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Cherokee Nation Addresses Bias Against Descendants of Enslaved People

The tribe's Supreme Court excised language from its constitution that limited the citizenship rights of descendants of Black people who had been enslaved by the tribe before the Civil War.



Principal Chief Chuck Hoskin Jr. of the Cherokee Nation speaking at a celebration of Martin Luther King's Birthday in Muskogee, Okla. He said the court ruling was "achieving the equality our ancestors believed in."

By Mark Walker
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WASHINGTON — It has been a long-running point of racial friction between members of the Cherokee Nation and thousands of descendants of Black people who had been enslaved by the tribe before the Civil War.

Through a series of legal and political battles, those descendants, known as Freedmen, have been pushing to win equal status as members of the tribe, including the right to run for tribal office and receive full benefits like access to tribal health care and housing. And this week the Oklahoma tribe took another big step to resolve the issue by eliminating from its Constitution language that based citizenship on being descended "by blood" from tribal members listed on a late 19th-century census.

The change effectively codified in the Cherokee Constitution the effects of a 2017 federal court ruling that held that the Cherokee Freedmen should have all the rights of

tribal citizens, based on an 1866 treaty that laid out the terms of emancipation. Julie Hubbard, a spokeswoman for the Cherokee Nation, said there had been about 2,900 enrolled Freedmen citizens before the 2017 ruling; another 5,600 have become enrolled citizens since then.

The Cherokee Nation is one of the largest tribes in the country with more than 380,000 enrolled citizens. More than half live within the tribe's reservation in northeastern Oklahoma.

"This is a big win because what this means is that the tribal government, including the tribal courts, are working to uphold the 1866 treaty obligation to the Freedmen," said Marilyn Vann, a Cherokee citizen and president of the Descendants of Freedmen of the Five Civilized Tribes Association.

The Cherokee and other Native American nations originally in the South had purchased enslaved Black people as laborers in the 18th and 19th centuries, and had brought them along when they were driven westward by white settlers.

After the Civil War, the practice ended with the 1866 treaty, which also guaranteed that freed Black people and their descendants would "have all the rights and privileges of native Cherokees."

But what followed were broken promises, exclusions and painful fights that only escalated in the past several decades over whether tens of thousands of descendants of the Freedmen were being afforded equal rights by the Cherokee Nation.

The latest development came on Monday, when the Cherokee Nation Supreme Court issued a ruling that removed the "by blood" language from the Cherokee Nation Constitution and made any related laws illegal.

The 'by blood' language found within the Cherokee Nation Constitution, and any laws which flow from that language, is illegal, obsolete and repugnant to the ideal of liberty," the ruling states. "These words insult and degrade the descendants of Freedmen much like the Jim Crow laws found lingering on the books in Southern state some fifty-seven years after the passage of the 1964 Civil Rights Act."

Sara Hill, the attorney general for the Cherokee Nation, said she pushed for the removal language after it was used to delegitimize Ms. Vann's candidacy for an at-large tribal council seat. When Ms. Vann declared her candidacy in December, a challenger and citizens claimed she did not meet the tribe's "by blood" constitutional requirement.

The complaints referred to a 2007 amendment to the tribe's constitution "to limit citizenship in the Cherokee Nation to only those persons who were descended from individuals who appeared on the Dawes Rolls as Cherokee, Shawnee or Delaware by blood."

More than 75 percent of Cherokee citizens had voted in 2007 to approve the amendment. The Dawes Rolls were lists of tribal members assembled in the late 19th and early 20th centuries.

“I saw those words being thrown around as if people wanted to give them new meaning again, and I thought it was time to get those words removed from our law and our constitution,” Ms. Hill said, “because I could see they were being used to belittle and demean the rights of Cherokee Freedmen.”

Principal Chief Chuck Hoskin Jr. of the Cherokee Nation said the tribal nation needed to confront its history of enslaving humans and the lasting repercussions of failing to recognize the Freedmen as citizens. Mr. Hoskin said the tribe had shifted toward recognizing the Freedmen after the 2017 ruling and believed removing any anti-Freedmen language from its Constitution was fulfilling a promise made by its ancestors.

“The United States government has broken all of its treaty obligations,” he said. “The Cherokee Nation is better than that.”

“We ought to be a nation that keeps its word,” he said. “I think this just reaffirms that what we are doing is the right thing, which is achieving the equality our ancestors believed in 155 years ago.”

Similar legal challenges are unfolding in other tribal communities. The Freedmen of the Muscogee (Creek) Nation were given the same right as Cherokee Freedmen under the same 1866 treaty. But they were disenfranchised from the tribal nation in 1979 and are still fighting for re-entry.

“The Cherokee Nation Supreme Court equalized their nation by removing racist lingo which had established an unfair class system based on race instead of nationality,” said Eli Grayson, a Muscogee (Creek) citizen, who has Freedmen ancestors. “Does my heart good to know this tribe can move away from an unequal government to government for all. Hope the Creek Nation will follow.”