

IN THE SUPREME COURT OF THE CHEROKEE NATION

Robin C. Mayes, )  
)  
Petitioner, )  
vs. )  
)  
Cherokee Nation Election )  
Commission, )  
)  
and )  
)  
Marilyn Vann, )  
Respondents. )

Case No. SC-21-01

FILED  
2021 MAR 17 AM 11:59  
CHEROKEE NATION  
SUPREME COURT  
KENDALL BIRD, COURT CLERK

AND

In Re: Challenge to the Eligibility )  
of Victoria Vazquez, Candidate for )  
Council District 11 for the 2021 )  
General Election. )

Case No. SC-21-02

TRANSCRIPT OF HEARINGS BEFORE THE  
CHEROKEE NATION ELECTION COMMISSION  
OF THE CHEROKEE NATION  
ON FEBRUARY 22, 2021

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

AND

In Re: Challenge to the )  
Eligibility of Victoria )  
Vazquez, Candidate for ) Eligibility Hearing No. 2021-2  
for District 11 Council )  
for the 2021 General )  
Special Election. )

Comes now the Cherokee Nation Election Commission and files

herein its Transcript of Hearings before said Commission related to the above captioned Appeals.



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BEFORE THE CHEROKEE NATION ELECTION COMMISSION  
OF THE CHEROKEE NATION

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

ORIGINAL

\* \* \* \* \*

SPECIAL MEETING AGENDA

FEBRUARY 22, 2021

CHALLENGES OF ELIGIBILITY FOR THE  
2021 GENERAL ELECTION

\* \* \* \* \*

REPORTED BY:  
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A P P E A R A N C E S

CHEROKEE NATION ELECTION COMMISSION

Ms. Shawna Calico, Chairman  
Ms. Pam Sellers, Vice-Chairman  
Mr. Rick Doherty, Secretary  
Ms. Elizabeth Ballew, Member  
Mr. Randy Campbell, Member

ON BEHALF OF THE COMMISSION

Mr. Harvey Chaffin  
Attorney at Law  
215 W. Shawnee Street  
Tahlequah, Oklahoma 74464

ON BEHALF OF THE CONTESTANT

Mr. Robin Mayes, Pro se

ON BEHALF OF CANDIDATE MARILYN VANN

Ms. Carly Griffith Hotvedt, JD/MPA  
Attorney at Law  
1515 E. 60th Street  
Tulsa, Oklahoma 74105



1 CHAIRMAN CALICO: Okay. So I will call  
2 the Cherokee Nation Election Commission Special  
3 Meeting Agenda for February the 22nd, 2021, to  
4 order at 1:00 p.m.

5 Roll call, please.

6 MR. DOHERTY: Elizabeth Ballew?

7 MS. BALLEW: Here.

8 MR. DOHERTY: Pamela Sellers?

9 MS. SELLERS: Here.

10 MR. DOHERTY: Shawna Calico?

11 CHAIRMAN CALICO: Here.

12 MR. DOHERTY: Randy Campbell?

13 MR. CAMPBELL: Here.

14 MR. DOHERTY: Rick Doherty, here.

15 CHAIRMAN CALICO: Item 3, approval of  
16 minutes from the February 12th special meeting.  
17 Everybody should have a copy of those. And I  
18 will entertain a motion to approve.

19 MS. SELLERS: I make a motion to  
20 approve the meeting of February 12th.

21 MS. BALLEW: Second.

22 CHAIRMAN CALICO: Okay. I have a  
23 motion and a second. All in favor?

24 (At which time, the Commission  
25 collectively answered in the affirmative.)

1 CHAIRMAN CALICO: Item 4, old business.  
2 We have none.

3 Item 5, current items. Item A, hearing  
4 on the challenges of eligibility for the 2021  
5 General Election. First, we have Robin Carter  
6 Mayes contesting the eligibility for candidate,  
7 Marilyn Vann.

8 MR. CHAFFIN: And Marilyn Vann's  
9 attorney asked that we contact her on the  
10 speakerphone. She had a conflict and couldn't  
11 be here.

12 CHAIRMAN CALICO: Okay. All right.  
13 Marcus.

14 MR. CHAFFIN: The Commission probably  
15 should have a motion on whether she can --

16 CHAIRMAN CALICO: Okay.

17 MR. CHAFFIN: -- appear by telephone.

18 CHAIRMAN CALICO: Okay. Well, I'll  
19 entertain that motion to let Ms. Carly Hotvedt  
20 and Marilyn Vann attend by phone.

21 MR. CAMPBELL: So move.

22 MS. SELLERS: Second.

23 CHAIRMAN CALICO: I have a motion and a  
24 second. All in favor?

25 (At which time, the Commission answered

1 collectively in the affirmative.)

2 (Chair contacted the parties by phone.)

3 CHAIRMAN CALICO: Ms. Hotvedt, this is  
4 Shawna Calico from the Election Commission. If  
5 you will hold on for just a second, I'm going to  
6 call Mrs. Vann and get her on the line as well.

7 MS. HOTVEDT: Excellent. Thank you.

8 (Off-the-record discussion had.)

9 CHAIRMAN CALICO: Ms. Vann.

10 MS. VANN: Yes, this is Marilyn.

11 CHAIRMAN CALICO: Okay. This is Shawna  
12 Calico from the Election Commission. I'm going  
13 to conference you in to the meeting, so hold on  
14 for just a moment, please.

15 MS. VANN: Okay.

16 CHAIRMAN CALICO: Can you still hear  
17 me?

18 MS. VANN: Yes, ma'am.

19 MS. HOTVEDT: Yes, I can hear you.

20 CHAIRMAN CALICO: Okay. I just wanted  
21 to make sure I had both of you on there.

22 COURT REPORTER: Ms. Calico, can I ask  
23 you to have them identify themselves when they  
24 speak?

25 CHAIRMAN CALICO: Ladies, the court

1 reporter will need you to identify yourselves  
2 when you speak. That way she'll be able to get  
3 accurate records, please.

4 MS. VANN: Okay.

5 MS. HOTVEDT: Okay.

6 MR. CHAFFIN: I'll start out by first  
7 announcing that the procedures for the hearing  
8 have been sent to all the parties, but you might  
9 want to read the part of the procedures that  
10 apply to the audience.

11 CHAIRMAN CALICO: So everyone has  
12 received a copy of the hearing procedures. The  
13 only thing I'm going to read is Section 2 that  
14 says, "The parties, counsel for the parties, and  
15 the audience should conduct themselves in a  
16 respectful and courteous manner, and anyone  
17 creating a disturbance will be asked to leave."

18 MR. CHAFFIN: And at the beginning of  
19 each hearing, the procedures, the proof of  
20 notice to the candidate and contestants, the  
21 responses, written responses filed by the  
22 candidates and contestants, and the actual  
23 complaint are made a part of the record. And  
24 the parties have been furnished copies of those  
25 already.



1 CHAIRMAN CALICO: Okay.

2 (At which time, Commission Exhibit No.  
3 1 was made a part of the record.)

4 MR. CHAFFIN: So, Marcus, if you would  
5 give the court reporter those copies so she can  
6 make them a part of the record. And that will  
7 be Commission Exhibit 1.

8 And with that, Madam Chairman, you can  
9 conduct the hearing and allow the contestants to  
10 present their case, and the candidate will be  
11 able to respond.

12 CHAIRMAN CALICO: Okay. With that,  
13 Mr. Mayes, we'll let you begin.

14 MR. MAYES: Okay. Go ahead?

15 CHAIRMAN CALICO: Yes.

16 MR. MAYES: Yes. Well, I had kind of a  
17 lengthy presentation to make, but I think  
18 considering the events, court rulings, things  
19 might go a little faster.

20 I just kind of wanted to highlight -- I  
21 sent you, by documents, everything that the --  
22 the majority of my presentation today. I had a  
23 few things that were -- that I was going to add,  
24 but I think for now I'll just kind of go over  
25 that lightly.

1                   So to begin with, we know the  
2                   Constitution already requires candidates to be  
3                   by blood. It's in there. Nothing has happened  
4                   since the 2017 federal ruling to remove or  
5                   negate that. It's there -- it was there when  
6                   candidates filed in this filing season.

7                   And the same thing is true about the  
8                   election law. The election law requires  
9                   candidates to be by blood. The tradition to  
10                  establish by blood is a CDIB card. Every  
11                  candidate that filed had to make copies of their  
12                  cards. So the process continues to, and still  
13                  requires, the by-blood and documentation of it.

14                  The candidate's packet itself, as I  
15                  stated in my -- in my presentation by document,  
16                  it's a little misleading, or it's quite  
17                  misleading, actually. It doesn't really say  
18                  anything about by-blood. It refers to court  
19                  orders. It refers to the Constitution which  
20                  does definitely require by-blood.

21                  So the essence of the complaint is not  
22                  whether it's right or wrong for the Freedmen  
23                  being allowed to -- Freedmen of descendants, I  
24                  should say, to be allowed to run for office.  
25                  It's about whether the law and the Constitution



1           and the process is in conformance with the law  
2           of the Constitution.

3                   And I personally -- I have been working  
4           for rights of Freedmen descendants for quite a  
5           while. I have gone to court over issues. I've  
6           tried to get -- I've even been to federal court.  
7           I have had a Motion to Intervene in the Nash  
8           case, complaining that this Election Commission  
9           and the certification of Oklahoma was  
10          withholding the rights of Freedmen to  
11          participate in elections, because they had  
12          stopped processing their -- their registration.

13                   So I don't think anybody can say that  
14          I'm doing this to try to prevent the Freedmen  
15          from having their rights. I believe they do. I  
16          believe that they had those rights after 1866.  
17          There were Freedmen descendants on the Council.  
18          There were -- there's a Freedmen descendant on  
19          the Council now.

