

Testimony
Hon. Michael Burrage
General Counsel
Choctaw Nation of Oklahoma

Before the oversight hearing on

"Select Provisions of the 1866 Reconstruction Treaties between the United States
and Oklahoma Tribes"

Convened by the
United States Senate Committee on Indian Affairs
July 27, 2022

Good afternoon Chairman Schatz, Vice-Chair Murkowski, Senator Lankford, and distinguished members of the Committee.

I am Michael Burrage, General Counsel for and a member of, the Choctaw Nation of Oklahoma.

I am here at the request of, and on behalf of, the Chief of the Choctaw Nation, the Honorable Gary Batton, who the Committee invited to testify on a matter of grave and momentous importance to the integrity of the Choctaw Nation.

I began representing the Choctaw Nation in 1974 upon graduation from the University of Oklahoma College of Law, at which time I moved to Antlers, Oklahoma to begin my law practice. I have represented the Tribe since that time, except for an approximate 7 year period, when I was appointed by President Clinton, to be a United States District judge, being Chief judge for 5 of those years and also serving on the 10th Circuit Court of Appeals. I was told I am the first Native American to be appointed to the federal bench.

To be clear, the Freedman issue, as it relates to the Choctaw Nation, has nothing to do with race. Tribal membership is based on blood, not race.

Today, Choctaw Nation's tribal membership includes African Americans as well as those from other races. All members of our Tribe share one characteristic in common, they are all Choctaw by blood. They are all the lineal descendants of Choctaw Indians.

The Constitution of the Choctaw Nation was established by a United States District Court order dated March 9, 1983 in an action entitled *Morris v Watt*, with **federal approval by the government, June 9, 1983** and ratified by a vote of the tribal members, certified by the Choctaw Election Commission on July 25, 1983. This Constitution limits tribal membership to Choctaws by blood and their lineal descendants. Chief Batton, and I as General Counsel, take an oath to uphold and defend this Constitution. Our Constitution has existed and worked well for almost four decades, but now another part of the federal government that approved this Constitution, wants to unilaterally walk it back. Without the consent of the Indians affected. Sound familiar, when it come to the federal government treatment of Indian tribes?

In the Choctaw Nation's recent litigation against the federal government over unallotted lands, United States District Court Judge Lee West, said the federal government made many agreements with the tribes it did not keep. He said that was not going to happen in his court and it did not.

It is the federal government, by placing tribal membership in a political arena, that initiated this Freedmen issue, not the Choctaw Nation. If there is a problem, the government needs to find another solution, that does not infringe upon the rights of the Choctaw people or the integrity of our self-government.

In *Santa Clara Pueblo v. Martinez* the Supreme Court held a tribe, because of its sovereignty and principles of self-determination, has the exclusive authority to determine its membership. Following this, the Tenth Circuit in *Ordinance 59 Ass'n v. U.S. Dep't of Interior Sec'y*, held that **"Tribes, not the federal government, retain authority to determine tribal membership."** This holding should be honored by all branches of the federal government today.

The lawful interpretation of treaties, case law and history that relates to Indians is complicated. There are special rules of construction when it comes to treaties

with Indians. We are here today, having been drawn into a political process, where decisions can have far reaching legal consequences.

I respectfully ask the Committee -- is a congressional hearing, where time is limited and personal and political concerns are on the table, the proper place to adjudicate such important matters as tribal membership? Then, you add on top of that, legislative threats are made, if the Tribe does not make the decision wanted by some politicians, critical housing funds for tribal members in need will be withheld.

How can this be squared with the United States government's trust duties and obligations to Indian tribes?

How is this anything other than undermining tribal self-determination and tribal autonomy?

After surviving the cruelty of the Trail of Tears, the Dawes Act, the near termination of our tribal functions, and nearly two centuries of takings at the hands of the United States government, the Choctaw Nation deserves better than to have the core of its constitutional identity as a sovereign Tribe threatened.

Thank you for your attention to our concerns. When appropriate, I will attempt to answer any questions you may have.