



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



MAY 21 2007

The Honorable Chad Smith
Principal Chief, Cherokee Nation
P.O. Box 948
Tahlequah, Oklahoma 74465-0948

Dear Chief Smith:

The Department of the Interior considered approval of the May 2003 amendment to the 1976 Cherokee constitution that would remove from the constitution the requirement that the Secretary approve all constitutional amendments for them to be effective. After thorough analysis, the Department hereby disapproves the 2003 amendment. The Secretary must, therefore, still approve constitutional amendments before they become effective.

I do not make the decision to disapprove the 2003 amendment lightly. I recognize the Cherokee Nation as a sovereign nation capable of managing its government without oversight of the Federal government. I also recognize that the United States 1866 treaty with the Cherokee Nation was somewhat unusual in its requirement that the Cherokee Nation recognize the rights of individual Freedmen in exchange for amnesty and the continuation of the government-to-government relationship between the United States and the Nation.

I am concerned that approval by the Department of the 2003 amendment at this time would be used by some as a validation or evidence of legitimacy of the Cherokee Nation's removal of its Freedmen members from the tribe in apparent violation of the 1866 treaty. Therefore, I cannot approve the 2003 amendment knowing it may provide the basis for violating the terms and intent of the 1866 treaty.

In its December 16, 2006, decision, the district court in the *Vann* litigation stated that the Department's failure to act on the 2003 amendment was final agency action for purposes of establishing the court's jurisdiction to hear the case. Nothing in the Cherokee Constitution or the Department's regulations imposes a time limit on the Department's responsibility to approve or disapprove amendments to the Constitution. The court's conclusion that the Department's failure to act until now constituted final agency action does not preclude me from making a decision now on whether to approve or disapprove the 2003 amendment.

In closing, I want to assure you that I have the utmost respect for the Cherokee Nation and its powers and right of self-government. As the Federal government works to honor and implement the 1866 treaty, we trust the Cherokee Nation will also honor the treaty that it entered into in the exercise of its powers of self-government.

Sincerely,

Carl J. Artman
Assistant Secretary – Indian Affairs