

SC-21-02

FILED

Case No.

2021 MAR -1 PM 3:00

IN THE SUPREME COURT OF THE CHEROKEE NATION

CHEROKEE NATION
SUPREME COURT
NATHAN L. BIRD, COURT CLERK

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

SC-2021-02

**ON APPEAL FROM THE CHEROKEE NATION ELECTION COMMISSION
OF THE CHEROKEE NATION
Eligibility Hearing No. 2021 - 2**

**PETITIONER MASON HUDSON'S
OPENING BRIEF**

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STATEMENT OF JURISDICTION

The Cherokee Nation Supreme Court has original jurisdiction over this matter.

STATEMENT OF THE ISSUES

- I. Whether a Candidate for Council can seek a third term after being elected on two prior consecutive time?

STATEMENT OF THE FACT

The Petitioner, Mr. Mason Hudson, is a candidate for Council District 11 for the 2021 General Election. The incumbent Ms. Vazquez seeks a third consecutive “elected” term on the Council. Ms. Vazquez was elected to her first term on October 12, 2013, through a special election. This special election was held by the Cherokee Nation Election Commission due to the vacancy created when Chuck Hoskin, Jr. was appointed Secretary of State for the Cherokee Nation by then-Chief Bill John Baker. Ms. Vazquez was unopposed when she was re-elected to her second term on the Council District 11 in 2017. Mr. Mason has previously and timely raised an objection to the eligibility of incumbent District 11 Councilor Victoria Vazquez. On February 22, 2021, the Cherokee Nation Election Commission found pursuant to Attorney General Opinion 2016-CNAG-04 and Judgement in District Court Case No. CV-2018-122, the Candidate, Victoria Vazquez, was eligible to be a candidate for Council District 11. *See Attachment A.*

Candidate Mr. Mason timely files this petition and appeal.

ARGUMENT

I. The Tribal Constitution should not be interpreted differently for the office of the Executive than it should for a member of Council.

The Cherokee Constitution lays out the requirements to serve on the Tribal Council (further “Council”) of the Cherokee Nation (further “CN”). *See* C.N. Const. art. VI, § 3; art. VII §§ 2 & 3. The CN Constitution requires that “All Council members be limited to two (2) consecutive elected terms on the Council.” C.N. Const. art. VI, § 3. Petitioner contends that Ms. Vazquez is not eligible by the term limits requirement in Article VI, Section 3; *see also In Re: Challenge to Buhl Anglen* (tribal councilors must who serve 2 terms must sit out 4 years). As it stands, the Cherokee Nation Supreme Court in *Cornsilks v. Hembree*, SC-2018-04, has previously analyzed Attorney General Opinion 2016-CNAG-04 as applied to when an elected official serves two terms. “Once a person has been ‘elected’ for 2 consecutive terms of office, that person become ineligible for the next election.” *Id.* Vazquez was elected to her first term on October 12, 2013, through a special election. Vazquez was re-elected to her second term unopposed in 2017.

Vazquez now seeks an unconstitutional third consecutive term on the Council. The Cherokee Nation Supreme Court made this clear that this is impermissible when they said “[t]his constitutional provision could not be more clearly written. Once a person has been ‘elected’ for 2 consecutive terms of office, that person becomes ineligible for the next election. There is no room for extension by way of challenge or other event which might shorten the number of days in office.” *Id.* Vazquez may contend she is eligible for another term because she did not take office until approximately two-months after her office’s

general election. The Supreme Court of the Cherokee Nation requires that the "The Cherokee Constitution should be read as it is plainly written to carry out the will of the Cherokee people" *Id.*

This will of the people is clearly known as the Supreme Court's *Cornsilk* opinion mirrors the intent as it was discussed during the Constitutional Convention:

MS. SILVERSMITH: Our intention is to draw up a Constitution that all of our people can read and understand. So we do need help with the verbiage, help with the English, help where things should go so they can understand.

So with the help of some of the members here, we came up with this revised proposal, and worked:

"All Council members shall be limited to two consecutive limited terms on the Council."

Now, the elected terms, can I explain why we did this?

MR. HANNAH: That's why you are here, ma'am.

Please, move on with your explanation so we can move on with debate.

