CHEROKEE NATION ELECTION COMMISSION
REGULAR MEETING
JULY 13, 2010
9:00 A.M.

Agenda

I. Call Meeting to Order and Roll Call of Commissioners present or absent

II. Current Agenda

a. Approval of Meeting Minutes previous meetings
b. Monthly Financial Report

III. Old Business

1. Discussion and action regarding lawsuit information

2. Report or correspondence from Mr. Cole

IV. New Business

1. Discussion and action regarding holiday ad for the Cherokee Phoenix

V. Adjournment

POSTED
7-6-10
WB
@ 4:15 AM/PM

Cherokee Nation Election Office
22116 S. Bald Hill Road
Tahlequah, OK 74464

Regular Meeting

July 13, 2010

Visitor Sign In Sheet

Lloyd Cole	

CHEROKEE NATION ELECTION COMMISSION
P.O. BOX 1188
TAHLEQUAH, OK 74465-1188
PHONE (918) 458-5899 FAX (918) 458-6101

MEETING ATTENDENCE RECORD

FOR THE MONTH OF July 2010

REGULAR OR SPECIAL	DATE: 07/13/2010	REGULAR OR SPECIAL	DATE:
COMMISSIONER Roger Johnson		COMMISSIONER	
COMMISSIONER Patsy Eads-Morton		COMMISSIONER	
COMMISSIONER Brenda Jim Walker		COMMISSIONER	
COMMISSIONER Martha Calico		COMMISSIONER	
COMMISSIONER Curtis L. Rohr		COMMISSIONER	

REGULAR OR SPECIAL	DATE:	REGULAR OR SPECIAL	DATE:
COMMISSIONER		COMMISSIONER	
COMMISSIONER		COMMISSIONER	
COMMISSIONER		COMMISSIONER	
COMMISSIONER		COMMISSIONER	
COMMISSONER		COMMISSIONER	

CHEROKEE NATION
ELECTION COMMISSION MEETING
ELECTION SERVICES OFFICE MEETING ROOM
Regular Meeting
July 13, 2010/ 9:00 AM

Commission Presided by: Roger Johnson - Chairman

Commission Date/Time/Place: July 13, 2010/9:00 AM
Election Services Office Meeting Room

Commission Members Present/Absent:

Martha Rose Calico Present/Absent

Patsy Morton Present/Absent

Roger L. Johnson Present/Absent

Curtis L. Rohr Present/Absent

Brenda Walker Present/Absent

Quorum Established: YES/NO

Staff Present: Wanda Beaver Joyce Gourd Genny Scott

Visitors:

L. Cole

Cherokee Nation Election Commission
Regular Meeting
Election Services Meeting Room
July 13, 2010

Minutes

CALL TO ORDER/ROLL CALL:

The Regular Meeting of the Election Commission was called to order at 9:11 a.m. Roll Call was taken and a quorum was established. In attendance were:

Commission -

Roger L. Johnson - Chairman
Brenda J. Walker - Vice-Chairperson
Martha Calico – Secretary/Treasurer
Patsy Eads-Morton - Commissioner
Curtis L. Rohr - Commissioner

Office Staff - Joyce Gourd
Wanda Beaver
Geneva Scott

Guests - Lloyd Cole
Todd Hembree

APPROVAL OF MINUTES:

A motion was made by Curtis L. Rohr to approve the minutes for the June 8, 2010 Regular meeting. The motion was seconded by Brenda J. Walker. A vote was taken and the motion was approved unanimously. A motion was made by Curtis L. Rohr to approve the minutes for the June 22, 2010 Special meeting. The motion was seconded by Brenda J. Walker. A vote was taken and the motion was approved unanimously.

MINUTES:

A motion was made by Martha Calico to approve the Budget report as presented. The motion was seconded by Curtis L. Rohr. A vote was taken and the motion was approved unanimously.

Discussion was held regarding the latest information on the lawsuits. Mr. Cole informed the Commission that a response would be filed on the Commissions behalf stating that they agreed with the Five Districts and amended legislative act passed by the Tribal Council. The Commission discussed going forth with the five districts and possibly setting a Special Meeting to go over any changes or issues associated with the new districts.

Discussion was held regarding the ad that is to be put in the Cherokee Phoenix newspaper holiday issue. The Commission agreed that the following items should be in the ad:

- District Changes
- Deadline for Absentee Ballot requests
- Deadline for Voter Registration
- Voting precincts to be announced at a later time

Also to encourage citizens to make sure their information is up to date with the Election Office. The information is to be sent to Nicole Hill with the Cherokee Phoenix who will do the layout for the ad.

A motion was made by Martha Calico to adjourn at 11:38 a.m. The motion was seconded by Patsy Eads-Morton.

Martha Calico

Martha Calico, Secretary/Treasurer

GWƎƎ DƆP
CHEROKEE NATION®

Election Commission

©2009 Cherokee Nation

Attention: Voters

Is your voting information current?

Why does the Cherokee Nation Election Commission need your name and current address?

-Information regarding the change in Districts

-Precinct locations will be announced at a later time

Attention: Voters in Bell and Afton

Please note the following precinct changes for the 2011 Election.
Voters registered in Bell will vote at the Stilwell precinct.
Voters registered in Afton will vote at the Grove precinct.

-Absentee Ballot request starts on Feb. 7, 2011 - May 13, 2011

-Voter Registration closes on March 31, 2011

-At Larger Voters will need to request an Absentee Ballot unless they plan to vote during the walk-in voting days

You can call, e-mail or come by the Election Services Office to check the status of your information.

The Election Services Office is located at 22116 S. Bald Hill Road, Tahlequah, Okla., in the same building with the EMS. You may also call the office at (918)458-5899 or 1(800)353-2895. The e-mail address is election-commission@cherokee.org

Committee: (committee name) Date: 00-00-00 Committee Date: 00-00-00	Author: (author name) Sponsor: (name(s) of councilor(s) sponsoring)

An Act

Legislative Act __-00

AN ACT AMENDING LEGISLATIVE ACT 06-10; REVISING TITLE 26 ("ELECTIONS") OF THE CHEROKEE NATION CODE ANNOTATED; AMENDING § 5, ADDING PROVISIONS FOR APPORTIONMENT; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be referred as the "Voter District Amendment of 2010" and codified as Title 26 Sections 5(A-B) of the Cherokee Nation Code Annotated ("CNCA").

Section 2. Purpose

The purpose of this Act is to amend the Cherokee Nation Election Code to define the apportionment process of Council seats and define Tribal Council Districts within the jurisdictional boundaries of the Cherokee Nation.

Section 3. Legislative History

L.A. 9-85 Eff. July 13, 1985
L.A. 35-89 Eff. Sept. 9 1989
L.A. 6-91 Eff. March 9, 1991
L.A. 2-87 Eff. Feb. 14, 1987
L.A. 12-90 Eff. Nov. 13, 1990
L.A. 5-87 Eff. Feb. 14, 1987
L.A. 8-87 Eff. Feb. 26, 1987
L.A. 11-87 Eff. March 14, 1987
L.A. 6-87 Eff. Feb. 14, 1987
L.A. 9-87 Eff. Feb. 26, 1987
L.A. 14-87 Eff. March 14, 1987
L.A. 7-87 Eff. Feb. 14, 1987
LA. 12-87 Eff. May 11, 1987
L.A. 23-87 Eff. June I1, 1987
L.A. 3-87 Eff. February 14, 1987
L.A. 4-87 Eff. Feb. 14, 1987
L.A. 7-97 Eff. May 12, 1997 (as revised in its entirety)
L.A. 39-05 Eff. Nov. 14, 2005 (as revised in its entirety)
L.A. 06-10 Eff. Feb. 16, 2010 (as revised in its entirety)

Section 4. Amendment

This Act hereby amends Legislative Act 06-10 by adding "Section 5, Representation by District" under Chapter 1§ 5 of Legislative Act 06-10.

§ 5. ~~Reserved.~~Representation by District

A. Commencing with the Council elections of 2011, there shall be five (5) voting Districts within the jurisdictional boundaries of the Cherokee Nation as identified in the attached map Exhibit "A", "Boundaries of Five Voting Districts of the Cherokee Nation."

B. Commencing with the Council elections of 2011, there shall be three (3) council seats for each of the five (5) districts within the jurisdicational boundaries of the Cherokee Nation."

C. Candidates may file for only one (1) seat and must received a majority of votes cast for that seat. Qualified voters within each District may vote for a candidate for each of the District's three (3) seats.

D. The Executive Branch shall prepare a plan and budget for FY 2010/2011 to assist State of Oklahoma counties within the boundaries of the Cherokee Nation to complete 911 enhanced address location. The plan and budget will be amended and/or approved by Tribal Council by December 1, 2010. The plan will be fully executed by the Executive Branch by December 1, 2011.

E. The Executive Branch shall prepare a plan and budget for FY 2010/2011 to determine the last known address and/or current address for every Tribal citizen registered with the Cherokee Nation by December 1, 2011.

F. The Legislative Branch shall determine apportionment and districting for the 2013 Tribal Elections based on the improved Registrar Citizenship data determined by the December 1, 2011 deadlines by August 1, 2012.

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Section 5. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 6. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 7. Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect and be in full force after its passage and approval.

Section8. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

Enacted by the Council of the Cherokee Nation on the _____ day of _____, 2010.

_____
Meredith A. Frailey, Speaker
Council of the Cherokee Nation

ATTEST:

_____
Don Garvin, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this _____ day of _____, 2010.

_____
Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:

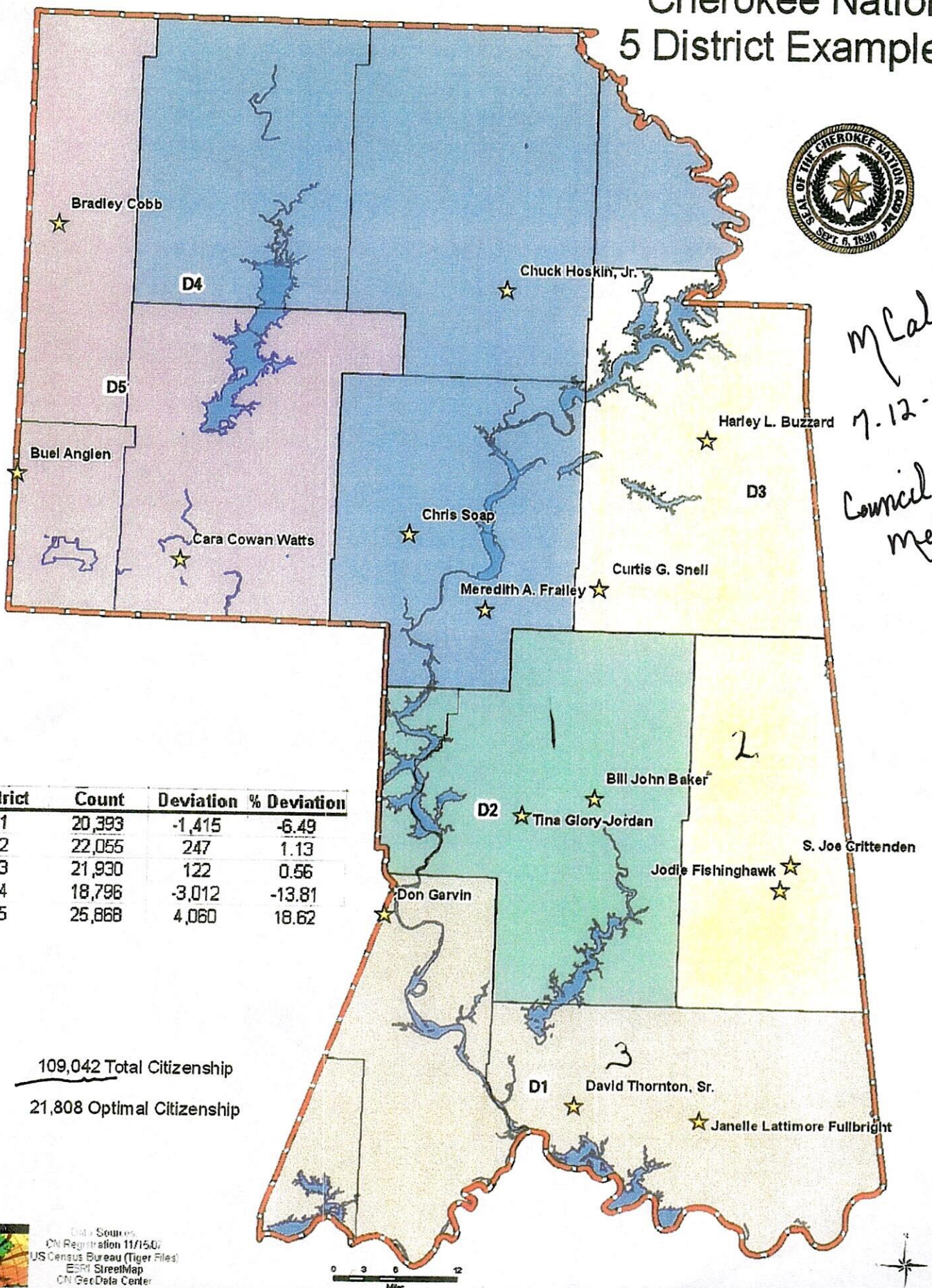
_____
Melanie Knight, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Tina Glory Jordan	_____	Meredith A. Frailey	_____
Bill John Baker	_____	Chris Soap	_____
Joe Crittenden	_____	Cara Cowan Watts	_____
Jodie Fishinghawk	_____	Buel Anglen	_____
Janelle Lattimore Fullbright	_____	Bradley Cobb	_____
David W. Thornton, Sr.	_____	Charles Hoskin, Jr.	_____
Don Garvin	_____	Julia Coates	_____
Harley L. Buzzard	_____	Jack D. Baker	_____
Curtis G. Snell	_____		

