



TO: MEMBERS OF THE THIRD LEGISLATURE
CHEYENNE & ARAPAHO TRIBES

FROM: GOVERNOR JANICE BOSWELL
CHEYENNE & ARAPAHO TRIBES

MEMBERS OF THE THIRD LEGISLATURE :

I am providing this statement in response to the alleged Articles of Impeachment issued by certain members of the Legislature. Legislators Michael Kodaseet, Jane Nightwalker, Clifton Ellis, Mary Jo Higgins, Casper Avans, and Fiona Whiteskunk continue to pursue this unlawful impeachment process without regard for the facts, for the Cheyenne and Arapaho Constitution, or for my due-process rights. It is important for the Cheyenne and Arapaho tribal members to know the real story. The above-listed Legislators have also pursued this course of action in direct violation of the Tribes' Constitution, which requires that *all actions* of the Legislature follow the Legislative Process.

So that our tribal members may better understand the situation, I provide these responses to the Legislators' charges against me:

Charge 1—Removal of Chief Judge Bob Smith.

I did not remove the Judge Bob Smith from the Trial Court. I sent a letter to BIA officials requesting that they observe and respect the will of the Cheyenne and Arapaho People, as we have attempted to exclude Bob Smith from our Territory on multiple occasions. I requested that the BIA observe Smith's exclusion and honor the actions of our traditional leadership. When I sent my letter to the BIA and informed Smith of our position, he left voluntarily.

The Supreme Court protects Bob Smith and continues to appoint new judges to *our tribal courts outside the constitutional process*. Justice Dennis Arrow selects his own people to control our Supreme Court, and I suspect he is selecting those who will blindly uphold and support anything and everything he wishes to do to our People. It is clear that Dennis Arrow does not *know* Cheyenne and Arapaho ways. He does not know our people. He does not know our values or our culture. He does not care to know. Yet he continues to invent Cheyenne and Arapaho law, and he controls our government and all its institutions. Dennis Arrow and his Court are the individuals responsible for protecting Bob Smith. It is as though we have returned to the time of the Great White Father.

Before I sent the letter to the BIA, the Supreme Court's last opinion was that Smith remained validly and legally in our territory because the Tribes as a whole did not banish him. In fact, the Tribes' traditional leaders had taken action to exclude him from the Tribes' territory. Legally, there is an important distinction between the two. Nevertheless, the Supreme Court ruled that the law banishing Smith was passed by the Legislature and the Legislature could not be considered "the Tribes as a whole." That ruling was issued *before* the Tribal Council voted, *unanimously*, to uphold and support Smith's exclusion from our Territory. The Tribal Council Resolution has not been ruled unconstitutional. The Tribal Council represents the Tribes as a whole. However, Dennis Arrow still disagrees. He has declared that Bob Smith may enter our Territory because the traditional leaders no longer have the power to exclude non-members.

Charge 2—Removal of Lt. Gov. Leslie Harjo.

The Lieutenant Governor was never illegally or unconstitutionally suspended. Leslie Harjo was lawfully suspended *with pay*, and asked not to report to work for five days after she failed to heed repeated warnings about her official misconduct and unprofessional behavior, including public outbursts, threatening confrontations and multiple instances of insubordination. I have made no attempt to remove the Lieutenant Governor from office. Article VII, Section 1(a) of the Tribes' Constitution requires the Lieutenant Governor to be subordinate to the Governor. The Constitution outlines numerous powers and duties of the Governor, but does not, likewise, outline, implicitly or explicitly, any rights, powers or duties of the Lieutenant Governor, except to provide that the Lieutenant Governor is subordinate to the Governor. Her only official duties, as Lieutenant Governor, are what I direct her to do. Essentially, I directed her to take a week away from work in hopes that it would alleviate the issues underlying her unprofessional behaviour.

Charge 3—Failure to Timely Submit a Budget.

The Department of Treasury will submit the 2011 Budget projections to the Legislature before the end of June, 2010. The former administration had projected revenues far beyond any amount the tribe has ever earned. Budgets were inflated as greatly as the revenue. The return to reality has been a challenge. I have relied on the staff of the Department of Treasury and the Office of Finance to prepare the 2011 Budget based on real income. They, in turn, have had to rely on each of the various Departments and Programs to finalize departmental budgets. The Treasurer is attempting to balance the Tribes' budget and pay substantial tribal debts largely incurred from 2007 through 2009. When I assumed office, the Tribes' were facing severe financial dilemmas which required serious and thoughtful consideration and fiscal restraint on the part of our Finance staff. Our goal has been to cut expenses instead of services, and it has been challenging. It is not been easy for the department and program directors to figure out how to maintain services while cutting their own administrative budgets, but we have managed to finalize budget projections as close to June 1st as possible. In addition to the initial challenge of balancing the budget, our Finance staff has also been necessarily burdened with having to assist in preparing for multiple lawsuits filed recently against my administration and the numerous suits against the former governor Darrell Flyingman. I have viewed the minimal delay as reasonably necessary and unavoidable. The Finance staff has been working very diligently, and I greatly

appreciate their efforts. I am surprised that the Third Legislature finds a few weeks delay to be an impeachable offense when the Tribe has critical financial problems.

