

111TH CONGRESS
1ST SESSION

H. R. 2761

To sever United States Government relations with the Cherokee Nation of Oklahoma until such time as the Cherokee Nation of Oklahoma restores full tribal citizenship to the Cherokee Freedmen disenfranchised in the March 3, 2007, Cherokee Nation vote and fulfills all its treaty obligations with the Government of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2009

Ms. WATSON (for herself, Ms. NORTON, Mr. CUMMINGS, Mrs. CHRISTENSEN, Mr. BUTTERFIELD, Mr. CONYERS, Mr. CLAY, Ms. LEE of California, Mr. TOWNS, Mr. AL GREEN of Texas, and Mr. FATTAH) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To sever United States Government relations with the Cherokee Nation of Oklahoma until such time as the Cherokee Nation of Oklahoma restores full tribal citizenship to the Cherokee Freedmen disenfranchised in the March 3, 2007, Cherokee Nation vote and fulfills all its treaty obligations with the Government of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. FINDINGS.**

2 Congress finds the following:

3 (1) In the 1830s, members of the Cherokee Na-
4 tion were removed from their lands in the south-
5 eastern United States and forced to migrate to
6 Oklahoma along a route known as the Trail of
7 Tears. Among those persons forced to migrate were
8 the Black slaves of Cherokees, free Blacks married
9 to Cherokees, and the children of mixed-race fami-
10 lies, known now as the “Black Cherokees”.

11 (2) In 1861, the Cherokee Nation executed a
12 treaty with the Confederate States of America,
13 thereby severing its relations with the United States
14 Government. Members of the Cherokee Nation held
15 positions in the Congress and military of the Con-
16 federate States of America and waged war against
17 the United States during the Civil War.

18 (3) Following the Civil War, the United States
19 reestablished relations with the Cherokee Nation
20 through the Treaty of 1866. The Treaty of 1866 de-
21 clared that the Black Cherokees, also known as
22 “Cherokee Freedmen”, were to be made citizens of
23 the Cherokee Nation and to have all the rights of
24 Cherokees.

25 (4) The Treaty of 1866 further guarantees the
26 following:

1 (A) Laws “shall be uniform throughout
2 said nation” and that if “any law, either in its
3 provisions or in the manner of its enforcement,
4 in the opinion of the President of the United
5 States, operate unjustly in [the Freedmen] dis-
6 trict, he is hereby authorized and empowered to
7 correct such evil.”.

8 (B) The Cherokee Freedmen are given the
9 right to elect officials and to representation
10 “according to numbers” on the national council.

11 (5) Following the Treaty of 1866, the Cherokee
12 National Council amended its constitution to guar-
13 antee the Cherokee Freedmen full rights as citizens
14 of the Cherokee Nation.

15 (6) Also following the Treaty of 1866, the
16 Courts upheld the Cherokee Freedmen’s treaty
17 rights, including—

18 (A) in 1895, the Court of Claims held that
19 the Cherokee Freedmen were entitled to share
20 in the tribe’s land sale proceeds and the Cher-
21 okee Nation’s sovereignty could not be exercised
22 in a manner that breached the nation’s treaty
23 obligations to the United States (*Whitmire,*
24 *Trustee for the Cherokee Freedmen v. Cherokee*

1 Nation, 30 CT Cl. 138, 180 (CT Cl. 1895));
2 and

3 (B) in 1906, the Supreme Court noted
4 that the Cherokee Freedmen are citizens of the
5 Cherokee Nation entitled to the same property
6 rights as other members of the Cherokee Na-
7 tion under the Treaty of 1866 (Red Bird v.
8 United States, 203 U.S. 76, 84).

9 (7) In a December 19, 2006, ruling in Vann v.
10 Kempthorne, the United States District Court for
11 the District of Columbia found that in 1906, the
12 Dawes Commission registered members of the Cher-
13 okee Nation under separate categories: the “Freed-
14 men Roll” for the Black Cherokees and the “Blood
15 Roll” for other Cherokees. Individuals possessing Af-
16 rican blood were placed on the Freedmen Roll, where
17 no levels of Indian blood were recorded. Those pos-
18 sessing no African blood were placed on the Blood
19 Roll, where levels of Indian blood were recorded. The
20 Dawes Commission declared that persons recorded
21 on the Freedmen Roll were on equal footing with
22 those on the Blood Roll.

