

FILED

IN THE SUPREME COURT OF THE CHEROKEE NATION

2021 MAR 12 AM 10:52

ROBIN C. MAYES,
Appellant,

v.

CHEROKEE NATION ELECTION
COMMISSION,

and

MARILYN VANN,
Appellees.

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CHEROKEE NATION
SUPREME COURT
KENDALL BIRD, COURT CLERK

SC- 2021-01

BRIEF IN SUPPORT OF MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR
SUMMARY JUDGMENT

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STATEMENT OF ASSIGNMENT OF ERROR

Appellant alleges that the Cherokee Nation Election Commission improperly ruled that Appellee Vann was an eligible candidate for Council for the At Large District for the Cherokee Nation 2021 General Election, due to constitutional and statutory violation of “by blood” provisions that seek to disenfranchise Cherokee Citizen Freedmen Descendants despite their full rights as Native Cherokees pursuant to the Treaty of 1866, rights which were affirmed by Federal court ruling in *Cherokee Nation v Nash et al*, 267 F. Supp. 3d 86 (D.D.C. 2017),¹ and incorporated in the Final Order in *In Re: Cherokee Nation v Nash et al*, SC-17-07.

STATEMENT OF ISSUES FOR REVIEW

1. Does Appellant’s claim challenging the Election Commission ruling fail due to mootness in light of the Final Order in *In Re: Effect of Cherokee Nation v. Nash et al*, SC-17-07?
2. Is Appellee entitled to Summary Judgment regarding the claim that the Cherokee Nation Election Commission erred in certifying Appellee Vann’s eligibility?

STATEMENT OF THE CASE

Appellant and Appellee Vann both filed to run for Cherokee Nation Tribal Council At-Large for the 2021 Election Cycle. Appellant first attempted to prematurely seek redress before the District Court of the Cherokee Nation on February 1, 2021 by requesting an advisory opinion in the form of a constitutional interpretation from the District Court regarding Appellee Vann’s eligibility before she had even filed to run for office and before the Election Commission published a list of candidates. Exhibit 1 in Appendix. The District Court dismissed the petition as Appellant

¹ Binding on Cherokee Nation pursuant to legislatively authorized waiver of sovereign immunity and consent to abide by the decision per Resolution 22-09 “A RESOLUTION RATIFYING LITIGATION IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA.”

failed to exhaust his administrative remedies under Article VIII § 4 of the Cherokee Nation Constitution and 20 CNCA § 51(a)(2). Exhibit 2 in Appendix. On February 8, 2021 Appellant then filed a challenge to Appellee Vann's eligibility before the Cherokee Nation Election Commission which was rejected as untimely as the filing period had not yet closed and the challenge period had not yet opened. On his third try, Appellant again filed a challenge to Appellee Vann's eligibility on February 8, 2021 within the requisite time frame and before the appropriate body.

The Election Commission held a hearing on February 22, 2021 at 1:00 PM wherein Appellant argued that Appellee Vann was ineligible to be a candidate for Cherokee Nation elected office due to her status as a Freedman Descendant Cherokee Citizen, and not "by blood," as he alleges to be a requirement. Appellee Vann, through counsel, disputed the validity of the "by blood" constitutional and statutory requirements pursuant to the valid language in the Treaty of 1866, recently affirmed by the Cherokee Nation Supreme Court's Final Order in *In Re: Nash et al*, SC-17-07, filed at 10:36 AM on February 22, 2021. On the same day, after the hearing, the Cherokee Nation Election Commission incorporated the referenced final order and found that Appellee Vann was an eligible candidate for Cherokee Nation Council for the At Large District for the Cherokee Nation 2021 General Election.

STATEMENT OF UNDISPUTED FACTS

Appellee Vann references the assertions by numbered paragraph listed in Appellant's filing in this matter titled "Appeal from a Decision of the Cherokee Nation Election Commission." For purposes of this Motion to Dismiss, or in the alternative Motion for Summary Judgement, Appellee Vann does not dispute paragraphs 1 through 7. Paragraph 8 is not a statement of fact but rather an argument of law. As such, Appellee Vann disputes Paragraph 8 as a matter of law for reasons following herein.

