

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE CHEROKEE NATION,

Plaintiff,

v.

RAYMOND NASH, et al.,

Defendants /Cross-Claimants/
Counter-Claimants

-and-

MARILYN VANN, et al.

Intervenors/Defendants/Cross-
Claimants/Counter-Claimants

v.

THE CHEROKEE NATION, et al.,

Counter-Defendants,

-and-

SALLY JEWELL, SECRETARY OF THE
INTERIOR, AND THE UNITED STATES
DEPARTMENT OF THE INTERIOR,

Counter-Claimants/Cross-Defendants.

Case No. 1:13-cv-01313 (TFH)
Judge: Thomas F. Hogan

**JOINT MOTION FOR ENTRY OF ORDER SETTING BRIEFING SCHEDULE
FOR SUMMARY JUDGMENT ON CORE ISSUE
AND STAYING CASE ON ALL OTHER MATTERS**

The parties to this action, in the interest of reaching a final resolution of this longstanding dispute, have agreed to jointly petition this Court to resolve by summary judgment the core issue in dispute in this action – *i.e.*, whether the Freedmen possess a right to equal citizenship in the Cherokee Nation under the Treaty of 1866 – and to stay decision on all other matters in this

action and the related case *Vann v. Jewell* (Case No. 1:03-cv-01711). Should the Court have questions regarding the proposal the parties make herein, the parties suggest that counsel address those questions at a status conference (currently being rescheduled from September 16, 2013) in the related *Vann* action.

As the Court is aware, the disputes between and among the Freedmen, the Cherokee Nation and/or its officers, and the Federal Government have been pending before the federal courts for over a decade, in both this forum and in the United States District Court for the Northern District of Oklahoma. The Freedmen originally filed *Vann* in this Court in 2003. Since then, *Vann* has been before the United States Court of Appeals for the District of Columbia Circuit twice on questions relating to sovereign immunity. However, despite a decade of active litigation, very little else has been addressed in that case.

The Cherokee Nation filed this case in the Northern District of Oklahoma in 2009. Subsequent to the Cherokee Nation's amended complaint in May 2012, the Federal Government filed a counterclaim and the Freedmen filed counterclaims against the Cherokee Nation and certain Cherokee Nation Officers¹ and cross-claims against the Federal Defendants, that largely mirror those in *Vann*. This case recently was transferred back to this Court from the Northern District of Oklahoma for the second time in order to determine whether it should be heard by this Court under the first-to-file-rule. That question, too, raises issues relating to the Cherokee Nation's sovereign immunity that remain unresolved and, much like the *Vann* action, no other substantive issues have been addressed in this case since its inception in February 2009. There are motions to dismiss currently pending in this action, and the Court recently granted the

¹ Specifically, Principal Chief Baker, Deputy Chief Crittenden, the Cherokee Nation Registrar and Cherokee Nation Election Commission Members.

defendants' consent motion to stay the requirement to respond to the Freedmen's Fifth Amended Complaint in the *Vann* action.²

Although the parties do not wish to waive any of the arguments, claims, or defenses that they may have in these actions, they also recognize that the resolution of their jurisdictional and procedural disputes could take several years and greatly delay reaching the merits of the case. The parties also recognize that many of the claims in these cases could be more easily resolved once the core issue is resolved. The parties wish to achieve, in the most efficient and expeditious way possible, a final resolution of their disputes. The parties also recognize that the federal courts have a strong interest in resolving these cases as expeditiously as possible. Accordingly, following the Court's July 15, 2013, status conference in *Vann*, the parties agreed to ask this Court to permit the parties to move for summary judgment on the core issue in this case and to stay all other aspects of this case and the *Vann* case.

Specifically, after further discussion, the parties have agreed that the core issue between the parties in both this case and the related *Vann* action is the question of whether the Freedmen possess a right to equal citizenship in the Cherokee Nation under the Treaty of 1866 (the "Core Question"). The Cherokee Nation, the Federal Government, and the Freedmen have each asserted a claim for declaratory relief that addresses this Core Question, though each claim differs somewhat in its specific wording and focus. The parties suggest that this Core Question be submitted to the Court for determination by cross-motions for partial summary judgment by the Cherokee Nation, the Federal Government, and the Freedmen. While the parties currently anticipate that this issue will be appropriate for determination on summary judgment, the parties

² The parties note that a third party, Robin Mayes, has filed a Motion to Intervene in this action (Doc. No. 202) that has been opposed by all parties. This motion has not yet been decided.

reserve their rights under Federal Rule of Civil Procedure 56(d) to seek further relief from the Court.

The parties believe that, if the Court rules on the Core Question as requested, they may be able to resolve all of the remaining issues presented by this action and the *Vann* action without further need for the Court's involvement. Accordingly, the parties have agreed that, following the Court's ruling on the motions for partial summary judgment, they would enter into good faith settlement discussions (either with or without the assistance of mediator) in an effort to reach a global settlement of all claims at issue in both this action and the *Vann* action. The parties would ask the Court to continue the stay in this case and the *Vann* action while these settlement discussions proceed.

While the parties seek a prompt resolution of the Core Question, they reserve all rights to assert any claims or defenses. The Cherokee Nation has consistently asserted its sovereign immunity in the D.C. forum in this action and in the related *Vann* action, and does not now concede that it could be compelled to appear in this forum, in either this action or the *Vann* action. The Cherokee Nation also does not now concede that it is subject to the Freedmen's counterclaims or the Federal Government's counterclaims in this action in the D.C. forum or the Oklahoma forum. The Cherokee Nation voluntarily consents to the jurisdiction of this Court for the sole purpose of reaching an expeditious determination of the Core Question in this case, which is of great importance to the Cherokee Nation, and reserves all other rights with respect to its sovereign immunity. The Federal Government and the Freedmen expressly agree that the Cherokee Nation has not waived its sovereign immunity with respect to any other claim or issue in this or any other jurisdiction by voluntarily consenting to the jurisdiction of this Court for determination of the Core Question.

Proposed Briefing Schedule

The parties propose the following briefing schedule:

- Opening Motion for Partial Summary Judgment (Cherokee Nation), due November 29, 2013. (60-page limit.)
- Responses to Opening Motion and Cross-Motions for Partial Summary Judgment (Freedmen, Federal Government), due January 31, 2014. (60-page limit.)
- Reply to Responses to Opening Motion and Response to Cross-Motions (Cherokee Nation), due February 28, 2014. (100-page limit.)
- Replies to Response to Cross-Motions (Freedmen, Federal Government), due March 28, 2014. (25-page limit.)
- Oral Argument (all parties), the week of April 28, 2014, or at the convenience of the Court.

The parties reserve the right to seek additional pages from the Court, if necessary.

CONCLUSION

For the foregoing reasons, the parties respectfully request that the Court enter the attached stipulated order (1) setting a briefing schedule for partial summary judgment of the Core Question in this case articulated above, and (2) staying all other matters in this action, including the pending motions to dismiss. The parties are separately submitting a motion to stay the *Vann* action.

Dated: September 13, 2013

Respectfully submitted,

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