

IN THE SUPREME COURT OF THE CHEROKEE NATION

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

CASE NO.: SC-2021-02

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Before:

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

Opinion by:
Concurring:

Shawna S. Baker, Justice
Lee W. Paden, Chief Justice
Rex Earl Starr, Justice

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SUPREME COURT
KENDALL BIRD, COURT CLERK

FINAL ORDER

This Matter came before the Court on March 23, 2021. After reviewing the briefs submitted by the parties and having heard oral arguments, the Court finds as follows:

Procedural History

In the 2013 general election, the Cherokee people of District 11 elected Chuck Hoskin, Jr. as their Tribal Councilor. Soon thereafter, Principal Chief Baker appointed Councilor Hoskin, Jr. to be his Secretary of State resulting in a vacancy for District 11's Tribal Councilor position. A special election was called pursuant to Article VI, Section 13 of the 1999 Cherokee Constitution and Victoria Vasquez prevailed. In 2017, Councilor Vasquez ran unopposed and was elected in her first general election to a four-year term of office. Councilor Vasquez filed her application to run as a candidate in the 2021 general election. Mason Hudson timely filed a challenge with the Election Commission regarding her eligibility. Mr. Hudson argues that Councilor Vasquez has served two (2) consecutive elected terms and therefore, term limits apply prohibiting Councilor Vasquez's candidacy. The Election Commission ruled against Mr. Hudson. Mr. Hudson's argument is the subject of this appeal.

Discussion

On June 26, 1976, the Cherokee people ratified the 1975 Constitution of the Cherokee Nation. Twenty (20) years later in 1995, the Cherokee people voted to convene a new Constitutional Convention.¹ The Convention of the Delegates began on February 26, 1999 and for nine (9) days the official transcript traces the Delegates methodically

¹ See Constitutional Convention Commission Report to the Cherokee People Regarding Upcoming Votes on the Cherokee Constitution.

moving from the beginning of the 1975 Constitution through each Article and Section, one by one, until reaching the conclusion of the document or Article XVIII.² In essence, the Delegates used the 1975 Constitution as a road map for creating the 1999 Constitution.³ When the Delegates proposed adding new Sections to the 1999 Constitution, those without counterparts in the 1975 Constitution, the transcript reveals there was never a time when the Delegates paused from moving forward to revisit prior Articles and or Sections.⁴ Ultimately, the completed, proposed draft of the 1999 Constitution was released for circulation on July 30, 1999 and ratified by the Cherokee people on July 26, 2003 with a vote of 3,622 in favor to 3,059 opposed.⁵

The 1999 Constitution addresses in Article VI, Section 3 the qualifications, terms, and term limits of Tribal Councilors.

Section 3. The Council shall consist of seventeen (17) members, who are citizens of the Cherokee Nation. Any citizen of the Cherokee Nation at least twenty-five (25) years of age on that date of the election may be a candidate for the Council. 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) consecutive elected terms on the Council.*** All Council members having served two consecutive terms must sit out one (1) term before seeking any seat on the Council.

Emphasis added. The highlighted sentence is at the heart of today's appeal.

Unlike Section 3, which has a somewhat parallel provision found at Article V, Section 3 in the 1975 Constitution, Section 13 of the 1999 Constitution is new in its

² 1999 Cherokee Nation Constitutional Convention, Transcript of Proceedings, by Court Reporter Marla J. Cullison, CSR.

³ *Id.*

⁴ *Id.*

⁵ *In re: The Status and Implementation of the 1999 Constitution of the Cherokee Nation*, JAT 2005-04 (2005).

entirety. Section 13 creates a procedure for filling an unexpected vacancy on the Tribal Council. Section 13 as ratified by the Cherokee people on July 26, 2003 read as follows:

Section 13. In the case of removal, death, resignation or disability of any of Council member, **such seat shall be filled by the candidate having the next highest number of votes in that district, who is available and willing to serve and whose eligibility is confirmed by the Election Commission.** In the event no such candidate exists, the Council shall fill the vacated seat in the following manner: If a majority of the four-year term remains to be served, the Council shall authorize a special election in the district of the vacated seat to be conducted within ninety days, if a minority of the four-year term remains to be served, the Council shall elect a replacement who would otherwise be qualified to serve from the district of the vacated seat.

Emphasis added.