(4)

Cherokee Nation
5 District Example 2



M Calico
7-12-10
Council meeting

District	Count	Deviation	% Deviation
D1	20,393	-1,415	-6.49
D2	22,055	247	1.13
D3	21,930	122	0.56
D4	18,796	-3,012	-13.81
D5	25,868	4,060	18.62

109,042 Total Citizenship

21,808 Optimal Citizenship

Data Sources
CN Registration 11/15/07
US Census Bureau (Tiger Files)
ESRI StreetMap
CN GeoData Center

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Map Disclaimer: Information displayed on this map is from multiple sources and is to be used for graphic display and general planning purposes only. Questions about this map, its sources, and intended use should be directed to the Cherokee Nation's GeoData Center.

FILED

2010 JUL 14 PM 12:57

IN THE DISTRICT COURT OF THE CHEROKEE NATION

PRINCIPAL CHIEF CHADWICK SMITH IN HIS OFFICIAL CAPACITY, Petitioner, VS. CHEROKEE NATION ELECTION COMMISSION, Respondent. CHEROKEE NATION TRIBAL COUNCIL Intervenor/Real Party In Interest.	)	CASE NO CV-09-65
CARA COWAN-WATTS Cherokee Council Member District 7, and DON GARVIN, Cherokee Council Member District 4, Plaintiffs, VS. CHEROKEE NATION ELECTION COMMISSION, Defendant.	)	CASE NO CV-2010-53

RESPONSE OF CHEROKEE NATION ELECTION COMMISSION TO LEGISLATIVE ACT OF JULY 12, 2010 AMENDING SECTION 5, TITLE 26, CHEROKEE NATION CODE ANNOTATED

Comes now the Cherokee Nation Election Commission (hereinafter "Commission") in response to legislation adopted by the Cherokee Nation Tribal Council on July 12, 2010, revising Title 26, of the Cherokee Nation Code Annotated; amended

JUL 13 2010

IN THE DISTRICT COURT OF THE CHEROKEE NATION

PRINCIPAL CHIEF CHADWICK SMITH IN HIS OFFICIAL CAPACITY, Petitioner, VS. CHEROKEE NATION ELECTION COMMISSION, Respondent. CHEROKEE NATION TRIBAL COUNCIL Intervenor/Real Party In Interest.	)	CASE NO CV-09-65
CARA COWAN-WATTS Cherokee Council Member District 7, and DON GARVIN, Cherokee Council Member District 4, Plaintiffs, VS. CHEROKEE NATION ELECTION COMMISSION, Defendant.	)	CASE NO CV-2010-53

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Section 5 in which provisions for apportionment and redistricting was duly passed and adopted states:

1. In it's hearing on June 25, 2010, in response to the Motion To Reconsider of the Tribal Council the Court's previous Findings of Fact and Conclusions of Law, the Tribal Council was directed to meet and take action to adopt a redistricting plan and report the same to the Court not later than July 13, 2010.

2. Pursuant to the Court's wishes the Cherokee Nation Tribal Council did convene on July 12, 2010, adopting an amendment to LA-06-10 Revising Title 26, of Cherokee Nation Code specifically amending Section 5 (previously reserved) in which the Council redistricted the Cherokee Nation jurisdictional boundaries into five (5) districts as evidenced by said act, a true copy of which is attached hereto and made a part hereof as though fully set out herein. Attached to the legislation was Exhibit A being a map setting forth the boundaries by counties of the respective newly formed five districts. This Act contains the emergency clause upon its passage and approval. The Commission has been reliably informed that the Principal Chief, Chadwick Corntassel Smith, will approve the legislation.

3. The Commission notes that this legislation does not direct it to apportion the newly created five (5) districts since it specifically provides for these districts for the election in 2011. The Act further provides creating three (3) council seats within each respective district.

4. Based upon these observations your Commission believes it has been relieved of its responsibility to apportion, consequently, it is preparing to conduct the

2011 elections in the newly formed five (5) districts unless otherwise directed by this Honorable Court.

5. As a consequence of these events the Commission suggests there are no remaining issues to be decided by this Court subject to unforeseen objections from parties of interest. The Commission has no objections to this legislation which it believes to meet constitutional muster.

Respectfully Submitted,

CHEROKEE NATION ELECTION COMMISSION

By: Lloyd E. Cole Jr.

Lloyd E. Cole, Jr., CNBA#0061
OBA#1777
120 W. Division St.
Stilwell, OK 74960
(918) 696-7331
Fax: (918) 696-2070
e-mail: colelaw@windstream.net

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2010, I mailed a true and correct copy of the above and foregoing RESPONSE to the following, to-wit:

Todd Hembree
HENBREE & HEMBREE
P.O. Box 1839
Tahlequah, OK 74464

D. Michael McBride III
CROWE & DUNLEVY
500 Kennedy Building
321 South Boston Avenue
Tulsa, OK 74103-3313

ATTORNEYS FOR CHEROKEE NATION TRIBAL COUNCIL

A. Diane Hammons
Cherokee Nation Attorney General
P.O. Box 948
Tahlequah, OK 74465

Principal Chief Chadwick Smith
P.O. Box 948
Tahlequah, OK 74465

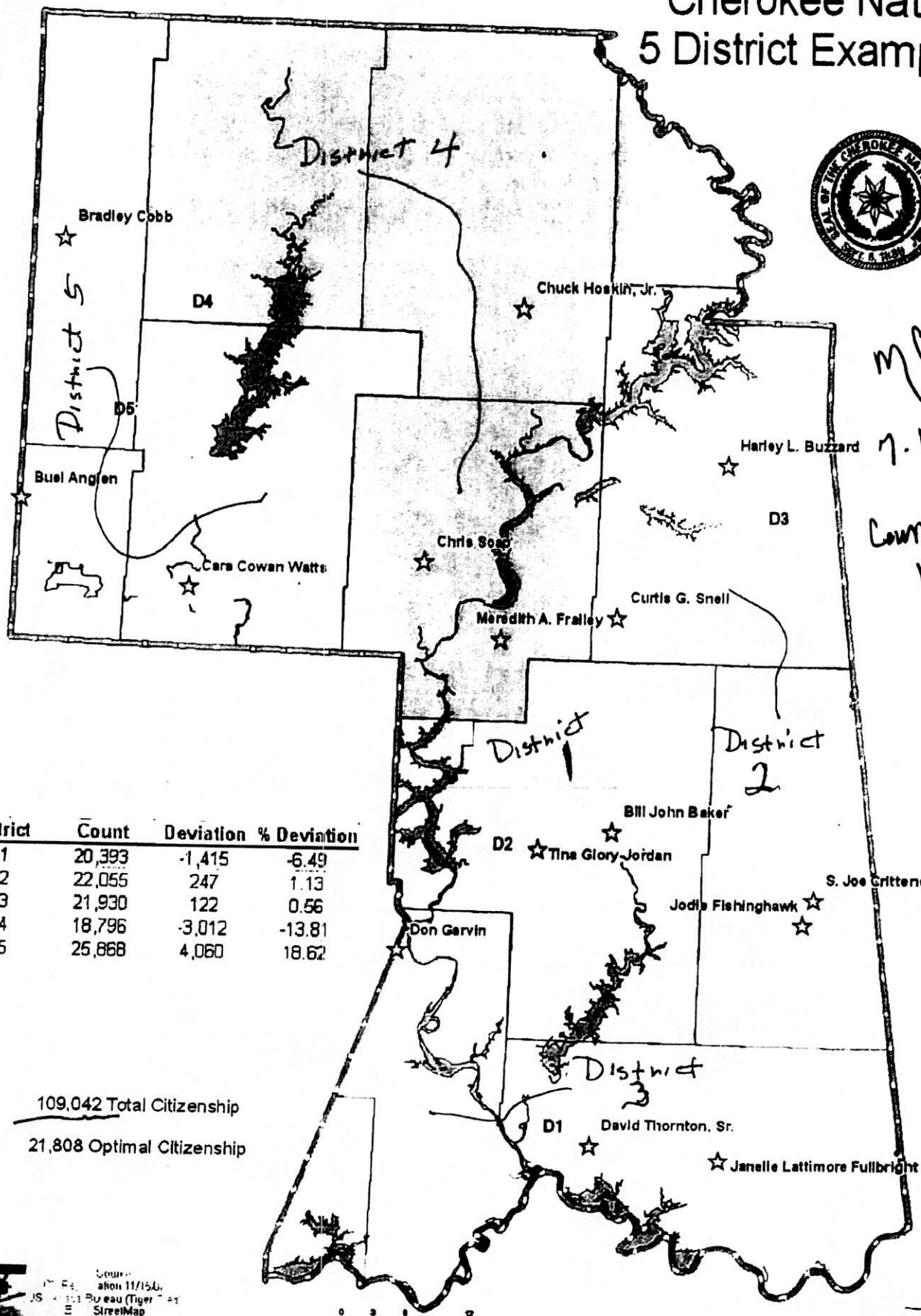
Stacy L. Leeds
11177 Hwy 10
Tahlequah, OK 74464
ATTORNEY FOR INTERVENORS JODIE
FISHINGHAWK AND TINA GLORY JORDAN

Cara Cowan-Watts
P.O. Box 2922
Claremore, OK 74018

Don Garvin
1112 Sky View Drive
Muskogee, OK 74403

Lloyd E Cole Jr.
Lloyd E. Cole, Jr.

