

FILED

IN THE SUPREME COURT OF THE CHEROKEE NATION

2017 FEB 22 AM 10: 01

In re: Effect of Cherokee Nation v. Nash and )  
Vann v. Zinke, District Court for the District of )  
Columbia, Case No. 13-01313 (TFH) and Petition )  
For Writ of Mandamus requiring the Cherokee )  
Nation Registrar to Begin Processing Citizenship )  
Applications. )

KB  
CHEROKEE NATION  
SUPREME COURT  
KENDALL BIRD, COURT CLERK  
Case No. SC-17-07

**COMBINED  
ORDER DENYING INTERVENTION  
ON MOTIONS TO INTERVENE SUBMITTED BY  
ROBIN C. MAYES, MICHAEL J. HORN, KACEY SOLIZ, DAVID S. MONTGOMERY,  
JAMI MURPHY, NANCY EDENS LOROIT, LIANNA ELIZABETA CONSTANTINO,  
REANNON BROWN MILLER, KRISTI HANSEN, LINDSEY ATTAWAY, SCOTT M.  
MCCULLOUGH, KATHY GRIFFIN WHITE, AND ZACHARY D. RUSSELL  
AND  
ORDER DENYING THE MOTION OF CHEROKEE NATION COUNCILOR WES  
NOFIRE, COUNCILOR HARLEY BUZZARD, COUNCILOR JULIA COATES, TO FILE  
AN INTERVENTION OR IN THE ALTERNATIVE, FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF**

This case began on September 1, 2017 when the Cherokee Nation, represented by Attorney General Todd Hembree, petitioned this Court to recognize that the Cherokee Nation was bound by the federal court decision in *Cherokee Nation v. Nash, et al.*, Case No. 09 CV-052. This Court granted the Nation’s request and entered a Preliminary Order on September 1, 2017 which held “Freedmen descendants, upon registration as Cherokee Nation citizens shall have all the rights and duties of any other native Cherokee, including the right to run for office. Because it violates the Treaty of 1866 between the Cherokee Nation and the United States, the 2007 amendment to the Constitution that purported to limit citizenship within the Cherokee Nation to Cherokees by blood, Delaware Cherokees and Shawnee Cherokees is held to be void and without effect.”

Following that Preliminary Order, several private citizens and two Tribal Council members, in their individual capacities, sought to intervene and compel the Attorney

General to appeal the final order in *Cherokee Nation v. Nash*. See *Motion to Intervene*, December 11, 2017.

This Court denied that Motion to Intervene. In that denial, this Court noted that the Cherokee Nation, by Resolution of the Tribal Council in 2009, affirmatively recognized “a federal ruling *would be binding upon both parties to the Treaty of 1866.*” (emphasis added). The Tribal Council further authorized, via the same Resolution, “the Attorney General . . . to take such action as necessary to pursue such litigation and ensure the nation’s interests are fully represented.” See Resolution 22-09.

This Court held that none of the proposed intervenors could show standing to allow them to intervene in this matter. Specifically, this Court held “the Movants are individual Cherokee Citizens who disagree with the outcome of a federal case and disagree with the way the Nation and the Attorney General’s office handled the case.” *Opinion*, May 16, 2018. This Court went on to say that to have standing, “movants must have suffered an injury in fact – an invasion of a legally protected interest which is concrete and particularized, and actual or imminent, not conjecture or hypothetical. *Id.* (Citations omitted).

Nothing in the facts or procedural posture of this case has changes since the year 2017 when the original Movants (at least one of them who was previously denied intervention) sought intervention in this case. The present Attorney General, Sara Hill, has asked for a final order to be issued by the Court, but the underlying facts and issues remain the same. A Cherokee citizen must show that they will suffer an individualized harm by a decision determining that Freedman individuals are entitled to citizenship and all the rights said citizenship includes to properly intervene. Present year Movants have

not met their burden. The fact has not changed that individual Cherokee citizens have not and likely cannot allege an injury to give rise to standing.

At least two Movants note that they are current candidates for elected office, ostensibly as a reason to allow intervention. First, candidate status alone neither grants nor elevates standing. Second, a candidate in the current election cycle has a guaranteed right of appeal to this Court to challenge an opposing candidate via an administrative appeal. See 26 C.N.C.A. §37. This Court will not grant intervention as a way to avoid the statutory and administrative method of challenging an opposing party's candidacy. This Court also notes that the current case is not specific to any one citizen or candidate for elected office.

Finally, three current Cherokee Nation Tribal Council members have moved to intervene in their "official capacity." (In their individual capacities, they have the same standing issue as already decided by this Court in this case previously, and mentioned above in this Order). As an initial matter, it must be noted that two of the Tribal Councilor Movants, Harley Buzzard and Julia Coats, were Tribal Council members in 2009 when they joined a unanimous Council that voted to affirmatively recognize that "a federal ruling would be binding upon both parties to the Treaty of 1866." And unanimously authorized the "the Attorney General . . . to take such action as necessary to pursue such litigation and ensure the nation's interests are fully represented." See *Resolution 22-09*. It appears that these two Councilors may be exhibiting remorse for binding the Cherokee Nation to the decision in the *Nash* case. But remorse does not confer standing.

Regardless of the Councilors prior positions, the fact that they are current Tribal Council members does not confer standing. This Court has previously held that "members

of the legislative branch must demonstrate they have standing before they can proceed in litigation. Members of Tribal Council, like private Cherokee citizens, must demonstrate a specific particularized harm.” *Anglen v. McKinley*, JAT-05-11. Here, the Councilors only alleged potential harm is that they “have great interest in upholding their oath of office of the Constitution and laws which may apply.” See *Nofire, Buzzard, Coats Motion*, February 18, 2020. While this statement is undoubtedly true, it still does not allege any specific injury to the Councilors.

The Councilor Movants alternatively sought to file an Amicus brief. That request is denied for failure to follow Cherokee Nation Supreme Court Rule 82.

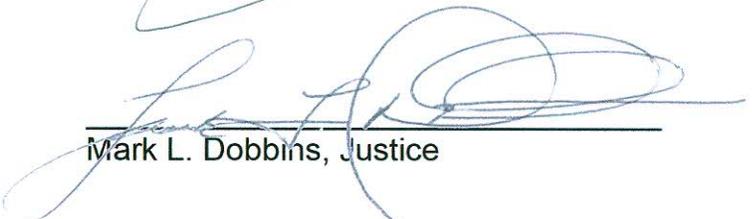
All Motions to Intervene are denied for lack of standing and the Motion for Leave to File Amicus is denied for failure to follow the Cherokee Nation Supreme Court Rules.

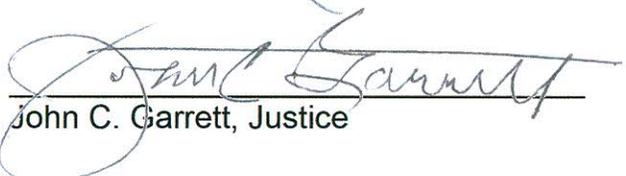
**IT IS SO ORDERED.**

**ENTERED** this 22<sup>nd</sup> day of February, 2021.

  
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Lee W. Paden, Chief Justice

  
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Shawna S. Baker, Justice

  
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Mark L. Dobbins, Justice

  
\_\_\_\_\_  
John C. Garrett, Justice

  
Rex Earl Starr, Justice

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**Certificate of Mailing**

I, Kendall Bird, certify that on the 22<sup>nd</sup> day of February, 2021, I mailed, emailed and/or faxed a true copy of the above and foregoing to the following:

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Kendall Bird, Court Clerk