

FILED

NOV 27 2023

Mark C. McCartt, Clerk
U.S. DISTRICT COURT

Case No. 23-CV-490-CVE-SH

In The
United States District Court for the
Northern District of Oklahoma

MUSCOGEE (CREEK) NATION,)

Plaintiff,)

v.)

23-cv-490-CVE-SH

G.T. BYNUM, in His Official Capacity as Mayor)
of the City of Tulsa, WENDELL FRANKLIN, in)
His Official Capacity as Chief of Police for Tulsa)
Police Department, and JACK BLAIR, in His)
Official Capacity as City Attorney for Tulsa,)

Defendant.

On Writ of Certiorari to the
United States District Court for
the Northern District of Oklahoma

BRIEF FOR *AMICUS CURIAE* MUSCOGEE (CREEK) NATION
IN SUPPORT OF THE PLAINTIFF

RON GRAHAM, CHAIRMAN,
MUSCOGEE CREEK FREEDMEN COALITION
GENEALOGIST / HISTORIAN / EDUCATOR
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Mail No Cert Svc No Orig Sign
 C/J C/MJ C/Ret'd No Env
 No Cpys No Env/Cpys O/J O/MJ

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1. Ron Graham biography,
2. Muscogee (Creek) Nation (MCN) 1866 Treaty Article II v. the 13th, 14th and 15th Amendments of the United States Constitution,
3. MCN Chief David W. Hill letter to Governor J. Kevin Stitt,
4. MCN 1867 Constitution Article XVII,
 5.MCN 1867 Constitution (Codified 1892, Article X Section 2),
6. Muscogee (Creek) Freedmen Order and Opinion by Judge Donette Mouser 9-27-2023,
7. Muscogee (Creek) Freedmen History

BIOGRAPHICAL INFORMATION

I, Ronald Graham, hereby certify that I am not a litigant in this action and am an adult over 18 years of age and is competent and capable of providing some dialogue in this litigation. I am retired and the Chairman of the Muscogee Creek Freedmen Coalition, a newly formed organization that will assist anyone that needs assistance in gathering their genealogy or family history data. For more information please see the curriculum vita of Mr. Graham that is attached to this brief.¹

INTRODUCTION AND SUMMARY OF ARGUMENT

The Muscogee (Creek) Nation (“Nation” or “Creek Nation”) is the fourth most populous Indian nation in the United States. Thousands of Creek citizens reside within the boundaries of the Reservation that has been the Creek homeland for nearly two centuries. Today, the Nation provides significant governmental services to its citizens and non-citizens throughout the Nation’s Reservation. I stand steadfast in support of the Nation in this litigation. Although, the Nation has to be in full compliance with the 1866 Treaty, especially Article II of this Treaty which gives citizenship to people of African descent, Later known as Creek Freedmen (Freedmen).

ARGUMENT

THE CREEK FREEDMEN TREATY-PROTECTED CITIZENSHIP HAS NEVER BEEN ABROGATED

The Creek Freedmen descendants citizenship is based on the Nation’s 1866 Treaty Article II, which was concluded on June 14, 1866, ratified July 23, 1866 and proclaimed August 11, 1866 in accordance with applicable Federal

Law, provides as follows: “The Creeks hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in accordance with laws applicable to all members of said tribe, shall ever exist in said nation; and inasmuch as there are among the Creeks many persons of African descent, who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said country, and may return within one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens [thereof,] shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe.” The Nation’s 1866 Treaty Article II is equivalent to the 13th, 14th and 15th amendments of the U.S. Constitution.²

THE TREATIES SUPREME LAW OF THE LAND

In a letter dated August 30, 2023 from Mr. David W. Hill, Principal Chief of the Nation³ addressed to Mr. J. Kevin Stitt, Governor of Oklahoma, also the Constitution, Civil and Criminal Code of the Muskogee Nation adopted at Council Ground October 12, 1867 - Article XVII page 12⁴, and the Constitution and Laws of the Muskogee Nation as compiled and codified by A.P. McKellop under the Act of October 15, 1892 - Article X Section 2⁵, all state that, “The Treaties shall be the supreme law of the

land.” Also, the U.S. Constitution - Article VI clause 2 states, “All Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land...” Despite dissenting in the *McGirt v. Oklahoma* 2020 court decision, Case No. 18-9526, the Honorable Chief Justice John G. Roberts Jr., of the U.S. Supreme Court acknowledged that the Nation’s 1866 Treaty is valid. No law can be contrary to Federal Law

ACT OF APRIL 26, 1906 (34 Stat. 137) SECTION 3

The Freedmen descendants citizenship is also protected by the *Act of April 26, 1906 Sec. 3* states, “That the approved roll of Creek Freedmen shall include only those persons whose names appear on the roll prepared by J.W. Dunn, under authority of the United States prior to March fourteenth, eighteen hundred and sixty-seven, and their descendants born since said roll was made, and those lawfully admitted to citizenship in the Creek Nation subsequent to the date of the preparation of said roll and their descendants born since such admission, except such, if any, as have heretofore been enrolled and their enrollment approved by the Secretary of the Interior.” This Act is also known as the Five “Civilized” Tribes Act.

BY BLOOD

In 1979 the Nation disenfranchised the Freedmen descendants by inserting the “by blood and/or Indian by blood” phrase in the Nation’s Constitution and laws/codes. The “by blood” language found within the Nation’s Constitution or any law(s) which flows from that language is contrary to Federal Law. The Creek Freedmen citizenship is exclusively based on the MCN 1866 Treaty Article II. Again, the U.S. Supreme Court decision in the *McGirt* case ruled that the Nation’s 1866

Treaty is still valid. The Muscogee Creek Nation should fully comply with the 1866 Treaty. The Nation have violated my Civil Rights since I first applied for citizenship in 1983 (over 40 years!). Many more of the Nation's referendums followed through the years from the Nation's National Council (NCA) such as: NCA 81-06; NCA 81-77; NCA 85-45; NCA 01-135; NCA 02-078 and Title 7. All were approved by the Nation's Principal Chiefs and NCA. Absolutely none of the new NCA referendums or laws/codes, Five Tribes Act, Burke Act, Oklahoma Indian Welfare Act, Stigler Act (amended in 2018, H.R. 2606) did not abrogate, amend, or otherwise alter Article II of the Nation 1866 Treaty.

CONCLUSION

Recently the Nation's Court ruled in favor of the Freedmen, Rhonda Grayson & Jeffrey Kennedy v. The Nation's Citizenship Board, case no. CV-2020-34.⁶ This case is being appealed to the Nation's Supreme Court by the Nation's Board. The Muscogee (Creek) Nation may continue to define itself as it sees fit, {because of its sovereignty}, but essentially do so equally and evenhandedly with the regards of all Muscogee Creek citizens, including the descendants of the Muscogee Creek Freedmen.⁷ Mvto.