20                   Now, whether they're by-blood or not,  
21          we don't know. We know about the one now. We  
22          don't know what -- Rick Ross was by-blood, and  
23          that's not documented as far as I can see. But  
24          anyhow, I'm getting off where I said I wasn't  
25          going to go.

1 All right. I'm going to kind of skip  
2 ahead since we know that the Court ruled that  
3 the Constitution 75 should not have had the  
4 language by blood in it. And it shouldn't, but  
5 it does. And it's not fair -- and it's not a  
6 free and fair election if the rules change after  
7 everybody's filed.

8 So I've got a pretty good idea how this  
9 Commission is going to rule today. I don't see  
10 how you have much choice. So my main concern is  
11 about how I can appeal this. I believe my right  
12 to appeal is still going to be preserved.

13 Before I conclude, I wanted to call a  
14 witness, David Cornsilk. Would that be  
15 appropriate?

16 MS. HOTVEDT: This is Carly Hotvedt,  
17 Counsel for Marilyn Vann. We're going to object  
18 to a witness. There's no facts at issue in this  
19 case. It's primarily a matter of law. There's  
20 no need to call a witness.

21 MR. CHAFFIN: That's up to the  
22 Commission whether they want to hear the witness  
23 or not.

24 MR. CAMPBELL: Well, my opinion is,  
25 we've always allowed witnesses to be called so

1 we get all the evidence that we need, so I don't  
2 have any problem with it.

3 CHAIRMAN CALICO: I don't have a  
4 problem with the witness either.

5 MR. MAYES: It won't take long. It's  
6 just some added information.

7 MR. DOHERTY: I'm going to make a  
8 motion we allow him to call his witness.

9 MS. SELLERS: I'll second.

10 MS. BALLEW: Second.

11 CHAIRMAN CALICO: I have a motion and a  
12 second. All in favor?

13 (At which time, the Commission answered  
14 collectively in the affirmative.)

15 CHAIRMAN CALICO: Does he need to be  
16 sworn in?

17 MR. CHAFFIN: Yes. The court reporter  
18 can swear him in.

19 DAVID CORNSILK  
20 was called as a witness on behalf of the Contestant  
21 and, after having been first duly sworn, testified as  
22 follows:

23 **DIRECT EXAMINATION**

24 BY MR. MAYES:

25 Q. David, just before we came in, we had a

1 conversation regarding a certain subject, and we  
2 agreed on a question. Do you remember what that  
3 question was?

4 A. I do.

5 Q. So could you repeat it for me?

6 A. Are there Freedmen who are Cherokees by blood  
7 and would meet the requirement of the  
8 Constitution?

9 Q. And can you answer that question?

10 A. I can answer that in the affirmative. I have  
11 been researching the Freedmen since 1988, and  
12 there are hundreds, if not thousands, of them  
13 who are descendants of Cherokee Indians and  
14 would meet the by-blood requirement.

15 There are also hundreds of thousands of  
16 them who would also meet the requirement of  
17 by-blood if the by-blood requirement were not  
18 restricted to a certificate of degree of Indian  
19 blood, but a proof of Cherokee ancestry as shown  
20 on the Dawes enrollment record. Many of the  
21 Freedmen were descendants of slave owners, and  
22 those slave owners were Cherokee Indians. Yet  
23 the Dawes Commission would not allow them to  
24 present their blood quantum because of racism at  
25 that time.



1           The Cherokee Council, in my opinion,  
2           could simply redefine what by-blood means, and  
3           probably two-thirds of the Freedmen would be  
4           eligible to run for office.

5       Q.    That's it?

6       A.    (Nodded head.)

7       Q.    Okay. I have another question. Considering  
8           this, there's a term that's come up frequently  
9           over the last few days on the internet, and you  
10          may have been the one who coined it. It's  
11          "super citizen". Can you explain and say how  
12          that relates to the possibility of there being  
13          different classes of Cherokee citizens with  
14          different rights and how it would be -- what a  
15          super citizen is in that regard?

16      A.    Well, I did use that term on Facebook. And  
17           there are four primary requirements to run for  
18           office. I'm not telling you anything you don't  
19           already know, residency, age, no felonies and  
20           by-blood. Two-thirds of the Cherokee population  
21           live outside of the boundaries of our  
22           reservation, which means that about 240,000  
23           Cherokees are not eligible to run for principal  
24           Chief. They're also not eligible to run for  
25           various offices if they don't domicile there for

1 a particular amount of time.

2 If you're between the ages of 18 and  
3 30, you're not eligible to run for Chief.  
4 Between 18 and 25, you're not eligible to run  
5 for Council. And if you have felonies that have  
6 not been expunged or pardoned, you're not  
7 eligible.

8 So all of these requirements establish  
9 a boundary, and those boundaries leave certain  
10 people out. The by-blood requirement does that  
11 as well. There are Cherokees who live in the  
12 boundary and can run for Chief. There are  
13 Cherokees who live outside the boundary and  
14 cannot. There are Cherokees who committed  
15 felonies and have not got those expunged and  
16 they can't run for office. There are Cherokees  
17 who have not obtained the proper age and they  
18 can't run for office. And there are Cherokees  
19 who are not by-blood and they cannot run for  
20 office.

21 Therefore, if we say that this one  
22 requirement, Cherokee by-blood, is no longer  
23 applicable, yet there are Cherokees in that  
24 category who are Freedmen descendants who can't  
25 run, then we've created a super citizen. These



1        were citizens that have rights above and beyond  
2        those of all the other Cherokees.

3                What the Federal Court asked us to do  
4        is apply our laws equally. If there are  
5        Cherokees who cannot run for office, Cherokee  
6        Indians who cannot run for office, then it is  
7        very likely that there would be Freedmen  
8        citizens who cannot run for office.

9                So these laws are applied equally to  
10       everybody. It's not that this by-blood law  
11       targets Freedmen, because, as Mr. Mayes pointed  
12       out, we have a Freedmen serving on the Tribal  
13       Council right now. He met the requirements. He  
14       didn't have any felonies, he lived in his  
15       district for the appropriate amount of time, and  
16       he was the right age. He was 26, I believe, the  
17       youngest council member we've had. And he also  
18       is a Freedmen descendant, and he meets the  
19       by-blood requirement.

20               So the law does not target -- this  
21       language in the Constitution does not target the  
22       Freedmen. And as I mentioned earlier, if the  
23       Cherokee Council would take action to amend the  
24       definition of by-blood, expanding it from just  
25       the CDIB card to anyone who can prove that they

1 had an ancestor who was a Cherokee Indian, even  
2 Marilyn Vann would qualify.

3 She's a descendant of a Cherokee Indian  
4 woman, and there is ample proof of that. The  
5 unfortunate thing is that in 1902 her ancestor  
6 was not allowed to enroll by blood because he  
7 was black.

8 Q. Is that all?

9 A. That's all I have.

10 Q. I've got one last question. Well, one last  
11 question involving two cases of candidates that  
12 were disqualified. There was a case, the Rhonda  
13 Brown case where she ran for Chief and was  
14 disqualified for residency. She's a Freedmen  
15 descendant and does not have a CDIB. The other  
16 one was Randy White who applied to be a  
17 candidate again in this election. He was  
18 disqualified for not being by-blood.

19 Considering those cases, how does that  
20 impact the question today?

21 A. Well, the Randy White decision definitely  
22 impacts my two challenges. But the Rhonda Brown  
23 case, I think, is very important because Rhonda  
24 Brown was -- or Rhonda Brown was -- or Rhonda  
25 Fleming, I think, is her actual name. She's a

1 Freedmen descendant and she applied to be a  
2 candidate, and her candidacy was disqualified by  
3 this body because she was not a resident of the  
4 Cherokee Nation.

5 She appealed to the federal court  
6 claiming that she was a super citizen and the  
7 requirements for residency did not apply to her  
8 because the federal courts had said that she, as  
9 a Freedmen, had all the rights of every  
10 Cherokee. Well, we know that's not the case,  
11 and the Federal Court saw through that as well  
12 and ruled against her.

13 Q. Okay. I think I just got a -- do I need to --

14 A. Well, I think they get to ask me questions, too.

15 MR. MAYES: Okay. All right. Thank  
16 you.

17 CHAIRMAN CALICO: Does anyone have a  
18 question for Mr. Cornsilk?

19 Do they get to ask their questions now  
20 or do --

21 MR. CHAFFIN: Well, yeah.

22 MR. MAYES: I'm through asking  
23 questions.

24 MR. CHAFFIN: Yeah. Does counsel for  
25 Ms. Vann have any questions of Mr. Cornsilk?

1 MS. HOTVEDT: This is Carly Hotvedt,  
2 counsel for Marilyn Vann. No, no questions.

3 MR. CHAFFIN: Okay.

4 CHAIRMAN CALICO: Okay. Thank you.

5 MR. CHAFFIN: Do you have anything  
6 else, Mr. Mayes?

7 MR. MAYES: Yes, I've got just a couple  
8 of things.

9 MR. CHAFFIN: Okay.

10 MR. MAYES: Can I --

11 CHAIRMAN CALICO: Yeah, you're good.

12 MR. MAYES: Okay. Now, when I first  
13 heard about the court ruling this morning, it  
14 really -- and I have not had a chance to read  
15 the whole thing, but I skipped down to the  
16 conclusion. You can see pretty much what -- the  
17 first thing that occurred to me that the  
18 Commission might want to consider is, also in  
19 the Constitution there is a clause about no law  
20 being applied retroactively.

21 Now, there -- what they ruled today, I  
22 understand, is an interpretation that the  
23 by-blood phrase should never have been in there.  
24 That's a little different than retroactive. I  
25 understand that. But in that effect, if this --



1 if this Commission decides that Ms. Vann is  
2 eligible because of that ruling, well, then  
3 you've gone and applied an order today that  
4 affects what happened back when we filed.  
5 Because conditions when we filed were exactly,  
6 as I said today, Constitution, election law,  
7 requires by-blood.