Charge 4—Withholding Funds from the Legislature.

In no instance have I refused to sign any check requests of the Legislature that have reached my desk. The Treasurer has an independent and constitutional duty to safeguard the Tribes' funds. Additionally, there are financial and audit policies that require all check requests to be approved by staff accountants before reaching either the Treasurer or myself. I have the utmost confidence in the Department of Treasury staff and finance officers who are handling the Legislative check requests. There has been sufficient justification on the part of the Treasury in the instances of non-payment and insufficient corrective action on the part of certain legislators to obtain payment.

Charge 5—Hiring Ida Hoffman as Chief of Staff.

The supposed Tribal Council Resolution barring Ida Hoffman from working for the Tribes (Resolution #021096TC005) is unconstitutional and unenforceable. This Resolution has never been upheld as a constitutional and enforceable instrument, and it has, in fact, never been enforced at all. The Bureau of Indian Affairs expressly recognized, in 1996, that this resolution, among others, was procedurally invalid. Even if the resolution were procedurally valid, it could not be upheld or enforced under either the 1975 or the 2006 Constitutions. The Legislature issued "findings" after conducting an investigative hearing during which the legislators failed to observe even the most basic elements of due process. The legislators do not possess the qualifications or training necessary for drawing conclusions of law. More importantly, the Legislature does not have a *constitutional power* to make conclusions of law or to declare the enforceability or validity of the Tribes' laws. That power is granted exclusively to the Judicial Branch, and I have no duty to uphold an invalid resolution unless the Judicial Branch determines it to be otherwise.

Charge 6—Not Submitting Nominations to Legislature.

I have submitted nominations to the Legislature for every position in my administration requiring confirmation as well as vacant commission seats open for nomination. The Legislature has declined to confirm some of the Governor's nominations. I have provided alternate nominees in instances where the original nominees were denied confirmation. There is no constitutional provision governing the method and manner for submitting nominations either in the first instance or in follow-up instances where nominees have not been confirmed.

Six legislators presently desire to impeach me for not enforcing court orders as they continue to blatantly disregard the Supreme Court's Opinion ordering the Legislature to follow the Legislative Process. Those same six legislators follow Charge 5, accusing me of failing to enforce laws and court orders, with this subsequent charge in which they complain because I am not enforcing a resolution that a court order *requires me to ignore*. These six legislators consistently disregard the Supreme Court's opinions and orders, and so it is no surprise that they have blatantly ignored the Supreme Court's prior Opinion concerning the Legislature's capacity to pass such a law. Further, the Legislature disregarded the Legislative Process entirely when they

purported to pass Resolution 3L-2010-RS-03-07 by amending it *after it was vetoed* and then voting to enact the *amended version* by veto-override. By refusing to uphold and enforce this unconstitutional act of the Legislature, I am simply observing the directive of the Supreme Court that the Governor has a duty to ignore acts of the Legislature that do not adhere to the constitutional requirements of the Legislative Process.

Charge 7—Invalid Signing of Contracts.

The Legislature has absolutely no basis for this charge.

Charge 8—Removal of Tribal Council Coordinator.

I did not remove the Tribal Council Coordinator from her position. The Tribal Council removed Rachel Lynn from her position. Rachel Lynn engaged George Old Crow to participate in a friendly lawsuit in an attempt to salvage her position with the Tribes. Mr. Old Crow filed suit against Rachel Lynn to enjoin her from placing her removal resolution on the March 27, 2010, Tribal Council agenda. Bob Smith issued an Order the evening before the meeting, approximately two weeks after the agenda had already been published; Smith's order prohibited Rachel Lynn from placing her resolution on the agenda, though the agenda had already been established and published. On March 27th, the meeting proceeded according to the original published agenda since Smith's order was directed only at Rachel Lynn and did not prohibit the Tribal Council from adhering to the previously established schedule. At Old Crow's hearing for a permanent injunction seeking to invalidate the entire Tribal Council meeting, Lynn simply showed up and informed the Court that she agreed with Old Crow. There was an objection on the record that 1) the Tribal Council was an interested party, 2) the Tribes themselves were never notified of Old Crow's hearing on the permanent injunction, 3) that the Court should not rule on Old Crow's request to invalidate the meeting until the Tribal Council had an opportunity to defend its interests. Bob Smith disregarded the Tribal Council's interest in the lawsuit and denied the request that the Tribes or the Tribal Council be allowed to intervene. Smith granted Old Crow's request that the meeting be held invalid and restored Rachel Lynn to her position as Coordinator. I strongly disagree with the Order of the Court, yet I have observed and complied with the Order. Lynn continues to be paid and continues to exercise the duties of the Tribal Council Coordinator.

