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CHEROKEE NATION®
P.O. Box 948 • Tahlequah, OK 74465-0948
918-453-5000 • www.cherokee.org

Office of the Chief

Chuck Hoskin Jr.
Principal Chief

Bryan Warner
Deputy Principal Chief

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Written Testimony of Cherokee Nation Principal Chief Chuck Hoskin, Jr.
Senate Committee on Indian Affairs oversight hearing on "Select Provisions of the 1866 Reconstruction Treaties between the United States and Oklahoma Tribes"

Chairman Schatz, Vice Chairman Murkowski, and members of the Senate Committee on Indian Affairs:

Osiyo, and thank you for holding this important hearing. It is my honor to speak with you today on behalf of the more than 429,000 citizens of Cherokee Nation.

Supreme Court Justice Hugo Black concluded his dissent in *Federal Power Commission v. Tuscarora Indian Nation* with a powerful reminder. "Great nations, like great men, should keep their promises."

At its essence, today's hearing is about promises, and the historic failure of great nations to keep those promises. For far too long, Cherokee Nation failed to uphold a solemn promise made to the Cherokee Freedmen more than 156 years ago.

But I can sit before you today, next to my fellow Tribal leaders and my good friend Marilyn Vann, and honestly and proudly speak to the many recent actions taken by Cherokee Nation to help right this wrong. I can tell you Cherokee Nation is a better nation for having recognized full and equal citizenship of Freedmen descendants. I can tell you that we are a nation that keeps its word.

Our obligation to the Cherokee Freedmen and all enrolled citizens of Freedmen descent is found within Article 9 of our Treaty of 1866:

> *The Cherokee Nation having, voluntarily, in February, eighteen hundred and sixty-three, by an act of the national council, forever abolished slavery, hereby covenant and agree that never hereafter shall either slavery or involuntary servitude exist in their nation otherwise than in the punishment of crime, whereof the party shall have been duly convicted, in accordance with laws applicable to all the members of said tribe alike.* ***They further agree that all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees****.*

What the opponents of Freedmen rights ignore is that the issue of full Freedmen citizenship was settled long before 2021, 2017, or 2007. It was settled in 1866, by a treaty that was ratified by the

Senate, signed by the President of the United States, and is the supreme law of the land. This is and was not a living issue—it was settled by our ancestors.

The Treaty of 1866 is our last treaty with the United States, and it also reaffirmed important portions of all previous treaties, including the 1835 Treaty of New Echota that provides for our delegate to the U.S. House of Representatives.

The Treaty of 1866 remains alive and well, as a federal judge affirmed in 2017. Its relevance today impacts everyone within our treaty-based reservation, which was reaffirmed by the U.S. Supreme Court through the historic *McGirt* decision.

The Treaty of 1866 is a legally binding document that ties together every agreement Cherokee Nation has ever had with the United States. Breaking the Treaty of 1866 could be our undoing.

Through Article 9 of the Treaty of 1866, we agreed to give Freedmen "all" the rights of native Cherokees. Not some rights. Not rights subject to a popular vote. Not rights with an expiration date. "All the right of native Cherokees." Any right Cherokee Nation had to enslave human beings, or deny them or their descendants full citizenship, was disposed when we entered into this treaty.

Certain Cherokee Nation leaders, however, opted to ignore our 1866 Treaty and its strong commitment to equality and push policies designed to exclude Freedmen descendants from their political community. This was most apparent in 2007, when we amended our constitution to limit citizenship "to only those persons who were Cherokee, Shawnee, or Delaware by blood."

In the wake of this unfortunate action, Congress added limitation language to a reauthorization of the Native American Housing Assistance and Self Determination Act (NAHASDA):

> SEC. 801. LIMITATION ON USE FOR CHEROKEE NATION.
> *No funds authorized under this Act, or the amendments made by this Act, or appropriated pursuant to an authorization under this Act or such amendments, shall be expended for the benefit of the Cherokee Nation; provided, that this limitation shall not be effective if the Temporary Order and Temporary Injunction issued on May 14, 2007, by the District Court of the Cherokee Nation remains in effect during the pendency of litigation or there is a settlement agreement which effects the end of litigation among the adverse parties.*

As the Congressional Research Service wrote, at the time of the 2008 reauthorization "some lawmakers supported denying NAHASDA funding to the Cherokee Nation if it did not restore tribal citizenship rights to the Cherokee Freedmen. Others opposed such efforts, citing reluctance to intervene in a dispute that was being considered in the courts and concerns about the effect that denying NAHASDA funding would have on low-income members of the Cherokee Nation."