8 Now, having said that, my last question  
9 is just an inquiry and let the Commission know  
10 that I expect to be able to, in the event that  
11 there's -- I want to file an appeal to your  
12 decision, I expect that I would be able to know  
13 the process, and it should be clear and the  
14 timeline should be clear.

15 I'm saying this because of past  
16 experience. I've filed quite a few challenges  
17 before, and at least one time the Notice of  
18 Appeal that -- I think the chairperson is  
19 supposed to provide the Court and the -- that  
20 wasn't undone, and I was waiting for that to  
21 happen. And then by the time I could realize it  
22 was not going to happen and file, it was too  
23 late.

24 So I'm just asking that fair notice and  
25 the process be clear. I'm sure that you'll do

1           that; I just want to point it out and make sure  
2           that I, for the record, ask it. And that  
3           concludes my presentation.

4                   CHAIRMAN CALICO: Okay. Ms. Hotvedt,  
5           Mr. Mayes has concluded, so would you like to  
6           present?

7                   MS. HOTVEDT: I would. Thank you. I'm  
8           going to keep my arguments fairly brief today,  
9           because I believe this matter to be mute as a  
10          matter of law, considering the order that was  
11          filed today in the supreme court -- Cherokee  
12          Nation Supreme Court, Case 17-017, that  
13          definitively and explicitly states that the  
14          by-blood requirement found in the Constitution,  
15          the statutes, and any sort of regulatory and  
16          administrative code of the Cherokee Nation are  
17          void ab initio, which means void from the  
18          outset.

19                   And that ruling contended that the  
20          Treaty of 1866 was inclusive of Cherokee in  
21          indicating that Cherokee Freedmen and their  
22          descendants are entitled to have all of the same  
23          rights as Cherokees -- native Cherokees under  
24          the law. The Supreme Court ruling also  
25          incorporated the determinative language that was



1       asserted in the Cherokee Nation v. Nash case,  
2       that was consolidated with the Vann case,  
3       indicating that Cherokee Nation, Freedmen  
4       descendants, should be enrolled as citizens as a  
5       matter of rights, and also incorporated that  
6       treaty language to be applicable to every single  
7       component of the Cherokee Nation government,  
8       including the Election Commission.

9               And I believe the Election Commission  
10       recognized that particular language in the  
11       ruling that was issued in the Rhonda  
12       Brown-Fleming candidate challenge, wherein she  
13       was prohibited from being eligible to run for  
14       Chief of the Cherokee Nation based on the  
15       residency requirement.

16              However, there was specific language in  
17       there, and I'd like to read that into the  
18       record: "That any challenge to the candidate on  
19       the basis that she is not Cherokee by blood has  
20       no validity, as Cherokee Freedmen citizens are  
21       eligible to run for office if they meet all  
22       other requirements for the office applicable to  
23       all Cherokee citizens."

24              And at that point I'd like to take  
25       issue with the testimony that was given earlier

1       by David Cornsilk wherein he had argued that  
2       there was a particular distinction of Freedmen  
3       and Freedmen descendants being, quote, unquote,  
4       super citizens. That's a solacious distinction  
5       that does exist, as a practical matter, of fact  
6       or law. And to focus on the eligibility  
7       requirements failed to make the distinction or  
8       the acknowledgment that the only immutable  
9       characteristic is the by-blood requirement as  
10      listed. Every single other requirement is  
11      mutable, which means that is a condition capable  
12      of being changed to either meet the requirement  
13      in the instance of residency or age, or to be  
14      disqualified by action in the instance of having  
15      a felony.

16               Every single one of those is capable of  
17      being changed to either become qualified or to  
18      be prevented from being qualified, with the  
19      exception of the by-blood distinction. And we  
20      know that under the Equal Protection Provision  
21      in the Cherokee Nation Constitution, that those  
22      immutable characteristics will constitute a  
23      discrimination against the Cherokee Freedmen,  
24      which is inconsistent with the Treaty of 1866  
25      and inconsistent with the Cherokee Nation's

1 Supreme Court ruling today, indicating that any  
2 of the by-blood language is void ab initio.

3 So with that said, we have submitted  
4 the order filed in the Supreme Court case 17-017  
5 today, via e-mail to the Election Commission  
6 administrator, which we'd like to include in the  
7 record for consideration and request that this  
8 matter be considered mute and that the  
9 eligibility challenge be dismissed, or the  
10 Election Commission rule that Marilyn Vann is  
11 qualified and is eligible as a candidate based  
12 on the Treaty of 1866, which is supported by the  
13 Supreme Court ruling today in 17-017.

14 MR. CHAFFIN: Anything else?

15 MS. HOTVEDT: And that's -- that would  
16 conclude my argument today.

17 MR. CHAFFIN: Well, what we'll do,  
18 we'll have all the hearings, then we'll go into  
19 executive session and reach a decision, and  
20 those decisions will be announced today.

21 CHAIRMAN CALICO: Okay.

22 MR. CHAFFIN: And, Mr. Mayes, a  
23 decision will be announced today. You can stay  
24 around if you want a copy --

25 MR. MAYES: Do I have the ability to



1 ask a question of the Council?

2 MR. CHAFFIN: Yeah, but it's not in  
3 the -- then you have five days, if it's ruled  
4 against you, to appeal, five business days from  
5 the date that you receive notice of the  
6 decision, by statute.

7 MR. MAYES: So the notice of the  
8 decision is what triggers the -- the five days.

9 Now, that brings up another question,  
10 is that before these cases were considered -- I  
11 think their term is de nuevo, it's a new case.  
12 Because the Election Commission is not actually  
13 part of the judicial system. It's a hearing  
14 and -- by the Commission.

15 And so in the past those cases have  
16 been treated like new cases and not limited to  
17 just -- to decide whether the Election  
18 Commission has made a mistake or not. It's --  
19 all the evidence is reheard and all that. But  
20 I've noticed here lately, the last few  
21 challenges, it seems to have been treated like  
22 an appeal, a civil suit or something. And I'm  
23 going to -- I'm going to be raising those  
24 questions, so I just wanted to make sure you're  
25 aware of that, and so that's why I'm saying

1           that.

2                     Still, I would like to ask some  
3           questions to you.

4                     MR. CHAFFIN:   Okay.

5                     CHAIRMAN CALICO:   Okay.   Ms. Hotvedt?

6                     MS. HOTVEDT:   Yes.

7                     CHAIRMAN CALICO:   Mr. Mayes has a  
8           question for you.

9                     For her or for --

10                    MS. HOTVEDT:   I'd like to seek  
11           clarification before the Election Commission to  
12           determine -- we're not presenting witnesses  
13           today, we're here to make legal arguments.  
14           We're willing to participate before the  
15           tribunal, but I'm concerned that those questions  
16           are not particularly relevant to the rights of  
17           Ms. Vann, that affect her case in this  
18           particular matter.

19                    MR. MAYES:   You know, I think she's  
20           right about that.

21                    MR. CHAFFIN:   Madam Chairman, it is  
22           noted in the proceeding that it's proper to ask  
23           questions of the attorney.   There's a witness  
24           that can ask questions, but -- Mr. Mayes can  
25           make an argument against what the attorney has

1       said, but that would be done at this point in  
2       time. We've had the presentation. Mr. Mayes  
3       can make his final argument, and then  
4       Ms. Hotvedt can respond. I don't think it's  
5       proper to ask questions of the attorney.

6               MR. MAYES: I'm sorry. I should know  
7       these --

8               MR. CHAFFIN: You can make your final  
9       argument and you can respond anything --

10              MR. MAYES: Right. Okay. Well, just a  
11       couple of things. The argument about the  
12       immutability of the requirements, it's a little  
13       bit of a stretch in my opinion. I know that  
14       the -- there's not much you can do about your  
15       by-blood, except maybe you discovered new  
16       evidence that shows you are by-blood.

17              There's the age. If you're not old  
18       enough, you just have to wait. And if you're  
19       not -- if you're in a situation like Ms. Brown  
20       was where her family was pretty much ejected  
21       from her allotment and had her -- their land and  
22       everything stolen from them and -- around the  
23       time of the Tulsa riots, and had to move to --  
24       to California and try to survive. And then once  
25       you're engrained or you've got roots, how can



1       you suddenly come back and exercise your civil  
2       rights?

3               There's a process, you have to have --  
4       you have to be able to make that happen. So in  
5       a real sense, residency oftentimes -- it's not  
6       always mutable. There's a lot of things that  
7       have to happen before you can correct that.

8               And I might also note that residency  
9       hasn't always been. I remember back in the 1995  
10      election that we had candidates from all over.  
11      I remember Harry Tootle, use your noodle on the  
12      Chief's ballot, so it's not just so cut and dry.  
13      There's a lot of complex issues here that should  
14      have been resolved, even back way before the  
15      last election. It should have -- you've had a  
16      Constitutional convention.

17              And this opens up all kinds of  
18      Constitutional crisis questions that should have  
19      been addressed, but it seems like it's been  
20      avoided. And that's my main mission here or  
21      purpose, is to try to drag this out in the  
22      sunshine so we can see what needs to be done to  
23      fix it.

24              And that's really what -- and one last  
25      thing, I know this is not a popular thing, but

1 the 1866 treaty, which was mentioned earlier, it  
2 was made with the Cherokee Nation under the 1839  
3 Constitution. And there's a strong case to be  
4 made that the current Cherokee Nation of  
5 Oklahoma is not connected. Those -- those  
6 treaties are not signed. They're not in  
7 agreement with the current government  
8 established today.

9 So, I mean, that gets real complicated,  
10 but I'm just throwing that out there, that it  
11 is the real issue and it's a valid issue. And  
12 with that, I think I'm done. Thank you for  
13 hearing me out.

