

IN THE SUPREME COURT  
OF THE  
CHEROKEE NATION OF OKLAHOMA

FILED

2021 MAR -1 PM 1:23 <sup>BB</sup>

CHEROKEE NATION  
SUPREME COURT  
KENDALL BIRD, COURT CLERK

ROBIN C. MAYES,

Petitioner,

vs.

CHEROKEE NATION ELECTION  
COMMISSION,

and

MARILYN VANN,

Respondents.

CASE NO.

SC-21-01

**APPEAL FROM A DECISION OF THE CHEROKEE NATION ELECTION COMMISSION**

**COMES NOW**, the Petitioner, Robin C. Mayes, by and through his attorney Jim Cosby, and for his Appeal from a decision of the Cherokee Nation Election Commission, states as follows:

1. That the Petitioner, Robin C. Mayes, is a citizen member of the Cherokee Nation of Oklahoma, and a registered voter with the Cherokee Nation of Oklahoma. Mayes is a Cherokee by blood.

2. That Petitioner is a qualified candidate who has properly filed for and is a candidate for the At-Large Council seat that is up for election in 2021.

3. That Respondent, Cherokee Nation Election Commission consists of the following members:

1. Shawna Calico - Chairman
2. Pamela Sellers - Vice Chairman
3. Rick Doherty - Secretary/Treasurer
4. Randy Campbell - Commissioner
5. Elizabeth Ballew – Commissioner

4. That Respondent, Marilyn Vann is a candidate for At-Large Council 2021. Respondent Vann, is a native Cherokee by Treaty and not by blood

5. That the Petitioner filed a written protest with the Respondent, Cherokee Nation Election Commission, within five (5) days after the close of the filing period for candidates for elective office seeking to have Respondent Vann disqualified.

6. The protest was grounded on the fact that Respondent Vann did not produce a CDIB card to qualify as a candidate pursuant to the 1999 Cherokee Nation Constitution and election laws.

7. That said challenge was heard by the Respondent, Cherokee Nation Election Commission at its meeting on the 22nd day of February 2021 and a decision dismissing Petitioner's contest was rendered by said Respondent, on the 22nd day of February 2021.

8. That based upon the evidence submitted and arguments made the Respondent, Cherokee Nation Election Commission did commit error when it determined that Candidate Vann is not in violation of the CNO 1999 Constitution and determining Marilyn Vann to be eligible to run for election to the office of CNO At-Large Council member.

### **ARGUMENT AND AUTHORITY**

RESPONDENT CHEROKEE NATION ELECTION COMMISSION ERRED WHEN IT VIOLATED THE CONSTITUTION AND CHEROKEE NATION ELECTION CODE RIGHTS OF PETITIONER AND ALLOWED RESPONDENT VANN TO BE A CANDIDATE

The issue is that the Cherokee Nation Election Commission erred in not following the Cherokee Nation Constitution and the Election Code of the Cherokee Nation Election Commission when it denied Petitioner's contest of a candidate in the same district race.

Cherokee Nation Constitution, Article VI states: "The Council shall consist of seventeen (17) members, who are citizens by blood of the Cherokee Nation."

Cherokee Nation Election Code, Chapter 4 Section 31 A states:

General Qualifications of Candidate who desires to run for the elective Cherokee Nation office of Principal Chief, Deputy Principal Chief, or Council Member shall meet the following general eligibility requirements consistent with the Constitution of the Cherokee Nation, Article VI, Section 3, Article VII, Section 2 and 3, and Article IX, Section 2:

1. The Candidate shall be a citizen of the Cherokee Nation, in accordance with Article IV of the Constitution of the Cherokee Nation and shall be a citizen by blood if the Cherokee Nation.

Petitioner Mayes is a Cherokee citizen by blood and meets the qualifications of both Article VI of the Constitution and Chapter 4 Section 31 of the Cherokee Nation Election Code. Respondent, Vann does not meet the Constitutional requirements or qualifications in the Election Code. The Constitution and Chapter 4 of the Election Code is the law of the land. The Election Code can be easily amended but the amendment to the Constitution will take a vote of the people.



