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IN THE SUPREME COURT OF THE CHEROKEE NATION

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CHEROKEE NATION
SUPREME COURT
KENDALL BIRD, COURT CLERK

In Re: Challenge to the Eligibility)
of Victoria Vazquez, Candidate for) Case No. SC-21-02
Council District 11 for the 2021)
General Election.)

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

AND

**RESPONSE TO APPEAL FROM A DECISION OF THE CHEROKEE NATION
ELECTION COMMISSION BY MASON HUDSON**

OF THE

CHEROKEE NATION ELECTION COMMISSION

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TABLES OF CONTENTS TO
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<u>HEADING</u>	<u>PAGE OF BRIEF</u>
Brief in Support of Decision	1
Statement of the Case	1
Statement of Facts in Support of the Commission's Decision	2
Arguments and Authorities.	3
Response to Appeal and Brief in Support of Appeal of Mason Hudson.	8
Statement of Jurisdiction	8

Statement of the Issues	8
Argument (of Hudson).	8
Conclusion (of Hudson).	10
Commission Summary and Conclusion.	10

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<u>AUTHORITY</u>	<u>PAGE OF BRIEF</u>
Cherokee Nation Constitution, Article VI, Section 3	4, 7
Cherokee Nation Constitution, Article VI, Section 13.	4
Cherokee Nation Attorney General Opinion, CNAG Opinion 2016-CNAG-04	5
Cornsilk v. Hembree, CV-2018-122.	5
Cornsilk v. Hembree, SC-2018-04	5, 6, 7
Cherokee Nation Constitution, Article VII,	

Section 1.	6
Cherokee Nation Constitution, Article VII, Section 3.	7

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BRIEF IN SUPPORT OF DECISION

Comes now the Cherokee Nation Election Commission (hereinafter the "Commission") and for its Brief in Support of the Decision of the Commission from which this appeal has been taken, would respectfully submit the following:

Statement of the Case

Victoria Vazquez filed as a Candidate for Council District 11 on February 1, 2021.

Challenge to the Candidacy of Victoria Vazquez was filed by

Mason Hudson on February 11, 2021.

The Commission set the Hearing on the Challenge for February 18, 2021 at 2:15 P.M. and Notice of said Hearing was given to the Candidate and the Challenger; subsequently, due to inclement weather, the hearing was continued to February 22, 2021 at 2:15 P.M. and the Parties were notified.

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

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

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

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

Statement of Facts in Support
of the Commission's Decision

The following facts were not disputed:

1. Victoria Vazquez is a District 11 Citizen of the Cherokee Nation .

2. Victoria Vazquez has established a bona fide permanent residence in District 11 not less than 270 days immediately preceding the 2021 General Election.

3. Victoria Vazquez is over the age of 25 years.

4. Victoria Vazquez has not been convicted of nor plead guilty to a felony.

5. Victoria Vazquez was elected at a Special Election in October 2013, to fill the unexpired term of a Council Member who had resigned.

6. Victoria Vazquez was elected to a full 4 year term in the 2017 regular election cycle.

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

Arguments and Authorities

PROPOSITION

**Having been Elected at a Special Election for a Term of Less than Four Years
to Fill the Unexpired Term of a Resigning Council Member
and
then being Elected to only one Full Four Year Term,
Victoria Vazquez is Eligible to be a Candidate for another Four Year Term.**

The only challenge Mason Hudson presented to the Candidacy of Victoria Vazquez (hereinafter sometimes referred to as ±Vazquez≤F= was that she had been elected to two terms and was not eligible to be a candidate for the 2021 General Election.

Section 3. Of Article VI. Legislative of the Cherokee Nation
Constitution (hereinafter the ~~±~~Constitution~~≤~~F=provides:

~~±~~Each Council member shall be elected in the general election for a term of four (4) years and until his or her successor is duly elected and installed. All Council members shall be limited to two (2) elected terms on the Council.~~≤~~
(Emphasis Mine.)

The next sentence of said Section states:

~~±~~All Council Members having served two consecutive terms must sit out one (1) term before seeking any seat on the Council.~~≤~~
(Emphasis Mine.)