23 (8) In 1970, Congress passed the “Principal
24 Chiefs Act” requiring the Chickasaw, Choctaw,
25 Creek, Seminole, and Cherokee Nations to obtain

1 approval for their voting laws for selection of the
2 principal chief. The Department of the Interior
3 drafted a policy stating that it was not necessary
4 that each of these groups have identical or similar
5 regulations, but that three conditions are deemed
6 fundamental to the democratic selection of a prin-
7 cipal tribal official. One of the three conditions stip-
8 ulated by the Department is that voter qualifications
9 of the Cherokees must be broad enough to include
10 the enrolled Cherokee Freedmen citizens.

11 (9) In May 2003, the Cherokee Nation held an
12 election for its officers and ratification of a new con-
13 stitution. The vote proposed to amend the 1999 con-
14 stitution of the Cherokee Nation by removing the re-
15 quirement that the United States Department of the
16 Interior and Bureau of Indian Affairs approve
17 amendments to the Cherokee Nation Constitution.
18 The Cherokee Freedmen were not permitted to vote
19 or run for office. The election violated the Treaty of
20 1866, the 13th Amendment to the United States
21 Constitution, the Principal Chiefs Act of 1970, and
22 the Department of the Interior's guidance on the
23 ratification of a new constitution.

24 (10) In May 2003, the Cherokee Nation held an
25 election for its officers and the ratification of a new

1 constitution. The new constitution removed the re-
2 quirement that the United States Department of the
3 Interior and the Bureau of Indian Affairs approve
4 amendments to the Cherokee Nation constitution.
5 The Cherokee Freedmen were not permitted to vote
6 in this election. The election violated the Treaty of
7 1866, the 13th Amendment to the United States
8 Constitution, and the Principal Chiefs Act of 1970.

9 (11) The Department of the Interior has not
10 recognized the May 2003 vote to amend the Cher-
11 okee Nation's constitution. The Cherokee Nation has
12 subsequently removed its request for approval from
13 the Department of the Interior.

14 (12) Currently, the Cherokee Nation operates
15 under a Principal Chief elected in violation to the
16 1970 Principal Chiefs Act and Treaty of 1866, a
17 National Council constituted without Cherokee
18 Freedmen representatives in violation of the Treaty
19 of 1866, and a Constitution not approved by the
20 United States pursuant to article XV, section 10 of
21 the 1975 Cherokee Nation Constitution.

22 (13) In May 2003, the Cherokee Nation re-
23 named its highest court, formerly named the Judi-
24 cial Appeals Tribunal and newly renamed the Su-
25 preme Court, after the Judicial Appeals Tribunal

1 ruled in a 2–1 decision that the Cherokee Freedmen
2 were entitled to citizenship pursuant to the 1975
3 Cherokee Nation constitution. Pursuant to the new
4 May 2003 constitution, which still has not been ap-
5 proved by the Department of the Interior, the ille-
6 gally elected Principal Chief appointed two addi-
7 tional judges to the Supreme Court. The panel of
8 five Supreme Court judges ruled in a 3–2 decision
9 that the Cherokee Nation could hold a vote on the
10 tribal status of the Cherokee Freedmen.

11 (14) Operating under the unapproved Constitu-
12 tion, the Cherokee Nation held an election in March
13 2007, to remove the Cherokee Freedmen from the
14 Cherokee Nation. In a vote of less than 4 percent of
15 the total Cherokee Nation population, the voters
16 elected to remove Cherokee Freedmen not on the
17 Dawes blood rolls from the Nation.

18 (15) In May 2007, the Cherokee Nation leader-
19 ship determined that it would allow registered
20 Freedmen to vote in the June 23, 2007, election for
21 tribal officers. Despite the Cherokee Nation’s deci-
22 sion to allow Freedmen to vote, Freedmen’s rights
23 as members of the Cherokee Nation are severely re-
24 stricted: Freedmen are not allowed to run for office
25 in the June 2007 election in violation of the Treaty

1 of 1866; the registration of Freedmen entitled to
2 Cherokee citizenship under the 1906 Dawes Rolls
3 has been halted; and the election is to be held under
4 provisions of an unapproved constitution and in vio-
5 lation of the 1970 Principal Chiefs Act that requires
6 the Cherokee leadership to submit its voting require-
7 ments for the election to the Secretary of the Inte-
8 rior for his approval. Further, the actions of the
9 Cherokee Nation in halting citizenship application
10 processing and voter registration of Freedmen have
11 disproportionately reduced the number of Freedmen
12 voters that can participate in the election.