14 CHAIRMAN CALICO: Thank you.

15 Ms. Hotvedt, do you have anything?

16 MS. HOTVEDT: Just briefly. These  
17 arguments in opposition to recognizing the  
18 validity of the 1866 treaty and other attempts  
19 to make distinction between, you know, immutable  
20 characteristics and Constitutional procedures  
21 and, you know, other issues that are not before  
22 this body, are just an attempt to obfuscate the  
23 true nature of the issue, which is Cherokee  
24 Freedmen descendants have full rights under  
25 Cherokee law to seek public office, just like

1           any other native Cherokee, assuming that they  
2           meet all of the other requirements.

3                     That's the only thing that we're making  
4           a defense on, and we're standing on the ruling  
5           today before the Cherokee Nation Supreme Court  
6           in 17-017. We definitely appreciate the  
7           Election Commission's participation in this  
8           hearing and considering our defense, and hope to  
9           get a favorable ruling. And thank you very  
10          much. We'll leave it at that.

11                    CHAIRMAN CALICO: Thank you.

12                    MR. CHAFFIN: That concludes the  
13          hearing.

14                    CHAIRMAN CALICO: Okay. That will  
15          conclude the hearing, as Mr. Shaffin said. We  
16          will go into executive session after we've heard  
17          everything, and then come back with the ruling.  
18          And if you're still around, you can come back  
19          again. Or if you want us to give you a call  
20          or --

21                    MR. MAYES: Well, I've -- I'm going to  
22          drive back to Texas tonight, so I might leave as  
23          soon as I'm able to. But I'm definitely  
24          interested in hearing the other hearings, so if  
25          you don't mind, I'll just sit in.

1 MR. CHAFFIN: It will be e-mailed to  
2 you.

3 MS. HOTVEDT: I'm sorry. This is Carly  
4 Hotvedt. For clarification, we'll get an  
5 e-mail. Will that be simultaneous with the  
6 announcement or will that come afterwards?

7 MR. CHAFFIN: It will be within a few  
8 minutes after --

9 CHAIRMAN CALICO: Yeah, within a few  
10 minutes after we issue it.

11 MS. HOTVEDT: Okay. That's sufficient  
12 for me. I won't stick around. I'll just keep  
13 an eye on my e-mail.

14 CHAIRMAN CALICO: Okay.

15 MS. HOTVEDT: Thank you.

16 CHAIRMAN CALICO: Thank you, Ms. Vann.

17 MS. VANN: Thank you. Thank you,  
18 everybody.

19 CHAIRMAN CALICO: Thank you, Mr. Mayes.

20 Okay. So I have a motion by Rick and a  
21 second by Randy. All in favor to return at  
22 2:15? And it's 1:40 now. So we'll take a break  
23 at 1:40 and come back at 2:15.

24 (At which time, the hearing was  
25 concluded and soon thereafter a ruling was



1 reached by the Commission and recited into the  
2 record.)

3 CHAIRMAN CALICO: I will entertain the  
4 motion to exit executive session at 4:20.

5 MS. SELLERS: So moved.

6 CHAIRMAN CALICO: I have a motion. Do  
7 I have a second?

8 MR. CAMPBELL: Second.

9 CHAIRMAN CALICO: I have a second. All  
10 in favor?

11 (At which time, the Commission answered  
12 collectively in the affirmative.)

13 (Whereupon, Madam Chair Calico read the  
14 decision of the Cherokee Nation Election  
15 Commission in reference to the Challenge to the  
16 Eligibility of Marilyn Vann, Candidate for  
17 Council, into the record.)

18 CHAIRMAN CALICO: I'm going to read  
19 each one of these as they were given to us.

20 It says, Before the Cherokee Nation  
21 Election Commission of the Cherokee Nation in  
22 reference to the Challenge to the Eligibility of  
23 Marilyn Vann, Candidate for Council --

24 MR. CHAFFIN: Would you give the court  
25 reporter a copy of that? And show it was read

1           into the record.

2                   CHAIRMAN CALICO:   Candidate for  
3           Council, At-Large District for the 2021 General  
4           Election, Eligibility Hearing No. 2021-1.  
5           Decision.

6                   CHAIRMAN CALICO:   And do I need to read  
7           who all signed it?

8                   MR. CHAFFIN:   Just state that it was  
9           signed by all the Commissioners.

10                  CHAIRMAN CALICO:   And this was signed  
11           by all five Commissioners.

12                  MR. CAMPBELL:   We do need to do a  
13           motion.

14                  CHAIRMAN CALICO:   And at this time,  
15           I'll --

16                  MR. CHAFFIN:   And I ask that that be  
17           made a part of the record.

18                  CHAIRMAN CALICO:   Please, let that be  
19           made a part of the record.

20                  At this time I will entertain a motion  
21           to approve Marilyn Vann or --

22                  MR. CHAFFIN:   The Marilyn Vann  
23           decision.

24                  CHAIRMAN CALICO:   To approve the  
25           Marilyn Vann decision.

1 MS. BALLEW: I make a motion to approve  
2 the Marilyn Vann decision.

3 MR. CAMPBELL: Second.

4 CHAIRMAN CALICO: I have a motion and a  
5 second. All in favor?

6 (At which time, the Commission answered  
7 collectively in the affirmative.)

8 (Hearing 2021-1 concluded.)  
9  
10  
11  
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C E R T I F I C A T E

STATE OF OKLAHOMA   )  
                                  )  
COUNTY OF TULSA     )

I, Tammie Shipman, Certified Shorthand Reporter  
in and for the State of Oklahoma, do hereby certify  
that the foregoing proceedings are a true and correct  
transcript of the record of the machine shorthand  
notes taken by me and transcribed into written form  
under my supervision, direction and control.

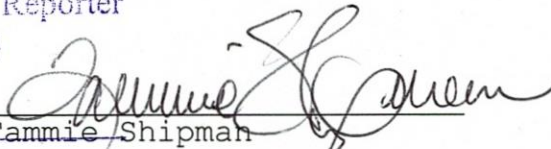
I further certify that I'm neither related to nor  
attorney for any interested party in the named action,  
nor otherwise interested in the outcome of said  
action.

WITNESS MY HAND, this 12th day of March, 2021.



Tammie Shipman  
State of Oklahoma  
Certified Shorthand Reporter  
CSR #1564

My Certificate Expires \_\_\_\_\_

  
\_\_\_\_\_  
Tammie Shipman  
Shorthand Reporter  
CSR #1564



# Cherokee Nation Election Commission

P.O. Box 1188, Tahlequah, OK 74465-1188

Email: [election-commission@cherokee.org](mailto:election-commission@cherokee.org)

Website: <https://election.cherokee.org/>



Phone: 918-458-5899

Toll Free: 1-800-353-2895

Fax: 918-458-6101

February 12, 2021

To: Marilyn Vann  
mkvann@hotmail.com

To: Robin Mayes  
mayes1839@gmail.com

Notice is hereby given pursuant to Section 37 of Title 26 (Elections) of the Cherokee Nation Code Annotated that a contest of your eligibility as a candidate for At-Large Council has been filed. A copy of said contest is attached.

Pursuant to the above Section 37 and pursuant to Section 2.09 of the Rules and Regulations of the Cherokee Nation Election Commission, (the "Commission"), notice is also given to the Candidate and Contestant that a hearing will be held by the Cherokee Nation Election Commission office on February 18, 2021 at 1:00 PM, at the Election Commission office, 17763 S. Muskogee Ave, Tahlequah, OK 74464, at which the Commission will hear evidence and render it's decision. The Candidate and contestant, and/or their respective legal counsel, may appear and present evidence and argument in support of their respective positions.

COVID-19 procedures pursuant to Cherokee Nation Executive Order 2020-02-CTH must be followed.

Dated this 12<sup>th</sup> day of February, 2021

Cherokee Nation Election Commission

BY: Shawna Calico  
Shawna Calico, Chairman



BEFORE THE CHEROKEE NATION ELECTION COMMISSION  
OF THE CHEROKEE NATION

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

Hearing Procedure

This hearing is being conducted pursuant to Section 37 of Title 26 of the Cherokee Code Annotated and the Rules and Regulations of the Commission. Notice of this Hearing has been given as provided by law to the Candidate, with a copy of the Protest. Proof of service on the Candidate and Contestant shall be made a part of the record.

The Procedure for this hearing will be as follows:

1. The Chairman will preside over the hearing and make any necessary rulings, and may consult with Commission legal counsel. Any Commission Member who disagrees with the Chairman's Ruling may request a voice vote by full Commission and the Majority vote shall control.
2. The parties, counsel for the parties and the audience should conduct their selves in a respectful and courteous manner and anyone creating a disturbance will be asked to leave.
3. The formal rules of evidence shall not apply unless the Commission in its discretion rules otherwise.
4. The Commission Members and Commission Attorney may ask questions at any time. Commission Members, Commission Staff or Commission Attorney may not be called as a witness.

5. The proceeding shall be recorded by a Certified Court Reporter, who shall also swear any witness.

6. First, the Commission shall make a part of the Record the Protest and Challenge, all Documents related to Eligibility submitted by the Candidate at the time of filing for Tribal Council and all Information obtained by the Commission pursuant to Authorization by the Candidate.

7. Second, the Protestant and Challenger shall be given the opportunity to present any evidence in support of their Protest and Challenge; and, the Candidate shall be allowed to cross exam any witness called and redirect and recross will be allowed. All Exhibits shall be marked and made a part of the record.

8. Third, the Candidate shall be given the opportunity to present any evidence in opposition to the Protest and Challenge; and, the Protestant and Challenger shall be allowed to cross exam any witness called and redirect and recross will be allowed. All Exhibits shall be marked and made a part of the record.

9. At the end of the evidence, the parties will be allowed closing arguments to the Commission within a time frame set by the Commission; and, after such closing argument, the Commission will consider the evidence in executive session.