Ultimately, Congress prohibited Cherokee Nation from receiving NAHASDA funding unless (1) a specific temporary injunction in tribal litigation on the Cherokee Freedmen dispute remained in effect during litigation or (2) there was a settlement to the litigation.

This litigation ended in 2017, when Judge Thomas F. Hogan of the U.S. District Court for the District of Columbia ruled in favor of the Freedmen in *Cherokee Nation v. Nash*. Per Hogan's opinion, the 1866 Treaty guarantees that extant descendants of Cherokee freedmen shall have "all the rights of native Cherokees," including the right to citizenship in the Cherokee Nation.

> *Although the Cherokee Nation Constitution defines citizenship, Article 9 of the 1866 Treaty guarantees that* ***the Cherokee Freedmen shall have the right to it for as long as native Cherokees have that right. The history, negotiations, and practical construction of the 1866 Treaty suggest no other result. Consequently, the Cherokee Freedmen's right to citizenship in the Cherokee Nation is directly proportional to native Cherokees' right to citizenship****, and the Five Tribes Act has no effect on that right.*
>
> *The Cherokee Nation can continue to define itself as it sees fit but* ***must do so equally and evenhandedly with respect to native Cherokees and the descendants of Cherokee freedmen. By interposition of Article 9 of the 1866 Treaty, neither has rights either superior or, importantly, inferior to the other. Their fates under the Cherokee Nation Constitution rise and fall equally and in tandem****. In accordance with Article 9 of the 1866 Treaty, the Cherokee Freedmen have a present right to citizenship in the Cherokee Nation that is coextensive with the rights of native Cherokees.*

We did not appeal this decision. We immediately began accepting and processing citizenship requests from Freedmen descendants. To date, we have approved and processed approximately 11,834 citizenship requests.

Shortly after the Federal court decision, the Cherokee Nation Supreme Court issued its own order binding the Nation as a matter of settled tribal law in complete accordance with the Federal District Court's order in *Nash*. Specifically, the Supreme Court determined,

> *that the [Nash] case was entered into voluntarily by the Nation, that the Nation had a full and proper presentation of its case, and that* ***the Nation is therefore now subject to the opinion of the D.C. District Court…****and…* ***[f]urther, this Court recognizes that the Treaty of 1866 has been and remains fully binding on both the Cherokee Nation and the United States,*** *and to recognize the rights of those individuals who can trace an ancestor to the Dawes Freedmen rolls to obtain citizenship within the Nation.*

Therefore, the Court,

> ***Order[ed], Adjudge[d], and Decree[d] that the memorandum opinion issued August 30, 2017 by the District Court of the District of Columbia … is enforceable within and against the Cherokee Nation****, and that therefore the Cherokee Nation Registrar, and the Cherokee Nation government and its offices, are directed to begin processing the registration applications of eligible Freedmen descendants,* ***and that such Freedmen descendants, upon registration as Cherokee Nation citizens, shall have all the rights and duties of any other native Cherokee.***

Most recently, at the request of Attorney General Sara Hill, the Cherokee Nation Supreme Court unanimously ruled that the "by blood" language included the Cherokee Nation Constitution violated the Treaty of 1866 and was thus void. The order states the language is "illegal, obsolete, and repugnant to the ideal of liberty," and the words "by blood" are "void, were never valid from inception, and must be removed wherever found throughout our tribal law."