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11-26-23
DATE



BIOGRAPHY OF

Ron Graham Sr. was born and raised in Okmulgee, OK. He graduated from Okmulgee High School, and attended Northeastern Oklahoma A&M College in Miami, OK, and Langston University in Langston, OK. Mr. Graham is very passionate and has a great desire to educate others on the genealogy and history of the Dawes Commission in the Five Civilized Tribes, especially the Muscogee (Creek) Nation (MCN). He is the son of Theodore (Blue) Graham, roll number New Born 671 and maternal grandson of Phyllis Johnson, roll number Minor 124, both listed as Creek Freedmen. Mr. Graham is a direct descendant of: Hutton / Grayson, Corbray, and McGilbray. All were Muscogee (Creek) Nation citizens. He was a litigant in pursuit of recapturing his tribal citizenship with the Muscogee (Creek) Nation: *Ron Graham vs. Muscogee (Creek) Nation of Oklahoma Citizenship Board (CV-2003-53)*, and also in the Supreme Court of the Muscogee (Creek) Nation: *Muscogee (Creek) Nation of Oklahoma Citizenship Board vs. Ron Graham (SC 2006-03)*. And again in 2019: *Ron Graham v MCN Citizenship Board, (CV 2019-138)* and also MCN Supreme Court (*SC 2020-01*). Also, Mr. Graham has an ancestor of an All-Black Town of Oklahoma, *Huttonville*. Located in Eufaula, OK - McIntosh County.

Mr. Graham currently serves as: the Muscogee Creek Freedmen Coalition of Okmulgee, OK - Chairman; Genealogy Chairman for the Descendants of Freedmen of the Five Civilized Tribes Association and Vice President for the Black Genealogy Research Group of Oklahoma. Also, He was formerly the President & the Co-Founder of the Muscogee Creek Indian Freedmen Band and past President for the NAACP, Okmulgee, OK County branch. As well as being fully engaged with the genealogy and history of the descendants of Freedmen / Black Indians of Indian Territory / Oklahoma for over 40 years. He has traveled to: Washington DC; New York City; Cincinnati, Ohio; Los Angeles, CA; Atlanta, GA; Tuskegee, AL; Oklahoma City; Tulsa, OK; Muskogee, OK and other various places to educate people about the Freedmen's plight. Mr. Graham has been featured or referenced in many publications such as: EBONY; THE CRISIS; & WIRED magazines; TULSA WORLD-Feb. 2009 & 2012, Nov. 2020. Muscogee Nation News, March-2012; Cherokee Phoenix, Feb.-2011, July-2016; Oklahoma Gazette; The Daily Oklahoman; Muskogee Daily Phoenix; Oklahoma Eagle; The Black Chronicle-OKC; Okmulgee Times; Indian Voices, March-2012; & Tahlequah Daily Press, June-2017 newspapers; www.indianz.com; Indians In Contemporary Society-The Freedmen, pp.282-283, by Circe Sturm and Kristy J. Feldhousen-Giles, Smithsonian Institution-Washington 2008; New York Times, Sep-2020; Bloodlines, by Get Focused Films; and the books: BLACK, WHITE, and INDIAN—Race and the Unmaking of an American Family, by Claudio Saunt; Apartheid in Indian Country?---Seeing Red Over Black Disenfranchisement, by Hannibal B. Johnson and We Refuse To Forget, by Caleb Gayle. Also, the Chronicles of Oklahoma-volume XCIX number two summer 2021, pages 208-211.

Mr. Graham has given Genealogy / History presentations about the Freedmen for the Oklahoma Historical Society's Indian Archives 75th Anniversary at the Oklahoma History Center in Oklahoma City, OK. The John Hope Franklin Center for Reconciliation: 2014 National Symposium-Education for Reconciliation; 2018 Symposium - DNA of Reconciliation; 2019 - Civic Engagement & Reconciliation and 2020 - Reconciliation & Technology/Neutral Resources for Social Good, all in Tulsa, OK. Also the Okmulgee, OK County Genealogical Society; Bristow, OK Library; the University of Oklahoma, College of Law; Langston University; University of Tulsa, College of Law; Tulsa Community College(TCC); North Tulsa Historical Society-Rudisill Regional Library, Tulsa OK; University of Central Oklahoma; Three Rivers Museum; Bacone College; Connors State College; Northeastern State University; Oklahoma State University Institute of Technology(OSUIT) in Okmulgee, OK; College of the Muscogee Nation; MCN of Oklahoma National Council Fact Finding Committee, Okmulgee, OK; Oklahoma City Muscogee (Creek) Association; Cherokee Nation of Oklahoma National Council; Cherokee Heritage Center, 16th Annual, Cherokee Ancestry Conference; Rose State College-Oklahoma City, OK; Ralph Ellison Library-OKC; KPOO 89.5 FM, San Francisco; 1240AM The Brew-Okmulgee, OK; Oklahoma City Community College, (OCCC); Oklahoma City University (OCU) and the Midwest African American Genealogy Institute, (MAAGI) 2019 & 2020 Conferences at Allen County Public Library in Fort Wayne, Indiana. As well as other numerous libraries, churches, and community centers. Mr. Graham works diligently to educate mainstream America about the important roles the Freedmen and their descendants have/had in the history of this country. MVTO.

MUSCOGEE (CREEK) NATION CITIZEN
CREEK FREEDMEN

AFRICAN AMERICAN CITIZEN

MUSCOGEE (CREEK) NATION
1866 TREATY, ARTICLE II

UNITED STATES
CONSTITUTION

SUPREME LAW OF THE LAND

RECONSTRUCTION AMENDMENTS

The Creeks hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in accordance with laws applicable to all members of said tribe, shall ever exist in said nation; and inasmuch as there are among the Creeks many persons of African descent, who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said country, and may return within one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens [thereof,] shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe.

- The **Thirteenth** Amendment to the United States Constitution officially abolished and continues to prohibit slavery to this day.....**1865.**

- The **Fourteenth** Amendment to the United States Constitution declared that all persons born or naturalized in the United States are American citizens i n c l u d i n g A f r i c a n Americans.....**1868.**

- The **Fifteenth** Amendment to the United States Constitution prohibits each government in the United States from denying a citizen the right to vote based on that citizen's race, color, or previous condition of servitude... **1870.**

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Muscogee (CREEK) Nation

Executive Office

August 30, 2023

Office of Governor J. Kevin Stitt
2300 N. Lincoln Blvd., Suite 212
Oklahoma City, OK 73105

Governor Kevin Stitt:

Your recent lies and offensive claims made in last week's State of the State address at the Oklahoma Chamber of Commerce are comments unbecoming of the Office of Governor. Your remarks represent a new low, even for someone who has developed a pattern of baseless hostility towards tribes in Oklahoma and require correction for the public record. These lies will perpetuate hostility that will be felt on individual levels and directed toward tribal citizens. For example, the reckless comment you made regarding tribal tags—"Every time you see a tribal tag, just realize the state is losing about \$200 million in revenue annually"—is not only inaccurate, but it could result in physical confrontations against innocent tribal citizens for no other reason than having a tribal tag on their vehicle.