MS. SILVERSMITH: Does anyone have a question about the, if a Council person is appointed, would that delete them from having two consecutive terms, or would it limit them to a half of a term or a third of a term, or three-day term or whatever, no? That's why we injected "elected."

They had to be elected. If they aren't elected, then, of course, they can run two terms, two elected terms. Okay.

"All Council members having served two consecutive terms may sit on one term before seeking any seat on the Council."

That is what I am proposing, what you see on the screen.

MR. HANNAH: Thank you very much. The floor is open for debate.

Mr. Poteete, you are recognized. How rise, you?

MR. POTEETE: I move to consider the question.

We've had debate previously. All we've done is refine the language to reflect the intent of the parties before we go --

MR. HANNAH: The question has been moved. Is there a second?

DELEGATE: Second.

This language change was passed. *See* Attachment B

Petitioner does not deny that Ms. Vazquez may file to run for said office in a future election, but the term for 2021 breaches the Constitutional limit and this Court's analysis on serving consecutive terms. The analysis and language of this Court on this issue is clear.

CONCLUSION

Ms. Vazquez, as this Court analyzed in *Cornsilk v. Hembree*, has served her two elected terms and is thus ineligible for a third term. It is requested that this Court reverse the findings of the Cherokee Nation Election Commission and find that Ms. Vazquez is ineligible to continue to run for office.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "R.D. Gifford, II", written over a horizontal line.

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CNBA No. - Submitted/Pending

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was furnished through certified mail, facsimile and by electronic mail service (email) to the following on this 1st day of March, 2021:

Ralph F. Keen II
205 West Division
Stilwell, OK 74960
F: 918-696-3576
KeenLawOK@gmail.com

Attachment A

BEFORE THE CHEROKEE NATION ELECTION COMMISSION
OF THE CHEROKEE NATION

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

Eligibility Hearing No. 2021 - 2

DECISION

Now on this 22nd day of February, 2021, this matter came on for hearing before the Cherokee Nation Election Commission and the Contestant, Mason Hudson, appears by and through his attorney Deborah Reed: and the Candidate Victoria Vazquez, appears in person and by and through her attorney Ralph F. Keen II.

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 Mason Hudson, an opposing Candidate for District 11 as provided by law; finds that Notice of this Hearing was given and served as provided by law; finds that, pursuant to Attorney General Opinion 2016-CNAG-04 and Judgement in District Court Case No. CV-2018-122, the Candidate, Victoria Vazquez, is eligible to be a candidate for Council District 11.

IT IS THEREFORE THE DECISION OF THE CHEROKEE NATION ELECTION COMMISSION that Victoria Vazquez, is eligible to be a candidate for Council District 11 for the Cherokee Nation 2021 General Election.

Dated this 22nd day of February, 2021.

Cherokee Nation Election Commission

BY: Shawna Calico
Shawna Calico, Chairperson and Member

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

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

BY: Randy Campbell
Randy Campbell, Member

BY: Elizabeth Ballew
Elizabeth Ballew, Member

Attachment B



Doctor Hook, you are recognized, sir.

MR. HOOK: I move that we untable the Silversmith proposal.

MR. HANNAH: There's a motion to bring the Silversmith proposal off the table. Do I hear a second?

DELEGATE: Second.

MR. HANNAH: Seconded. And hearing no opposition, all those in favor signify by saying, "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those Opposed, "no."

THE DELEGATES: No.

MR. HANNAH: And the Silversmith proposal is off the table and before us.

MR. KEEN, JR.: Point of information.

MR. HANNAH: Point of information by Mr. Keen.

MR. KEEN JR.: Perhaps we need to ask the author to step forward and explain the language. There has been some language change since we've last visited this.

MR. HANNAH: While it was on the table. This is just to assure all the delegates that while these things go on the table, things happen to them out there.

MS. SILVERSMITH: Our intention is to draw up a Constitution that all of our people can read and understand. So we do need help with the verbiage, help with the English, help where things should go so they can understand.

So with the help of some of the members here, we came up with this revised proposal, and worked:

"All Council members shall be limited to two consecutive limited terms on the Council."

Now, the elected terms, can I explain why we did this?