In the case, *In re: Effect of Cherokee Nation v. Nash et al*, SC-17-07, the Cherokee Nation Attorney General filed a Petition for Declaratory Action, Petition for Writ of Mandamus, and Request for Preliminary Order. The Court granted the relief requested and the Court made a finding that “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.” Id. The Court never made any mention of the Cherokee Nation Constitution or the provisions in the Election Code. Directives were never given on changing Cherokee law to comply with the *Nash* decision.

In, *Vann et al vs. Salazar et al* SC-11-07, the Cherokee Nation Supreme Court dealt with the issue of representatives of the Cherokee Nation entering into agreements with the Federal Government on cases such as *Nash*. The Cherokee Nation Supreme Court found that the “Cherokee Nation has no authority to bind the Cherokee people to an agreement without their consent when such an agreement would violate a provision of the Cherokee Nation Constitution.” Id. Here, as in *Vann*, agreements and orders were made that bound the Cherokee people to the *Nash* case without their consent. Any orders or agreements violate by blood provisions in the Constitution and are therefore unenforceable.

Article XV, SECTION 2, of the Cherokee Nation Constitution gives the only way that the Constitution can be amended. It states:

Any amendment or amendments to this Constitution may be proposed by the Council, and if the same shall be agreed to by a majority of all the members of the Council, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered into the Journal and referred by the Secretary of State to the People for their approval or rejection, at the next regular general election, except when the Council, by a two-thirds (2/3) vote, shall order a special election for that purpose. If a majority of all the registered voters voting at such election shall vote in favor of any amendment thereto, it shall thereby become a part of this Constitution.

Since there has never been clarification of the conflicting laws it has become an atmosphere of ambiguous authority on which to rely. After both the *Nash* ruling and following existing Cherokee law, only a Freedmen who possesses Cherokee blood can be considered a qualified candidate. This situation is not as unique as may be thought since there are many Freedmen that have Cherokee blood. Canaan Duncan for example is a Freedmen with Cherokee blood who is also a member of the current Cherokee Nation Council. Until this is resolved there will be continuing litigation.

For three and one-half years after the Supreme Court’s ruling nothing was done to make changes. The Constitution was never amended nor was there any legislation by the Cherokee Nation Council to propose amendments to the Cherokee Nation Constitution to comply with the *Nash* decision. Also, the Cherokee Nation Election Commission never amended the Cherokee Nation Election Code to comply with the *Nash* decision.

The Cherokee Nation, its Executive Branch, its Legislative Branch and its Courts, are wholly without authority to nullify any portion of the Constitution that may conflict with federal law. In 2003, the Cherokee people voted to remove from their Constitution, language granting oversight of the Constitution by the federal government. There exists no authority granting any of the co-equal branches of the Cherokee Nation, or the Courts within the Constitution itself the power to nullify any portion thereof; that those powers being reserved to the Cherokee people themselves by popular vote.

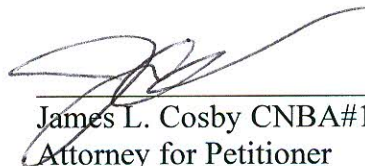
Any rulings or attempts to change the provisions of the Constitution after Petitioner filed his Contest are *ex post facto* and should not be decisive in the ruling of this Appeal.

### **CONCLUSION**

Since these by blood laws still exist, Petitioner can rely on them as controlling authority to contest the candidacy of Respondent, Vann. The Cherokee Nation Election Commission erred when it failed to comply with the Cherokee Nation Constitution and the Cherokee Nation Election Code when it certified Respondent Vann as a qualified candidate. Redacting and hiding words in the Constitution does not amend the recognized original document. A Court order also does not amend the Constitution. There has been no Supreme Court rulings that deal with the constitutionality of the by blood requirements in the Constitution. Following provisions in the Constitution are the only option in making amendments to the document.

Respectfully submitted,

ROBIN C. MAYES, PETITIONER



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James L. Cosby CNBA#183  
Attorney for Petitioner  
210 S. Muskogee Ave  
Tahlequah, OK 74464  
(T) (918) 458-0069  
(F) 918-458-9969



**VERIFICATION**

STATE OF TEXAS

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ss.

COUNTY OF DENTON

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I, ROBIN C. MAYES, of lawful age being first duly sworn, upon oath state that I have read the above captioned instrument, am familiar with the matters contained therein, and the same are true to the best of my information and belief.

Robin May