10. The Commission will reconvene the hearing to render its decision.

Approved by the Cherokee Nation Election Commission on  
February 12, 2021.

Cherokee Nation Election  
Commission, Defendant

BY: Shawna Calico  
Shawna Calico, Chairman



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

CHEROKEE NATION

FEB 08 2021

ELECTION COMMISSION FILED



CHEROKEE NATION  
FEB 11 2021  
ELECTION COMMISSION FILED

**From:** Robin Mayes <mayer1839@gmail.com>  
**Sent:** Thursday, February 11, 2021 4:53 PM  
**To:** Marcus Fears  
**Subject:** <EXTERNAL> Addendum to my At Large Candidate Challenge

Marcus,

Please find the following addendum to my At Large candidate challenge to be incorporated with the original complaint filed February 8.

Thank you,

## Robin Mayes, Candidate At Large Council

ADDENDUM>>>>>>>>>>>>>

The Constitution of the Cherokee Nation requires that citizens seeking an elected office in the Cherokee Nation must be citizens by blood. This requirement applies equally to all citizens running for the offices of council, deputy principal chief and principal chief. It does not exclude freedmen, Delawares and Shawnees as long as they also meet the requirement of having Cherokee Indian blood. Right now, serving on the Council, is a freedman. He was eligible to serve because he met the residency, age, no felonies and Cherokee by blood requirements. Therefore, the by blood requirements do not exclude any of the adopted classes of citizens anymore than the other requirements do.

## Marcus Fears

---

**From:** Carly Griffith Hotvedt <griffith.hotvedt@gmail.com>  
**Sent:** Thursday, February 18, 2021 12:27 PM  
**To:** Marcus Fears; Election Commission  
**Cc:** Marilyn Vann; mkvann@gmail.com  
**Subject:** <EXTERNAL> Marilyn Vann Response to Mayes Eligibility Challenge  
**Attachments:** VANN Eligibility Challenge Response Signed.pdf

\*\*\*\*\*  
NOTICE: THIS EMAIL CONTAINS AN ATTACHMENT SENT FROM AN EXTERNAL SENDER.  
IF YOU DO NOT KNOW THE SENDER OR WERE NOT EXPECTING THIS EMAIL,  
DO NOT OPEN ANY EMAIL ATTACHMENTS AND DELETE THIS MESSAGE.  
Thank you: The Cherokee Nation - Information Technology Department  
\*\*\*\*\*

Marcus,

Please find attached a response on behalf of Marilyn Vann to the eligibility challenge filed against her by Robin Mayes.

If there are any questions or concerns, please let me know.

Wado,

Carly Griffith Hotvedt, JD/MPA  
1515 E 60th Street  
Tulsa, OK 74105  
918-398-1071  
[Griffith.hotvedt@gmail.com](mailto:Griffith.hotvedt@gmail.com)

FEB 18 2021

ELECTION COMMISSION FILED

BEFORE THE CHEROKEE NATION ELECTION COMMISSION  
OF THE CHEROKEE NATION

IN RE: CHALLENGE TO THE ELIGIBILITY )  
OF MARILYN VANN, CANDIDATE FOR )  
AT-LARGE COUNCIL FOR THE 2021 ) ELIGIBILITY HEARING NO. 2021-1  
GENERAL ELECTION )

RESPONSE TO ELIGIBILITY CHALLENGE

COMES NOW Marilyn Vann, by and through her counsel of record Carly Griffith Hotvedt, CNBA #0723, in response to the challenge filed before the Cherokee Nation Election Commission regarding the eligibility of her candidacy for Cherokee Nation Tribal Council Seat At-Large. Ms. Vann disputes the substance of the "complaint" filed by Robin Mayes before the Cherokee Nation Election Commission and re-asserts her eligibility to seek representative office for the Council At-Large Seat as a Freedman Descendant citizen of the Cherokee Nation with all rights and privileges under the law consistent with those of native Cherokees. The Election Commission should certify Ms. Vann as an eligible candidate for Cherokee Nation Tribal Council Seat At-Large.

ARGUMENT

Marilyn Vann is a citizen of the Cherokee Nation with lineal descendancy from a Freedman ancestor on the Dawes Roll. Ms. Vann properly filed to run for the At-Large Council seat in the 2021 election cycle in accordance with the criteria and deadlines as indicated by this Commission, under the statutes set forth in Title 26 of the Cherokee Nation Code, and in accordance with the full rights endowed to her through Article 9 of the Treaty of 1866.

A. Cherokee Nation is bound by the Treaty of 1866

Article 9 of the Treaty of 1866 expresses:

"[A]ll freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the



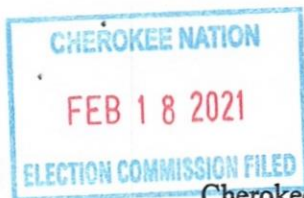


commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees: Provided, That owners of slaves so emancipated in the Cherokee Nation shall never receive any compensation or pay for the slaves so emancipated."

Broken down for practical consideration, the substantive portion of the treaty language indicates that **all Freedmen and their descendants shall have the rights of native Cherokees**. The plain language of the treaty should be applied as drafted and executed. As native Cherokees are entitled to seek public office within the Cherokee Nation, barring the prerequisite of meeting universally applicable eligibility requirements, so too is Ms. Vann, as an enfranchised Cherokee Freedman descendant and citizen.

Cherokee Nation has a continued obligation to uphold the provisions of the Treaty of 1866. The acknowledgement of those responsibilities has been determined by the Cherokee Nation Supreme Court in the Final Order in *In re: Effect of Cherokee Nation v. Nash*, SC-17-017. The Cherokee Nation Tribal Council passed Resolution No. 22-09, which voluntarily agreed to enter the Cherokee Nation into litigation before a Federal Court of the United States to determine the "narrow issue of construction of the 1866 Treaty language" and acknowledging that a ruling "would be binding upon both parties to the Treaty of 1866." A ruling was made in the federal case *Cherokee Nation v. Nash*, 267 F. Supp. 3d 86 (D.D.C. 2017), (Order filed August 30, 2017) indicating that the Nation's sovereign right to determine its membership was constrained by the Treaty of 1866 wherein Cherokee Freedmen and their descendants were determined to have a right to citizenship equal to that of native Cherokees. The Cherokee Nation Supreme Court issued a Preliminary Order indicating that the federal court ruling was enforceable in the Cherokee Nation and is binding against the Nation and its governmental branches and offices, which includes the Cherokee Nation Election Commission. The Court later entered a Final Order in SC-17-017 on September 9, 2019 which continues the Preliminary Order filed September 1, 2017.





Cherokee citizenship includes the right to seek public office. Freedman descendants have been acknowledged by the Courts of the Cherokee Nation, under the terms of the Treaty of 1866, to have the same citizenship rights as native Cherokees. Ms. Vann, as a Cherokee citizen of Freedman descent, possessing the same rights as native Cherokees, is qualified to seek office in the Cherokee Nation and meets all legally enforceable eligibility requirements to do so.

B. Constitutional and statutory provisions conflicting with the Treaty of 1866 are void

The “by blood” provision in the 1999 Cherokee Nation Constitution Article VI § 3 and statutory provisions incorporating “by blood” limitations are *void ab initio*. The Treaty of 1866, wherein Cherokee Nation ceded part of its sovereign right to determine membership, specifically in regard to Freedmen and their descendants, precedes the 1999 Constitution, thus any subsequent statute or constitutional provision inconsistent with terms of treaties currently binding the Cherokee Nation are impuissant. In other words, any constitutional provisions or statutory language that attempts to reduce or deny the citizenship of Cherokee Freedmen descendants violate the Treaty of 1866, are to be held void and without effect, and are thereby unenforceable. (*In re: Cherokee Nation v Nash*, Sept 9, 2019 Order) Further, conflicting provisions of law must give way to treaty provisions, absent explicit abrogation of treaty rights. *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979).

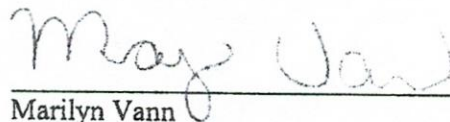
In *Washington*, neither a subsequent agreement regarding fish catch divisions between Canada and the United States, nor regulations promulgated by a commission intended to implement the agreement, implicitly extinguished indigenous rights reflected in treaty provisions regarding fish catches. *Id.* At 689-691. Just as subsequent regulations or conventions cannot supersede or extinguish rights guaranteed under treaty provisions, neither can subsequent constitutional provisions or statutory language implicitly abrogate the rights secured to Freedman

and their descendants in the Treaty of 1866. As such, any impositions on the rights and privileges of Freedman Descendants, as attempted by "by blood" restrictions in Article VI § 3 of the Cherokee Nation Constitution and in statutory provisions of the Cherokee Nation Code Annotated, are *void ab initio*.

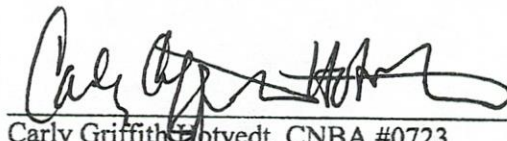
#### CONCLUSION

As the Cherokee Nation Election Commission is bound by the decision of the Cherokee Nation Supreme Court to recognize the citizenship rights of "those individuals who can trace an ancestor to the Dawes Freedmen Rolls...", under the binding language in Article 9 of the Treaty of 1866 which is not invalidated by subsequent constitutional or statutory provisions otherwise, this Commission should certify Ms. Vann's eligibility to be a candidate for the At-Large Council seat for the 2021 election cycle.

Respectfully submitted this 17<sup>th</sup> day of February 2021.