ARGUMENTS AND AUTHORITIES

1. Applicability of Authority

In the absence of Cherokee Nation case law, principle or procedure, persuasive authority is referenced to inform the Court of legal practices and precedents of other jurisdictions that may be influential for consideration and adoption. *Mayes v. Thompson et al*, JAT 95-15, page 4. As this Court has incorporated the Federal Rules of Civil Procedure (“FRCP”) to inform the Supreme Court Rules and Procedures, persuasive case law interpreting FRCP provisions is incorporated herein.

Further, as Appellant has failed to comply with Supreme Court Rule 72 (b), Appellee Vann requests that the Court take judicial notice of extrinsic documents integral to the complaint and in the public record, FRCP Rule 12(d) and Rule 56. (See Appendix: Exhibits 1-4).

2. Appellant’s Standing to Bring a Claim Has Failed Due to Mootness

In order to survive a motion to dismiss under Supreme Court Rules and Procedures 20 CNCA App. Rule 63 which is further informed by the Federal Rules of Civil Procedure, the appeal must “state a claim to relief that is plausible on its face.” *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 570, (2007). Even if a claim is found ripe for consideration at the outset of the filing, that ripeness must continue through the entirety of the litigation reflecting an “actual, ongoing controversy between litigants.” *Deakins v. Monaghan*, 484 U.S. 193, 199 (1988). That justiciability can fail due to post-filing events and rulings, rendering the claim moot. *Lujan v. Defenders of Wildlife*, 504 US 555 (1992). When a material condition changes and negates the Appellant’s interest to protect in the proceeding, the Appellant’s claim is rendered moot. *Corn silk v. Cherokee Nation Tribal Council*, JAT 96-15, page 3. Thus, when the appellant “can prove no set of facts in support of his claims which would entitle him to relief” a motion to dismiss should

be granted. *Conley v. Gibson*, 355 US 41, 45-46 (1957). That is especially true when specific and on-point case law is rendered, addressing the issues of the claim.

In this matter, this Court issued a Final Order in *Nash*, SC-17-07 on February 22, 2021 detailing that “by blood” language incorporated into the Cherokee Nation Constitution and Cherokee Nation statutes was a violation of the Treaty of 1866 and thus, *void ab initio*. That explicit determination in the Final Order, appropriately informed the Cherokee Nation Election Commission’s decision to certify Appellee Vann’s eligibility. Appellant’s appeal to this Court, challenging the Election Commission’s decision as a violation of constitutional and statutory provisions that have been freshly determined by this Court to be void from the outset, is, as matter of law, moot. As there is no longer an actual controversy between litigants, this matter should be dismissed.

3. In the Alternative, Appellee Vann is Entitled to Summary Judgment as a Matter of Law

a. No issue of material fact

Summary judgment is appropriate if the pleadings, affidavits, depositions, and evidence on file “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed.R.Civ.P. 56(c). A fact is material if it is essential to the proper disposition of a claim under controlling law and an issue is genuine if the evidence is such that a rational trier of fact could resolve the issue either way. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). All facts and inferences must be viewed in the light most favorable to the non-moving party. *Id.* at 255. The movant bears the initial burden of demonstrating the absence of a dispute of material fact warranting summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). If a party who would bear the burden of proof at trial lacks sufficient evidence on an essential element of a claim, then all other factual issues concerning the claim become

immaterial. *Id.* at 322. Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no “genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (citations omitted). An Appellant’s failure to designate a record on appeal as required by Supreme Court Rules and Procedures 20 CNCA App. Rule 56 places “no duty on the Court to search for an undesignated record for the existence of factual disputes or theory to sustain Appellant’s Petition in Error.” *Cherokee Nation v. Linda O’Leary et al*, SC-2006-14.

Appellant has failed to designate a record in accordance with the Rules of the Cherokee Nation Supreme Court. Further, Appellee Vann does not dispute the material facts alleged in the Appellant’s improperly titled appeal pleading before this Court. As the only disputed “fact” is actually Appellant’s position of law, the Court should find that there is no issue of material fact.