13 (16) The manner in which the Cherokee Nation
14 is conducting the relationship between the United
15 States and the tribal entity is not in the best inter-
16 est of the United States Government, citizens of the
17 Cherokee Nation, and violates existing treaties and
18 laws governing the relationship between the United
19 States Government and the Cherokee Nation.

20 (17) Current efforts of the Cherokee Nation to
21 expel members of the Cherokee Freedmen from the
22 tribal rolls and abolish Department of the Interior
23 oversight are being pursued in violation of the treaty
24 rights extended to the Cherokee Freedmen in a trea-
25 ty agreement between the United States and Cher-

1 okee Nation in the 1866 Treaty and in violation of
2 Freedmen citizenship under the federally approved
3 Cherokee Nation constitution of 1975.

4 (18) The Department of the Interior has failed
5 to uphold its fiduciary responsibility by recognizing
6 the May 2003 Cherokee Nation election for Prin-
7 cipal Chief in which Freedmen were not allowed to
8 vote in violation of the Principal Chiefs Act and the
9 Treaty of 1866 and by failing to take any adminis-
10 trative action against the Cherokee Nation leader-
11 ship for its decision to sanction a referendum in
12 March 2007 in which the Freedmen were expelled
13 from the Cherokee Nation.

14 **SEC. 2. SEVERANCE OF RELATIONS WITH THE CHEROKEE**
15 **NATION.**

16 (a) IN GENERAL.—The United States hereby severs
17 all relations with the Cherokee Nation, including all finan-
18 cial obligations or otherwise, until such time as the Cher-
19 okee Nation is meeting all of its treaty obligations and
20 other federal statutory obligations (including all obliga-
21 tions of the Treaty of 1866, the Principal Chiefs Act, hold-
22 ing elections for tribal leaders that are in compliance with
23 the Act, and has restored the rights of all Cherokee Freed-
24 men disenfranchised from the Cherokee Nation in the

1 March 3, 2007, Cherokee Nation vote), as determined by
2 a final certification under section 2(d).

3 (b) COMPLIANCE WITH THE REQUIREMENTS OF THE
4 ACT.—The Secretary shall coordinate with all depart-
5 ments and agencies of the United States Government to
6 ensure that every effort is being made by the United
7 States Government to comply with this Act.

8 (c) REPORTS.—

9 (1) FEDERAL AGENCIES.—Not later than 30
10 days after the date of the enactment of this Act, and
11 continuing annually until the final certification as
12 determined under section 2(d), all departments and
13 agencies under the jurisdiction of the United States
14 Government shall submit a report to the Secretary
15 describing—

16 (A) all Federal programs under their juris-
17 diction that provide financial assistance and
18 other services to the Cherokee Nation; and

19 (B) the efforts that are being undertaken
20 comply with all requirements of this Act.

21 (2) STATUS REPORTS.—Until the Secretary cer-
22 tifies to Congress that the Cherokee Nation is in
23 compliance with its treaty obligations, the Secretary
24 shall submit monthly public reports to Congress on
25 the status of the United States Government's efforts

1 to ensure that all departments and agencies of the
2 Federal Government are in compliance with the re-
3 quirements of this Act.

4 (3) OTHER FREEDMAN INDIANS.—Not later
5 than 6 months after the date of the enactment of
6 this Act, the Secretary shall issue a public report to
7 Congress on the status of freedmen in the Cherokee,
8 Choctaw, Chickasaw, Muscogee (Creek), and Semi-
9 nole Nations of Oklahoma. The report shall address
10 whether each of those Indian tribes is complying
11 with all treaty obligations and Federal laws with re-
12 spect to its freedmen members, the level of partici-
13 pation of freedmen in tribal leadership positions,
14 tribal benefits received by the freedmen, and pre-
15 vious or current efforts on the part of those Indian
16 tribes to disenfranchise its freedmen members.

