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Protest of D. W. Bushyhead, Principal Chief, and other Cherokee and Creek Indians, against the passage of Senate bill no. 50 and House bill no. 3961

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PROTEST

OF

D. W. BUSHYHEAD, PRINCIPAL CHIEF, AND OTHER CHEROKEE
AND CREEK INDIANS,

AGAINST

The passage of Senate bill No. 50 and House bill No. 3961.

MARCH 7, 1884.—Ordered to lie on the table and be printed.

WASHINGTON, D. C., *February 28, 1884.*

SIR: We inclose you our protest against the passage of the bill for another railroad through the Indian Territory. The paper contains our objections, and may not have been called to your attention.

It would revolutionize the Government policy in the Indian Territory, and we believe the bill was not sent to the Secretary of the Interior for his views on it.

Pardon us for calling this matter to your attention; and begging from you a careful consideration of such a measure,

We are, very respectfully,

D. W. BUSHYHEAD,
Principal Chief.

L. B. BELL,
JOHN G. SCHRIMSHER,
Cherokee Delegation.

Hon. OMAR D. CONGER,
United States Senate.

WASHINGTON, D. C., *February 8, 1884.*

To the Congress of the United States:

GENTLEMEN: There are several measures pending before you to charter railroad companies and grant them certain valuable privileges and properties in our country. Two of these have been reported to you, and by the committees having them in charge recommended to you for enactment. Those are Senate bill No. 50 and House bill No. 3961. Both of these violate treaty obligations solemnly entered into with us by the United States. Both of these propose to take our property without consulting us. Both of these, while thus violently taking our property, offer a compensation wholly inadequate, and both are

cumbered with propositions dangerous in their character, and entirely subversive of all law, order, or peace in the Indian Territory. These bills were reported before we could have an opportunity to be heard on them on any of the questions involved; and we think we have but to call your attention to the new and dangerous propositions in order to find in the Senate and House of Representatives that spirit of fairness and justice that usually mark the American character.

We are aware that we may subject ourselves to the criticism that this, our protest, is an oft-repeated one; our only apology being that this is an oft-repeated attempt to invade and deprive us of our rights. It is no less our duty than our privilege thus to appeal to you, and to ask you not to lend your sanction to such a wrong. These bills show:

(1.) In the second section the corporation practically receives by its terms a strip of land five hundred feet wide, at and for some distance from stations, and an additional two hundred feet elsewhere for cuts and fills. This is taken out of the domain our people can use or occupy. Will any one pretend that the fifty dollars per mile is a fair remuneration for such a property or such a franchise? No parallel case was presented in the railroad chartered through the Choctaw Nation last year. The treaty with the Choctaws permitted such Congressional legislation, while ours does not; but even in that case the company were required to pay the Choctaw Nation more in each year for the franchise granted than these bills propose to pay us altogether. We protest against such confiscation of our property. We have not been consulted as to what it is worth. You surely would not take our property for the use of the Government for less than its value, and why should you give it to a private corporation for less?

(2.) Section seven of each bill authorizes the employés of each company to *settle* on the right of way. This is a departure from all that is known in any State or grants of right of way. It grants our property for individual benefit. It would, if enacted, create a village, town, or string of settlements along the railroad, creating individual rights and interest, and saddling them and their improvements on our realty. It would create a community under no government or law. It would introduce all manners of traffic, with liquor and other abuses, into the Indian country. It would render it totally impossible to preserve law and order therein.

It is a scheme expressly devised to break up and destroy the country of the five nations. It is a scheme full of mischief and confusion to us and you, and would, if consummated, destroy the government policy in the Indian Territory. We granted right of way to two railroads that have been built; but in both cases the employés are restricted to an occupancy necessary to run this road, and the company is under bond for their good behavior while in and their removal when discharged. It works no hardship to them. It would cripple and destroy the action of our government, thus greatly violating our treaties. It would strip us of considerable revenue we now enjoy. It would introduce into our country all the riff-raff that for years have been seeking to invade it in violation of law and treaty.

(3.) The manner of assessing damages for property and improvements, condemned on the right of way, is not fair. We are only allowed one of the three commissioners, two of whom may assess the damages. The mode of appeal to a far distant court in an adjacent State is too expensive and cumbrous to be a remedy in cases of hardship; its expense debars our people from using it. The road now in the Indian country, under the act of Congress, and by voluntary agreement, formally en-

tered into with their officers, by the Cherokee Nation, before the Department, permits all these cases, and all cases of damages to be settled in the Cherokee courts. This has been proved to be so far satisfactory. It has worked no hardship at least to the company. The company has never complained of it, but prefer such adjudication to the expensive adjudication of a remote court. Why ignore the jurisdiction of the local tribunals.

It seems to have been the purpose of these bills to trample down every right of our people, as well as our treaties.

(4.) Section 5 places the power of taxing entirely in the hands of Congress, a power, the exercise of which, under your Constitution, is somewhat questionable. You have guaranteed us the right of government in our own country. Why thus gratuitously invade it? While every State surrounding us has inaugurated what is termed hostile legislation towards railroads, the Cherokee government never has. Why not take the power from the States of Kansas and Texas, if you wish to protect railroad corporations from it.

(5.) Section 8 only repeats and intensifies the wrong of section 3, and leaves us no remedy save in the court of an adjacent State.

For these and many other reasons, we are forced, in defense of the just rights of our people, to protest against the passage of these measures. We do not appear as the enemy of any railroad that is needed for the business of the country. We have already by our voluntary act granted the right of way to two roads that have been in operation for more than ten years. The companies asking the franchises under these bills have never attempted to make a fair arrangement for the privileges they ask from our authorities.

We earnestly protest against any disposition of our property without consulting us. To refuse us the initial step in disposing of our own property is surely unfair. We think we need not assure you we have rights that ought to be respected. Congress certainly would not assume the power to tax our country and sell it for taxes. The Supreme Court of the United States, in 18 Howard, page 100, defines our government under the 5th article of the treaty of 1835, which is as follows:

"The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory; but they shall secure to the Cherokee Nation the right, by their national councils, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their people, or such persons as have connected themselves with them: *Provided, always,* That they shall not be inconsistent with the Constitution of the United States, and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and, also, that they shall not be considered as extending to such citizens and Army of the United States as may travel or reside in the Indian country, by permission, according to the laws and regulations established by the government of the same." (7 U. S. Stats., 481.)

In its decision the court says, that the measure of the power of our government is only limited by the express terms of treaty limitation. Nor can an excuse be found in the power to frame laws regulating trade; these certainly do not and could not authorize an act confiscating our property. In the Territories Congress merely grants a right of way through the public lands; but here they claim the right, if this bill is passed, to make another disposition of property they conveyed to us

and placed under our jurisdiction. This proposed law further overrides our laws regulating the mode of obtaining ties and other material. These measures are full of wrongs to us, and of danger both to us and the country, and we beg of you to carefully consider them, and not to permit a violation of the treaty pledges made to us by the United States.

We are, very respectfully,

D. W. BUSHYHEAD,
Principal Chief.
J. G. SCHRIMSHER,
L. B. BELL,
Cherokee Delegation.

IS-PA-HE-CHE,
SAM'L CHECOTE,
D. M. HODGE,
G. W. GRAYSON,
Creek Delegates.