Cherokee Nation
5 District Example 2



District	Count	Deviation	% Deviation
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109,042 Total Citizenship

21,808 Optimal Citizenship

L. Cole

M Calico 7.12.10 Council meeting

REC'D JUL 27 2010

JUL 27 2010

FILED

2010 JUL 27 AM 11:42

CHEROKEE NATION
DISTRICT COURT
KRISTI MONGOOYEA
COURT CLERK

IN THE DISTRICT COURT OF THE CHEROKEE NATION

PRINCIPAL CHIEF CHADWICK SMITH, in his official capacity, Petitioner, v. CHEROKEE NATION ELECTION COMMISSION, Respondent, CHEROKEE NATION TRIBAL COUNCIL, Intervenor/Real Party in Interest,	Case No. CV-2009-65
CARA-COWAN WATTS, Cherokee Council Member District 7, -and- DON GARVIN, Cherokee Council Member District 4, Plaintiffs, v. CHEROKEE NATION ELECTION COMMISSION, Defendant.	Case No. CV-2010-53

ORDER OF DISMISSAL

The Court, after review of the briefs filed by Principal Chief Chadwick Smith, the Petitioner, the brief filed by Cherokee Nation Tribal Council, as well as the brief and maps provided by Cara-Cowan Watts and Don Garvin, in their capacity as Cherokee Tribal Council Members, finds as follows:

Legislative Act 22-10 on its face appears to be unconstitutional since it violates the so called ten percent (10%) rule, which was implicitly adopted in *Lay v. Cherokee Nation.*

The Court however notes an exception to that rule when the redistricting entity has made a good faith effort to comply with one person one vote and just cause exists. In such instances, deviations from strict population equality are permissible when justified by legitimate considerations incident to the effectuation of a rational policy.

The Court has considered the reasons set forth in the Tribal Council's brief filed on the 23rd day of July, 2010, indicating that the Districts were drawn to keep like communities with similar social, economic and developmental interests together.

The Court has also considered the information provided by Cara-Cowan Watts and Don Garvin with regard to the lack of evidence to support these reasons and reasons to redraw the Districts to be more equal.

The Court is concerned about the population deviation of approximately 8,000 citizens between Districts 3 and 4 when compared to District 5.

In the past Cherokee Courts have given great deference to the enactments of the Tribal Council. This Court believes that the Tribal Council and Chief have worked together to the greatest extent possible to arrive at an agreement as to the number of Districts. Further, at least a majority of the Council and the Chief have agreed to a redistricting plan (Legislative Act 22-10) which will allow the upcoming election to go forward in a timely manner. This is a compelling Tribal interest, and when taken together with the information provided by the Tribal Council is a more persuasive argument as to why the 5 District plan proposed by the Tribal Council should be upheld as opposed to the Court redrawing the Districts itself without the benefit of all of the information which was available to the Council and Chief in their deliberations.

The Court also notes that this legislation has been signed by the Chief at the time of this ruling.

For the foregoing reasons, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above-styled matters are dismissed as a result of a showing by the Tribal Council of legitimate reasons for a deviation of population in excess of 10% between the newly drawn Five Districts.

IT IS SO ORDERED.

JUDGE OF THE DISTRICT COURT

REC'D JUL 2 6 2010

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2010 JUL 23 PM 4:03

IN THE DISTRICT COURT OF THE CHEROKEE NATION

PRINCIPAL CHIEF CHADWICK SMITH, In his official capacity,	)	
Petitioner,	)	
v.	)	
CHEROKEE NATION ELECTION COMMISSION,	)	**Case No.: CV-2009-65**
Respondent,	)	
CHEROKEE NATION TRIBAL COUNCIL,	)	
Intervenor/Real Party In Interest,	)	
CARA COWAN-WATTS, Cherokee Tribal Council Member District 7,	)	
-and-	)	
DON GARVIN, Cherokee Tribal Council Member District 4,	)	
Plaintiffs,	)	**Case No.: CV-2010-53**
v.	)	
CHEROKEE NATION ELECTION COMMISSION,	)	
Defendant.	)	

BRIEF BY CHEROKEE NATION TRIBAL COUNCIL IN SUPPORT OF LEGISLATIVE ACT 22-10 CREATING FIVE (5) REPRESENTATIVE DISTRICTS WITHIN THE JURISDICTION OF THE CHEROKEE NATION

COMES NOW, the Cherokee Nation Tribal Council, Intervenor/Real Party in Interest, by and through its attorney, Todd Hembree, and hereby submits this Brief in support of Legislative Act 22-10, which creates five (5) representative districts within the jurisdiction of the Cherokee Nation boundaries, with three (3) Council members per district. The Cherokee Nation Tribal

Council contends that good cause need not be shown under the laws of the Cherokee Nation for variances of population between the five (5) created districts above ten percent (10%), although such good cause plainly exists, thereby allowing an exception to the constitutionally mandated variance under 10%.

In support of this proposition the Tribal Council would state as follows:

PROPOSITION I:

LEGISLATIVE ACT 22-10 CREATES DISTRICTS WITHIN THE CHEROKEE NATION, WHICH IS THE CONSTITUTIONAL DUTY OF THE CHEROKEE NATION TRIBAL COUNCIL

On July 12, 2010, the Cherokee Nation Tribal Council convened a special meeting of its Rules Committee to consider districting and reapportionment. This was, in part, a response to this Court's order setting a July 30, 2010 deadline for the resolution of the districting issue. At said Rules Committee meeting concepts were discussed concerning nine (9) districts, fifteen (15) district and five (5) district plans. Although no official vote was taken, the consensus of the Council was that the most accurate number of citizens residing within the jurisdictional boundaries of the Cherokee Nation was approximately 110,000. After much consideration and debate, the Rules Committee passed an Act creating five (5) representative districts with three (3) councilors per district. All parties in this suit are in agreement that the Cherokee Nation Tribal Council has the sole constitutional duty to establish representative districts in accordance with Article VI Section 3 of the Cherokee Nation Constitution.

First, it must be noted that Legislative Act 22-10 is constitutionally valid on its face. This Act has been through the complete legislative process, being considered and debated fully in committee and again being debated and considered by the entire Tribal

Council. It has been signed by the Principal Chief, the Petitioner in this case, who acknowledges to this Court his agreement with the Act. Cherokee Nation Courts have given great deference to Legislative Acts of the Tribal Council. In Phillips v. Eagle, JAT 98-09, the Judicial Appeals Tribunal (now Supreme Court) stated:

> "Where two (2) possible interpretations of a Council enactment exists, one which would render it unconstitutional, or the other which affirms the Acts constitutionality, if at all possible, will adopt the alternative construction, which upholds the enactment."

Also, it is important to point out that courts will avoid wading into redistricting battles out of respect and deference to the separation of powers, realizing that the Legislative Branch plays the primary role in redistricting. League of Latin American Citizens v. Perry, 548 US 399 (2006). Therefore, unless it can be clearly shown by an interested party that Legislative Act 22-10 is unconstitutional, this Court will make all efforts and interpretation to uphold the constitutionality of this Act.

PROPOSITION II:

ANY VARIANCES BETWEEN THE POPULATIONS OF THE DISTRICTS ARE JUSTIFIED TO UPHOLD LEGITIMATE INTERESTS OF THE CHEROKEE NATION AS A WHOLE

This Court is well aware of the difficulties in ascertaining the precise number of citizens that live within the jurisdictional boundaries of the Cherokee Nation. This court has heard testimony that this figure may range between 102,000 to 122,000 Cherokee citizens. Official reports from departments of the Cherokee Nation have had at one time or another listed this figure at 102,000, 108,000, 109,000, 110,000 and 122,000 citizens living within the boundaries. Any citizen population number that is chosen by a party in this suit can be easily rebutted due to the inconsistencies of methodologies used and inconsistencies of data available to each of the 14

counties within our jurisdictional boundaries. To put it simply, we do not know exactly how many citizens reside within the Cherokee Nation jurisdictional boundaries. With this being the back drop of information being available to the Cherokee Nation Tribal Council, the Rules Committee, on July 12, 2010, came to a consensus that there were approximately 110,000 Cherokee citizens within the jurisdictional boundaries of the Cherokee Nation. Again, after considering different district variations of five, nine and 15, the Council passed a five district plan with three councilors per district. Legislative Act 22-10 also states that redistricting shall occur in 2013 and that the Cherokee Nation will help develop 911 systems in those counties within its jurisdictions that are not complete. This Act also states that the Cherokee Nation will use all efforts to develop a comprehensive system to ascertain the citizens within its jurisdictional boundaries. In short, this Act requires a de_facto census of Cherokee citizens.

This Court has requested for the Cherokee Nation to show good cause for any variances between the population of the districts in excess of ten percent (10%). Consistent with the equal protection clause of the 14th Amendment of the United States Constitution, Lay v. Cherokee Nation, JAT 97-05, our Court agreed with the United States Supreme Court, that the Cherokee Nation Constitution provides that districts should be reasonably equal: "Hence the concept of "One-Cherokee, One-Vote." Much has been said in this case concerning the "Ten Percent Rule". However, this is actually misleading, in that, there is no such rule at all, even in the only context where the rule applies -- which is for federal congressional redistricting. As to *tribal legislative redistricting*, the rule has no applicability whatever. The federal redistricting standards do not even apply to state and local governments in legislative redistricting or apportioning within their own governments. Rather, those governments are constrained solely by the Equal Protection Clause and federal statutory provisions implementing Equal Protection public policy interests.

> In assessing the applicability of the one person, one vote requirement to state and local apportionment plans, the Supreme Court held in 1973 in Mahan v. Howell, [410 U.S. 315, 323-35 (1973)] that states have more latitude to vary the population of their legislative and local districts than they have with their congressional districts. Additional deference to states is appropriate in the apportionment of state or local districts because of states' legitimate interest in preserving traditional political boundaries.

Adam Muller, The Implications of Legislative Power: State constitutions, State Legislatures, and Mid-Decade Redistricting, 48 B.C. L. Rev. 1343, 1357-58 (2007) (footnotes omitted). In Mahan, the Court held that while state and local entities must make a good-faith effort to comply with one person, one vote, deviations from strict population equality are permissible when justified by "legitimate considerations incident to the effectuation of a rational state policy." 410 U.S. at 325.

To further combat racial discrimination, Congress passed the Voting Rights Act of 1965, 42 U.S.C. § 1973c (2000)(amended 2006). The Voting Rights Act provides that a state may not pass a law that provides for any "standard, practice or procedure . . . which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color." Many of the cases concerning the supposed 10% rule relate to Voting Rights Act matters. The Voting Rights Act has no applicability to the Cherokee Nation and racial discrimination within Cherokee voting districts is not an issue—all Cherokee voters are of one race by blood.

State governments justify variances in population by providing legitimate government policies based upon non-racially discriminatory criteria. Karcher v. Daggett, 462 U.S. 725, 740 (1983). State governments may legitimately demonstrate policy interests of keeping compact districts, preserving local political boundaries, or by avoiding incumbent against incumbent races. Id. The Fourteenth Amendment's Equal Protection Clause prohibits racial gerrymandering. Shaw v. Reno, 509 U.S. 630, 649 (1993). The Equal Protection Clause prohibits districts that are motivated predominantly by race to the exclusion of traditional criteria

to create districts. In Shaw, the Court disallowed bizarrely shaped districts concluding that racial considerations were the only rational justification for the strangely shaped districts. 509 U.S. at 649-58. The Court remanded the case to consider whether narrowly tailored reasons existed that achieved a compelling governmental interest to justify the racially motivated districts. No racial issues exist within the Cherokee Nation as every voter is Cherokee by blood.

But even within the inapplicable federal congressional redistricting context in which the supposed 10% rule has been cited, the case law would not allow it to be applied under the circumstances here.

In Voichner v. Quilter, 1113 S. Ct. 1149 (1993). The United States Supreme Court stated:

> "That a *prima facie* case is a violation of the reasonably equal or the equal protection clause requirement exists, where the deviation between the largest and smallest districts in population from the ideal population for a district is ten percent (10%) or greater. Where such *prima facie* case is established the governmental entity must justify the deviation."

Therefore where a governmental entity can justify, based on legitimate interest, a deviation above 10% in population between districts, the federal courts will and have allowed such deviations to exist for federal congressional redistricting. Such is the case that is now before this Court. The redistricting plan established by the Cherokee Nation Tribal Council and approved by the Principal Chief of the Cherokee Nation does have deviations between the districts that rise above 10%. However, those deviations can be clearly and legitimately justified, assuming *arguendo* that they need to be.