- b. Appellant cannot establish a violation warranting Appellee Vann’s disqualification under the law

The only provisions of law Appellant alleges in support of his position that Appellee Vann should be deemed ineligible to seek elected office in the Cherokee Nation have either been overruled by this Court’s recent rulings (*Vann et al vs. Salazar et al*, SC-11-07) or are misinterpreted as to their application by Appellant (*In Re: Nash*). Appellant asserts that the Cherokee Nation Supreme Court lacked the authority to rule as it did and declare the “by blood” provisions *void ab initio*. The Court acted well within its authority, and in finality, pursuant to the judicial power granted in Article VIII, Sections 1 and 4 of the Cherokee Constitution. This Court did not “amend” the Constitution; rather, provisions were declared void from the outset due to violation of existing treaty provisions to which the Cherokee Nation remains bound.

The existence of, continued application, and validity of treaties between the United States and tribes removed to Indian Territory as acknowledged in the Nation's Brief Of Amici Curiae Historians, Legal Scholars, and Cherokee Nation in Support of Petitioner filed before the Supreme Court of the United States of America in *McGirt v. Oklahoma*, 591 U.S. ____, (2020) reflect the Nation's position and acknowledgement of the rights and responsibilities of the parties to the treaties. The Nation's integrity, position of moral superiority, and standing are predicated upon keeping our promises.

Appellant is also silent as to the constitutional provision ensuring equal protection of the law to Cherokee Citizens. Titled "Bill of Rights," Article III, § 1 of the Constitution says:

"The judicial process of the Cherokee Nation shall be open to every person and entity within the jurisdiction of the Cherokee Nation. Speedy and certain remedy, and equal protection, shall be afforded under the laws of the Cherokee Nation."

Treaties, constitutional provisions, statutes, regulations and case law all comprise the laws of the Cherokee Nation. Marilyn Vann, as a Cherokee Citizen and by seeking public office within the Cherokee Nation government, is within the jurisdiction of the Cherokee Nation. As a Cherokee Citizen Freedmen Descendant, Appellee Vann is entitled to the same rights as native Cherokees. The equal protection provision requires that the Cherokee Nation must treat individuals in the same manner as those similarly situated. Like as like. As such, she is entitled to receive the benefits of equal protection of the law, specifically the referenced provisions of Article 9 of the Treaty of 1866, the express confirmation of that treaty language per *Nash*, and the application of the Final Order of *In Re: Nash* as issued by this Court.

That assurance of equal protection further supports the decision of the Election Commission to certify her as a candidate as "by blood" discrimination not only violates treaty guarantees but also the Constitution. Cherokee Citizens are similarly situated by benefit of political

class and distinction. An impermissible conflict is created whenever a government body acts under any constitutional provision in a manner that frustrates an explicit constitutional purpose set out in a different provision. A “by blood” requirement inherently undermines the concept of equal protection by an impermissible creation of a disenfranchised class. “By blood” language attempting to disenfranchise any citizen of the Cherokee Nation is an implicit violation of the equal protection provision in the Constitution.

In light of Appellant’s disregard of Court rules and intentional ignorance of the validity and applicability of the Court’s recently issued mandatory authority and valid constitutional provisions, his attempt to re-litigate this correctly decided matter should be disposed of summarily as there is no material issue of fact and the law is clear: Marilyn Vann, as a citizen of the Cherokee Nation, is eligible to run for the At Large Council District of the Cherokee Nation Council for the 2021 election cycle.

CONCLUSION

For the foregoing reasons, Appellee Marilyn Vann respectfully requests the Court to grant her Motion to Dismiss or, in the alternative, Motion for Summary Judgement, and affirm the decision of the Cherokee Nation Election Commission certifying her eligibility to seek elected office.

Respectfully Submitted this 12th day of March 2021.