You also stated that "Tribal governments disbanded and allotted out all the land in 1907 at statehood." You say this as though it were a fact. However, every agency of the federal government—which has plenary authority to make laws governing Indian Country—and the United States Supreme Court has repeatedly found otherwise. On this matter, I would encourage you to listen to informed advisors on both history and the law so as to avoid the embarrassing mistake of saying such easily disproven things in the future. I would also remind you that the Muscogee (Creek) Nation has entered into numerous treaties with the United States, and, as you should know, Article VI of the U.S. Constitution clearly upholds these treaties as the supreme law of the land, and every judge in every state shall be bound thereby.

You also stated that "we are now in a jurisdictional and geographical fight for who has authority over our state" and characterized tribal efforts to assert their legal jurisdiction on their reservations as a "storm of injustice." There is no such struggle. We have always known the State of Oklahoma is our neighbor, and our intent has been to be good neighbors. We've demonstrated our patience and desire to be good neighbors.

The concept of tribal jurisdiction over reservations is not new, nor did it begin with the *McGirt* decision. It has always been the law of the land since before Oklahoma statehood, and *McGirt*

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simply affirmed that fact. However, politicians of the past chose to ignore those laws and pretend they didn't exist-- just as you are attempting to do now.

Had the State of Oklahoma not illegally ignored tribal jurisdiction and instead developed a collaborative relationship with tribes, as the system is designed to be, neither the state nor the tribes would be in the place we find ourselves today.

Much of the work that tribes have done since the *McGirt* decision has been to repair the damage of those politicians' actions. We've made great strides these past few years to continue to strengthen our tribal systems that were illegally thwarted for decades. The result is more police on the streets, more courts to try cases, and more public safety on reservations.

Your efforts to ignore the law are just as harmful as those of the politicians of years gone by.

It is clear that state leaders of the past were influenced in their treatment of Indians by the shameful ignorance of their times. But here in 2023, there can be no excuse for resurrecting such sentiments and actions. Misrepresenting history, ignoring the law, and spewing false rhetoric is best left in the past.

Sovereign tribal jurisdiction should be treated as an opportunity, not a zero-sum game. Such a totalitarian perspective is not supported in this case and is Jacksonian type leadership that is designed to only serve an elite pool of people. Many other states work with tribes to the benefit of their citizens and their economies. That same collaboration and positive sovereign-to-sovereign cooperation is the only path that every citizen of Oklahoma, tribal or not, deserves.

Your words give the perception that you wish tribes didn't exist, but we do and will continue to do so. You may personally wish tribes didn't have any jurisdiction or authority, but we do and will continue to do so. So, I encourage you, as the elected leader of our state, to end your political campaign of baseless and damaging rhetoric, cease using Oklahomans' hard-earned money to fund baseless lawsuits, and forge a path to work with tribal leaders for the benefit of all.

As always, my door is open for constructive conversation and sovereign-to-sovereign negotiations. I hope to hear from you soon.

Sincerely,

David W. Hill

David W. Hill, Principal Chief
Muscogee (Creek) Nation

cc. Lt. Gov. Matt Pinnell, Speaker Charles McCall, Pro Tem Greg Treat
Attorney General Gentner Drummond

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*Constitution, Civil and Criminal Code
of the
Muskogee Nation*

*Adopted at Council Ground
October 12, 1867*

Article XVII

4.

*All Treaties shall be the
supreme law of the
land.*

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**CONSTITUTION AND LAWS
OF THE
MUSKOGEE NATION,**

AS COMPILED AND CODIFIED
BY

A.P. McKELLOP,

Under Act of October 15, 1892.

ARTICLE X

**Sec. 2. The treaties shall
be the supreme law of
the land. p. 17**

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IN THE DISTRICT COURT OF THE MUSCOGEE (CREEK) NATION DISTRICT COURT
OKMUGEE DISTRICT FILED

RHONDA K. GRAYSON and)
JEFFREY D. KENNEDY,)
)
 Plaintiffs,)
)
 v.)
)
 CITIZENSHIP BOARD OF THE)
 MUSCOGEE (CREEK) NATION)
 OF OKLAHOMA,)
)
 Defendant.)

2023 SEP 27 A 11:57
CYNTHIA FREEMAN
COURT CLERK

Case No. CV-2020-34

ORDER AND OPINION ON APPEAL
FROM CITIZENSHIP BOARD OF THE MUSCOGEE (CREEK) NATION
DENIAL OF CREEK FREEDMEN CITIZENSHIP APPLICATIONS

COMES NOW this Court to enter its Order and Opinion in the captioned matter which was tried via bench trial on April 4 and 5, 2023.

I. HISTORICAL BACKGROUND

The Muscogee Creek Nation has risen from its complicated history with the United States to stand today as one of the most dynamic and enduring tribes of the more than 500 currently recognized by the United States government. A portion of that complicated history unfortunately includes a period of slavery within the tribe. Slavery within the tribe did not always look like slavery in the southern United States. Slaves were often adopted into the owner's clan where they participated in cultural ceremonies and spoke the Mvskoke language.¹

¹ It is likely that children of the enslaved had no degraded status whatsoever. See generally, Gary Zellnar, *African Creeks – Estelveste and the Creek Nation* (2007) and William C. Sturtevant, *Handbook of North American Indians – Vol. 14: Southeast*.

The families later known as Creek Freedmen (“Freedmen”) likewise walked the Trail of Tears alongside the tribal clans and fought to protect the new homeland upon arrival in Indian Territory. During that time, the Freedmen families played significant roles in tribal government including as tribal town leaders in the House of Kings and House of Warriors.²

The Nation – previously practicing kinship slavery - assumed more traditional southern slavery customs as the Civil War drew near and the Nation found itself divided, much like the United States, with a portion of the Nation in alliance with the Confederacy and the other in alliance with the Union. Eventually, Muscogee citizens fought on both the Union and Confederate sides.

