

This piece was written by Robert Miller, a fellow of the American Indian Policy and Media Initiative.



THE CHEROKEE NATION EXERCISED SOVEREIGNTY, NOT RACISM

By Robert J. Miller

The Cherokee Nation exercised its sovereignty – not racism – on March 3 when its citizens voted to exclude from tribal citizenship about 2,800 non-Indian members who had been enrolled in the past year under a 2006 Cherokee Supreme Court case.

The decision of the Cherokee voters to remove these 2,800 people from tribal citizenship is no simple matter of racial bias, but a complex legal and political decision about who has the right to claim Cherokee citizenship.

Yet, in a country that is deeply ignorant of Native American tribal nations and the unique legal relationship that the U.S. government has with them, the first response from newspaper columnists and politicians was to charge racism and turn to Congress and the courts to force the sovereign Cherokee Nation to change its mind.

But the U.S. Supreme Court and other federal and state courts that have addressed this general issue have stated repeatedly that the determination of tribal citizenship is an act of sovereignty and the details of that citizenship is within the sole discretion of each tribe individually. Legally speaking, federal and state courts don't have a say in how tribes define their citizenship.

The tribal authority to define its membership and make other decisions regarding tribal citizenship are not reviewable by federal or state courts. Indian tribes are sovereign governments whose authority does not flow from the United States Government or from the U.S. Constitution. In fact, tribal governments predate the United States and the U.S. Constitution and have been regarded as being unrestrained by constitutional provisions that limit federal and state authority.

Consequently, on March 3, the citizens of the Cherokee Nation exercised their sovereignty as a people, as a political entity and as a government to determine the limits of Cherokee citizenship. This is no different than how Americans and the United States government have exercised their sovereign and political authority to define and to strictly control American citizenship. America has placed numerous limitations and conditions on U.S. citizenship. For example, naturalized American citizens such as California Governor Arnold Schwarzenegger can never become the president because they were not born in this country.

The requirements of citizenship must be strictly complied with, and citizenship can even be taken away retroactively if a person did not originally meet the requirements. Even native born citizens can lose their American citizenship in certain situations.

Similarly, the Cherokee Nation has imposed conditions on tribal citizenship throughout its history and into the modern day. The March 3, 2007 vote was part of this ongoing process.

The controversial aspect of the Cherokee vote, and the charge of discrimination arises because most of the 2,800 persons to be excluded from tribal citizenship are descendants of the “Cherokee Freedmen.” They are descendants of ex-slaves of the Cherokee and other freed blacks who lived in the Indian Territory in the 1860s.

On March 3 the Cherokee people did not vote to exclude these persons from tribal citizenship because they are black. Instead, they voted to exclude all persons who were enrolled in the past year who could not trace their ancestry to an Indian person on the nation's 1906 Dawes Roll.

The Dawes Roll was a document compiled by the federal government to apportion Cherokee lands in Oklahoma. The Nation has always required proof of descent from an ancestor on this roll. The vote of March 3, 2007 requires that people desiring Cherokee citizenship have to prove that they have Indian blood and descent from the Dawes Roll. As the Cherokee Chief Chad Smith has written: “The Cherokee people voted to be just like almost every other Indian tribe in the country: an Indian government made up of Indian citizens.”

This uninformed charge of racism leveled at the Cherokee Nation has attracted the attention of the editorial boards of The New York Times and The Washington Times, Pulitzer Prize-winner E.R. Shipp and members of the House of Representatives' Black Caucus.

Congresswoman Diane Watson and 25 members of the Caucus sent a letter to the Bureau of Indian Affairs protesting the recent vote by the Cherokee Nation and called it “blatant discrimination of the worst kind.” The Caucus also stated that “fundamental social justice

demands that the black Cherokees be reinstated in the Cherokee Nation with full rights.”

Several Cherokee Freedman have brought a lawsuit against the Nation in federal court in Washington D.C. It remains to be seen whether the federal judge will break with federal and state court precedent and interfere in this internal and inherent sovereign decision of the Cherokee Nation.

Charges of Cherokee discrimination and racism are contradicted by the above facts, and by one other obvious point: the Cherokee Nation has thousands of mixed blood Indian, black, white, Asian, and Hispanic tribal citizens.

Not a single step has been taken to impact the citizenship status of these people. The vote of March 3, 2007 was directed at one specific issue affecting a limited number of people who were enrolled as citizens in the Nation in the past year.

The Cherokee Nation and the Cherokee people exercised their sovereign rights to define their Nation’s citizenship requirements; they did not engage in discrimination and racism.

~ ~ ~ ~ ~

Robert J. Miller is a professor at Lewis & Clark Law School, the chief justice of the Grand Ronde Tribe, and an Eastern Shawnee. He is the author of Native America: Discovered and Conquered. He is also a fellow of the American Indian Policy and Media Initiative at Buffalo State College.

The AMERICAN INDIAN POLICY AND MEDIA INITIATIVE is a grant-funded academic and professional project of the Communication Department at Buffalo State College. The Initiative’s focus lies at the intersection of media, public policy and Native interests. The Initiative prepares and publishes commentaries, news, research and academic reports that offer original and authentic voices of and about Native America. Available online at AmericanIndianInitiative.buffalostate.edu