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"All Council members having served two consecutive terms may sit on one term before seeking any seat on the Council." That is what I am proposing, what you see on the screen.

MR. HANNAH: Thank you very much. The floor is open for debate.

Mr. Poteete, you are recognized. How rise, you?

MR. POTEETE: I move to consider the question.

We've had debate previously. All we've done is refine the language to reflect the intent of the parties before we go —

MR. HANNAH: The question has been moved. Is there a second?

DELEGATE: Second.

MR. HANNAH: And there is a second. And hearing no opposition, we move for the vote. And the vote taken, voting in the affirmative would include the language that you see, listed as "Silversmith proposal," that:

"All Council members shall be limited to two consecutive elected terms on the Council. All Council members having served two consecutive terms must sit out one term before seeking any seat on the Council."

All those in favor of the proposal, please signify by saying, "aye."

THE DELEGATES: Aye.

MR. HANNAH: Those opposed, "no."

THE DELEGATES: No.

DELEGATE: Roll call vote.

MR. HANNAH: Roll call is called for. Mr.

Secretary. We apparently still have a convoluted system there. Mr. Vice-Chairman, will you assist the Secretary in telling a manual roll call?

MR. LITTLEJOHN: Point of information.

MR. HANNAH: Mr. Littlejohn, you're recognized on point of information.

MR. LITTLEJOHN: Would this apply to the present Council members seated, or will it begin with the next elected?

MR. HANNAH: A most astute question. Mr. Smith.

MR. SMITH: I anticipate that we will certainly include the ex-post facto provision, so this will be prospective rather than retroactive. So, yes, it would add two more terms.

MR. KEEN JR.: I would agree with that. This requirement can only come into effect perspectively, not retroactively.

MR. HANNAH: Mr. Littlejohn, you are clarified.

Let's bring order here in the chamber.

And, Mr. Secretary, are you prepared for the vote?

Will the delegates take their seats for the vote, please?

I believe it would be proper and in order for the delegates to take their seats for the vote. And thank you, gentlemen.

MR. UNDERWOOD: Adair.

MS. ADAIR: No.

MR. UNDERWOOD: Alberty.

MR. ALBERTY: Yes.

MR. UNDERWOOD: Bill Baker.

MR. BILL BAKER: No.

MR. UNDERWOOD: Donn Baker.

MR. DONN BAKER: No.

MR. UNDERWOOD: Jack Baker. Berry.

MS. BERRY: Yes.

MR. UNDERWOOD: Birmingham.

MS. BIRMINGHAM: Yes.

MR. UNDERWOOD: Burnett

MS. BURNETT: Yes.

MR. UNDERWOOD: Center.

MR. CENTER: No.

MR. UNDERWOOD: Chilson.

MS. CHILSON: Yes.

MR. UNDERWOOD: Clarke.

MR. CLARKE: No.

MR. UNDERWOOD: Colson.

MS. COLSON: Yes.

MR. UNDERWOOD: Coon.

MS. COON: Yes.

MR. UNDERWOOD: Cornsilk.

MR. CORNSILK: Yes.

MR. UNDERWOOD: Crawford.

MS. CRAWFORD: No.

MR. UNDERWOOD: Crittenden, Don Crittenden.

MR. DON CRITTENDEN: No.

MR. UNDERWOOD: H. Crittenden.
MR. H. CRITTENDEN: Yes.
MR. UNDERWOOD: Crouch.
MR. CROUCH: No.
MR. UNDERWOOD: Bill Davis. Earl Davis. Bryce
Downing. Carl Downing.
MR. CARL DOWNING: Yes.
MR. UNDERWOOD: Dowty.
MR. DOWTY: No.
MR. UNDERWOOD: Foster.
MS. FOSTER: Yes.
MR. UNDERWOOD: Gourd.
MR. GOURD: No.
MR. UNDERWOOD: Gunter.
MR. GUNTER: Yes.
MR. UNDERWOOD: Hagerstrand.
MS. HAGERSTRAND: Yes.
MR. UNDERWOOD: Hammons.
MS. HAMMONS: Yes.
MR. UNDERWOOD: Hannah.
MR. HANNAH: Abstain.
MR. UNDERWOOD: Herod.
MR. HEROD: Yes.
MR. UNDERWOOD: Hathaway. Havens.
MS. HAVENS: No.
MR. UNDERWOOD: Hembree.
MR. HEMBREE: No.
MR. UNDERWOOD: Hook.
MR. HOOK: Yes.
MR. UNDERWOOD: C. Hoskin, Jr.
MR. HOSKIN, JR.: No.
MR. UNDERWOOD: C. Hoskin, Sr.
MR. HOSKIN, SR.: No.
MR. UNDERWOOD: Johnson. Jordan. J. Keen.
Ralph Keen, Jr.
MR. KEEN, JR.: Yes.
MR. UNDERWOOD: Ralph Keen, Sr.
MR. KEEN, SR.: Yes.
MR. UNDERWOOD: Lay.