Marilyn Vann  
Candidate for At- Large Cherokee Nation  
Tribal Council



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





## Marcus Fears

---

**From:** Robin Mayes <mayer1839@gmail.com>  
**Sent:** Friday, February 19, 2021 4:39 PM  
**To:** Marcus Fears  
**Subject:** <EXTERNAL> Brief in support of Challenge Vann

February 22, 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

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Election Commission:

COMES NOW Robin Carter Mayes a Cherokee Citizen, registered voter and filed candidate for Council At-Large in this 2021 election.

In support of my timely filed complaint against the Marilyn Vann Campaign I provide the following facts for your consideration:

- 
- 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. The "by blood" requirement is at issue today.
- 
- The recently revised Election Law regarding qualifications continues to require ALL candidates to be Cherokee "by blood."
- The candidate packets published and distributed to potential candidates contains a list of qualifications that is misleading in that qualification "A. The Candidate shall be a citizen of the Cherokee Nation in accordance with Article IV of the Constitution of the Cherokee Nation and/or Cherokee Nation Supreme Court orders or decisions." #NOTE- Although Article IV does include the by blood requirement in later paragraphs it is Article VI that is specific to the Council requirements and does clearly require in Section 3 that Council Members be by blood.
- 
- 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."
- 
- The history of court case SC 17-07 is complicated and not necessary for this determination of candidate eligibility. Briefly, the Federal Court case most know as the Freedmen case went on for nearly 15 years. Eventually private negotiations resulted in an agreement that the Freedmen and the Cherokees would adhere to



the decision of the Federal Court regarding one narrow question. Does the 1866 Treaty grant Citizenship to the Freedmen and their descendants? The Court ruled that it does.

- The rendering of the federal Court's decision is the source of the conflict we are addressing today. As the AG in 2017 produced an opinion that in summary stated the Freedmen descendants are Citizens and added the right to run for elected office and brought his own opinion to the SC Chief Justice for confirmation.
- The Cherokee Supreme Court by Chief Justice Garret confirmed and the Election Commission revised their list of qualifications to include the effect of the Court Order.
- 
- The Election Law and the People's Constitution remain as was before the Federal Court decision.
- 
- SC 17-07 is not applicable because it is not yet completed and no final order of the Supreme Court has been rendered. Vann's candidacy and Mayes challenge all predate any final ruling of the Supreme Court.
- 
- The Constitution of the Cherokee Nation requires that citizens seeking an elected office in the Cherokee Nation must be citizens by blood. This requirement applies equally to all citizens running for the offices of council, deputy principal chief and principal chief. It does not exclude freedmen, Delawares and Shawnees as long as they also meet the requirement of having Cherokee Indian blood. Right now, serving on the Council, is a freedman. He was eligible to serve because he met the residency, age, no felonies and Cherokee by blood requirements. Therefore, the by blood requirements do not exclude any of the adopted classes of citizens anymore than the other requirements do.

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 oversight 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.

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Robin Carter Mayes



## Marcus Fears

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**From:** Carly Griffith Hotvedt <griffith.hotvedt@gmail.com>  
**Sent:** Monday, February 22, 2021 12:31 PM  
**To:** Marcus Fears; Election Commission  
**Cc:** Marilyn Vann; mkvann@gmail.com  
**Subject:** Fwd: <EXTERNAL> Vann Eligibility Hearing  
**Attachments:** SC-17-07 37-Final Order 2-22-21.pdf

\*\*\*\*\*  
NOTICE: THIS EMAIL CONTAINS AN ATTACHMENT SENT FROM AN EXTERNAL SENDER.  
IF YOU DO NOT KNOW THE SENDER OR WERE NOT EXPECTING THIS EMAIL,  
DO NOT OPEN ANY EMAIL ATTACHMENTS AND DELETE THIS MESSAGE.  
Thank you: The Cherokee Nation - Information Technology Department  
\*\*\*\*\*

Marcus,

In light of today's ruling from the Cherokee Nation Supreme Court, I would like to request that the most recent order from SC-17-017 (attached) be submitted in supplement to Marilyn Vann's response filed in the challenge to her candidate eligibility.

Wado,

Carly Griffith Hotvedt

----- Forwarded message -----

**From:** Marcus Fears <[marcus-fears@cherokee.org](mailto:marcus-fears@cherokee.org)>  
**Date:** Mon, Feb 22, 2021 at 9:54 AM  
**Subject:** RE: <EXTERNAL> Vann Eligibility Hearing  
**To:** Carly Griffith Hotvedt <[griffith.hotvedt@gmail.com](mailto:griffith.hotvedt@gmail.com)>

Ok, we will be able to accommodate Ms. Vann as well.

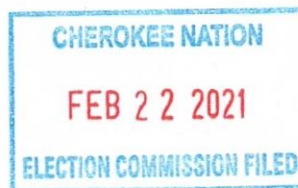
Thank you,

**Marcus Fears**

Cherokee Nation Election Commission

Administrator

918.458.5899



**From:** Carly Griffith Hotvedt <[griffith.hotvedt@gmail.com](mailto:griffith.hotvedt@gmail.com)>

**Sent:** Monday, February 22, 2021 8:53 AM

**To:** Marcus Fears <[marcus-fears@cherokee.org](mailto:marcus-fears@cherokee.org)>

**Subject:** Re: <EXTERNAL> Vann Eligibility Hearing

I believe Marilyn would like to join as well. We would be on separate lines however. The number listed in my signature block is correct.

Thank you for the update.

Carly

On Mon, Feb 22, 2021 at 9:45 AM Marcus Fears <[marcus-fears@cherokee.org](mailto:marcus-fears@cherokee.org)> wrote:

I'm working on the details this morning. If it's just you on the line then we may just call you if the number listed below is the correct number.

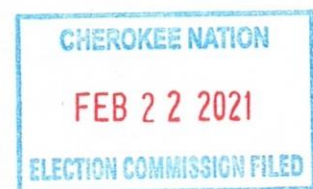
Thank you,

## **Marcus Fears**

Cherokee Nation Election Commission

Administrator

918.458.5899



**From:** Carly Griffith Hotvedt <[griffith.hotvedt@gmail.com](mailto:griffith.hotvedt@gmail.com)>

**Sent:** Monday, February 22, 2021 8:32 AM

**To:** Election Commission <[grpUd-Election\\_Commission@cherokee.org](mailto:grpUd-Election_Commission@cherokee.org)>; Marcus Fears <[marcus-fears@cherokee.org](mailto:marcus-fears@cherokee.org)>

**Subject:** <EXTERNAL> Vann Eligibility Hearing

Hello,

there a phone number or conference line to call into for the candidate eligibility hearing this afternoon at 1 pm?

Wado,

--

Carly Griffith Hotvedt, JD/MPA

1515 E 60th Street

Tulsa, OK 74105

918-398-1071

[Griffith.hotvedt@gmail.com](mailto:Griffith.hotvedt@gmail.com)

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FILED

IN THE SUPREME COURT OF THE CHEROKEE NATION

2020 FEB 22 AM 10:36

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, )

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

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**Petitioners:**

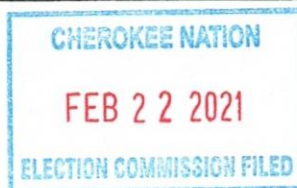
Sara Hill for the Cherokee Nation  
Chrissi Nimmo  
Courtney Jordan  
Office of the Attorney General  
Cherokee Nation  
P.O. Box 948  
Tahlequah, OK 74465  
[sara-hill@cherokee.org](mailto:sara-hill@cherokee.org)  
[chrissi-nimmo@cherokee.org](mailto:chrissi-nimmo@cherokee.org)

**Before:**

Lee W. Paden, Chief Justice  
Shawna S. Baker, Justice  
Mark L. Dobbins, Justice  
John C. Garrett, Justice  
Rex Earl Starr, Justice

**Opinion by:**

Shawna S. Baker, Justice



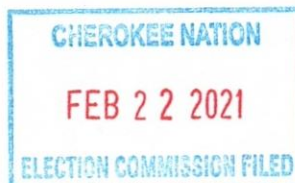


## **FINAL ORDER**

This Matter came before the Court on an *Amended Motion for Final Disposition* filed by the Cherokee Nation on February 8, 2021. The Court finds as follows:

### ***Procedural History***

This matter began on September 1, 2017 when the Cherokee Nation, represented by the Office of the Attorney General, filed an *ex parte Petition for Declaratory Action, Petition for Writ of Mandamus and Request for Preliminary Order* finding that the memorandum opinion issued by the United States District Court, Washington D.C., in *Cherokee Nation v. Nash et al, and Vann et al, and Zinke*, 267 F. Supp. 3d 86 (D.D.C. 2017), *enforced sub nom. In re Effect of Cherokee Nation v. Nash*, No. SC-17-07, 2017 WL 10057514 (Cherokee Sup. Ct. Sept. 1, 2017) ("Nash Opinion") was binding upon the Cherokee Nation. Pursuant to Supreme Court Rule 4, the Chief Justice issued a *Preliminary Order Granting Declaratory Action and Petition for Writ of Mandamus* stating the Nash Opinion was binding within and against the Cherokee Nation. On December 11, 2017, proposed Intervenor filed a *Motion to Intervene, for Writ of Mandamus; and to Set Aside Preliminary Order*. The Court denied the *Motion to Intervene* on May 16, 2018, finding that the proposed Intervenor lacked standing. On December 7, 2018 a *Motion for Hearing and Final Disposition* was filed by the Office of the Attorney General. The Court in an Order dated September 9, 2019, adopted once again its earlier *Preliminary Order*. An *Amended Motion for Hearing and Final Disposition* was filed by the Office of the Attorney on February 8, 2021, followed by proposed Intervenor *Motions to Intervene* and the *Motion of Cherokee Councilor Wes Nofire, Councilor Harley Buzzard, and Councilor Julia Coates, to file an Intervention, and or in the Alternative, for Leave to File*



*Amicus Curiae Brief*. Today, the Court issued a *Combined Order* denying the relief sought finding that standing was lacking by the proposed Intervenor including Tribal Councilors Wes Nofire, Harley Buzzard, and Julia Coates. The Court notes that no one with standing challenged the *Preliminary Order*.