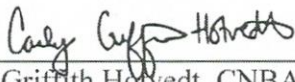
Carly Griffith Hotvedt, CNBA #0723
1515 E 60th Street
Tulsa, OK 74105
918-398-1071
Griffith.hotvedt@gmail.com

CERTIFICATE OF MAILING

The undersigned certifies that on 12th day of March 2021, a true and correct copy of the foregoing pleading was mailed and emailed to the following persons:

Jim L. Cosby
Attorney for Petitioner
210 S. Muscogee Ave
Tahlequah, OK 74464
cosbylawfirm@yahoo.com

Harvey L. Chaffin
Attorney for Cherokee Nation Election Commission
215 W. Shawnee
Tahlequah, OK 74464
hlchaffin@greencountryabstract.com



Carly Griffith Hotvedt, CNBA #0723
1515 E 60th Street
Tulsa, OK 74105
918-398-1071
Griffith.hotvedt@gmail.com

Appendix

1. Exhibit 1, Appellant's District Court Petition, CV-21-41
2. Exhibit 2, District Court Order, CV-21-41
3. Exhibit 3, Appellant's Timely Election Commission Filing
4. Exhibit 4, Election Commission Order re Eligibility Hearing No.
2021-1

Exhibit 1: Appellant Mayes District Court Filing

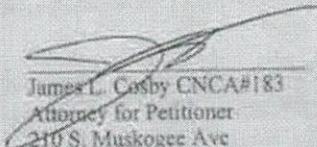
IN THE DISTRICT COURT OF CHEROKEE NATION

ROBIN C. MAYES,)
Petitioner,)
vs.) Case Number CN-21-41
CHEROKEE NATION)
ELECTION COMMISSION,)
Defendant.)

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ENTRY OF APPEARANCE

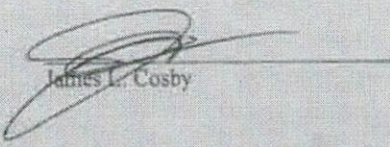
COMES NOW, James L. Cosby and hereby enters his appearance for the Petitioner, Robin Carter Mayes, in the above-styled matter.


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

CERTIFICATE OF SERVICE

I, James L. Cosby do hereby certify that on the 1st day of February 2021, I delivered a copy of the foregoing document to the following:

Office of Sarah Hill, Cherokee Nation Attorney General
Tahlequah, OK 74464


James L. Cosby

1

CHEROKEE NATION
FEB 01 2021
ELECTION COMMISSION FILED

the office of At Large Councilor. The 2021 election season has commenced with candidate's fund-raising commencing on December 1, 2020, filing and certain behaviors falling under the jurisdiction of CNEC.

ARGUMENT AND AUTHORITY

Petitioner Mayes alleges and states that Marilyn Vann is not eligible to run for or serve as an elected official of the Cherokee Nation because the Constitution of the Cherokee Nation Article VI, Sect. 3, prohibits it. Article VII, Section 2 & 3) provide that a candidate for any of the elected offices of the Cherokee Nation government shall meet several threshold requirements.

Article VI Section 3 of the Cherokee Nation Constitution states in part, "The Council shall consist of seventeen (17) members, who are citizens by blood of the Cherokee Nation. Any citizen by blood of the Cherokee Nation at least twenty-five (25) years of age on that date of the election may be a candidate for the Council..." (Id.)

Mayes stipulates that Vann likely meets all requirements except one, she is not Cherokee by blood as required by the Constitution. Vann is a citizen by adoption of the Freedmen class and does not possess a Certificate of Degree of Indian Blood used to prove the candidate is Cherokee by blood. Vann has been led to believe she is eligible to run for elected office by court case, *In Re: Effect of Cherokee Nation v. Nash, et. al.* (SC-17-07), in which Justice John C. Garrett stated "Freedmen shall have all the rights of Cherokees by blood "...including the right to run for office." (Id.). These seven words can be nothing more than dicta for the reason that neither filing by the Supreme Court addresses the Constitutional language barring Vann's candidacy cited above. In *Nash*, the question of candidacy was never raised by any party for the Supreme Court to rule on the issue.

Finally, the courts of the Cherokee Nation are wholly without authority to nullify any portion of the Constitution that may conflict with federal law. The Cherokee people voted in 2003 to remove from their Constitution language granting over-site of the Constitution by the federal government. There exists no authority granting any of the co-equal branches of the Cherokee Nation within the Constitution itself power to nullify any portion thereof; that power being reserved to the Cherokee people themselves by popular vote only.