MR. LAY: Yes.
MR. UNDERWOOD: Littlejohn.
MR. LITTLEJOHN: No.
MR. UNDERWOOD: Linnenkohl.
MS. LINNENKOHL: Yes.
MR. UNDERWOOD: Masters.
MS. MASTERS: Yes.
MR. UNDERWOOD: McDaniel.
MR. McDANIEL: Yes.
MR. UNDERWOOD: McIntosh.
MS. McIntosh: No.
MR. UNDERWOOD: McCreary.
MR. McCREARY: Yes.
MR. UNDERWOOD: MacLemore.
MR. MacLEMORE: Yes.
MR. UNDERWOOD: Melton. Meredith.
MS. MEREDITH: No.
MR. UNDERWOOD: Miller.
MS. MILLER: No.
MR. UNDERWOOD: Moore.
MR. MOORE: Yes.
MR. UNDERWOOD: Mullan.
MR. MULLON: Yes.
MR. UNDERWOOD: Peacock.
MR. PEACOCK: Yes.
MR. UNDERWOOD: Phillips.
MR. PHILLIPS: No.
MR. UNDERWOOD: Pitts.
MS. PITTS: No.
MR. UNDERWOOD: Plumb. Poteete.
MR. POTEETE: Yes.
MR. UNDERWOOD: Raper.
MR. RAPER: Yes.
MR. UNDERWOOD: Rider.
MR. RIDER: No.
MR. UNDERWOOD: Robinson.
MR. ROBINSON: Yes.
MR. UNDERWOOD: Rutledge.
MR. RUTLEDGE: Yes.

MR. UNDERWOOD: Sanders. Barbara Scott.
MS. STARR-SCOTT: Yes.
MR. UNDERWOOD: D. Scott.
MS. SCOTT: Yes.
MR. UNDERWOOD: Owen Scott.
MR. SCOTT: Yes.
MR. UNDERWOOD: M. Silversmith.
MS. SILVERSMITH: Yes.
MR. UNDERWOOD: R. Silversmith.
MR. SILVERSMITH: Yes.
MR. UNDERWOOD: Smith.
MR. SMITH: Yes.
MR. UNDERWOOD: Spencer.
MR. SPENCER: Yes.
MR. UNDERWOOD: Starr.
MR. STARR: No.
MR. UNDERWOOD: Stopp. Stroud.
MS. STROUD: Yes.
MR. UNDERWOOD: Twining.
MS. TWINING: Yes.
MR. UNDERWOOD: Underwood, yes.
Viles.
MR. VILES, JR.: Yes.
MR. UNDERWOOD: Wheeler.
MR. WHEELER: Yes.
MR. UNDERWOOD: Whitfield.
MR. WHITFIELD: No.
MR. UNDERWOOD: Wilson.
MR. WILSON: Yes.
MR. HANNAH: Mr. Secretary, has the vote been tallied?
MR. UNDERWOOD: The vote has been tallied.
MR. HANNAH: And the results are?
MR. UNDERWOOD: Forty-four yes; twenty-three no.
MR. HANNAH: Number of abstentions, Mr. Secretary?
MR. UNDERWOOD: One.
MR. HANNAH: One abstention. That would be the Chair, who drove here to do that. And Calvin wasn't here to hear

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it. What can I say?

We are on Article V, Section 3. Stay together here,
folks. You are recognized, sir.
