

IN THE DISTRICT COURT OF THE CHEROKEE NATION

FILED

2017 JUN 14 PM 4:02

CHEROKEE NATION  
DISTRICT COURT  
KRISTI MONCOOYEA  
COURT CLERK

ROBIN CARTER MAYES )  
 CANDIDATE AT-LARGE )  
 PRO SE, )  
                                   Petitioner, )  
 )  
 VS. )  
 )  
 CHEROKEE NATION ELECTION )  
 COMMISSION, )  
 )  
 and )  
 )  
 CHEROKEE NATION OFFICE of the )  
 ATTORNEY GENERAL, )  
 )  
                                   Respondent. )

Case No. CV-2017-273

SPECIAL APPEARANCE AND MOTION TO DISMISS

COMES NOW the Respondent, Cherokee Nation Election Commission (hereinafter "Commission") appearing specially for purposes of this Motion only and for its Motion to Dismiss the Petition for Writ of Mandamus and Declaratory Judgment of Robin Carter Mayes, Petitioner, on file herein, hereby respectfully submits the following:

The Commission hereby adopts and incorporates the SPECIAL LIMITED ENTRY OF APPEARANCE AND MOTION TO DISMISS of the Cherokee Nation Office of the Attorney General filed herein.

Further, the Commission's is an autonomous and permanent entity charged with the administration of all Cherokee Nation elections, in accordance with election laws. Cherokee Nation Constitution Article IX. Election Section 1. The Council shall enact an appropriate law not inconsistent with this Constitution

that will govern the conduct of all elections. Cherokee Nation Constitution Article IX. Election Section 1.

One of the Council laws enacted pursuant to this Constitutional provision is Sub-Section 11. C. 12. f. of Title 26 of the CNCA, which provides:

"Any accusations concerning campaign activities shall be reported to the Cherokee Nation Attorney General for investigation. Should the Cherokee Nation Attorney General find merit, a report to the Cherokee Nation Election Commission will be made for possible assessment of penalties and/or disqualification under procedures found at Title 26 § 38 of the Cherokee Nation Code Annotated."

The above provision is certainly within the Constitutional authority of the Council.

The Commission has a limited staff that is dedicated to registering voters, educating voters and Cherokee Citizens about the election process and their right to participate and to conduct fair independent elections free from political influence.

Numerous complaints are received by the Commission each election cycle similar to those presented by Mr. Mayes to the Commission and including among others candidates taking signs, campaigning on Cherokee Nation Property and at Community Events, intimidating voters, interfering at the polls and many others. If the Commission were required to investigate all complaints, they would become a political tool for the candidates and would be hindered in their duty to conduct fair elections.

The Commission does not have a staff of investigators, attorneys or policemen to perform these investigations; and, the

Council wisely provided for the Attorney to conduct the investigations which is within his constitutional duties and make a report to the Commission for action if the Commission deems it appropriate. It is noted that the statute does not require the Commission to take action but it is within their discretion whether to assess penalties or disqualification.

For the reasons set forth above and in the Attorney General's Motion, the Petition for Writ of Mandamus and Declaratory Judgment of Robin Carter Mayes, Petitioner, on file herein, should be dismissed.

WHEREFORE, the Cherokee Nation Election Commission respectfully request that the Court dismiss the Petition for Writ of Mandamus and Declaratory Judgment of Robin Carter Mayes, Petitioner, on file herein; and, further prays for such other and further relief to which the Commission may be entitled and which the Court may deem just and equitable.

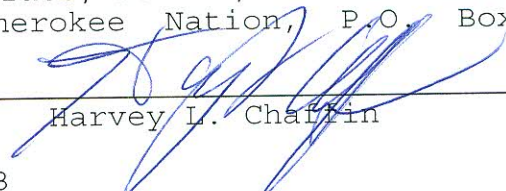
Cherokee Nation Election  
Commission, Respondent

BY: 

HARVEY L. CHAFFIN, CNBA#0459  
Attorney for Respondent  
215 W. Shawnee  
Tahlequah, OK 74464  
918/453-2800

CERTIFICATE OF MAILING

I, Harvey L. Chaffin, do hereby certify that on this 14th day of July, 2015, I mailed by first class mail, with postage prepaid thereon, a true and correct copy of the within and foregoing Answer to Robin Mayes 3016 Groveland Terrace, Denton, TX 76210 and to Sr. Assistant Attorney General, Cherokee Nation, P.O. Box 948, Tahlequah, OK 74465.

  
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Harvey L. Chaffin