The courts of the Cherokee Nation, including the Supreme Court, are created by provisions of the Constitution, namely Article VIII, Sections 1-8. More specifically Section 1, vests the highest judicial authority in a Supreme Court whose powers are enumerated and limited therein. Section 4, spells out the original jurisdiction of the Supreme Court which is limited to interpretation and application of laws and the Constitution. Nowhere in Article VIII, is the Supreme Court granted authority to nullify the Constitution nor any part thereof. In fact, if the Court grants itself the power to amend the Constitution without approval of the people an untenable power play between branches of the government could

ensue, most likely by the executive branch seeking to nullify constitutional provisions it does not like.

It is critical to the health of Cherokee constitutional government and our progeny that the Court recognizes it does not have this power. Therefore, Petitioner Mayes asks the Court to overturn its ruling in SC-17-07. *Stare Decisis* does not apply in this case. *Stare Decisis* creates a more stable body of decisions upon which the Courts, governments and people may rely. However, *Stare Decisis* is not a judicial absolute when it is clear a previous decision is unworkable or clearly violates the Constitution. There are only a handful of times the Cherokee Courts have overturned an earlier decision. Without laboring the point too greatly, the Court's attention is drawn to *Allen v. Council*, JAT-04-09, wherein the Supreme Court overturned the earlier Riggs decision because that decision was constitutionally fatally flawed. Therefore, *Stare Decisis* must not be applied in this case because to do so would leave in effect a ruling that is clearly unworkable, dangerous and most importantly unconstitutional.

The time frame for adjudicating the issue raised is short and the answers needed are urgent. The Cherokee Nation Supreme Court (hereinafter CNSC) was without discretion and erred in its decision in SC-17-07. The Cherokee Nation Supreme Court made the erroneous statement that Freedmen have the right to run for office being clearly in violation of the Constitutional requirement that candidates be Cherokees by blood and an issue not at bar in that case. We know in the operations of the Cherokee people's government that the Council and Principal Chief are without authority to ignore or nullify any portion of the Constitution. We also know that the three branches of the Cherokee people's government are co-equal, each being part of the grand scheme of checks and balances which are the hallmark of a tripartite form of government. Therefore, if the legislative and executive branches of government can't, on their own, amend the Constitution, it stands to reason that the court also lacks that authority. Because the courts of the Cherokee Nation lack any authority to amend the Constitution, SC-17-07 is a nullity and of no effect and must be overturned.

CONCLUSION

This is a unique case for the Court because it asks the courts of the Cherokee Nation to recognize the limits of their own constitutional authority, to curtail that power in the interest of good governance and preservation of the constitutional tripartite separations of powers and protect the Cherokee people's inherent and sole right to amend the Constitution. The Court is being asked to admit SC -17-07 was wrong and make right its own wrong. This is no small matter and is not approached lightly. However, the deleterious effects of SC-17-07, cannot be overstated. It is unfortunate that the Freedmen, already a group of Cherokees mistreated by the Cherokee Nation government, will be the ones to suffer. But that suffering need not be permanent nor even long term.

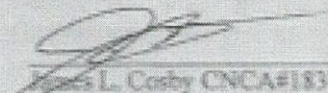
Had the leadership of the Cherokee Nation sought out proper remedy for the portions of the Constitution offensive to the Nash Ruling, we would not be here. But here we are and we rely upon our Court to recognize the limits of its

own powers and discretion for what is in the best interest of the tribe, Freedmen and Mayes. While it is not the role of Petitioner to tell the Court, what would be the proper remedy to resolve the conflict between the Cherokee Nation Constitution and the Nash ruling, Mayes prays for the Honorable Court to overturn SC-17-07 and direct the Election Commission to disqualify Marilyn Vann on the constitutional grounds she is not Cherokee by blood and does not meet the minimum threshold set by the Constitution to seek an elected office. Petitioner Mayes suggests to the Honorable Court that you strongly advise the Principal Chief and Council to place the by blood question on a special ballot as early as possible.

WHEREFORE, premises considered the Petitioner Robin Mayes respectfully requests that the Court overturn its ruling in SC-17-07, and find that the Cherokee Nation Constitution requires a political candidate be a Cherokee citizen by blood and for any further relief available.