### ***Discussion***

On war-torn soil in Indian Territory during Reconstruction, thousands of miles from their respective homelands, the heartbeats of three First Nations, the Cherokees, the Shawnees, and the Delawares, and three continents of flesh tones and cultures, Native Americans, African Americans, and adopted or intermarried-European Americans, were forced to coalesce and weave together a single nation to be known by only one name henceforth: the Cherokee Nation. One hundred and fifty-five years after the 1866 Treaty,<sup>1</sup> native Cherokees must step fully into the promise they made “[o]n the far end of the Trail of Tears”<sup>2</sup>. By doing so, the Cherokee Nation, as a whole, lifts itself into the 21<sup>st</sup> century and sheds the heavy weight of antebellum and the pervasiveness of racism and racial injustice in favor of equality and justice for all.

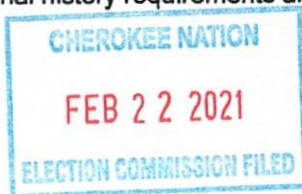
Unequivocally, Freedmen have rights equal to “by blood” or native Cherokees.<sup>3</sup> Freedmen are men, women, and persons whose “right to citizenship does not exist solely

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<sup>1</sup> Treaty with the Cherokee, 1866, U.S.-Cherokee Nation of Indians, July 19, 1866, *hereinafter* (“1866 Treaty”).

<sup>2</sup> *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S. Ct. 2452 (2020).

<sup>3</sup> *Cherokee Nation v. Nash*, 267 F. Supp. 3d 86, 127 (D.D.C. 2017). The United States District Court for the District of Columbia held that while the Cherokee Nation maintains a sovereign right to determine its membership, it must do so equally with respect to native Cherokees and the descendants of Freedmen per Article 9 of the 1866 Treaty with the Cherokee because “neither has rights either superior or, importantly, inferior to the other.” *Id.* at 140. Thus, any rights of citizenship for native Cherokees must be extended to Cherokee Freedmen. *Id.* This would necessarily include the right to run for elected office, so long as, other age, residency, and criminal history requirements are met.





under the Cherokee Nation Constitution and therefore, [their right to citizenship] cannot be extinguished solely by amending the Constitution” to exclude them.<sup>4</sup> Likewise, their right of citizenship cannot be enlarged by its inclusion in the Cherokee Nation Constitution. Freedmen rights are inherent. They extend to descendants of Freedmen as a birthright springing from their ancestors’ oppression and displacement as people of color recorded and memorialized in Article 9 of the 1866 Treaty.

The request before the Supreme Court is whether it may strike the “by blood” language found in the Cherokee Nation Constitution, the 2007 Cherokee Nation Constitutional Amendment, tribal statutes, administrative procedures, and other laws wherever found. The Cherokee Nation Attorney General grounds her request in a single authority: the actions taken by the 2009 Tribal Council and former Principal Chief Chadwick Smith and the resulting, binding, federal court decision arising therefrom.

On February 26, 2009, Speaker Meredith Frailey sponsored a Resolution Ratifying Litigation in the United States District Court for the Northern District of Oklahoma.<sup>5</sup> The Resolution states in part:

**WHEREAS, Legislative Act 07-01<sup>6</sup> provides that litigation brought on behalf of the Cherokee Nation and involving substantial assets and sovereignty of the Nation be authorized by the Principal Chief and authorized by the Council;**

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<sup>4</sup> *Id.* In light of *Nash, Lucy Allen v. Cherokee Nation Tribal Council, et al.*, JAT-04-09, improperly holds that the Cherokee people have the right to amend the Cherokee Constitution regarding a blood quantum requirement when said blood quantum requirement limits the rights of Freedmen.

<sup>5</sup> R-22-09, <https://cherokee.legistar.com/View.ashx?M=F&ID=631997&GUID=C3E852FF-8389-4CDD-AFB6-1DFA9BBBF8FB>

<sup>6</sup> LA-07-01 citing Article V, Section 7 of the Cherokee Nation Constitution for its authority.



WHEREAS, it is desirable for a federal court to determine the narrow issue of construction of the 1866 Treaty language and any federal law affecting the treaty regarding any federal rights, if any, of freedman and their descendants;

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WHEREAS, such a federal court ruling would be binding upon both parties to the Treaty of 1866....

**Emphasis added.**

Following introduction of the Resolution in the Rules Committee Meeting, a motion in favor of the same carried 17-0. *Id.* Members of the 2009 Tribal Council included: Meredith A. Frailey, Julia Coates, Harley L. Buzzard, Cara Cowan Watts, Buel Anglen, Bradley Cobb, Chris Soap, Bill John Baker, S. Joe Crittenden, David Thornton, Sr., Chuck Hoskin, Jr., Tina Glory Jordan, Jodie Fishinghawk, Jack Baker, Janelle Lattimore Fullbright, Don Garvin, and Curtis Snell. Less than thirty days later at the Tribal Council meeting held on March 16, 2009, the Resolution again carried with a vote of 17-0.<sup>7</sup>

Former Principal Chief Smith, who is on record in early 2008 stating Article 9 of the 1866 Treaty was "*bilaterally abrogated*" by the U.S. and Cherokee Nation,<sup>8</sup> signed Resolution 22-09 on March 23, 2009 fulfilling the requirements of LA-07-01 and waived the tribe's sovereign immunity for the limited purpose of litigating the 1866 Treaty. In doing so, the "by blood" language found limiting the rights of Freedmen descendants, whether found in the Cherokee Nation Constitution or elsewhere, was placed in the hands

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<sup>7</sup> See <https://cherokee.legistar.com/View.ashx?M=F&ID=631997&GUID=C3E852FF-8389-4CDD-AFB6-1DFA9BBBF8FB>

<sup>8</sup> Principal Chief Chadwick Smith, *Cherokee Nation Shadow Report to Committee on the Elimination of Racial Discrimination*, February 5, 2008.





of a federal court. The Cherokee Nation agreed to be bound, for all time, to the court's ruling.

Shortly thereafter, Attorney General A. Diane Hammons filed litigation in the Northern District of Oklahoma. The *Nash* case, for which the Resolution was passed, was transferred to the D.C. Circuit and combined with the *Vann* case. Eight years later on August 30, 2017, the case was decided by a federal court. *Nash* states, in relevant parts, that:

The Cherokee Nation's sovereign right to determine its membership is no less now, as a result of this decision, than it was after the Nation executed the 1866 Treaty. The Cherokee Nation concedes that its power to determine tribal membership can be limited by treaty. [Citation omitted]. The Cherokee Nation can continue to define itself as it sees fit but must do so equally and evenhandedly with respect to native Cherokees and the descendants of Cherokee freedmen. By interposition of Article 9 of the 1866 Treaty, neither has rights either superior or, importantly, inferior to the other. Their fates under the Cherokee Nation Constitution rise and fall equally and in tandem. In accordance with Article 9 of the 1866 Treaty, the Cherokee Freedmen have a present right to citizenship in the Cherokee Nation that is coextensive with the rights of native Cherokees.<sup>9</sup>

On September 1, 2017, the Cherokee Nation Supreme Court was asked by Former Attorney General Todd Hembree to:

[I]ssue a preliminary order as valid and enforceable as against the Nation, and direct the Cherokee Nation Registrar, and the Cherokee Nation government and its offices to begin processing the registration applications of eligible Freedmen descendants, and that such Freedmen descendants, upon registration as Cherokee citizens shall have all the rights and duties of any native Cherokee, including the right to run for office.<sup>10</sup>

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<sup>9</sup> *Cherokee Nation v. Nash*, 267 F. Supp. 3d 86.

<sup>10</sup> *In re: Effect of Cherokee Nation v. Nash, and Vann v. Zinke*, SC-2017-07.  
<https://www.cherokeecourts.org/Supreme-Court/SC-2017-07-In-Re-Effect-of-Cherokee-Nation-v-Nash-and-Vann-v-Zinke>



The Court entered its Preliminary Order on the same date enforcing the decision by the federal district court and granting the relief sought holding:

Therefore, the Court hereby Orders, Adjudges, and Decrees that the memorandum opinion issued August 30, 2017 by the District Court of the District of Columbia in case no. 13-01313 is enforceable within and against the Cherokee Nation, and that therefore the Cherokee Nation Registrar, and the Cherokee Nation government and its offices, are directed to begin processing the registration applicants of eligible Freedmen descendants, and that such 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.<sup>11</sup>

On December 7, 2018, Attorney General Todd Hembree filed a Motion for Hearing and Final Disposition wherein he requested the Court set the case for hearing and issue an "Order or Opinion finally disposing of the case."<sup>12</sup> On September 9, 2019, the Supreme Court issued an Order denying the Motion and adopted its earlier Preliminary Order.<sup>13</sup>

On February 8, 2021, Attorney General Sara Hill filed an Amended Motion for Hearing and Final Disposition<sup>14</sup> wherein she requested the Court strike "by blood" from the 1999 Cherokee Nation Constitution as such language is inconsistent with the Court's earlier ruling. Attorney General Hill's request to strike the "by blood" language is a more specific request than that made by her predecessor.

For approximately three and one-half years, the gap in time between the Court's Preliminary Order and Attorney General Hill's Amended Motion, the Cherokee Nation

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*





government and the Cherokee Nation Registrar have complied with the Court's Order. During this time, neither the legislative branch nor the people have initiated the laborious task to repeal the "by blood" language by a constitutional amendment. Furthermore, the Tribal Council has been remiss in drafting, circulating, and passing legislation to update the Cherokee Nation Code to comply with the ruling in *Nash*. For example, the Cherokee Nation Code still contains "by blood" references in the Citizenship Act, Title 11; the Election Code, Title 26; The Freedom of Information Act, Title 67; and the Constitutional Convention Act, Title 73.