In Karcher v. Daggett, 462 U.S. 725, 740-741 (1983), the Supreme Court held in considering variance in State legislative districts:

> "Any number of consistently applied legislative policies might justify some variance, including for instance, making districts compact, respecting municipal boundaries, preserving the cores of

> prior districts, and avoiding contest between incumbent Representatives... The State must, however, show with some specificity that a particular objective required the specific deviations in its plan, rather than simply relying on general assertions. The showing required to justify population deviations is flexible, depending on the size of the deviations, the importance of the State's interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely. By necessity, whether deviations are justified requires case-by-case attention to these factors."

Karcher at 740-741

To determine acceptable deviations from equal number per district courts consider the factors on a case-by-case basis. In Reynold v. Sims, 377 U.S. 533 (1964), Justice wrote:

> "Mathematical nicety is not a constitutional requisite...what is marginally permissible in one State may be unsatisfactory in another depending upon particular circumstances of the case."

Reynolds at 578-579

The courts have given State legislators deference in allowing variances in preserving political subdivisions (i.e. counties and communities) as long as the variance was based on legitimate consideration incident to the effectuation of a rational state policy. Gaffney v. Cummings, 412 U.S. 735 (1973), Mahan v. Howell, 410 U.S. 315 (1973).

The Cherokee courts have given great deference to enactments of the Tribal Council. Where two (2) possible interpretations of a Council enactment exist, one which would render it unconstitutional, or the other which affirms the Act's constitutionality, the Court, if at all possible, will adopt the alternative construction which upholds the enactment. Phillips v. Eagle, JAT-98-09, Lay v. Cherokee Nation, JAT-97-05.

The record contains abundant information demonstrating that the factors considered and the methodology used promoted legitimate national interest and Legislative Act 22-10 should be upheld.

One case stands out and provides succinct analysis to guide Cherokee Courts to decide to uphold the Council's Act and refrain from crossing constitutional boundaries. In Frank v. Forest County, 336 F.3d 570 (7th cir. 2003) an Indian Tribe brought an action alleging that a *county's* plan for redistricting its twenty-one supervisory districts deprived Native Americans of equal protection of the laws and violated the Voting Rights Act. The District Court granted summary judgment to the County and the Tribe appealed. Judge Posner, writing for a three judge panel of the U.S. Court of Appeals for the Seventh Circuit held that deviations of sizes of districts did not violate equal protection. Much like many of the proposed Cherokee voting districts, the Frank court noted the districts involved a sparsely populated area in extreme northeastern corner of Wisconsin and that the population was unevenly distributed. 336 F.3d at 571. The Frank court noted that some districts exceeded the ten percent deviation. The county argued, and the district court agreed that the deviations were legitimate and defensible because redrawing the districts in such a way as to reduce the deviations to below ten percent would produce un-compacted districts and districts that would cross many local government boundaries, such as school districts, fire districts and the like. Id.at 572. Judge Posner wrote that:

> "Redistricting is an intensely political process and there is no theoretical guidance to how to balance the various considerations that political science might deem relevant to conforming districted governments to the principles of democracy (themselves contested).

Id.at 572

The Frank court ruled that the "Ten Percent" rule was merely one of a *prima facie* liability and is therefore rebuttable. Id. at 572-573. Judge Posner reasoned that while "[r]ules are attractive"... "a rule applied to circumstances remote from those contemplated when it was adopted can produce perverse results." Id. The Frank court noted that the ten percent rule can be devised for "large electoral districts", not the twenty-one rural districts within the contested area.

Id. Citing Voinovich v. Quilter, 507 U.S. 146, 149, 161-162 (1993) and Brown v. Thomson, 462 U.S. 835, 838-839 (1983) as examples. In discussing the application of the ten percent rule to small rural populations and multiple districts (exactly as in the case with the Cherokee Nation) the Court reasoned:

> "The smaller and more scattered the population of the area to be redistricted and the more numerous the districts, making it harder to create districts of equal population without creating weird shapes that straddle the boundaries of the smaller government units as recognized early on by the Supreme Court in *Abate v. Mundt*, 403 U.S. 182, 185... (1971), the more arbitrary the rule of 10 percent *prima facie* liability becomes, until finally it becomes absurd."

Id.at 573 (emphasis original). The Frank court went on to note that in other cases the voting districts were significantly larger in population and that in the case of small population and rural redistricted areas, such as the Cherokee districts at issue here, the greater likelihood there will be unevenly distributed populations, particularly with a large number of districts.

Simply put, the "Ten Percent Rule", as articulated in Voinovich v. Quilter, may be used in drawing congressional districts and State districts in highly populated areas, but applying this same rule in sparsely populated areas, like the areas found within the Cherokee Nation, it is apparent that the "Ten Percent Rule" becomes unworkable. Literally, this is like putting a square peg in a round hole. Also, the Court should refrain from adopting federal policy *carte blanche* without recognizing the distinct differences between the federal government and the situations that exist in our own sovereign nation. Encroachment on the legislative function of redistricting is forbidden by separation of powers unless some constitutional authority has been contravened, and none has here. This line of reasoning was articulated by the Judicial Appeals Tribunal, Ralph Keen, when he stated:

> "The government of the United States has been in operation under that Constitution since March 4, 1789, a vast amount of tradition, experience and law has been developed since that date regarding

> the operation of such a government and the proper roles to be formed by each branch. From this heritage a valuable guidance can be obtained and used for the benefit of the government of the Cherokee Nation in particular, and the Cherokee people in general (much can also be learned as to what should not be done)."

Phillips v. Eagle, JAT-90-08 Pg. 19.

PROPOSITION III:

THE DISTRICTS SET FORTH IN LEGISLATIVE ACT 22-10 ARE BASED ON LEGITIMATE NATIONAL INTEREST AND JUSTIFY ANY VARIANCE BETWEEN THE POPULATIONS OF DISTRICTS

As stated above, the "Ten Percent Rule" is, in actuality, no rule at all. If there appears to be a variance between the populations of districts that exceeds 10%, then a showing by the governmental entity that the variance is justified based on legitimate interest, then the districts will be held constitutional. Voinovich v. Quilter, 507 U.S. 146.

The Cherokee Nation Tribal Council has informed the Court of reasons that the Court may consider in finding that the governmental entity has used legitimate interest to justify any variance. The legitimate national interest that the Cherokee government has chosen to uphold is to keep like communities with similar social, economical and developmental interests together. In Legislative Act 22-10, the Cherokee government chose to place Washington County, Tulsa County and Rogers County in one particular district (District 5). The government also chose to place Nowata, Craig, Mayes and Ottawa Counties within a particular district (District 4). These two (2) areas represent substantially different segments of the Cherokee Nation population. Washington County, Tulsa County and Rogers County are highly urban areas, with substantial economic enterprises and major employment opportunities, such as the oil industry, the aeronautics industry, the gaming industry (Hard Rock Casino, Catoosa, Oklahoma) and vast other areas of economic employment. The counties represented in District 4, Nowata, Craig,

Mayes and Ottawa, unfortunately, do not share the same interest or opportunities that the citizens of District 5 have. The citizens in District 4 comprise a very sparsely populated area. These economic opportunities pale in comparison to those of the more urban District 5. In short, District 5 is the most urban of areas of the Cherokee Nation, whereas District 4 represents the most sparsely and rural areas of the Cherokee Nation. Further, according to the 2000 U. S. Census the average income of citizens in District 5 is $47,664.80, whereas the average income for the citizens in District 4 would be $36,536.21. Also, to highlight the differences between the two (2) districts is important to note that of the top 10 most populated cities within the jurisdiction of the Cherokee Nation four of the top five: Tulsa, Bartlesville, Rogers and Owasso, are within the boundaries of District 5, while none of the top 10 most populated cities in the Cherokee Nation are within the boundaries of District 4. However, the most telling statements concerning the differences between the two districts come from the quotes of Dr. Bradley Cobb, who is a Cherokee Nation Tribal Council member from the Bartlesville area. Dr. Cobb argued eloquently in both the Rules Committee and at full council on the premise that the interest of Washington County lie hand in hand with the interest of Tulsa and Rogers Counties and that the interest of Washington County citizens were almost opposite of those interests of citizens residing in Craig, Nowata, Mayes and Ottawa Counties. Dr. Cobb stated:

> "I think that the lesser of the two evils is to put Washington, Rogers, and Northern Tulsa Counties together if you are going to stay with the five district map. I don't think it's good representation, I think as Councilor Hoskin probably pointed out in his letter that Councilor Fishinghawk read, it is entirely likely in my opinion that small towns and small communities are going to get left out of the representation table and Councilor Hoskin and I are at completely opposite ends of the spectrum on American politics and that ought to tell you something when the two of us are agreeing on this. So, I am really concerned that you are skewing the counties with the population here and you are not going to be represented in these small towns. So I will not be supporting this, if you are going to go with the five districts map I will support for Washington being with Northern Tulsa and Rogers County."..."I

> won't be supporting this new map primarily because I feel like the constituents that live inside the boundaries of Nowata and Craig County will not be represented fairly and I believe that Washington County interests and the things that are important to Washington County residents for the most part are different. An example of that is, as Mr. Buzzard has pointed out several times, they need roads. You have heard people need waterlines. You talk to constituents where I live: the number one thing that I get is scholarships. Those are about as far apart as you can get so I will not be supporting what I think you are doing is a disservice to the citizens that live in the boundaries of Craig and Nowata County."

It is self-evident from the information that has been put forward that the interest and needs of these two districts are drastically different. It is clearly of legitimate interest in keeping communities and constituencies together that share the same educational needs, economic needs, health needs and transportation needs. The three councilors sharing the representation of District 5, which includes Washington County, Tulsa County and Rogers County, will hold constituencies interested in education and economic development. The three councilors representing Mayes, Nowata, Craig and Ottawa Counties will be representing rural constituencies whose concerns are focused on acquiring basic needs, such as, transportation, roads, waterlines and other basic infrastructural needs. These basic needs are important for these rural communities to someday achieve what the urban communities already enjoy. The division of these districts was not arbitrary. They were thoroughly analyzed, deliberated and debated. What variances that exist are truly justified considering the interest that the communities in the respective districts share.

CONCLUSION

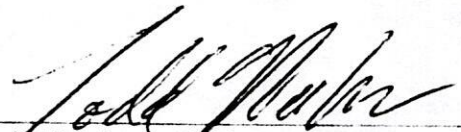
The Petitioner in this case, Principal Chief Chad Smith, the Respondent, Cherokee Nation Election Commission and the Intervenor/Real Party In Interest, Cherokee Nation Tribal Council,

have all reported to this Court that no issues remain concerning the suit brought before your Honor.

This Court has asked for justifications of any variance between districts that result from Legislative Act 22-10. As stated earlier, due to the various methodologies in arriving at that number and the inaccuracy in the official reports to this Court throughout the life of this case, variances can be skewed in an attempt to mislead the Court that the deviations may be more than what they actually are. The Tribal Council will not take part in such actions.

This case is not about who gets an extra seat for their district, it is about what is best for the Cherokee Nation as a whole. The districting plan outlined by Legislative Act 22-10 has been signed into law by the Principal Chief of the Cherokee Nation after passage by the Cherokee Nation Tribal Council. Both the Executive and Legislative Branches of the Cherokee Nation feel this Act is best for the Cherokee Nation as a whole and it is our prayer this Court uphold its constitutionality.