In 1865, as the Civil War came to an end, President Andrew Johnson designated a commission to travel to Fort Smith, Arkansas, to convene a council for the purpose of negotiating new treaties with the so-called “Five Civilized Tribes”: the Creek, Cherokee, Choctaw, Chickasaw, and Seminole. Members of that commission declared that a treaty with the United States “must” contain certain stipulations, including that “[the] institution of slavery, which has existed among several of the tribes, must be forthwith abolished, and measures taken for the unconditional emancipation of all persons held in bondage, and for their incorporation into the tribes on an equal footing with the original members, or suitably provided for.” *Department of the Interior - Report of D.N. Cooley, Southern Treaty Commission*, 296, 298. (Oct. 30, 1865).

Exercising its sovereignty, the representatives of the Nation negotiated and executed the treaty, which has served for the past one hundred fifty-seven years as the foundational document establishing the boundaries of the reservation of the Muscogee (Creek) Nation as well as

² *Tr. Of Trial, April 4, 2023*, 31:4-9 (afternoon session).

recognizing the Nation's tribal sovereignty. That treaty is today in full force and effect, and is the Treaty of 1866 ("the Treaty"). Article II of the Treaty states:

The Creeks hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in accordance with the laws applicable to all members of said tribe, shall ever exist in said nation; and inasmuch as there are among the Creeks many persons of African descent, who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said country, and may return within one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens (thereof) shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe.

In 1898 the Curtis Act required the registration of all native-born tribal members and – separately – all “Black Creeks” on what would be known as the Creek By Blood Dawes Roll and the Creek Freedmen Dawes Roll. Together, the rolls are known as the Final Dawes Roll.³

For more than one hundred years the Nation followed Article II of the Treaty by including those individuals listed on the Creek Freedmen Roll and their descendants as tribal citizens. Not until its 1979 Constitution did the Nation specify a blood quantum requirement for citizenship.

Article III, Section 2 of the 1979 Constitution reads:

Persons eligible for citizenship in the Muscogee (Creek) Nation shall consist of Muscogee (Creek) Indians *by blood* whose names appear on the final rolls as provided by the Act of April 26, 1906 (34 Stat. 137), and persons who are lincal descendants of those Muscogee (Creek) Indians *by blood* whose names appear on the final rolls as provided by the Act of April 26, 1906 (34 Stat. 137); (except that an enrolled member of another Indian

³ See, U.S. National Archives and Records Administration, *archives.gov*, April 11, 2023. The Final Rolls of Citizens and Freedmen of the Five Civilized Tribes in Indian Territory – also known as the Dawes Rolls or “Final Rolls” are the lists of individuals who were accepted as eligible for tribal membership in the “Five Civilized Tribes”: Cherokees, Creeks, Choctaws, Chickasaws, and Seminoles. Those found eligible for the Final Rolls were entitled to an allotment of land, usually as a homestead.

tribe, nation band, or pueblo shall not be eligible for citizenship in the Muscogee (Creek) Nation). (emphasis added)⁴

Prior to 1979, neither blood quantum nor Creek Freedmen status was determinative in tribal citizenship. The 1867 Constitution in fact made no mention of citizenship eligibility whatsoever, and the Nation even established “African Creek” towns in which Creek Freedmen continued to participate in and lead tribal government.^{5,6}

The Nation’s current constitution (the “Constitution”) is the legal successor to the 1867 Constitution, and it defines the Nation’s co-equal branches of government and their jurisdictions, as well as the basic rights of its citizens. It has been the governing authority for citizenship eligibility for nearly 45 years, and the principles therein must represent the resilience, dignity, and honor of the Muscogee people.

II. PROCEDURAL BACKGROUND

This matter arises from attempts by Plaintiffs Rhonda K. Grayson and Jeffrey D. Kennedy (“Plaintiffs”), each being a lineal descendant from the Creek Freedmen Roll, to become members of the Muscogee (Creek) Nation (the “Nation” or “Tribe”) through citizenship applications filed individually with the Citizenship Board of the Muscogee (Creek) Nation (the “Board” or “Defendant”) in 2019. Applications of both Grayson and Kennedy were denied by the Board, upon

⁴ Through the Act of April 26, 1906, Congress dissolved tribal governments, stripped tribal lands of their communal nature, and provided for the allotment of former communal tribal lands to individual tribal members, including freedmen of the Creek, Cherokee, Choctaw, Chickasaw, and Seminole tribes.

⁵ See generally, the *Constitution and Civil and Criminal Code of the Muskokee Nation*, approved at the Council Ground, Muskokee Nation, October 12, 1867. Library of Congress. (n.d.). <https://www.loc.gov/item/28014186/>.

⁶ Tribal towns in 1867 included three African Creek towns: Arkansas Colored, North Fork Colored, and Canadian Colored. See Affidavit of Dr. Gary Zellar, *Plaintiffs’ Statement Of Material Facts In Support of Their Motion For Summary Judgment, Exhibit D*.

which each made a formal administrative appeal to the Board for reconsideration.⁷ Despite the substantial additional evidence provided by each applicant, the appeal of each was also denied.⁸

On March 11, 2020, the Plaintiffs filed their petition in the District Court of the Muscogee (Creek) Nation in accordance with M(C)NCA Title 7 § 4-110(B) challenging Defendant's denial of their respective applications, seeking the Court's review of the Board's decisions, and praying for declaratory relief and attorney fees and costs. Following protracted delays (the fault of neither party nor the Court), a bench trial of the matter commenced on April 4, 2023.

The Parties presented witness testimony and direct evidence over a two day period. Following closing arguments from both Plaintiffs and Defendant, the Court took the matter under advisement to render judgment at a later date.

III. NO PRECEDENT IN THE NATION'S COURTS REGARDING THE APPLICABILITY OF THE TREATY OF 1866

In 2006, the Muscogee (Creek) Nation District Court issued an opinion in consolidated cases *Graham v. Citizenship Board*, CV 2003-53 and *Johnson v. Citizenship Board*, CV 2003-54, in which the plaintiffs asked the court to find that the Board had acted in an arbitrary and capricious manner in failing to process their citizenship applications because they were Creek Freedmen and not Creek by blood. The District Court remanded the plaintiffs' applications to the Citizenship Board, stating the Board had not followed the Muscogee (Creek) Code in regard to proper processing. Addressing only a procedural question, the District Court did not reach the question of the applicability of the Treaty of 1866.⁹ Following an appeal to the Muscogee (Creek) Nation

⁷ Plaintiff Grayson's application was denied on July 31, 2019, and her administrative appeal was filed on August 6, 2019. Plaintiff Kennedy's application was denied on October 14, 2019 and his administrative appeal was filed on December 23, 2019.

⁸ Plaintiff Grayson's administrative appeal was denied on November 5, 2019; Plaintiff Grayson's administrative appeal was denied on February 20, 2020.

