Principal Chief Baker, and Deputy Principal Chief Crittenden failed to defend the 2007 Constitutional Amendment and the Cherokee Nation Supreme Court's 2011 decision in *Nash by refusing to appeal. Cherokee Nation v. Nash*, NDDC, Civil Action No. 13-0313.

M. In 2012, in response to the Cherokee Nation Rules Committee questioning Hembree about his nomination as Attorney General, he assured the Committee he would defend the 2003 Constitution and would represent the will of the Cherokee people by their vote on the 2007 Constitutional amendment in the federal courts to the "greatest degree possible."

Section 4. Definitions

None

Section 5. Insert Substantive Provisions of Law

A. The Attorney General is directed to appeal any adverse decision in *Cherokee Nation v. Nash*, NDDC, Civil Action No. 13-0313 to the Court of Appeals and U.S. Supreme Court.

B. The Attorney General Act, 51 CNCA 105 Section A. 16. Is hereby amended by adding the following language, "Notwithstanding the provisions of this section, the Attorney General is prohibited from not appealing adverse decisions which diminish the sovereignty of the Cherokee Nation without the consent of the Council by Resolution

C. In the event, the Attorney General fails to appeal *Cherokee Nation v. Nash*, NDDC, Civil Action No. 13-0313 within five (5) days of this enactment or any other case which impacts the sovereignty of the Cherokee Nation without the consent of the Council, the Attorney for the Council is authorized and directed to appeal *Cherokee Nation v. Nash*, NDDC, Civil Action No. 13-0313 or any other case which impacts the sovereignty of the Cherokee Nation and employ such attorneys reasonable and necessary to appeal.

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

The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.

Section 9. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.