

U. S. House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

April 15, 2009

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue
Washington, DC 20530

Dear Attorney General Holder:

I write to request that the Department of Justice immediately commence an investigation into credible complaints that certain Indian tribes have violated, and continue to violate, the civil rights of their Freedman citizens. An investigation by the Justice Department into the ongoing actions by these tribes to systematically disenfranchise Freedman citizens is particularly warranted given the existence of these treaties and the significant amount of taxpayer money that is distributed annually to these tribes for health care, housing, education and infrastructure.

As you know, at the outbreak of the Civil War, the Cherokee, Chickasaw, Choctaw, Creek, and Seminole Nations (commonly referred to as the Five Civilized Tribes), all held slaves and each of the tribes fought with the Confederacy. After the Civil War, each tribe signed a treaty (Treaties of 1866) with the U.S. Government that provided equal rights of tribal citizenship to descendants of former slaves known as Freedman and guaranteed their right to run for office. The treaties, in every instance, re-established government-to-government relations and were conditioned on the inclusion of Freedman and their descendants as members of those Indian tribes in what then was known as Indian Territory (now present-day Oklahoma). These treaties remain in full force and effect. At present, it is estimated that there are between 100,000 to 150,000 Freedman who belong to these tribes.

Over the past three decades, however, the Cherokee, Choctaw, Creek, and Seminole Nations have moved to disenfranchise Freedman citizens in violation of these treaties. These efforts have taken the form of tribal disenrollment proceedings, which involved constitutional changes that imposed restrictions on citizenship, voting rights and the ability to hold elected office; various legal challenges brought in tribal and federal court, and concerted lobbying of federal and state elected officials, as well as officials at the Bureau of Indian Affairs (BIA). Unfortunately, the BIA has contributed to the problems now facing Freedman citizens by taking steps, and in some cases not taking steps, that have allowed the Five Civilized tribes to disenroll Freedman and revoke their citizenship. Much like Section 5 of the federal Voting Rights Act, the BIA must approve changes to the tribal constitutions. Unfortunately, the BIA has made certain questionable decisions that have permitted the tribes to disenroll the Freedman.

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In addition to the challenges presented by BIA actions, the Freedman have maintained that tribal courts have not acted to protect the Treaty rights of Freedmen. For example, Freedman citizens have noted that tribal judges often are picked by tribal leaders for their loyalty, and in some cases have been removed when they have challenged the views of a tribal Chief. During this same period, the federal government has provided millions of dollars to these tribes for health programs, housing, education, and infrastructure development. The disenfranchised Freedmen have not been allowed to fully participate in these programs, nor have they been allowed to benefit from the gaming proceeds the Nations generate on a yearly basis. In effect, the federal government has provided taxpayer revenues, as well as gaming rights, to groups that have and continue to distribute federal revenues on an exclusionary and discriminatory basis.

While the tribes contend that they have a sovereign right to determine citizenship and that any actions taken against the Freedman are shielded by the doctrine of sovereign immunity, in the case of the Five Civilized Tribes this right to determine citizenship was restricted by the Treaties of 1866. The tribes also have maintained that these treaties were modified or abrogated by subsequent congressional action, such as the Five Tribes Act of 1906. Neither this Act, nor any other Act of Congress, modified or abrogated the Treaties of 1866. Furthermore, arguments by the tribes that the Freedman are not citizens because they were included on a separate list, known as the Dawes Rolls, are incorrect. The Dawes Rolls, which was a federally-commissioned study of Members of the Five Civilized Tribes, was never intended to be used to justify discrimination by either the federal government or the Five Civilized Tribes nor was it intended to confer citizenship. Rather, the Dawes Rolls was an official U.S. Government registry that lists all citizens of the Five Civilized Tribes. What these arguments fail to acknowledge is that this is a fundamental civil rights issue, and, as such, that the federal government has a legal and moral responsibility to protect the rights of disenfranchised groups.

I have been in discussions on this matter with Harvard Law Professor Charles Ogletree, whom I know will be meeting with you next week. I want to express my support for the positions he will be taking in his meeting with you and I look forward to hearing from you.


BARNEY FRANK
Chairman