Respectfully Submitted,



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CERTIFICATE OF MAILING

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Todd Hembree

JUL 26 2010

FILED

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CHEROKEE NATION
DISTRICT COURT
KRISTI MONGOOYEA
COURT CLERK

IN THE DISTRICT COURT OF THE CHEROKEE NATION

PRINCIPAL CHIEF CHADWICK SMITH IN HIS OFFICIAL CAPACITY,	)	
Petitioner,	)	
v.	)	
	)	
CHEROKEE NATION ELECTION COMMISSION,	)	**Case No. CV-2009-65**
Respondent	)	
	)	
CHEROKEE NATION TRIBAL COUNCIL,	)	
	)	
Intervenor	)	
CARA COWAN-WATTS, In her Official Capacity as Council Member District 7 and as an Individual And DON GARVIN, In his Official Capacity as Council Member District 4,	)	**Case No. CV-2010-53**
Plaintiffs,	)	
v.	)	
	)	
CHEROKEE NATION ELECTION COMMISSION	)	
Defendant.	)	

PETITIONER'S BRIEF TO THE COURT REGARDING LEGISLATIVE ACT 22-10

COMES NOW, the Petitioner, CHADWICK SMITH, Principal Chief in his Official Capacity, pro se, and in response to the Court's request, submits this Brief regarding Legislative Act 22-10, wherein the Cherokee Nation Council created five new legislative districts.

1) In *Lay v. Cherokee Nation*, JAT 97-05, the Court agreed with and adopted the sound reasoning of the United States Supreme Court when it found that the Cherokee Nation

Constitution calls for *One Cherokee, One Vote. Id.* at p. 5, citing *Baker v. Carr*, (1962) 369 U. S. 186 and *Wesberry v. Sanders* (1644) 367 U. S. 1. In *Wesberry*, the Court stated that "Representatives shall be chosen 'by the People of the several States' and shall be 'apportioned among the several States * * * according to their respective Numbers.' It is not surprising that our Court has held that . . . persons qualified to vote [have] a constitutional right to vote and to have their votes counted. " *Id.* at 19.

Over the years, this principle has been analyzed and interpreted by the Courts as such: district apportionment plan challengers establish a prima facie case of discrimination by showing a maximum total deviation from ideal district size exceeding ten percent. The court is then required to consider whether deviations from ideal district size are justified by a state policy. *Voinovich v. Quilter* (1993) 507, U. S. 146.

"Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives." The list is not all-inclusive and each case must be decided on its own merits. *Karcher v. Daggett* (1983) 462 U. S. 725, 740.

2) The Administration proposed a Five District Plan that complies with Constitutional mandate or the above-listed 10 percent rule. A true and correct copy of the Five District Plan submitted to Council by Administration is attached hereto as Exhibit "A".

3) Council rejected the Administration's Five District Plan wherein one district has a deviation of 10.03 percent in favor of a Five District Plan developed by the Council in committee based on policies of preserving community interests and reducing voter confusion.

4) The Tribal Council bears the burden of justifying the variances for each district that deviates more than ten percent from the ideal district size found in the Five District Plan enacted by Council in Legislative Act 22-10.

5) As illustrated by his signature on Legislative Act 22-10, the Petitioner has no objection to the legislation. The Court has a legitimate issue to determine whether Council constitutionally applied permissible legislative policies to justify the greater than ten percent deviations in Districts 3, 4 and 5 in Legislative Act 22-10.

6) It is important for the Court to note that Legislative Act 22-10 contains a severability clause. This clause states:

> The provisions of this act are severable and if any part of (sic) provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act. p. 2

Therefore, if the Court strikes down any provision(s) contained in the Legislative Act 22-10, the remaining provision(s) shall remain in full force and effect under the laws of the Cherokee Nation.

Respectfully Submitted,

Chadwick Smith, in his Official
Capacity as Principal Chief, pro se
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Certificate of Service

I, the undersigned, do hereby certify that on the 23rd day of July 2010, I personally delivered or caused to be delivered via first class mail or facsimile a true and correct copy of the PETITIONER'S BRIEF TO THE COURT REGARDING LEGISLATIVE ACT 22-10 to the following:

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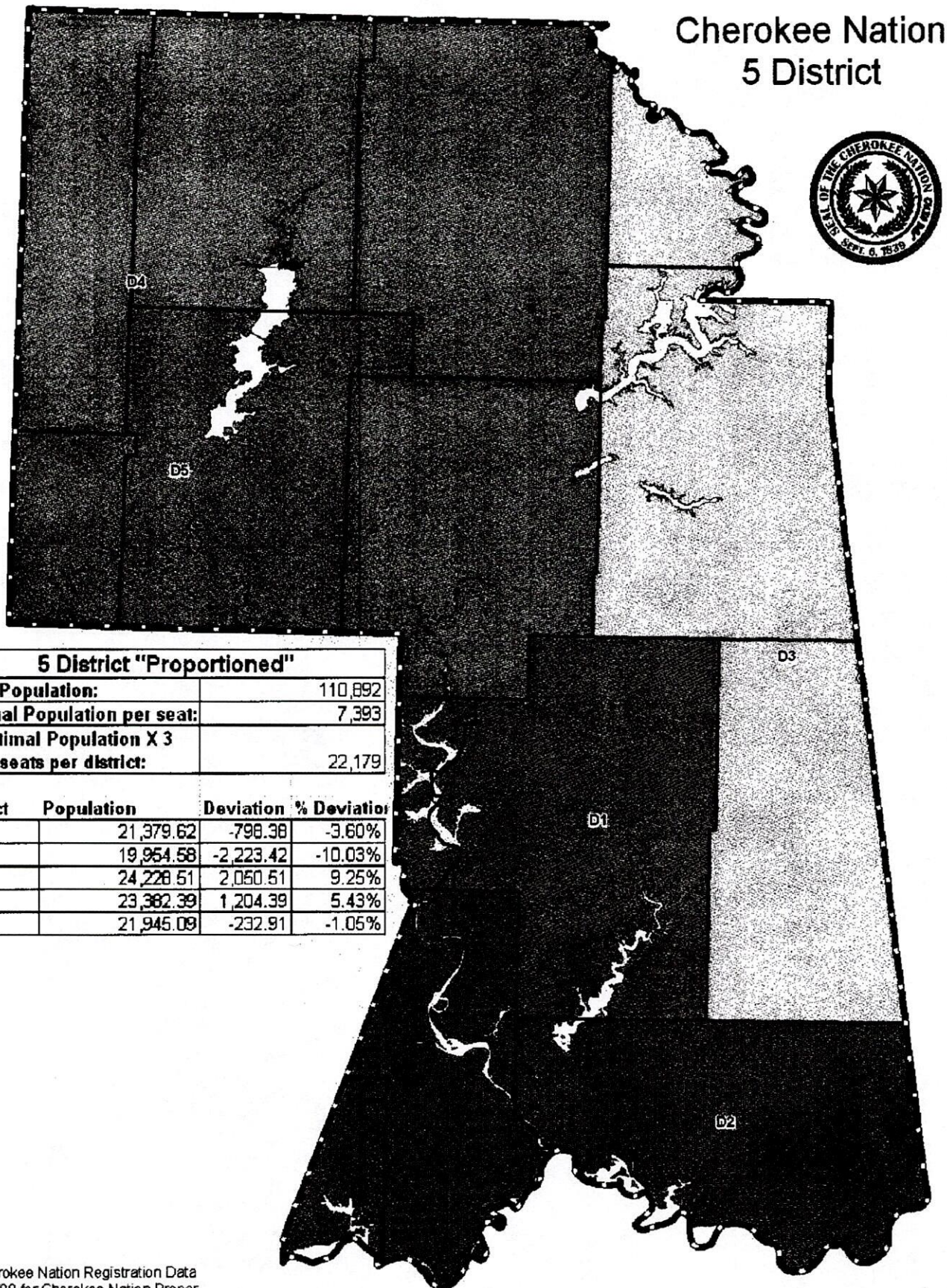
Chadwick Smith

EXHIBIT A

Cherokee Nation
5 District



5 District "Proportioned"	
Total Population:	110,892
Optimal Population per seat:	7,393
Optimal Population X 3 seats per district:	22,179

District	Population	Deviation	% Deviatio
D1	21,379.62	-798.38	-3.60%
D2	19,954.58	-2,223.42	-10.03%
D3	24,228.51	2,050.51	9.25%
D4	23,382.39	1,204.39	5.43%
D5	21,945.09	-232.91	-1.05%

6/25/10

Note: Cherokee Nation Registration Data as of 5/22/09 for Cherokee Nation Proper.

Information provided by citizen at the time of registration or time of citizen initiated updates.

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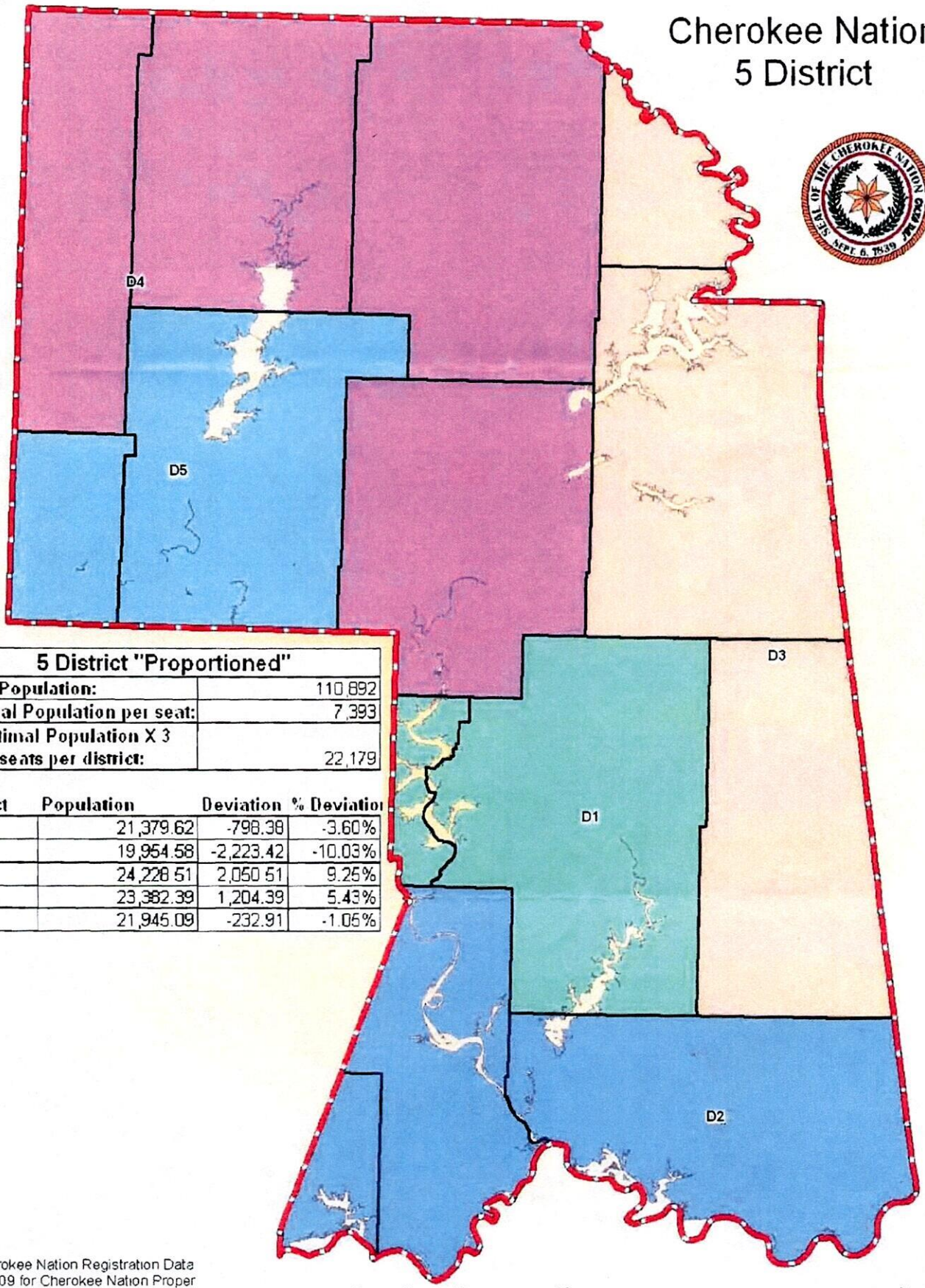
Miles

EXHIBIT A Page 1

EXHIBIT A

Cherokee Nation
5 District



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Miles

EXHIBIT A Page 1

REC'D JUL 2 3 2010

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July 26, 2010

Honorable Judge Bart Fite
Cherokee Nation District Court
P.O. Box 1097
Tahlequah, OK 74465

Re: Approved Map

Dear Judge Fite:

Councilman Garvin and I believe the legislation passed by the Tribal Council is proper given our timeframe for the upcoming 2011 election. The approved legislation establishes a positive path forward to resolve the fairness issues brought about by incomplete data and data integrity issues. We hope and pray the 2013 elections do not face the same issues which have been brought to you for consideration on this Court case.