The Tribal Council voted to remove Lynn as Coordinator after engaging in a lengthy discussion. At the meeting, Tribal Council members discussed Lynn's well-established record of interfering with the Tribal Council's right to convene. That was a basis for her removal. She was also removed because the Tribal Council recognizes the consistency with which she seeks to invalidate Tribal Council actions. Smith ruled that the resolution to remove her was unconstitutional and granted Old Crow's injunction prohibiting Rachel Lynn from placing it on the Tribal Council agenda – even though the Supreme Court ruled very recently that the Tribal Council agenda *cannot be altered once it has been published*. Smith then denied the Tribal Council its right to defend its own actions and declared all resolutions passed at the March 27, 2010, meeting to be invalid. Smith made his decision based on Rachel Lynn's and George Old Crow's agreement that the meeting should be declared invalid.

Charge 9—Unlawful Withholding of Funds for the Election Commission.

The Election Commission overspent by more than 185% in 2009 and more than 60% of the Commission's 2009 expenditures were for mileage and other payments to individual Election Commissioners. During 2009, the Election Commissioners paid themselves over \$300,000 in salaries, mileage, and other items, and went over budget by more than \$300,000. Now, they want a blank check to continue their grossly excessive spending. I have a duty to protect the Tribes' treasury and will not allow such excessive spending to continue. The previous administration neglected his duty to keep the Election Commission within budget, and allowed them to overspend without any oversight. The Department of Treasury is currently attempting to fashion solutions for the Commissions' over-extended budget. Nevertheless, the Election Commission has been provided access to all monies which have been allocated by the federally approved Gaming Revenue Allocation Plan. The Department of the Treasury has proposed a slight adjustment to their allocation to compensate for the Commission's serious 2009 deficit. The funds from this adjustment would still be allocated to the Election Commission, but would be applied to reduce its deficit. The Treasury has also recommended a reduced stipend and elimination of mileage reimbursements, since payment of such could subject the Tribes to IRS penalties. The Election Commission continues to be adequately funded, but the Commissioners have filed a lawsuit against me, apparently seeking unlimited funding. The Election Commission at this moment wants \$100,000 to pay their attorney to defend their demands. The Department of Treasury is attempting to settle this dispute by negotiating a deficit-reduction plan for the Commission, but the Election Commission has publicly rejected any settlement discussions.

Charge 10—Censoring the Newspaper.

The former editor of the newspaper, Dana Attocknie, was released from her position for several reasons. Her services were no longer necessary. The Tribal Tribune is a tribal newspaper sponsored by the Tribes. Attocknie did not report the news as a journalist but engaged in politics and abused her position as a journalist to perpetuate tension by publishing half-truths. She wasn't doing her job, and therefore fit nicely into a reduction-in-force, which was determined to be necessary.

Charge 11—Appointment of Non-Bonded Acting Treasurer.

The Acting Treasurer is currently insured and has been insured since his appointment. The insurance the Tribes' have on the Acting Treasurer far exceeds the coverage provided by a mere bond. The additional coverage provided by the Tribes' insurance policy is sufficient to satisfy the constitutional requirement that the Treasurer shall be bonded.

Charge 12—Unlawful Termination of Tribal Employees.

The Legislature references no specific instances in which I have terminated tribal employees without providing due process. It is my belief that due process has been observed in all instances of termination.

In conclusion, six legislators are trying to move forward with an arbitrary and unconstitutional impeachment process. Since the Legislature has failed to observe the

requirements of the Legislative Process, I have no choice but to disregard their actions. More importantly, the Constitution requires that the Legislature may impeach and remove only by a unanimous vote. The Legislature is attempting to impeach through passage of a Legislative Order which has not met any of the requirements of the Legislative Process. In addition, the Legislative Order by which you are construing your authority to impeach received only six affirmative votes of the Legislature. It was not a unanimous vote, as required by the Constitution.

I am happy to address the concerns of members of the Legislature. Unfortunately, you have made no attempt to understand the facts behind the disputes for which you allege my unconstitutional acts. You have never attempted to obtain any response from me. I had hoped you would work with me to benefit the members of the tribe. You have chosen to continue the political fighting of the last few years. At your most recent investigative hearing, you attempted to make legislative "findings of fact" without even calling as witness those whose conduct was at issue. The only witnesses you called were the very parties making the allegations. You have failed to seek the truth. This concerns me, and it should concern each and every one of our tribal members who want to see our Tribes achieve progress.

This concludes my response to these allegations which have been made up without a factual basis.

Sincerely,
Janice Prairie Chief-Boswell