⁹ Treaty of 1866, June 14, 1866, Ratified July 19, 1866, Proclaimed Aug. 11, 1866.

Supreme Court (“the Supreme Court”) and its *de novo* review, the lower court’s order was unanimously reversed and remanded for dismissal, with the Supreme Court finding that the Board had not acted in an arbitrary and capricious manner, but failing to reach the question of the applicability of the Treaty of 1866 to Muscogee (Creek) Nation citizenship eligibility.¹⁰

Subsequently, in May, 2019, petitioner Ron Graham filed a second application for citizenship in the Nation and again was denied. Following denial of his administrative appeal, Graham appealed to the Nation’s District Court which ruled in favor of the Board, and then appealed the District Court’s decision to the Supreme Court. His brief in support of appeal to the Supreme Court argued that the District Court had erred when it applied the wrong law to his case. Graham further asked the Supreme Court to find that the 2017 Memorandum Opinion issued by a federal district court in *Cherokee Nation v. Nash, et al*, required the Nation’s courts to analyze citizenship applications in accordance with the Treaty of 1866.¹¹ In its 2020 Opinion the Nation’s Supreme Court denied Graham’s second appeal, ruling it failed on procedural grounds and again not reaching the question of the applicability of the Treaty of 1866.¹²

As such, the Court finds the fundamental question in this case – whether the Nation’s laws regarding citizenship eligibility must comply with those established in the Treaty of 1866 – has not been addressed by the Nation’s Supreme Court, and therefore this Court is not bound by the principle of *stare decisis*.

IV. STANDARD OF REVIEW

M(C)NCA Title 7 §4-110(B) states in relevant part:

¹⁰ See, *Graham and Johnson v. Muscogee (Creek) Nation of Oklahoma Citizenship Board*, SC 2006-03 (2007).

¹¹ See, *Cherokee Nation v. Nash, et al.*, 267 F. Supp. 3d. 86 (August 30, 2017). The federal District Court concluded that under the Treaty of 1866 between the Cherokee Nation and the United States, “the Cherokee Freedmen have a present right to citizenship in the Cherokee Nation that is coextensive with the rights of native Cherokees.”

¹² *Ron Graham v. Muscogee (Creek) Nation Citizenship Board*, SC 2020-01 (2020). (District Court case No. CV 2019-138).

“...The Muscogee Nation District Court shall not set aside, modify, or remand any determination by the Board unless it finds that the determination is arbitrary and capricious, unsupported by substantial evidence or contrary to law.”

The plain language of this statute indicates that a finding by the Court that the Board’s decision falls within any one of those three standards must result in a ruling for the Plaintiffs.¹³ Thus, this Court must weigh the facts and evidence under three standards;

1. Was the action of the Board arbitrary and capricious, i.e., a willful and unreasonable action taken without consideration or in disregard of acts or law or without a determining principle?¹⁴ Such review should be narrow and without substitution of the Court’s judgment for that of the Board. *See Barnes v. U.S. Dep’t of Transp.*, 655 F.3d 1124, 1132 (9th Cir. 2011). “An agency decision will be upheld as long as there is a rational connection between the facts found and the conclusions made.” *Barnes*, 655 F.3d at 1132 (citing *Siskiyou Reg’l Educ. Project v. U.S. Forest Serv.*, 565 F.3d 545, 554 (9th Cir. 2009)). Under this “arbitrary and capricious” standard, a reviewing court must consider whether an agency’s decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. *See Env’tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 858 n.36 (9th Cir. 2003). The court may reverse only when the agency has relied on impermissible factors, failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence or is so implausible it could not be ascribed to a difference in view or to agency expertise. *See id.*

¹³ Use of the word “or” intends to express an alternative or to give a choice of one among two or more things. *Black’s Law Dictionary*, Sixth Ed., 1990, at 1095.

¹⁴ Arbitrary and capricious. Characterization of a decision or action taken by an administrative agency or inferior court meaning willful and unreasonable action without consideration or in disregard of facts or law or without determining principle. *Elwood Investors Co. v. Behme*, 79 Misc.2d 910, 361 N.Y. S.2d 488, 492. *Id.* at 105.

2. Was the action of the Board unsupported by substantial evidence? Substantial evidence is more than a scintilla and is evidence creating relevant consequence and furnishing a substantial basis of fact from which issues tendered can be reasonably resolved. *See, State v. Green*, 218 Kan. 438, 544 P2d. 356, 362. Under the substantial evidence rule, as applied in administrative proceedings, all evidence is competent and may be considered, regardless of its source and nature, if it is the kind of evidence that a reasonable mind might accept as adequate to support a conclusion. Further, substantial evidence means that degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than a preponderance of the evidence.¹⁵ In other words, the competency of evidence for purposes of administrative agency adjudicatory proceedings rests upon the logical persuasiveness of such evidence to the reasonable mind in using it to support a conclusion.
3. Was the action of the Board contrary to law? An action is contrary to law if it is unlawful or is in violation of a legal regulation or a legal statute. Black's Law Dictionary defines "contrary to law" quite simply as, "Illegal. In violation of statute or legal regulations at a given time." Under this plain definition, the Court must consider whether any statute, regulation, or law in effect at the time of the action is in contradiction to the decisions of the Board.

¹⁵ 58 FR 61992, Nov. 23, 1993, as amended at 68 FR 69302, Dec. 12, 2003.

V. FINDINGS

The paramount question in this case is whether the statement, in Article II of the Treaty of 1866, that qualifying Freedmen and their lineal descendants “shall have and enjoy all the rights and privileges of native citizens” encompasses a right to citizenship in the Muscogee (Creek) Nation. The answer to this question will establish whether the 1979 Muscogee (Creek) Nation Constitution is in conflict with Article II of the Treaty of 1866, and whether applications for Muscogee (Creek) citizenship should be reviewed for eligibility in accordance with the citizenship language found in the Treaty.

A. The Board’s Determinations Regarding Each Plaintiff’s Application For Citizenship Was Neither Arbitrary Nor Capricious.

At trial, Plaintiffs’ witness, Nate Wilson, Director of the Muscogee (Creek) Nation Citizenship Board, testified under oath regarding the “by blood” lineal requirement found in the Nation’s Constitution, and stated he began to have concerns regarding whether such a limitation was appropriate in light of applicant letters which referenced the Treaty and which took the position that the Treaty was controlling law that had not been abrogated, in whole or in part, by the United States.¹⁶ According to Wilson’s testimony he also had concerns because the Nation had recently been successful in stating its position to the U.S. Supreme Court (in *McGirt v. Oklahoma*¹⁷) that the Nation’s reservation established by the Treaty of 1866 had never been de-established and remained as denoted in the unabrogated Treaty.¹⁸ The U.S. Supreme Court’s ruling in *McGirt* unequivocally held that there had not been an abrogation of the Treaty and upheld the Nation’s sovereignty and rights found within the Treaty of 1866.