Respectfully submitted,

ROBIN MAYES, PETITIONER



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

2021 FEB -1 P. 12:26

ROBIN C. MAYES,

Petitioner,

vs.

CHEROKEE NATION
ELECTION COMMISSION,

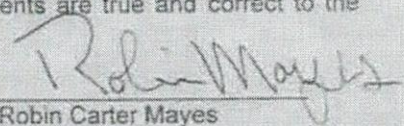
Defendant.

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Case Number CV-21-41

VERIFICATION

I, ROBIN C. MAYES, of lawful age do hereby certify that I am the Petitioner in the foregoing matter and affirm that all contents are true and correct to the best of my knowledge


Robin Carter Mayes

CERTIFICATE OF MAILING

I, Robin C. Mayes, hereby certify that I faxed, mailed or hand delivered a true and correct copy of the foregoing instrument on the 15th day of FEB, 2021, to the parties listed below:

Cherokee Nation Election Commission
P.O. Box 1188
Tahlequah, OK 74464

Exhibit 2: CV-21-41, Order from the District Court

District Court of Cherokee Nation

Robin C. Mayes, Petitioner,		CV 21 - 41
v.		
Cherokee Nation Election Commission, Defendant,		
and,		
Marilyn Vann, Proposed Defendant-Intervenor.		

FILED
2021 FEB - 4 PM 3:11
CLERK OF DISTRICT COURT
CHEROKEE NATION

Order Dismissing Matter from the District Court

Now before the District Court of the Cherokee Nation is a petition contesting a Cherokee Nation citizen's eligibility to run for Tribal Council. This matter, as with any election matter, is of great importance to the Cherokee Nation, all citizens, and the specific parties involved. The Court finds and Orders as follows:

The question presented is whether a Cherokee Nation citizen without a Certificate of Degree of Indian Blood is eligible to run for Tribal Council. The Court holds that because the substance of the Petitioner's action is an election protest, exhaustion of administrative remedies at the Cherokee Nation Election Commission is a jurisdictional prerequisite to seeking relief from the Judicial Branch.

The Court further holds that if the parties choose to exhaust their administrative remedies and still feel aggrieved that the Supreme Court of the Cherokee Nation is the appropriate forum for subsequent appeal.

Pursuant to Article VIII, Section 4 (*third paragraph, first sentence*) of the Constitution of the Cherokee Nation, which states:

In support of its original and appellate jurisdiction, the Supreme Court shall have power to issue, hear and determine writs of habeas corpus... and may exercise such other jurisdiction as may be conferred by statute.

and

pursuant to Cherokee Nation statute 20 CNCA § 51 (A) (2)

A. The Supreme Court shall have original jurisdiction over all matters set forth in Article VIII, Section 4 of the Cherokee Constitution and:

1. ...

2. Any case or controversy involving Cherokee Nation elections that has first been addressed by the Cherokee Nation Election Commission, and/or which is specifically provided for by statute.

[Emphasis added]

The Constitution of the Cherokee Nation and statutes that stem therefrom confer jurisdiction of election matters through the Cherokee Nation Election Commission's administrative process and then directly to the Supreme Court because of the need for expeditious resolve of any and all election contests. If the District Court were to proceed with this matter, the statutes and rules governing civil procedure would likely place the final resolve of the contest after the election was over.

FOR THE REASONS STATED, THIS MATTER IS HEREBY DISMISSED FROM THE DISTRICT COURT.

ORDERED, this 4th day of February, 2021


T Luke Barteaux
Presiding District Court Judge

Certificate of Mailing

I, the undersigned, do hereby certify that on the 5 day of February, 2021,
that I emailed, faxed, hand-delivered, and or mailed a true and correct file stamped copy of the
foregoing document to the following person(s):

Jim Cosby
210 S Muscogee Ave
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Harvey Chaffin
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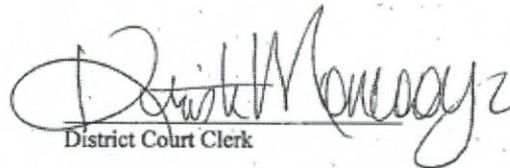