These sentences must be read together to determine their meaning to Cherokee Citizens who voted to approve the Constitution.

Section 13 of Article VI. Legislative of the Constitution provides the method for selection of a Council Member to replace a resigning Council Member; and, it was through the said Section 13 that Vazquez was selected to the Council in the Special Election.

Vazquez was not elected in a general election for a term of four (4) years when she was first elected to the Council, she was elected to a term of less than four years to fill the an unexpired term, in a special election..

If one accepted Hudson's interpretation of the relevant part of the said Section 3., a Council Member could resign before a majority of the term or a month or two before the end of his or her second term; then, someone else could be selected to fill the unexpired term; and, such would be considered a term, which the

resigned Council Member had sit out; and, the Resigned Council Member could run for the next two four year terms because he or she had sit out one term, even though the term sit out had been only for a couple years or a month or two. The above is not what the Cherokee Citizen Voters intended.

The only logical interpretation of relevant part of the said Section is that being elected in a special election is not being elected to a four year term at a general election and is not considered a term for purposes of requiring the Candidate to sit out for a term.

This Result was reached in Cherokee Nation Attorney General Opinion 2016-CNAG-04 wherein it was stated: ±Thus, a period of time in office of less than four (4) years resulting from a special election does not meet the definition of ±term≤=for purposes of calculating consecutive terms of office.≤

The above Opinion was upheld and confirmed in the Decision in Cornsilk v. Hembree CV-20189-122, written by District Judge T. Luke Barteaux, wherein it was held:

±When read together the plain meaning of Article VI, Sections 3 and 13, is if a Councilor is first placed in office by virtue of being a runner up or elected in a special election for a term of less than four (4) years then that shortened term shall not be counted as their first term for term limit purposes . . . K≤

Hudson relies on Cornsilk v. Hembree, SC-2018-04 in support of his position. To avoid confusion, he Supreme Court Case of

Cornsilk v. Hembree, SC-2018-04 will be hereafter referred to as
±Cornsilk SC≤K

First, Cornsilk SC, supra did not address that part of the District Court Decision holding Vasquez eligible for another term; but, was aware of the District Court's ruling in favor of another term for Vazquez; thus arguable, tacitly approving the District Court Ruling on Vazquez. If it was felt that it was in violation of Cherokee Law, likely the Supreme Court would have stated such, even if dicta.

Second, the Cornsilk SC case, supra is clearly distinguishable from the instant case in that it addresses the right of the Chief and Deputy Chief to run for another term in that there are factual differences between the cases and the Court was interpreting different Sections of the Constitution.

A. The Deputy Chief was elected to an served a four year term, since his service as Chief was a part of his duties as Deputy Chief in the absence of a Chief.

B. The Chief ran for and was elected to a four year term, but was delayed in being sworn in (during which the Deputy Chief served) because of election challenges, and the Court noted that was ±KKK=no room for extension by way of challenge or other event which might shorten the number of days in office.≤

C. The constitutional provision for term limits for the Chief is found in Section 1 of article VII of the Constitution, which provides:

±The Principal Chief shall hold office for a term of 4 years. No person having been elected to the

office of Principal Chief in two (2) consecutive elections shall be eligible to file for the office of Principal Chief in the election next following his or her second term of Office.≤=(Emphasis mine.)

Section 3 of Article VII of the Constitution applies the same limitations on the Deputy Chief.

The constitutional provision relating to the Chief states:
±having been elected in ... two (2) consecutive elections≤X
whereas, the constitutional provision relating to Council Members states: ±KKKhaving served two (2) consecutive terms must sit out KKKK≤===

The constitutional provision relating to the Chief in Section 1 of Article VII of the Constitution provides that the Chief KKK≤shall hold office for a term of four years.≤I=but prohibits serving ±KKKhaving been elected ... two (2) consecutive elections....≤

The constitutional provision relating to Council Members in Section 3 of Article VI of the Constitution provides that the Council Member ±KKKshall be elected in the general election for a term of four (4) years....≤=and ±KKKshall be limited to two (2) consecutive elected terms....≤==

And, therein is the difference between the Cornsilk, SC, supra and the instant case. In Cornsilk, SC, supra the Chief and Deputy Chief ran for and were elected to two four year terms consecutive terms. In this Vazquez case, Vazquez was elected to a term of substantially less than 4 years at a special election and only one four year term; and, thus is entitled to run for another four year. A term in the Section 3 of Article VI is

defined as four years.