¹⁶ *Tr. Of Nonjury Trial (Day Two), April 5, 2023* at 33:17-24.

¹⁷ *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020).

¹⁸ See, S. Ct. Docket No. 18-9526, *Brief For Amicus Curiae Muscogee (Creek) Nation In Support Of Petitioner*.

Wilson testified that he requested guidance from the Nation's Office of the Attorney General in an effort to ease his concerns and obtain clarification on the appropriate actions for the Board to take regarding citizenship eligibility. Wilson testified he was told to continue using the eligibility requirements for citizen applications as specified in the Nation's current Constitution and in M(C)NCA Title 7 § 4-105(A).^{19,20} Wilson and the Board then followed the recommendation thus provided.

Although the recommendation received from the Nation's Office of the Attorney General may have been flawed, the Board in fact sought guidance from it, thereby relieving their actions from being taken as arbitrary or capricious, or in willful disregard of the law. Therefore, this Court finds that the Board did not take a willful and unreasonable action without consideration or in disregard of acts or law.

B. Denial of Each Plaintiff's Citizenship Application and Appeal Was Erroneous And Unsupported By Substantial Evidence.

Plaintiffs presented the Court with testimony and evidence regarding the applications for Grayson and Kennedy, including documents presented by each to the Board during their initial applications and during their administrative appeals. Documentation during the initial applications included various records and affidavits required by the Board to demonstrate eligibility.²¹ However, while each Plaintiff's voluminous documentation reflected a direct lineage to

¹⁹ MCN Constitution Article II § 1 states:

[Opportunity for citizenship] Each Muscogee (Creek) Indian by blood shall have the opportunity for citizenship in The Muscogee (Creek) Nation.

M(C)NCA Title 7 § 4-105(A) states:

Lineal descent. Evidence of lineal descent from a Muscogee (Creek) Indian by blood whose name appears on the final rolls prepared pursuant to the act of April 26, 1906 (34 Stat. 137), shall be required from each applicant.

²⁰ *Tr. of Nonjury Trial Apr. 5, 2023 (Day Two)* at 33:20 – 34:3, 39:16 – 40:16.

²¹ Plaintiff Kennedy's application file presented at trial included approximately 75 pages of material in support of his application and appeal; Plaintiff Grayson's application file included approximately 90 pages of material in support of her application and appeal.

individuals listed on the Dawes Final Rolls, their lineages related back to individuals not listed on the Creek Nation Creek Roll (also known as “the Creek By Blood Roll”) but rather to individuals listed on the Creek Nation Freedmen Roll (also known as “the Creek Freedmen Roll”).

Upon administrative appeal, both Plaintiffs submitted substantial additional documentation regarding the Treaty of 1866 and its applicability to their applications for citizenship in the Nation, including a lengthy letter written and read to the Board by Grayson, during her administrative appeal, which cited Article II of the Treaty of 1866 and Article VI, Clause 3 of the United States Constitution²² in support of her theory that the Treaty of 1866 supersedes the Nation’s Constitution of 1979, and her application for citizenship in the Nation should be approved. Grayson testified she included excerpts of both the Treaty of 1866 and the U.S. Constitution’s Supremacy Clause to draw the Board’s attention to the law she believed was controlling and should be considered in reviewing her eligibility for citizenship.²³ Plaintiff Kennedy testified he also submitted extensive documentation evidencing his lineage dating back to a Creek by blood relative who died before the Dawes Rolls were created, and to ancestors who were listed on the Creek Freedmen Roll of the Dawes Commission. In his appeal to the Board, Kennedy also included a statement citing excerpts from the Treaty of 1866 as well as supplying the Board with more than 70 pages of documentation and a copy of the Treaty in its entirety.

The Board was unable (neither through direct examination of its own witness nor cross-examination of Plaintiffs’ witnesses) to provide any evidence whatsoever of the abrogation or

²² Article VI, Clause 3 (known as the Supremacy Clause) of the United States Constitution states: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

²³ *Tr. of Trial, April 4, 2023* at 72:9 – 73:6 (morning session).

inapplicability of the Treaty of 1866 and in fact provided confirmation of its own uncertainty regarding the effect of the conflict between the Nation's Constitution and the Treaty.²⁴

The Court finds that the Board's actions in denying Plaintiffs' applications and appeals were unsupported in light of the substantial evidence regarding the applicability of the Treaty of 1866 which was presented by Plaintiffs during and along with their applications and administrative appeals.

C. The Actions Of The Board Were Contrary To The Treaty of 1866.

It has long been established that the Nation's Constitution is its governing law. At trial, witnesses repeatedly cited the Constitution as the law they must follow. Remarkably, both the Nation's Constitution and the Muscogee (Creek) Nation Code of Laws ("Code" or "Code of Laws") recognize the binding authority of the Nation's treaties with the United States.

Article I, Section 2 of the Nation's current Constitution states:

The political jurisdiction of the Muscogee (Creek) Nation shall be as it geographically appeared in 1900 which is *based upon those Treaties entered into by the Muscogee (Creek) Nation and the United States of America*; and such jurisdiction shall include, however not limited to, properties held in trust by the United States of America and to such other properties as held by the Muscogee (Creek) Nation, such property, real and personal to be TAX-EXEMPT for Federal and State taxation, when not inconsistent with Federal law. (emphasis added)

Additionally, M(C)NCA Title 27, Judicial Procedures, states:

§ 1-101. Authority.

A. Basis of authority. The authority of the Muscogee (Creek) Nation to adopt this title is based upon:

1. The inherent sovereignty of the Muscogee (Creek) Nation and *the Treaties and Agreements between the Muscogee (Creek) Nation and the United States, including but not limited to the Treaty of 1790 and the Treaty of 1866.* (emphasis added)

and,

²⁴ Tr. Of Nonjury Trial (Day Two), 33:17-24; 40:9-20; 61:16-21.

§ 1-103. Law Applicable.

- A. Constitution and Laws of the Nation. In all cases, the Muscogee (Creek) Nation Courts shall apply the Constitution and duly enacted laws of the Muscogee Nation, the common law of the Muscogee people as established by customs and usage, and *the Treaties and Agreements between the Muscogee Nation and the United States.* (emphasis added)

Plaintiffs' expert, Dr. Carla Pratt, testified extensively regarding the nature and application of the Treaty of 1866 and provided an excellent overview of the legal process for treaty abrogation. Her testimony concluded that there has been no abrogation of the Treaty of 1866 whether in part or in full. In other words, the Treaty of 1866 was in full force and effect at the time of the Plaintiffs' applications for citizenship as well as at the time of their administrative appeals. This Court, the U.S. Supreme Court, and the Nation agree.

