

FILED

IN THE SUPREME COURT OF THE CHEROKEE NATION

2021 MAR 12 PM 12:05

CHEROKEE NATION
SUPREME COURT
KENDALL BIRD, COURT CLERK

Robin C. Mayes,

)

)

Petitioner,

)

)

vs.

)

Case No. SC-21-01

)

)

Cherokee Nation Election

)

Commission,

)

)

and

)

)

Marilyn Vann,

)

Respondents.

)

**BRIEF IN SUPPORT OF DECISION OF THE
CHEROKEE NATION ELECTION COMMISSION**

AND

**RESPONSE TO APPEAL FROM A DECISION OF THE CHEROKEE NATION
ELECTION COMMISSION BY ROBIN C. MAYES**

OF THE

CHEROKEE NATION ELECTION COMMISSION

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IN THE SUPREME COURT OF THE CHEROKEE NATION

Robin C. Mayes,)	
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vs.)	Case No. SC-21-01
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AUTHORITY

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BRIEF IN SUPPORT OF DECISION

Comes now the Cherokee Nation Election Commission
(hereinafter the "Commission") and for its Brief in Support of
the Decision of the Commission from which this appeal has been

taken, would respectfully submit the following:

Statement of the Case

Marilyn Vann filed as a Candidate for Council At Large on February 1, 2021.

Challenge to the Candidacy of Marilyn Vann was filed by Robin C. Mayes on February 8, 2021, and he submitted an Addendum to his Challenge on February 11, 2021.

The Commission set the Hearing on the Challenge for February 18, 2021 at 1:00 P.M. and Notice of said Hearing was given to the Candidate and the Challenger; subsequently, due to inclement weather, the hearing was continued to February 22, 2021 at 1:00 P.M. and the Parties were notified.

On February 22, 2021 at the appointed time, the Candidate and Challenger were given opportunity to present opening statements and evidence and exhibits and then closing argument. After deliberation, the Commission reached its Decision which was distributed to the Candidate and Challengers immediately on the same day, and from which this appeal was taken.

On March 3, 2021, Chief Justice of the Supreme Court, Lee W. Paden, through the Court Clerk, set this Appeal for hearing for March 23, 2021, at 12:00 P.M., and ordered that Responses be filed by March 12, 2021; and, that any further motions or other pleadings be filed by March 19, 2021.

A complete Transcript of the Hearing before the Commission, taken by a Certified Court Reporter, with Exhibits and Documents attached, was filed with this Court on receipt from the Court

Reporter.

This Brief in Support of the Decision of the Commission is being filed on March 12, 2021.

Statement of Facts in Support
of the Commission's Decision

The following facts were not disputed:

1. Marilyn Vann is an At Large Citizen of the Cherokee Nation .
2. Marilyn Vann has established a bona fide permanent residence at large not less than 270 days immediately preceding the 2021 General Election.
3. Marilyn Vann is over the age of 25 years.
4. Marilyn Vann has not been convicted of nor plead guilty to a felony.

Therefore, the issues before the Court are purely questions of law.

Arguments and Authorities

PROPOSITION

Decisions of the Court in:

**In re: Effect of Cherokee Nation v. Nash
and Vann v. Zinke, District Court of Columbia, Case
No. 13-01313 (TFH) and Petition For Writ of Mandamus
requiring the Cherokee Nation Registrar to Begin
Processing Citizenship Applications, Case No. SC-17-07**

AND

**Cherokee Nation v. Nash and Vann v. Zinke,
District Court of Columbia, Case No. 13-01313 (TFH)
267 F. Supp.3d 86 (D.D.C. 2017)**

Clearly hold Marilyn Vann Eligible to be an At Large Candidate.

The only challenge Robin C. Mayes presented to the Candidacy of Marilyn Vann was that she was not Cherokee by Blood and that such was required by the Cherokee Constitution.

The Cherokee Nation v. Nash case, supra and Vann v. Zinke case supra, in the Federal Court held that Freedman Citizens of the Cherokee Nation are entitled to all the rights of other Cherokee Citizens under the Treaty between the Cherokee Nation and the United States of America, including the right to vote and run for office.

The Cherokee Nation Supreme Court, in a detailed and well reasoned 13 page opinion, in the In Re: Nash case, supra, recognized the validity of the above described Federal Court case and ruled that the ±by blood≤requirement in the Constitution, tribal statutes, administrative procedures and laws where ever found are void ab initio, were never valid from inception and Orders the removal of ±by blood≤citizenship from the Constitution, laws and accompanying rules. regulations, policies or procedures of the Cherokee Nation.

RESPONSE TO APPEAL AND BRIEF IN
SUPPORT OF APPEAL OF ROBIN C. MAYES

The Appeal and Brief will be specially responded to and addressed chronologically by Section and unnumbered paragraph. The paragraphs of this Response will be numbered for reference.

It is admitted that in the first introductory paragraph Appellant is asserting an appeal of the Commission's decision.

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Denied, the Challenge was based on Candidate Vann not being Cherokee ±by blood≤K
7. Admitted.
8. Denied.

ARGUMENT AND AUTHORITY (of Mayes)

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 Appellant in the above statement blatantly ignores the Cherokee Nation Supreme Court Case and Federal Court Case cited and discussed above.

Appellant attempts to re-litigate issues that have already been decided by the Cherokee Nation Supreme Court and the Federal Court.

The Brief in Support of the Decision of the Commission,

above set forth, is incorporated herein as though fully set forth herein, in response to the Argument and Authority of Mayes.

Appellant's argument that the Court can not amend the Constitution or laws is misplaced. The Court did not amend the Constitution or laws, It simply held that the "by blood" provision was void from its inception which is certainly within its Judicial power granted under the Cherokee Constitution. Article VIII, Section 1.; and, the decisions of the Supreme Court shall be final. Article VIII, Section 4.

Appellant argues that the Preliminary Order in the In Re: Nash case, supra did not mention the Constitution of Election Code or give directives; but, such argument is of no avail, the Court specifically states in the In Re: Nash case, supra, that the decision shall supersede all previous orders entered in the case.

The Appellant's citation to Vann et al vs. Salazar et al, SC-11-07, is misplaced, at best; since, to the extent, said case is inconsistent with In Re: Nash case, supra, it is overruled.

With regard to Mayes argument that the In Re: Nash case, supra, was ex post facto, it has no merit as this Court held that the "by blood" provision was void ab initio, never valid from inception. The Court did not change the law, it merely declared it was never valid and void from inception.

CONCLUSION (of Mayes)

The Conclusion of Mayes attempts to summarize the invalid assumptions made in his Arguments and Authorities, which clearly

have no basis by virtue of the In Re: Nash case, supra and the Cherokee Nation v. Nash case, and Vann v. Zinke case supra,

CCOMMISSION SUMMARY AND CONCLUSION

Based on the Commission's Brief in Support of Decision and Response to Appeal and Brief in Support of Appeal of Robin C. Mayes, the decision of the Commission holding that Marilyn Vann is eligible to be a candidate for Council At Large should be affirmed.

Cherokee Nation Election Commission

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CERTIFICATE OF MAILING

I, Harvey L. Chaffin, do hereby certify that on the 12th day of March, 2021, I mailed by first class mail, with postage prepaid thereon, a true and correct copy of the within and foregoing Answer to James L. Cosby, 210 S. Muskogee Avenue, Tahlequah, OK 74464 and Carly Griffith Hotvedt, 1515 E 60th Street, Tulsa, OK 74105.


Harvey L. Chaffin