



THE ASSOCIATE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON, DC 20240

AUG 30 2006

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

Dear Chief Smith:

Thank you for your letter of June 9, 2006, advising me that the Cherokee Nation was withdrawing its request for approval of the Cherokee Nation's Constitutional Amendment approved by the Cherokee people on May 24, 2003. Your letter indicated that you consider the approval of the amendment moot in light of the June 7, 2006, decision by the Cherokee Nation's Judicial Appeals Tribunal in the matter styled "In Re: The Status and Implementation of the 1999 Constitution of the Cherokee Nation," JAT 05-04.

I read the Tribunal's decision with interest. While we can appreciate Mr. McCaleb clarifying what he intended, his stated intention is not an adequate substitute for the necessary action of actual approval. As an elected tribal official, I am sure that you can appreciate the difficulties created when a former official attempts to bind his successor by stating what he had intended to do when he was in office. The Cherokee Nation's constitution requires Secretarial approval of amendments and neither the Secretary nor any authorized representative of the Secretary has approved the amendment.

If the Cherokee Nation would like the Secretary's approval of the proposed amendment, it should resubmit its request for approval. It would be helpful to our consideration of such a request, if the Nation would address the effect of the *Lucy Allen v. Cherokee Nation Tribal Council*, JAT-04-09, decision of March 7, 2006, which concluded that 11 C.N.C.A. § 12, governing the Nation's membership, was more restrictive than the Nation's constitution and therefore unconstitutional. The *Allen* decision suggests that not all persons who were entitled to membership in the Nation were considered eligible to vote in the 2003 elections, which purported to adopt the constitutional amendments.

If you have any questions, please don't hesitate to call on me.

Sincerely,

James E. Cason