District Court Clerk

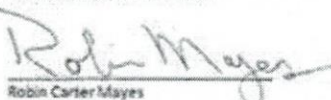
Exhibit 3

February 8, 2021
Cherokee Nation Election Commission
PO Box 1188
Tahlequah, Oklahoma 74464
RE: Complaint of Election Code Violations by Marilyn Vann, Candidate for Council At-Large

Election Commission:

COMES NOW Robin Carter Mayes a Cherokee Citizen, registered voter and filed candidate for Council At-Large in this 2021 election. I am hereby filing a complaint against the Marilyn Vann Campaign. I ask that the Election Commission immediately investigate the following violation and stop candidate Marilyn Vann from continuance of her campaign for the following reasons to wit:

This complaint alleges and states that Marilyn Vann is not eligible to run for or serve as an elected official of the Cherokee Nation because the constitution of the Cherokee Nation (Article VI, Sect. 3; Article VII, Section 2 & 3) provide that a candidate for any of the elected offices of the Cherokee Nation government shall meet several threshold requirements. Mayes stipulates that Vann likely meets all requirements except one, she is not Cherokee by blood as required by the Constitution. Vann is a citizen by adoption of the Freedmen class and does not possess a Certificate of Degree of Indian Blood used to prove the candidate is by blood. Vann has been led to believe she is eligible to run for elected office by court case SC 17-07, in which Justice John C. Garrett states Freedmen shall have all the rights of Cherokees by blood "....including the right to run for office." These seven words can be nothing more than dicta for the reason that neither filing by the Supreme Court addresses the constitutional language barring Vann's candidacy cited above. Further, the question of candidacy was never raised by any party to SC 17-07. Finally, the courts of the Cherokee Nation are wholly without authority to nullify any portion of the constitution that may conflict with federal law. The Cherokee people voted in 2003 to remove from their constitution language granting over-site of the constitution by the federal government. There exists no authority granting any of the co-equal branches of the Cherokee Nation within the constitution itself power to nullify any portion thereof; that power being reserved to the Cherokee people themselves by popular vote only. Therefore, At-Large candidate Mayes is seeking a decision from the Election Commission disqualifying Marilyn Vann.


Robin Carter Mayes

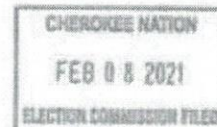


Exhibit 4: Election Commission Order re Eligibility Hearing No. 2021-1

BEFORE THE CHEROKEE NATION ELECTION COMMISSION
OF THE CHEROKEE NATION

In Re: Challenge to the Eligibility of	}	
Marilyn Vann, Candidate	}	Eligibility Hearing No. 2021 - 1
for Council, At-Large District for	}	
the 2021 General Election	}	

DECISION

Now on this 22nd day of February, 2021, this matter came on for hearing before the Cherokee Nation Election Commission and the Contestant, Robin Carter Mayes, appears in person; and the Candidate Marilyn Vann, appears via telephone conference and by and through her attorney, Carly Griffith Hotvedt via telephone conference.

The Commission, after hearing the evidence of witnesses, sworn and examined, examining exhibits introduced, the written challenge, written statements submitted and legal briefs and memos submitted, hearing arguments of counsel and after full deliberation, finds that the Challenge was timely filed by Robin Carter Mayes, an opposing Candidate At-Large as provided by law; finds that Notice of this Hearing was given and served as provided by law; finds that pursuant to Final Order in the Supreme Court Case No. SC-17-07, the Candidate, Marilyn Vann, is eligible to be a candidate for Council of the At-Large District.

IT IS THEREFORE THE DECISION, OF THE CHEROKEE NATION ELECTION COMMISSION that Marilyn Vann, is eligible to be a candidate for Council of the At-Large District for the Cherokee Nation 2021 General Election.

Dated this 22nd day of February, 2021.

Cherokee Nation Election Commission

BY: Shawna Calico
Shawna Calico, Chairperson and Member

BY: Pamela Sellers
Pamela Sellers, Vice-Chairperson and Member

BY: Rick Doherty
Rick Doherty, Secretary/Treasurer and Member

BY: Randy Campbell
Randy Campbell, Member

BY: Elizabeth Ballew
Elizabeth Ballew, Member