Since the Council did not adopt an apportionment methodology for determination of actual Cherokee Nation citizenship population within the Jurisdictional Service Area (JSA) of the Cherokee Nation by motion or through legislation, a methodology for consistent determination of Tribal population still does not exist in any approved written form. Apportionment methodology would address the questions of inclusion of citizens with bad addresses, a method for accounting of citizens within 'border' zip codes and an acceptable, fair deviation from the ideal apportioned population. The lack of apportionment methodology, also, leaves no legal definition or threshold for justifying a deviation larger than 10 percent. **Without an approved methodology in the form of legislation or policy, any variance beyond the Court ordered 10% rule is arbitrary and unfair.**

Due to lack of explicit action by the Tribal Council to adopt a methodology for apportionment of citizenship data, a default set of data somehow became the standard during debate at the Special Rules Committee meeting on Monday, July 12, 2010. A total Cherokee Nation citizen population of 110,892 was somehow defaulted to by the end of the meeting rather than the court ordered 122,427. The 110,892 total JSA population as described by David Justice, Cherokee Nation GeoData Services, who prepared the maps was arrived at by including all Cherokee Nation citizens in the Tribal Registrars database as of May 22, 2009 at their last known address even if the Registrars database showed their mailing address as undeliverable. The 110,892 differed from the Court order with respect to fair and equitable treatment of citizens living within the 'border' zip codes. To arrive at 110,892, GeoData did geocode the zip codes with 911 addressing available but left all citizens inside the Cherokee Nation JSA for those zip codes without 911 addressing.

If we assume 110,892 is the acceptable total population for Cherokee Nation citizens as provided by the Tribal Registrar, the optimal population per seat based on 15 Council seats is 7,393 Cherokee Nation citizens. If there are three Council seats for each district in a five district configuration, the optimal number per district is 22,179. **With the approved map which combines Tulsa, Rogers and Washington counties, the approved District 5 deviates by 22.8% (5,074) which is almost an entire fourth seat (68.6% of one seat).** The population numbers and deviations for the approved map and Constitutional map are provided as an attachment.

The adopted five (5) district map does not comply with the Court ordered 10% deviation which Chief Smith argued for and agreed was required for Constitutionality of any configuration of Council Districts. Per the 'Findings of Fact and Conclusions of Law' issued by the Court on June 18, 2010, "***6. The Court finds that citizenship numbers as of May 22, 2009, reveal that the distribution of the population of the nine districts as currently drawn is unconstitutional when considering Lay, supra, and the variances from the optimal citizenship number per***

district exceed 10%. 8. The Court finds that any number of districts in excess of one is constitutional so long as the population is constitutionally apportioned between them in accordance with Art. VI. Sec. 3...of the Constitution of the Cherokee Nation." From the June 25, 2010 Hearing transcript, the Court is quoted as saying, "***...with the Council then having the duty to draw those districts so that they all were constitutionally within the ten percent. If that can't be done then that number, in my opinion, would be an unconstitutional number of districts and we'd have to go back and find another number...to make that fit the constitutional ten percent mandate."***

Cherokee Nation Constitution
Article VI. Section 3.

The Council shall establish representative districts which shall be within the boundaries of the Cherokee Nation. Fifteen of these seats shall be apportioned to afford a reasonably equal division of citizenship among the districts, and the remaining two shall be elected at-large by those registered voters residing outside the boundaries of the Cherokee Nation voting at-large in accordance with this section.

An appropriate and Constitutional map meeting the 10% deviation guidance provided by the Courts was offered by motion to amend at full Council once it was discovered a map was available using the 110,892 population count. Councilors Harley Buzzard, Julia Coates, Jack Baker, Janelle Fullbright, Don Garvin and Cara Cowan Watts voted to adopt the appropriate map, but failed to garner the eight votes needed for a simple majority due to political gerrymandering by some Council members who wished not to drive so far and used an erroneous argument about the inclusion of too many counties in one district. Both the map adopted and the map offered by amendment includes four counties for the proposed District 4 as shown in the attached maps.

"***Lay v. Cherokee Nation (1998) holds that "if the Cherokee government is to be truly representative of the people, apportionment should be conducted whenever the population figures bear out the need to do so,***" per the 'Findings of Fact and Conclusions of Law' issued by the Court on June 18, 2010. By definition, apportionment is based on citizenship population and not geographical area or driving distance as mentioned in debate at full Council on the evening of July 12, 2010 to justify the inclusion of Washington county in the proposed District 5.

"Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives. Toleration of even small deviations detracts from these purposes. Therefore, the command of Art. I § 2, that States create congressional districts which provide equal representation for equal numbers of people permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown." - Kirkpatrick v. Preisler, 394 U.S. 526, 530-531 (1969)

Councilman Garvin and I are willing to compromise on the defaulted total population count of 110,892 even though we believe it is still unfair due to its inequity of including all citizens for some areas while dividing out others where geocoding is available. We are, also, willing to compromise on our strong belief that the Constitution requires us to have fifteen (15) separate and equal Council Districts to move the 2011 election forward. However, we find the adopted map which leaves the proposed District 5 with more than 22% deviation unconstitutional and contrary to the intent of Lay vs. Cherokee Nation (1998), the Cherokee Nation Constitution and the Court's clear orders to deviate less than 10% for all districts.

Rogers county Tribal citizens continue to lack proper and adequately apportioned Council representation under the approved map after three attempts in Court and several years of political negotiation with Council members and two Election Commissions to apportion in a timely manner.

In the 'Findings of Fact and Conclusions of Law' issued by the Court on June 18, 2010, the Court retained the authority to remedy apportionment should the Council, Chief and/or Election Commission fail to act per the Constitution and meet the 10% deviation requirement. The Court has the opportunity to remedy this travesty of political gerrymandering for personal preferences and stop further legal action by adopting the map which uses the same population base as the approved map and leaves the five (5) districts with three (3) Council members within the Constitutional deviation of 10% using the same legislation adopted at Council on July 12, 2010 without amendment other than the correct map. Please see the attached table, approved map and Constitutional map which demonstrate the clear differences in the maps given different county configurations within five districts.

In addition, I have attached two letters from noted Tribal citizens and historians which negate the statements made by some Council members that the alleged relationship between Washington and Tulsa or Rogers county justifies violating the Constitutional mandate of 10% or less deviation. Marybelle Chase is a Cherokee citizen, noted Tribal historian, Tribal Elder, active and long-time Tulsa county Cherokee Organization member. Ms. Chase, clearly, states there is no known relationship in the past or present which would justify retaining Washington County with Tulsa County. Lee Keener is a Cherokee citizen, Tribal history course teacher, active and long-time member and President of the Rogers County Cherokee Association (RCCA). Mr. Keener, clearly, states there is no known relationship in the past or present which would justify retaining Washington County with Rogers County when the map does not meet the Constitutional requirement of a 10% or less deviation.

After reviewing U.S. Census Bureau data, I found no significant reasons to keep any one County or community together or apart based on non-Tribal data such as population density, geographical area, driving distance or other documented rationale which might possibly be considered. Land usage for Washington County other than the city of Bartlesville is, primarily, cattle ranch operations in the past and today which aligns the community more closely with neighboring Craig, Nowata and northern Mayes counties.

Councilman Garvin and I believe we have provided ample documentation showing no known relationship which binds Washington County to either Tulsa or Rogers counties. Without approved apportionment methodologies providing a baseline for deviation requirements and determination of communities of like interests, the Court should remedy the apportionment dilemma for Rogers county Cherokee Nation citizens and adopt the map which meets the 10% deviation rule and includes only Rogers and Tulsa County within District 5 as shown in the attached map. Without approved legislation, it is too late to justify a deviation greater than 10% for any district.

If you have any questions concerning this letter or have additional questions, please call me on my cell at (918) 752-4342 or email me at cara@caracowan.com. Thank you for your time and consideration.

Sincerely,

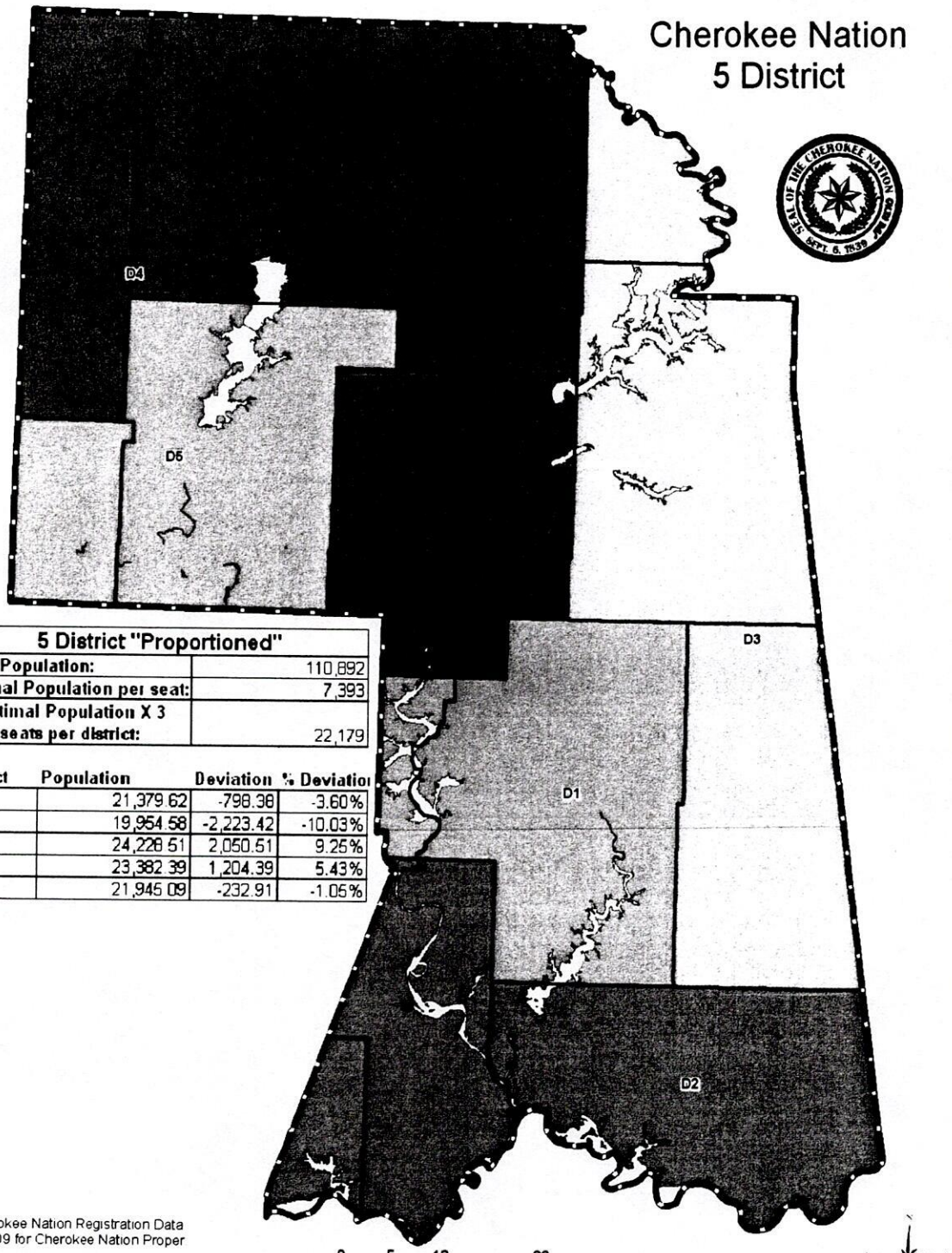
Cara Cowan Watts
Cherokee Nation Tribal Council
District 7 – Will Rogers