As specified by the Nation's current Constitution and its current Code of Laws, the Nation and this Court "...shall apply the Constitution and duly enacted laws of the Muscogee Nation, the common law of the Muscogee people as established by customs and usage, and the Treaties and Agreements between the Muscogee Nation and the United States."²⁵ The Treaty of 1866 itself is specifically identified *by name* in the Nation's Code of Laws as a source of its authority.²⁶ There can be no doubt that the Treaty must be followed in *all* regards, including as it relates to the eligibility for citizenship of those whose ancestors are listed on the Creek Freedmen Roll.

The Board limited their review of the Plaintiffs' applications for citizenship to an examination only of the Creek By Blood Roll, and proven lineal descendants therefrom, in contradiction to the clear language of the Treaty of 1866. Plaintiffs' witness, Board member Lea Ann Nix, testified repeatedly that the Board makes no review of the Final Rolls whatsoever if

²⁵ M(C)NCA Title 27, § 1-103. Law Applicable.

²⁶ M(C)NCA Title 27, § 1-101. Authority.

applicants ancestors are traced only to the Creek Freedmen Roll.²⁷ Both the Nation's current Constitution and its Code mistakenly, and in contradiction to the Treaty of 1866, limit eligibility for citizenship to those whose ancestors may be traced to the Creek by Blood Roll.

The Nation cannot choose to select and rely on portions of the Treaty to which it points as evidence of the tribe's intact reservation, and also negate the clear language entitling descendants of a segment of the Dawes Final Roll – the Creek Freedmen – from eligibility for citizenship. There simply is no legal avenue for configuring a checkerboard of validity where parts of the Treaty are intact and other parts are invalid. Either the Treaty in its entirety is binding or none of it is. The Nation has urged in *McGirt* – and the U.S. Supreme Court agreed – that the Treaty is in fact intact and binding upon both the Nation and the United States, having never been abrogated in full or in part by Congress. To now assert that Article II of the Treaty does not apply to the Nation would be disingenuous.

As such, this Court as well as the divisions and agencies of the Nation must adhere to the language found in the Treaty of 1866, including the language directing the Nation to embrace as citizens the African Creeks listed on the Creek Freedmen Roll and their lineal descendants.

The Court finds that the actions of the Board in denying Plaintiffs' citizenship applications and appeals were contrary to law, specifically the Treaty of 1866 and its required inclusion of the Creek Freedmen and their lineal descendants within the citizenship of the Muscogee (Creek) Nation.

²⁷ *Tr. Of Nonjury Trial (Day Two)*, 68:3-5; 69:9-19; 71:2-5; 72:5-12; 73:6-15; 73:25 – 75:16; 77:25 – 78:7; 80:19-24; 81:12-17; 82:11-18.

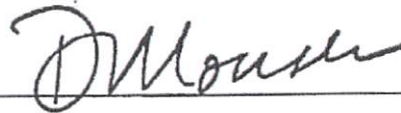
V. ORDER

Having weighed all the facts and evidence presented by the parties, this Court finds the acts of the Defendant in this matter to have been contrary to the law and unsupported by the relevant and substantial evidence presented by each Plaintiff, Rhonda Grayson and Jeffery Kennedy.

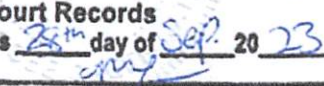
Judgment is hereby rendered for PLAINTIFFS. The decisions of the Board in denying the citizenship applications of the Plaintiffs are hereby REVERSED and REMANDED to the Citizenship Board of the Muscogee (Creek) Nation for reconsideration of the Plaintiffs' applications for citizenship in accordance with the clear language of Article II of the Treaty of 1866 between the Muscogee (Creek) Nation and the United States of America whereby lineal descendants of those individuals listed on the Dawes Final Rolls, including both the Creek By Blood Roll and the Creek Freedmen Roll, are eligible for citizenship in the Muscogee (Creek) Nation.

Plaintiffs' request for attorney fees and costs is DENIED.

SO ORDERED THIS 27th DAY OF SEPTEMBER, 2023.

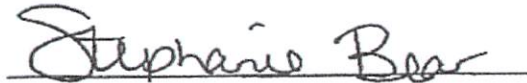


District Court Judge

MUSCOGEE(CREEK)NATION
The undersigned hereby certifies this instrument to be a full, true and correct copy or the original, as the same appears on the record in the District Court Records
Witness this 28th day of Sept 20 23

Court Clerk

CERTIFICATE OF MAILING

I, Stephanie Bear, Deputy Court Clerk for the Muscogee (Creek) Nation District Court, do hereby certify that on this 27th day of September, 2023, I emailed a true and correct copy of the foregoing **Order and Opinion on Appeal from Citizenship Board of the Muscogee (Creek) Nation Denial of Creek Freedmen Citizenship Applications – CV-2020-34** to: Attorney General's Office, gwisner@mcnag.com; cwilson@mcnag.com; jpittman@mcnag.com and Damario Solomon-Simmons, business@solomon-simmons.com; Beatriz Mate-Kodjo, bmate-kodjo@solomonsimmons.com; Kimberly Heckenkemper, kheckenkemper@solomonsimmons.com.

A handwritten signature in cursive script that reads "Stephanie Bear". The signature is written in black ink and is positioned above a horizontal line.

Stephanie Bear, Chief Deputy Court Clerk

7

MUSCOGEE CREEK FREEDMEN HISTORY

The Muscogee (Creek) Freedmen were citizens of the Muscogee (Creek) Nation (MCN) who were placed on the Creek Nation Freedmen roll. Many were enslaved by citizens of the MCN and/or were indigenous people of African/Indian descent. The Freedmen's tribal citizenship was affirmed by the Dawes Commission with full political and economic rights as native citizens, based on Article 2 of the MCN 1866 Treaty. As citizens, the Freedmen served faithfully as farmers, lighthorse police, teachers, superintendents, interpreters, attorneys, entrepreneurs, doctors / medicine men, tribal legislators: House of Kings/(*Senators*) & House of Warriors/(*Representatives*), judges and of course loyal citizens.

