

This piece was written for The Oklahoman newspaper by Steven Newcomb, Shawnee - Lenape/Delaware, a fellow of the American Indian Policy and Media Initiative.



THE CHEROKEE NATION'S CONTRADICTIONARY STANCE

By Steven Newcomb

The Cherokee Nation has received heated criticism in the media and elsewhere for its vote last month to eject the Freedmen.

Yet, ironically, and contradictorily, the Cherokee Nation has argued for years that the Delaware people who have been recognized as Cherokee citizens have to stay in the Cherokee Nation.

But the Delaware may only obtain their own separate federal recognition if the Cherokee Nation is permitted to control the funds of the Delaware Tribe.

As a descendent Shawnee and Delaware grandparents, I believe the Delaware Tribe has the same right to self determination that the Cherokee Nation cites in its dealing with the Freedmen.

Based on an 1867 agreement, individual Shawnees and Delawares were accorded the right of Cherokee citizenship. In the last 30 years the U.S. government has acknowledged the Delaware as a separate nation from the Cherokee. But over the same years the Cherokee have fought successfully to keep the Delaware within its nation.

The history is this: In 1977, the U.S. Supreme Court, in *Delaware Tribal Business Committee v. Weeks*, declared that despite its association with the Cherokee Nation, the Delaware Tribe was a separately federally recognized political entity.

In 1978, the Cherokee Nation began lobbying to have the United States no longer recognize the Delaware Tribe as a separate Indian nation. As a consequence, the United States, through the Bureau of Indian Affairs, withdrew federal recognition of the Delaware Tribe headquartered in Bartlesville, Oklahoma.

In 1996, the BIA reversed itself and the Delaware Tribe was again federally recognized. In a 2002 decision,

U.S. District Court judge Sven Holmes issued a partial order in favor of the BIA's decision to restore federal recognition to the Delaware Tribe of Indians.

Responding to a lawsuit filed by the Cherokee Nation against the Department of Interior, the 10th Circuit Federal Court of Appeals reversed Judge Holmes' decision in 2004, by ruling that the Delaware had abandoned their Delaware identity to become Cherokee citizens in the nineteenth century.

In that decision, the court ruled that because the U.S. Supreme Court ruling held in 1894 that the Delawares had all the rights of Cherokee citizens, and that the Delawares living among the Cherokees had not been separately recognized since 1867. Further, the court ruled that the BIA failed to use proper procedures to restore recognition of the Delawares, and declared unlawful the 1996 BIA ruling to recognize the Delawares.

Consequently, the Department of Interior was forced to withdraw federal recognition from the Delaware Tribe.

Returning to the recent vote regarding the Freedmen, the Cherokee Nation is free to do what it wants with its reputation and its legacy.

And if that includes throwing out the descendents of slaves that some Cherokees once owned, in contradiction to its 1866 treaty with the United States, that's its business.

But the Cherokee Nation should stop blocking the Delaware Tribe from obtaining its own rightful federal recognition, and stop dictating terms to the Delaware, such as demanding to control the funding of the Delaware Tribe.

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