The "by blood" language found within the Cherokee Nation Constitution, and any laws which flow from that language, is illegal, obsolete, and repugnant to the ideal of liberty. These words insult and degrade the descendants of Freedmen much like the Jim Crow laws found lingering on the books in Southern states some fifty-seven years after the passage of the 1964 Civil Rights Act. "By blood" is a relic of a painful and ugly, racial past. These two words have no place in the Cherokee Nation, neither in present day, nor in its future.

Attorney General Hill's request to remove the unenforceable language is not unreasonable. She is the chief legal officer of the Cherokee Nation and her job is to represent the public interest. The descendants of Freedmen are part of the larger constituency that she both serves and represents.

Two Tribal Councilors, Julia Coates and Harley Buzzard, who voted in favor of R-22-09 have stated in their Brief in Support of the Movants' Motion to Intervene filed herein,



"The sovereignty of the Cherokee Nation is at the heart of this litigation."<sup>15</sup> They are correct. Along with fourteen other Councilors and Speaker Frailey, Julia Coates and Harley Buzzard, as the people's representatives, unanimously waived the Cherokee Nation's sovereignty by the casting of their votes and Chief Smith joined them with the stroke of his pen. Today, the consequences of their collective decision to waive sovereignty, authorize federal litigation, and an agreement to be bound by the ruling of a federal court is the heart of this litigation.

Today's unanimous opinion in SC-2017-07 holds that the words "by blood" are *void ab initio*, were never valid from inception, and must be removed wherever found throughout our tribal law when said words are used in reference to the Dawes Rolls. In doing so, this Court recognizes the importance of the 1866 Treaty for purposes of our nation's prospective sovereignty and the underpinnings of citizenship.

Article VII, Section 4 of the 1999 Cherokee Constitution demands that this Court declare unconstitutional legal acts *void ab initio* and void from inception. Henceforth, any language existing in contradiction to *Nash* found within our laws, on or after July 19, 1866, whatever the source, never had any force or effect upon its enactment. This includes provisions within the Cherokee Nation Constitution, the 2007 Cherokee Nation Constitutional Amendment, tribal statutes, administrative procedures, and laws wherever found. As such, all Supreme Court and JAT opinions issued pre-*Nash*, to the extent they examine and opine on laws in contradiction to *Nash*, are no longer binding precedent.

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<sup>15</sup> *Id.* SC-2017-07: Motion of Cherokee Councilor Wes Nofire, Councilor Harley Buzzard, and Councilor Julia Coates, to file an Intervention, and or in the Alternative, for Leave to File Amicus Curiae Brief.





To be clear, the 1976 Cherokee Nation Constitution illegally includes the words "by blood" for Chief and Council qualifications. The 1999 Cherokee Nation Constitution illegally includes the words "by blood" for Chief and Council qualifications. Furthermore, there is no 2007 Cherokee Nation Constitutional Amendment. It is as though the Amendment was never passed by a vote of the people.

When a law is *void ab initio*, there can be no balancing of equities as none exist. The 1866 Treaty rights were enacted to place limits on our government. By enforcing them, this Court protects each and every citizen equally. It is a misnomer to refer to any of the violations of Article 9 of the 1866 Treaty in our code, policies, procedures, JAT and Supreme Court opinions, and or Constitution as law. Despite having form and features of the same, these provisions and others, were never law. "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed, as they never provided authority nor protection to anyone." *Norton v. Shelby County*, 118 U.S. 425, 442, 6 Sup. Ct. 1121, 30 L. Ed. 178 (1886).

It is the paramount duty of this Court to draw a bright line of demarcation, to erase confusion and misinformation, and to be fundamentally honest about the laws to which we are bound. Otherwise, the consequences could place our nation in peril.<sup>16</sup>

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<sup>16</sup> Today, the Cherokee Nation is dependent on federal subsidies and aid for approximately 70% of our General Operating Fund. See <https://oklahoman.com/article/5670440/council-for-chokeee-nation-approves-record-152-billion-budget>. See also, <https://www.cherokee.org/our-government/office-of-financial-resources/financial-reports/> (to learn more specific details from the Cherokee Nation's Financial Reports prepared by Cherokee Nation Treasurer, Tralynna Sherrill Scott). An abrogation of the 1866 Treaty or further violations may render these funds in jeopardy. During the *Nash* litigation, the tribe's failure to abide by the 1866 Treaty drew not only drew threats from the U.S. to withhold the same, but included a temporary suspension of \$33 million dollars from the Department of Housing and Urban Development. See [https://www.cherokeephox.org/news/federal-housing-funds-for-chokeee-nation-are-suspended-over-freedmen-issue/article\\_8747a809-2df3-515e-ae1f-07b44302ae14.html](https://www.cherokeephox.org/news/federal-housing-funds-for-chokeee-nation-are-suspended-over-freedmen-issue/article_8747a809-2df3-515e-ae1f-07b44302ae14.html) and <https://www.indianz.com/News/2011/002931.asp>. See also House Resolution Bill H.R. 2824, Introduced



As our people rejoice the ruling in *McGirt*, and expect a similar determination in pending litigation before the Oklahoma Court of Civil Appeals,<sup>17</sup> may we be reminded that the Creek Nation's rights to self-governance and the recognition of its reservation was dependent upon its 1866 Treaty.<sup>18</sup> Likewise, Cherokee Nation's pathway to similar recognition requires upholding the 1866 Treaty, not abrogating it. Our ancestors suffered unspeakable atrocities in their fight to preserve culture, language, traditions, values, and right to self-governance. Any calls by the government or the people demanding a new amendment to the Constitution, a Constitutional Convention, or the passage of other laws, for the sole purpose of denying the right of citizenship to Freedmen descendants, must only be seen as politically and or socially motivated acts. Such words shall never be law.<sup>19</sup>

In conclusion, this opinion is not written to speak to any one candidate's candidacy for office in the upcoming 2021 election cycle as the Election Commission has already held that the lack of Cherokee "blood" does not prohibit an individual from seeking elective office.<sup>20</sup>

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on 6/21/2007; <https://www.congress.gov/bill/110th-congress/house-bill/2824/text?r=9&s=1>, as well as, House Resolution Bill H.R. 2761, Introduced 6/8/2009; <https://www.congress.gov/bill/111th-congress/house-bill/2761/text> (both bills sought to sever relations with the Cherokee Nation and to suspend the tribe's right to conduct gaming operations).

<sup>17</sup> *Travis Hogner vs. State of Oklahoma*, F-2018-138.

<sup>18</sup> *McGirt*, 140 S. Ct. 2452 (2020).

<sup>19</sup> "It is an extravagant proposition that a void act can afford protection to the person who executes it." *In Osborn v. Bank of the United States*, 22 U.S. 738, 6 L. Ed. 204 (1824).

<sup>20</sup> *In Re: Challenge to the Eligibility of Rhonda Brown-Fleming*, CNEC 2019-5.



From this day forward, may we prosper as a nation and embrace one another with mutual respect, regardless of color, race, and ancestry, as that which we are: Cherokee citizens.

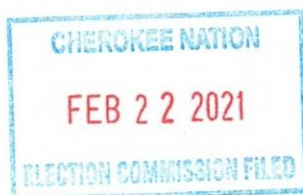
### **CONCLUSION**


Therefore, it is so Ordered that any reference to "by blood" citizenship or any other right or privilege of Cherokee citizens contained in the Cherokee Nation Constitution, including the 2007 Amendment, Article VI, Section 3, and Article VII, Section 2; the Cherokee Nation Code, including Title 11, Title 26, Title 67 and Title 73; and any and all accompanying rules, regulations, policies or procedures are *void ab initio*. The Court further Orders the Nation to remove any such reference to "by blood" citizenship from the Constitution, laws, and all accompanying rules, regulations, policies or procedure of the Cherokee Nation.

This final decision of the Cherokee Nation Supreme Court shall have the force of law, as to the construction and application there, in all the Courts of this Nation, until such construction or application shall be limited, altered or in any manner amended, by the subsequent decision of a subsequent case by the Supreme Court. (See Cherokee Nation Code, Title 20, Section 54)


**IT IS SO ORDERED** that this order shall be the final order and shall supersede all previous orders entered in this case.


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

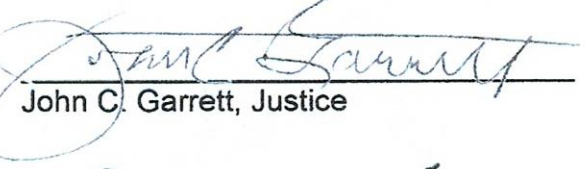


  
\_\_\_\_\_  
Lee W. Paden, Chief Justice



  
Shawna S. Baker, Justice

  
Mark L. Dobbins, Justice

  
John C. Garrett, Justice

  
Rex Earl Starr, Justice

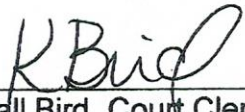
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**Certificate of Mailing**

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:

Sara Hill, [sara-hill@cherokee.org](mailto:sara-hill@cherokee.org)

Chrissi Nimmo [chrissi-nimmo@cherokee.org](mailto:chrissi-nimmo@cherokee.org)

  
Kendall Bird, Court Clerk



BEFORE THE CHEROKEE NATION ELECTION COMMISSION  
OF THE CHEROKEE NATION

In Re: Challenge to the Eligibility of )  
Marilyn Vann, Candidate )  
for Council, At-Large District for )  
the 2021 General Election )

Eligibility Hearing No. 2021 - 1

DECISION

Now on this 22<sup>nd</sup> 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 22<sup>nd</sup> 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