In the 1830s, the United States removed the Creek Indian people, including their slaves, from their traditional homeland to live in Indian Territory, what is now Oklahoma. This removal is known as the Trail of Tears. In the new lands, the Upper and Lower MCN people re-established their farms, plantations and ancient tribal towns. The Muscogee (Creek) Nation as a whole begin to experience a new prosperity. Up until the Civil War, the land stretched from the Cherokee Nation border to the Texas panhandle. During the Civil War, the Muscogee (Creek) Nation citizens battled on both, Union and Confederate sides. Some Creek Slaves/Freedmen and African/Indian people joined the Union Army, and later they would be known as Loyal Creeks. The end of the Civil War, the United States and Muscogee (Creek) Nation, signed the Treaty of 1866, which required the cession of 3.2 million acres, and granted all citizens, Native and Freedmen, full citizenship. Land ceded from the Creek Nation was due to the provisions in Article III of the MCN 1866 Treaty. The Freedmen were adopted as full citizens or members based on the MCN 1866 Treaty Article II, and it reads as follows:

MCN 1866 Treaty Article II. The Creeks hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted in accordance with laws applicable to all members of said tribe, shall ever exist in said nation; and inasmuch as there are among the Creeks many persons of African descent, who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said country, and may return within one year from the ratification of this treaty, and their descendants and such others of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens [thereof,] shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds, and the laws of the said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe.

In 1867, the Muscogee (Creek) Nation (MCN) citizens adopted a written constitution that followed the provisions of Article 2 of the 1866 Treaty, which also provided for a Principal Chief, Second Chief, judicial branch and a bicameral legislature composed of a House of Kings and a House of Warriors, which included the Freedmen. In addition, agent J.W. Dunn took a census, to identify citizens or members who were entitled for payment. This census would be known as the Dunn roll. Listed on the Dunn roll were all citizens or members, Native Creeks and Freedmen. Also, for political and economic purposes, there were three Freedmen's districts/towns formed: North Fork, Canadian, and Arkansas. There were other censuses/rolls and payrolls proceeded afterwards. Then the Colbert Commission was established. It was authorized to summons witnesses, take testimony, and made final decisions of citizenship cases, before it was abolished in 1896.

In 1898 congress passed the Curtis Act. This act allowed the government to terminate the MCN tribal government by taking away ownership of the land, inwhich had been held in common, and replacing it with individual ownership of 160 acres parcels per citizen or member. Congress then established the Dawes Commission (DC) to identify and enroll citizens eligible for allotment. The Curtis Act directed the DC to divide the MCN, by creating two separate rolls: 1) the "Creek Nation Creek Roll *or* Creek Nation Indian Roll," (*also known as the by blood roll*), which was purportedly composed of citizens with a blood quantum listed on the DC census cards; and 2) the "Creek Nation Freedmen Roll," which was composed of former slaves and/or free citizens or members with African, Mulatto with Indian descent who were placed on the Freedmen roll.

The Dawes Commission separated families by enrolling full siblings with different blood quanta's and enrolling some on the Creek by blood roll and the others placed on the Freedmen roll. The blood quantum was intended to be used for land allotment purposes, only. In fact, "In cases of mixed Freedmen and Indian parents, which was common among the Creeks... the applicant that was enrolled as a Freedmen were not given credit for having any Indian blood."

In 1906 Congress then passed the Five Tribes Act and the Burke Act. Congress then passed the Oklahoma Indian Welfare Act in 1936, amending the 1934 Indian Reorganization Act, to restore self-governance to Indian tribes in Oklahoma. In 1938, a memorandum was sent to the Solicitor-Department of Interior, Nathan Margold, by John Collier, Commissioner, on behalf of the Five Tribes it states, "for the reason that they wanted to find some way to eliminate the Freedmen." Also, "about the status of these Freedmen would be entitled to vote on the adoption of a constitution." In 1941, Nathan Margold answered and stated that, "the Creek Freedmen were adopted as full citizens or members pursuant to the Treaty of June 14, 1866 (14 Stat. 785)."

In 1944 the Muscogee General Convention adopted a new Constitution and bylaws. Under the new constitution the executive and legislature branches, were merged into one body, the Creek Indian Council. This government never received Bureau of Indian Affairs (BIA) approval because the new governing document excluded the Freedmen without giving MCN citizens an opportunity to vote on that provision. In 1947 the Stigler Act (amended 2018, H.R. 2606), was passed and the Principal Chiefs Act in 1970.

In 1979, the Muscogee (Creek) Nation disenfranchised the Freedmen beginning with the Constitution election, by reorganizing under the authority of the Oklahoma Indian Welfare Act, and continued later through the years by tribal referendums from, and approved by, the MCN National Councils and Principal Chiefs. The Freedmen were not permitted to vote in this election. And, as the results of these referendums, the Freedmen descendants have lost their citizenship, voting rights, federally funded programs and identity. The Five Tribes Act /Act of April 26, 1906 (34 Stat. 137), the Burke Act, the Oklahoma Indian Welfare Act, the Stigler Act, the 1979 Muscogee (Creek) Nation Constitutional election, the Muscogee Creek National Council (NCA) referendums: NCA 81-06, NCA 81-77, NCA 85-45, NCA 01-135, NCA 02-078, MCN Title 7 and the United States Supreme Court McGirt ruling did not abrogate, amend, or otherwise alter Article 2 of the 1866 Treaty. The MCN constitutional election and referendums making the descendants of the Creek Freedmen ineligible for citizenship, violated Article 2 of the 1866 Muscogee Creek Nation Treaty and is unenforceable. The Muscogee (Creek) Nation shall continue to define itself as it sees fit but essentially do so equally and evenhandedly with the regards of the native Muscogee Creeks and the descendants of the Muscogee Creek Freedmen.

In 2003, Mr. Ron Graham was a litigant in aim of regaining his tribal citizenship in the Muscogee (Creek) Nation: *Ron Graham vs. Muscogee (Creek) Nation of Oklahoma Citizenship Board* (CV-2003-53). In 2006, the MCN appealed the favorable decision for Mr. Graham, to the Supreme Court of the Muscogee (Creek) Nation: *Muscogee (Creek) Nation of Oklahoma Citizenship Board vs. Ron Graham* (SC 2006-03), where the decision was reversed. Later in 2019, Mr. Graham resubmitted his citizenship application. He was denied again by the MCN Citizenship Board, and proceeded to appeal the decision to the MCN Courts. The case was denied again by the MCN Supreme Court: *Ron Graham v Muscogee (Creek) Nation Citizenship Board* (SC-2020-01).

Nevertheless, after the MCN reorganized, the Freedmen continued to gather and organized as the Creek Freedmen Indians, [later the Muscogee Creek Indian Freedmen Band (MCIFB)]. However, we will continue to educate everyone on the plight about the descendants of the Muscogee Creek Freedmen have/had in this country.

Mvto. RG111122

Ron Graham
11-26-23

ATTN:
COURT CLERK

RON GRANTHAM
P.O. Box 1299
Okmulgee, OK 74447

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