

# **A move to destroy the Cherokee Nation**

**By Ben Nighthorse Campbell**

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Despite my years in politics, I'm still surprised by Congress's inability to learn from past mistakes and tendency to interfere where it should not. One of the richer sources of persistent bad judgment is Congress's tragic history of meddling in the internal affairs of Indian tribes. Yet the House is considering legislation that would destroy the Cherokee Nation, hurt some of America's poorest citizens, and dictate the outcome of an internal political dispute, despite the fact that Cherokee tribal and federal courts are reviewing the issues.

The Cherokee Nation is involved in litigation with a group of individuals claiming to be descendants of slaves, known as Freedmen, who were held by 2 percent of Cherokees before 1863, when the Cherokees voluntarily emancipated them. The Cherokee people voted decisively in March 2007 to limit citizenship in the tribe to those who descend from Indians who were listed on a federal census taken in 1906. On its face, the fact that an Indian tribe would want to be comprised of descendants of Native Americans should not be surprising or controversial.

However, the Freedmen descendants, whose ancestors were listed under the non-Indian category of Freedmen on that same census, believe they should be citizens of the tribe under treaty obligations.

Members of the House introduced H.R. 2824, a bill to terminate the Cherokee Nation and eliminate nearly \$300 million of funding, and related amendments to zero out federal funding to tribal citizens in all appropriations areas, such as healthcare (in the Indian Health Care Improvement Act, H.R. 1328) and housing (in the Native American Housing Assistance and Self Determination Act, H.R. 2786), to punish the Cherokee people for their vote.

I do not claim to know which party in this litigation is correct, and I do not take a side in this argument.

Neither should Congress. The case is being heard in tribal and federal courts. Those judges have all the facts and laws before them. Congress does not. Courts are the proper and fair venue for resolving these issues. Congress is not. Furthermore, congressional interference in an internal dispute would harm all Indian tribes and set a dangerous precedent.

Despite all this, House members are not only threatening the Cherokee Nation, but they are misrepresenting the facts. For example, one of the most egregious distortions is that the Cherokees have expelled all black people from the tribe. This is not only patently false, but it's also deeply offensive to all Indians. It's certainly not a foundation for legislation. In fact, the Cherokee Nation is as diverse an Indian tribe that exists today. There are thousands of African Americans who are Cherokee citizens, including more than 1,500 Freedmen descendants, because they have ancestors who were Indians on the 1906 rolls.

The more than 2,800 individuals who were disenrolled have been temporarily reinstated in the tribe pending the outcome of the litigation. Furthermore, unlike hundreds of other tribes, the

Cherokee Nation does not have a blood quantum for citizenship; one need only find an Indian ancestor on the 1906 rolls.

That means you're a citizen whether you're one sixty-fourth Cherokee or one-half Cherokee. Citizenship is colorblind. Congress has ignored this reality.

In the past, interference with tribal affairs, often justified by a paternalistic "we know best" mindset, has severely damaged the progress of tribes. Often, Congress not only didn't know best, but it based its decision on lies, mistaken assumptions and prejudice.

For example, believing that Indian tribes could not responsibly own land, Congress instituted a land ownership system that prevented Indians from selling their land. When a property owner died, ownership rights were distributed equally among all heirs, resulting in a fractionalization of ownership that denied the benefits of the land to its owners and cost the government millions of dollars in administrative costs.

Despite the fact that the policy was recognized as a failure as early as the 1930s, it was only in 2004 that Congress passed legislation I authored eliminating some of these ownership problems.

This policy also resulted in a lawsuit against the Department of the Interior alleging mismanagement of the trust accounts controlling these lands in excess of \$100 billion. This lawsuit is 12 years old and still working its way through the courts. Such are the dangers of a Congress that is quick to intrude on tribal sovereignty and slow to realize it has only exacerbated the problem.

Today, Congress is again rushing to judgment when it thinks it knows better than the tribe and the courts.

In this case, Congress's chosen method is particularly disturbing and destructive. The legislation being considered would punish the Cherokees for not extending citizenship to Freedman descendants by cutting off federal support for the tribe. Astonishingly, it would also harm the tribe's most vulnerable citizens — the old, the young, and the sick — who benefit from federal funds for essentials such as health care, housing and education services. In fact, this latest congressional action is, in my view, the constructive equivalent of the destructive termination policy of the 1950s.

Today's Indian tribes are the survivors of centuries of persecution, genocide and the destruction of their ways of life. I'm dumbfounded that Congress wants to reward that struggle by stripping tribes of the very sovereignty they fought so long to preserve.

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