Don Garvin
Cherokee Nation Tribal Council
District 4 – Three Rivers

Attachments Included:

Five (5) District Approved Map with Washington, Tulsa and Rogers County as 'District 5' (outside of ±10%)
Five (5) District Proposed Map with Tulsa and Rogers County as 'District 5' (within ±10%)
Table of Analysis of Apportionment for both Five (5) District Configurations
Districting Legislation Passed at full Council on July 12, 2010
Letter from Marybelle Chase, Cherokee Nation Citizen, Tulsa County Resident and Tribal Historian
Letter from Lee Keener, Cherokee Nation Citizen, President of Rogers County Cherokee Association and Tribal Historian

Cherokee Nation
5 District



5 District "Proportioned"	
Total Population:	110,892
Optimal Population per seat:	7,393
Optimal Population X 3 seats per district:	22,179

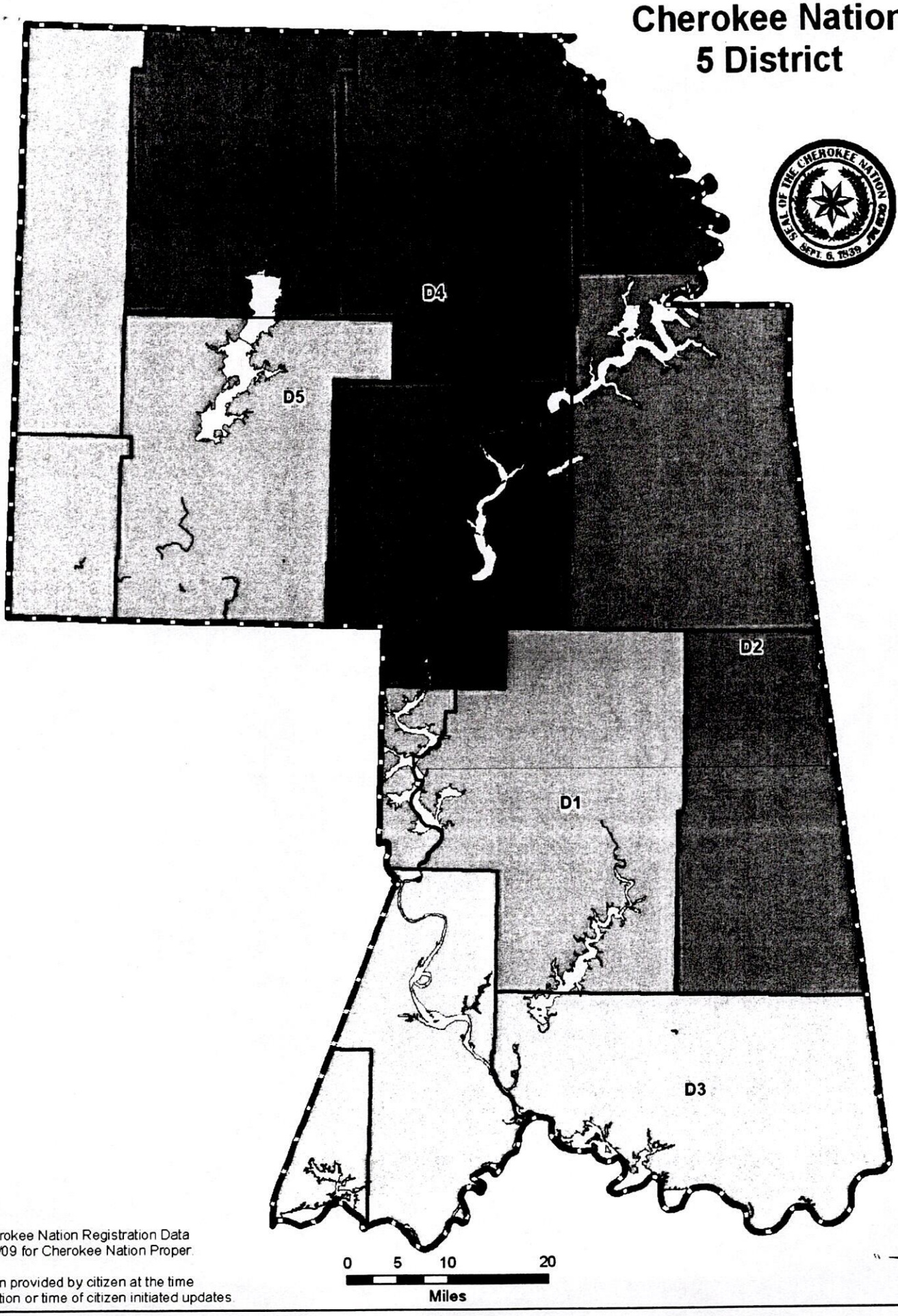
District	Population	Deviation	% Deviatio
D1	21,379.62	-798.38	-3.60%
D2	19,954.58	-2,223.42	-10.03%
D3	24,228.51	2,050.51	9.25%
D4	23,382.39	1,204.39	5.43%
D5	21,945.09	-232.91	-1.05%

6/25/10

Note: Cherokee Nation Registration Data as of 5/22/09 for Cherokee Nation Proper

Information provided by citizen at the time of registration or time of citizen initiated updates

Cherokee Nation
5 District



7/13/10

Note: Cherokee Nation Registration Data as of 5/22/09 for Cherokee Nation Proper.

Information provided by citizen at the time of registration or time of citizen initiated updates.

5 District "Proportioned"

Total JSA Population 110,892 Including Undeliverable Addresses & Partial Geocoding 'Border' Zip Codes

Total Population	**110,892**	
Optimal Population Per Seat	**7,392.8**	**7393**
Optimal Population x 3 Seats Per District	**22,178.4**	**22179**

	7393	
x 2		x 4
	14,786	29,572

(Note: GeoData rounded up to 7393.)

Map Adopted by Council on July 12, 2010					**Apportionment per Lay vs Cherokee Nation (1988) Using Approved Map**				
District	**Population**	**Deviation**	**% Deviation**	**NOTES**	**District**	**Population**	**Deviation**	**% Deviation**	**NOTES**
D1 (Cherokee and Wagoner Counties)	21,379.62	-799.38	-3.60%	Corresponds to D1 on other 5 District map.	D1	21,379.62	-799.38	-3.60%	
D2 (Delaware and Adair Counties)	22,983.07	804.07	3.63%		D2	22,983.07	804.07	3.63%	
D3 (McIntosh, Muskogee and Sequoyah Counties)	19,954.58	-2,224.42	-10.03%	Corresponds to D2 on other 5 District map.	D3	19,954.58	-2,224.42	-10.03%	
D4 (Nowata, Craig, Ottawa and Mayes Counties)	19,319.61	-2,859.39	-12.89%		**D4**	**19,319.61**	**4,533.61**	**30.66%**	**Two (2) seats are optimal.**
D5 (Rogers, Tulsa and Washington Counties)	27,253.31	5,074.31	22.88%		**D5**	**27,253.31**	**-2,318.69**	**-7.84%**	**Four (4) seats are optimal.**

Map Offered by Amendment at Full Council to Comply with Court Orders Requiring Deviation within ± 10%				
District	**Population**	**Deviation**	**% Deviation**	**NOTES**
D1 (Cherokee and Wagoner Counties)	**21,379.62**	**-799.38**	**-3.60%**	**Corresponds to D1 on other 5 District map.**
D2 (McIntosh, Muskogee and Sequoyah Counties)	**19,954.58**	**-2,224.42**	**-10.03%**	**Corresponds to D3 on other 5 District map.**
D3 (Ottawa, Delaware and Adair Counties)	**24,228.51**	**2,049.51**	**9.24%**	
D4 (Washington, Nowata, Craig and Mayes Counties)	**23,382.39**	**1,203.39**	**5.43%**	
D5 (Rogers and Tulsa Counties)	**21,945.09**	**-233.91**	**-1.05%**	

Source: Cherokee Nation Registrar Data

July 21, 2010

Judge Bart Fite
Cherokee Nation District Court
P.O. Box 1097
Tahlequah, OK 74465

Re: Status Report Concerning Apportionment and Redistricting

Dear Judge Fite:

I am writing regarding the case before you on apportionment and districting of Tribal Council seats. As a Cherokee Nation citizen, Tribal Elder, resident of Tulsa County within the jurisdiction and a recognized Tribal historian, I find the map approved by the Council on July, 2010 to be unconstitutional. If the Constitution requires apportionment to be based on citizenship population and be no greater than a plus or minus 10 percent deviation for equal and fair representation, the approved map does not meet the criteria that Chief Smith and you as the Court have set forward as requirements.

As a long-time resident and active member of the Tulsa Cherokee Community Organization (TCCO), and I find the stated 'strong relationship' and 'like-mindedness' between Washington County and Tulsa and Rogers County, in my opinion, not to be true. Washington County has little to nothing to do with Tulsa County on a regular basis and is more aligned with Craig and Nowata counties both traditionally and in current times. Even if there was a strong relationship, apportionment should be based solely on population numbers and not on relationships or like-mindedness. Otherwise, our citizens would lack proper and appropriate representation. With the approved map placing Washington with Rogers and Tulsa counties together as one district, Rogers County Cherokees are not the only Cherokees losing out. Tulsa County will lose, as well. The actual population numbers I have reviewed for the 110,892 total populations in the jurisdiction map does not bear out a configuration for Washington and Tulsa counties to remain aligned.

I hope you balance the actions of the Legislative and Executive Branch, by taking the appropriate action to create fair and balanced representation for all Cherokee citizens by adopting the map which has District 5 as Tulsa and Rogers counties, only, together which meets the plus or minus 10 percent rule. If you have any questions concerning this letter, please call me at (918) 835-1031 or email me at mchase15@cox.net. Thank you for your time and consideration.

Sincerely,

Marybelle Chase

Marybelle Chase

7.22.10

Re: Apportionment and Redistricting Case

Dear Honorable Judge Fite:

Your honor, I am writing concerning the case on apportionment and districting of Tribal Council seats.

As a Cherokee Nation citizen, Rogers County and Cherokee Nation resident, President of the Rogers County Cherokee Association (RCCA) and a recognized Tribal historian, history course teacher and ANA Cherokee Lifeways Language Teacher and Presenter I cannot find the map approved by the Council constitutional or fair. If the Constitution requires apportionment to be based on citizenship population with a deviation of 10 percent or less, the approved map does not meet those requirements.

There is no political, cultural, historical or community justification for the 22.8 percent deviation created by combining Washington County with Tulsa and Rogers County. Apportionment is based on population for any government and not geographical coverage or driving distance. Rogers County's representation on the Cherokee Nation Tribal Council must be determined by population demographics based on individual Tribal citizens actual residency as best can be determined by the Tribal Registrar.