17 (d) CONGRESSIONAL CERTIFICATION.—After the
18 Secretary has certified to Congress that the Cherokee Na-
19 tion is in full compliance with all its treaty obligations and
20 Congress approves the Secretary's certification by a vote
21 taken on a resolution introduced in both chambers of Con-
22 gress certifying that the Cherokee Nation is in full compli-
23 ance with its treaty obligations, the final certification of
24 the Cherokee Nation's treaty compliance shall take effect.

1 **SEC. 3. SUSPENSION OF RIGHT TO CONDUCT GAMING OP-**
2 **ERATIONS.**

3 (a) IN GENERAL.—The Cherokee Nation’s authority
4 to conduct gaming regulated under the Indian Gaming
5 Regulatory Act and to administer any funds from such
6 gaming are suspended until such time that the Cherokee
7 Nation is in compliance with all treaty and other obliga-
8 tions with the United States, as determined by a final cer-
9 tification under section 2(d).

10 (b) REPORT.—Not later than 30 days after the date
11 of the enactment of this Act, the National Indian Gaming
12 Commission shall submit a report to Congress detailing
13 the actions that have been taken to enforce subsection (a).

14 **SEC. 4. DEFINITIONS.**

15 (a) “CHEROKEE” AND “CHEROKEE NATION”.—The
16 terms “Cherokee” and “Cherokee Nation” mean the Cher-
17 okee Nation of Oklahoma.

18 (b) “CHEROKEE FREEDMEN”, “FREEDMEN”, AND
19 “BLACK CHEROKEES”.—The terms “Cherokee Freed-
20 men”, “Freedmen”, and “Black Cherokees” refer to indi-
21 viduals who can trace their ancestry to individuals listed
22 on the 1906 Dawes Commission Roles for the Cherokee
23 Freedmen.

24 (c) “OTHER FREEDMAN INDIANS”.—The term
25 “Other Freedmen Indians” refers to individuals who can
26 trace their ancestry to the 1906 Dawes Commission Rolls

1 who are members of the Choctaw, Chickasaw, Muscogee
2 (Creek), and Seminole Nations.

3 (d) SECRETARY.—The term “Secretary” means the
4 Secretary of the Interior.

5 **SEC. 5. NONCOMPLIANCE.**

6 (a) EFFECTIVE DATE.—Notwithstanding any deci-
7 sion by Congress under section 2(d) of this Act, the provi-
8 sions of this Act shall again take effect if at any future
9 date the Secretary certifies to Congress that the Cherokee
10 Nation of Oklahoma is not in full compliance with its trea-
11 ty obligations or Federal statutes that govern its relations
12 with the United States Government.

13 (b) PRIVATE ACTION.—Any Cherokee Freedmen
14 shall have a private right to bring actions for injunctive
15 relief, declaratory relief, or monetary damages against the
16 Cherokee Nation of Oklahoma, officials of the Cherokee
17 Nation of Oklahoma, or Federal officials for noncompli-
18 ance with this Act or for violations of the terms of the
19 Treaty of 1866, the 13th Amendment to the United States
20 Constitution, or the Indian Civil Rights Act of 1968. The
21 appropriate Federal courts shall have exclusive jurisdic-
22 tion over actions brought under this subsection.

23 **SEC. 6. DEPARTMENT OF JUSTICE.**

24 The Attorney General shall issue a finding on wheth-
25 er the Federal civil rights of the Cherokee Freedmen have

1 been violated by either the Cherokee Nation of Oklahoma
2 or the Department of the Interior, or both. Individual
3 Freedmen shall also have a private right of action to com-
4 pel the Attorney General to investigate federal civil rights
5 violations and provide a determination of whether a viola-
6 tion has occurred within 180 days of submitting a com-
7 plaint describing the violation in writing.

8 **SEC. 7. GAO REPORT ON EXPENDITURE OF FEDERAL**
9 **FUNDS.**

10 The Government Accountability Office shall issue a
11 public report to Congress detailing for each of the 5 years
12 ending immediately before the report was completed the
13 Cherokee Nation's expenditure of all Federal funds. The
14 report shall include an analysis of Federal funds allocated
15 by the Cherokee Nation's leadership for its member bene-
16 fits and services and for administrative and other pur-
17 poses. The report shall determine whether or not the Cher-
18 okee Nation is in full compliance with all Federal regula-
19 tions and laws regarding the management and disburse-
20 ment of Federal funds.

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