> *Unequivocally,* ***Freedmen have rights equal to "by blood" or native Cherokees. … Freedmen rights are inherent. They extend to descendants of Freedmen of as a birthright springing from their ancestors' oppression and displacement as people of color recorded and memorialized in Article 9 of the 1866 Treaty****. … The "by blood" language found within the Cherokee Nation Constitution, and any laws which flow from that language, is illegal, obsolete, and repugnant to the ideal of liberty. These words insult and degrade the descendants of Freedmen much like the Jim Crow laws found lingering on the books in Southern states some fifty-seven years after the passage of the 1964 Civil Rights Act.* ***"By blood" is a relic of a painful and ugly, racial past. These two words have no place in the Cherokee Nation, neither in present day, nor in its future****. … From this day forward, may we prosper as a nation and embrace one another with mutual respect, regardless of color, race, and ancestry, as that which we are: Cherokee citizens.*

The "by blood" language was a stain on our history and a haunting remnant of a sad period. We could not move forward with those words remaining in our constitution and laws, as some within the Nation were clinging to them in order to divide our people and belittle and demean the rights of Freedmen.

Last year Interior Secretary Deb Haaland approved the Cherokee Nation Constitution, which "explicitly ensures the protection of the political rights and citizenship of all Cherokee citizens, including the Cherokee Freedmen." As Secretary Haaland made clear upon approving our constitution, **"The Cherokee Nation's actions have brought this longstanding issue to a close and have importantly fulfilled their obligations to the Cherokee Freedmen."**

While in Cherokee Nation, this issue is settled, there is still much work to do. We know the *Nash* case and subsequent actions were the beginning, not the end.

We are on a path of reconciliation, but we need to do more than acknowledge the legal principle of equality—we must seek to embrace the spirit of equality each day.

Because no nation can truly prosper when any of its citizens are victims of discrimination.

As Native people, we know this all too well. We have experienced too many similar painful chapters—from the Trail of Tears, to governmental policies designed to terminate our political existence and destroy our culture. We must have difficult conversations about these injustices, and the accountability, reconciliation, and restitution that must follow, because they still shape the world that we live in today.

Unity doesn't just happen overnight. For more than a century Freedmen had been disconnected from Cherokee Nation. This exclusion meant many in the Freedmen community did not have the same experiences, the same access to services, the same opportunities, the same understanding of citizenship as non-Freedmen citizens. It is essential that we work to bridge that gap.

Even as we wipe away the overt or hostile discrimination, we need to make efforts to ensure that opportunities afforded to all Cherokee citizens are just that: afforded to all Cherokee citizens.

For this reason, in November 2020 I signed an executive order on equality, reiterating Cherokee Nation's commitment to equal protection and equal opportunity under Cherokee law.

The order directs our executive branch to determine whether barriers to equal access to services exist, to remove such barriers and to establish plans for outreach to citizens of Freedmen descent and other historically excluded communities within our tribe.

We also need to make sure that we are cognizant of the history and the Freedmen experience. In late 2020 I announced the Cherokee Freedmen Art and History Project, which seeks to provide a better understanding of Cherokee Freedmen history and enhance how those voices are represented within the Cherokee story. Cherokee society will be further enriched, and the cause of equality enhanced, by celebrating Freedmen history and art as part of a whole and complete Cherokee story.

The project began last year and is harnessing continued conversations and collaboration with Cherokee Freedmen community advisors to elevate the voice of Cherokee Freedmen. The project will include comprehensive research for historical materials, references, documents, and images, as well as an assessment of current interpretations at all tribal sites.

We will utilize the assessment to identify gaps in its representation and storytelling and develop new content that shares the Freedmen perspective throughout tribal history. The content will help educate Cherokee Nation citizens and the public through special projects, including an exhibit at the Cherokee National History Museum.

Last fall Marilyn Vann became the first Cherokee Nation citizen of Freedmen descent confirmed to a Cherokee Nation government commission.

I will close with a word on NAHASDA, as right or wrong, these issues have become intertwined.

Indian Country needs Congress to make consistent and significant investments in Native housing programs, and that starts with a robust reauthorization of NAHASDA. I urge the committee to swiftly move forward with a bipartisan reauthorization bill that can pass the Senate and be signed into law.

That said, I would respectfully ask the committee to not seek limitation riders that seek to tie needed funding to a desired outcome—on NAHASDA or any other vehicle. One might look at the Cherokee Nation story and come away with the conclusion that the 2008 limitation language brought us to where we are today. This is not the case. So, I request that Members carefully

consider the language they put forward, and not look to condition funding for a Tribe or group of Tribes in the hope of achieving a specific outcome.

Thank you for this opportunity to testify on this important topic.