As a resident, active member and leader of RCCA, I cannot determine any meaningful relationship with Washington County Cherokees which would demand a fixed association or justify throwing out the 10 percent deviation requirements. Washington County has no known relationship to Rogers County any more or less than any other area of the nation. From my perspective, I find Washington County is more aligned with Craig and Nowata counties. Even if a strong relationship existed, apportionment is based solely on population numbers and not on like communities. The Cherokee Nation Constitution is clear and states apportionment is based, solely, on Tribal Citizen's residency and thus our Tribal population. Otherwise, our citizens lack proper and appropriate political representation in Tahlequah. In talking with citizens from Washington County esp. Bartlesville many have stated they feel like they are forgotten "way up" there in the northern area of our jurisdiction. I would not want to further alienate that area and I think their area would have a stronger presence in general if combined by population.

Rogers County would lose representation rather than gain the second seat you awarded in an earlier Court determination. For seven years, Rogers County should have had a second seat under the existing nine district configuration. If Washington County is forced into District 5, Rogers County citizens will lose.

Wado,

Lee Keener

Lee Keener

Committee: Rules
Date: 06-24-10 Committee Date: 07-12-10

Author: Todd Hembree
Sponsor: Meredith Frailey

An Act

Legislative Act __-00

AN ACT AMENDING LEGISLATIVE ACT 06-10; REVISING TITLE 26 ("ELECTIONS") OF THE CHEROKEE NATION CODE ANNOTATED; AMENDING § 5, ADDING PROVISIONS FOR APPORTIONMENT; AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be referred as the "Voter District Amendment of 2010" and codified as Title 26 Sections 5(A-B) of the Cherokee Nation Code Annotated ("CNCA").

Section 2. Purpose

The purpose of this Act is to amend the Cherokee Nation Election Code to define the apportionment process of Council seats and define Tribal Council Districts within the jurisdictional boundaries of the Cherokee Nation.

Section 3. Legislative History

L.A. 9-85 Eff. July 13, 1985
L.A. 35-89 Eff. Sept. 9 1989
L.A. 6-91 Eff. March 9, 1991
L.A. 2-87 Eff. Feb. 14, 1987
L.A. 12-90 Eff. Nov. 13, 1990
L.A. 5-87 Eff. Feb. 14, 1987
L.A. 8-87 Eff. Feb. 26, 1987
L.A. 11-87 Eff. March 14, 1987
L.A. 6-87 Eff. Feb. 14, 1987
L.A. 9-87 Eff. Feb. 26, 1987
L.A. 14-87 Eff. March 14, 1987
L.A. 7-87 Eff. Feb. 14, 1987
LA. 12-87 Eff. May 11, 1987
L.A. 23-87 Eff. June 11, 1987
L.A. 3-87 Eff. February 14, 1987
L.A. 4-87 Eff. Feb. 14, 1987
L.A. 7-97 Eff. May 12, 1997 (as revised in its entirety)
L.A. 39-05 Eff. Nov. 14, 2005 (as revised in its entirety)
L.A. 06-10 Eff. Feb. 16, 2010 (as revised in its entirety)

Section 4. Amendment

This Act hereby amends Legislative Act 06-10 by adding "Section 5, Representation by District" under Chapter 1§ 5 of Legislative Act 06-10.

§ 5. ~~Reserved.~~Representation by District

A. Commencing with the Council elections of 2011, there shall be five (5) voting Districts within the jurisdictional boundaries of the Cherokee Nation as identified in the attached map Exhibit "A", "Boundaries of Five Voting Districts of the Cherokee Nation."

B. Commencing with the Council elections of 2011, there shall be three (3) council seats for each of the five (5) districts within the jurisdicational boundaries of the Cherokee Nation."

C. Candidates may file for only one (1) seat and must received a majority of votes cast for that seat. Qualified voters within each District may vote for a candidate for each of the District's three (3) seats

~~A.~~D. The Executive Branch shall prepare a plan and budget for FY 2010/2011 to assist State of Oklahoma counties within the boundaries of the Cherokee Nation to complete 911 enhanced address location. The plan and budget will be amended and/or approved by Tribal Council by December 1, 2010. The plan will be fully executed by the Executive Branch by December 1, 2011.

~~B.~~E. The Executive Branch shall prepare a plan and budget for FY 2010/2011 to determine the last known address and/or current address for every Tribal citizen registered with the Cherokee Nation by December 1, 2011.

~~C.~~F. The Legislative Branch shall determine apportionment and districting for the 2013 Tribal Elections based on the improved Registrar Citizenship data determined by the December 1, 2011 deadlines by August 1, 2012.

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Section 5. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 6. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 7. Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this Act shall take effect and be in full force after its passage and approval.

Section8. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

Enacted by the Council of the Cherokee Nation on the _____ day of _____, 2010.

_____
Meredith A. Frailey, Speaker
Council of the Cherokee Nation

ATTEST:

_____
Don Garvin, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this _____ day of _____, 2010.

_____
Chadwick Smith, Principal Chief
Cherokee Nation

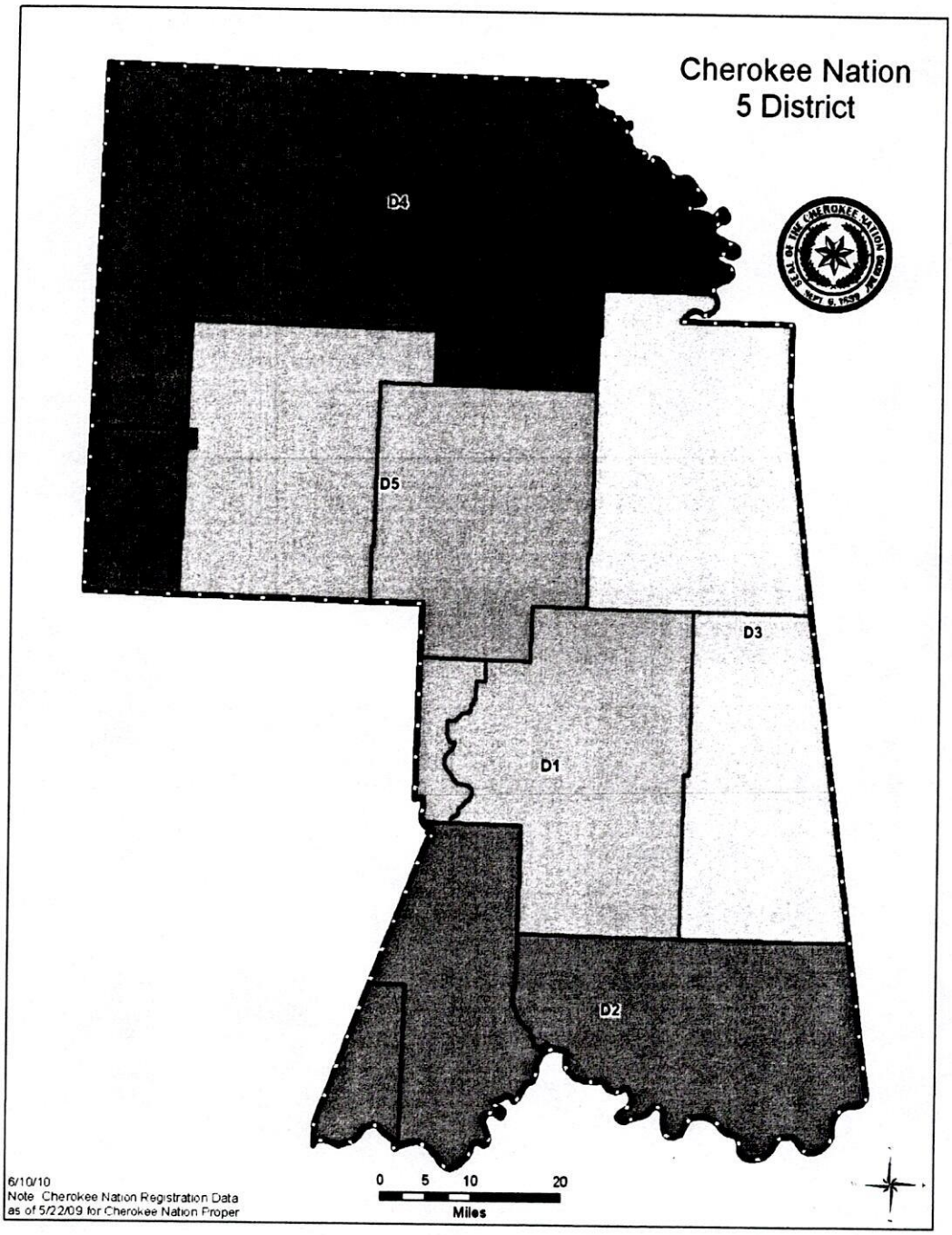
ATTEST:

_____
Melanie Knight, Secretary of State

Cherokee Nation

YEAS AND NAYS AS RECORDED:

Tina Glory Jordan	_____	Meredith A. Frailey	_____
Bill John Baker	_____	Chris Soap	_____
Joe Crittenden	_____	Cara Cowan Watts	_____
Jodie Fishinghawk	_____	Buel Anglen	_____
Janelle Lattimore Fullbright	_____	Bradley Cobb	_____
David W. Thornton, Sr.	_____	Charles Hoskin, Jr.	_____
Don Garvin	_____	Julia Coates	_____
Harley L. Buzzard	_____	Jack D. Baker	_____
Curtis G. Snell	_____		


Cherokee Nation
5 District
D4
D5
D3
D1
D2
6/10/10
Note Cherokee Nation Registration Data
as of 5/22/09 for Cherokee Nation Proper
0 5 10 20
Miles

D1 (Cherokee & Wagoner)	Num: 21,256	Deviation: -3,229	% Deviation: -13.19%
D2 (McIntosh, Muskogee, Sequoyah)	Num: 26,268	Deviation: 1,783	% Deviation: 7.28%
D3 (Adair & Delaware)	Num: 22,831	Deviation: -1,654	% Deviation: -6.76%
D4 (Mayes, Ottawa, Craig, Nowata)	Num: 22,863	Deviation: -1,622	% Deviation: -6.62%
D5 (Rogers, Tulsa, Washington)	Num: 29,209	Deviation: 4,724	% Deviation: 19.29%

700 people not accounted for

Chelsea with Craig + Nowata

PRECINCT LOCATIONS FOR THE 2011 GENERAL ELECTION

DISTRICT 1 – CHEROKEE COUNTY

Precincts:

TAHLEQUAH – Sequoyah High School Old Gym

KEYS – High School Cafeteria

HULBERT -

BRIGGS – New Gym Foyer

LOWERY – Library

DISTRICT 2 – ADAIR COUNTY

Precincts:

STILWELL – Wilma P. Mankiller Clinic

WESTVILLE – High School

CAVE SPRINGS – High School

DISTRICT 3 – SEQUOYAH COUNTY

Precincts:

VIAN – Police Dept.

MARBLE CITY – City Hall

SALLISAW – First United Methodist Church

MULDROW – Middle School

DISTRICT 4 – MCINTOSH/MUSKOGEE/WAGONER COUNTIES

Precincts:

WARNER – Middle School

FORT GIBSON – City Hall

OKAY – New Senior Citizens Center

DISTRICT 5 DELAWARE/OTTAWA COUNTIES

Precincts:

GROVE – Community Center

JAY – Library / Community Center

KENWOOD – Nutrition Site

KANSAS – Police/Utility Dept.

DISTRICT 6 MAYES COUNTY

Precincts:

PRYOR – AG Building Fairgrounds

SALINA – AMO – Community Clinic

LOCUST GROVE – City Hall

DISTRICT 7 ROGERS COUNTY

Precincts:

CLAREMORE – VFW

CHELSEA – Senior Citizens Center

DISTRICT 8 TULSA/WASHINGTON COUNTIES

Precincts:

BARTLESVILLE – Keeler Hts. Community Building

TULSA – United Airlines Workers

COLLINSVILLE – Library

DISTRICT 9 CRAIG/NOWATA COUNTIES

Precincts:

VINITA – Tom Buffington Heights

SOUTH COFFEYVILLE – CN Community Building

NOWATA – Senior Citizens Center