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

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

STATEMENT OF JURISDICTION

It is admitted that Court has Jurisdiction.

STATEMENT OF THE ISSUES

Appellant states the issue as he would like it to be. But his statement is not the issue. The issue is whether, being elected at a Special Election to fill out the term of a resigning Council Member with substantially less than a full term remaining is considered a \pm term \leq under the Consstitution.

STATEMENT OF FACT

The first sentence is admitted.

The second sentenced is denied. Ms. Vazquez is seeking a second elected as \pm term \leq is defined in the Constitution for Council Members.

The third, fourth, fifth and sixth sentences are admitted.

The last sentence of the first paragraph is admitted in part and denied in part. The Commission relied on the said AG opinion and Disrict Court case, but relied also on the Constitutional provisions cited and discussed in said authorities.

The last paragraph is admitted.

ARGUMENT (of Hudson)

The Brief in Support of the Decision of the Commission,

above set forth, is incorporated herein as though fully set forth herein in to the Argument of Hudson. (Hereinafter referred to as the ±Commission Brief≤K

The Commission strongly disagrees with Hudson's statement that the Tribal Constitution should not be interpreted differently for the office of the Executive than it should be for members of Council.

As shown in the Commission Brief, the Constitutional provisions for the Executive Branch and the provisions for a member of Council have different language, different meaning from the plain reading of the Constitution and difference definitions for term of office.

The balance of the argument down to the convoluted attempt to show the show the framers intent is addressed in the Commission Brief.

With regard to the excerpts from the Constitutional Convention, attempting to determine the meaning of the term:

A. Legislative intent may be helpful in interpreting the intent of the Legislature in enacting a law, because they are the ones who enact the law.

B. But with a Constitution of the Cherokee Nation it is enacted or adopted by the Cherokee Citizens who were not at the Constitutional Convention. In any event, when one looks at the discussion (debate) set forth in Hudson's Argument and Attachment B, to his Argument, they are inconsistent and it is ambiguous at to what was intended. The last thing Mr. Silversmith said was

served two consecutive terms....What you see on the screen.==Apparently what he saw on the screen is what is in the Constitution and its plain meaning is that it requires two consecutive 4 year terms not a partial term via a special election.

C. Therefore, the Court must interpret the Constitutional language as it is written and as a term is defined for Council Members, and approved by the Cherokee Citizens. The intent of the Constitutional Convention should not be considered, just the language of the Constitution taken in its entirety as it relates to the election of Council Members.

CONCLUSION (of Hudson)

The Conclusion of Hudson in the first sentence is not supported by law of fact. The relief requested in his second sentence is not consistent with the law and should be denied.

COMMISSION SUMMARY AND CONCLUSION

Based on the Commission's Brief in Support of Decision and Response to Appeal and Brief in Support of Appeal of Mason Hudson, the decision of the Commission holding that Victoria Vazquez is eligible to be a candidate for Council At Large should be affirmed.

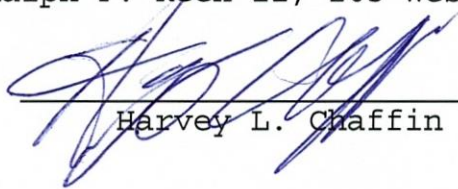
Cherokee Nation Election Commission

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CERTIFICATE OF MAILING

I, Harvey L. Chaffin, do hereby certify that on the 12th day of March, 2021, I mailed by first class mail, with postage prepaid thereon, a true and correct copy of the within and foregoing Answer to Robert D. Gifford, II, P.O. Box 2682, Oklahoma City, OK 73101 and Ralph F. Keen II, 205 West Division, Stilwell, OK, 74960.



Harvey L. Chaffin