In 2011, the Tribal Council proposed an Amendment to Article VI, Section 13 wherein a vacancy would be filled by a special election rather than by appointment. The Tribal Council's Resolution passed and it was approved and signed by Principal Chief Chadwick Smith on March 21 of the same year.⁶ On June 25, 2011, at the general election, the Cherokee people voted 11,231 to 3,448 in favor of approving the Amendment and since such time, the original Section 13 has been replaced with the following language:⁷

Section 13. In the case of removal, death, resignation or the inability to discharge the powers and duties of office of any of Council member, such seat shall be filled in the following manner: If more than one year of the four-year term remains to be served, the Council shall authorize a special election in the district of the vacated seat to be conducted within ninety (90) days, unless a general election is to be held within one hundred and twenty

⁶ See Resolution No. 21-11.

⁷ Two additional proposed amendments to the 1999 Constitution were also passed by the Tribal Council in 2011 and signed by Principal Chief Smith. The amendments sought to eliminate term limits for Tribal Councilors, as well as, the Principal Chief and Deputy Chief. The majority of the votes cast by the Cherokee people were against these two proposed amendments. See, https://www.cherokeephoenix.org/news/term-limit-measures-fail-special-council-vote-passes/article_5f0cf2dc-5bf3-5cee-b9ac-8b397169662f.html

(120) days from the vacancy at which time this special election may be held as part of the general election; if one year or less of the four-year term remains to be served, the Council shall elect a replacement who would otherwise be qualified to serve from the district of the vacated seat.

The question before the Court is whether the statement in Section 3, "All Council members shall be limited to two (2) consecutive elected terms on the Council." applies equally to all elected terms of office, general elections and special elections, or only to general elections? Alternatively stated, does Section 3's term limits contemplate only the elected terms described in Section 3 or does the sentence on term limits contemplate elected terms found in both Sections 3 and 13?

The Court's primary goal when interpreting the Constitution is to ascertain and effectuate the true intent of the Cherokee people by discerning the purpose of the Article(s) and or Section(s) in question and what the provision(s) seek to accomplish.⁸ When the plain language of the Constitution is clear and unambiguous, this Court need not search beyond the instrument itself for meaning.⁹ Even then, the Constitution's language in any one particular sentence must not be read alone. It is imperative that the Constitution's language be viewed within the context of the Section and Article to which it belongs. Presumably, the language of the Constitution and the terms used therein should operate together to form a consistent and harmonious document.

In this instance, the words of Section 3, "All Council members shall be limited to two (2) consecutive elected terms on the Council" are clear and unambiguous, but they

⁸ *Corn silk vs. Hembree*, SC-2018-04 (10/30/2018). This case is distinguishable from *Corn silk vs. Hembree*. In *Corn silk*, this Court analyzed the term limits found in Article VII as they relate to the Principal Chief and Deputy Principal Chief.⁸ Those elected to serve in the Executive Branch shall never be elected by votes cast in a special election. Rather, the Principal Chief and Deputy Principal Chief shall always be elected in a general election. In the event of a vacancy, Section 4 of Article VII contemplates an order of succession. And, when called upon to fill a vacancy, the person stepping forward into a higher office is fulfilling their Constitutional duties for the lower office to which they were elected.

⁹ *Allen vs. Cherokee Nation Tribal Council*, JAT-2004-09 (2006).

cannot be viewed in isolation as Mr. Hudson argues.¹⁰ Rather, the sentence is clarified by the preceding sentence in the Constitution's construction, "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."¹¹ Likewise, the final sentence in the first paragraph of Section 3, "All Council members having served two consecutive terms must sit out one (1) term before seeking any seat on the Council." relies upon the sentence found two sentences earlier for the definition of a "term." A term being equal to four (4) years.¹²

¹⁰ During the 1999 Constitutional Convention, the official transcript reveals that no discussion occurred between the Delegates on term limits when Section 13 was authored. Rather, the language relied upon by Mr. Hudson is a quote by Delegate Silversmith when the final sentence of Section 3, term limits, was up for debate. At the time, Delegate Silversmith commented,

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.

See pages 247-248, Volume III of the 1999 Cherokee Nation Constitution Convention Transcript.

Under the 1975 Constitution, there is no discussion in Article V, Section 3 regarding vacancies on the Tribal Council. Furthermore, when the 1999 Delegates, including Delegate Silversmith, first crafted a new procedure for filling vacancies on the Tribal Council, they did not author the language in Article VI, Section 3 while discussing term limits, but instead addressed the issue ten (10) sections later in Section 13. As a reminder, the original Section 13 appointed the candidate with the next highest number of votes to fill the vacancy and only if no candidate existed would a special election occur. No discussion was had, nor was language drafted in the original Section 13 implying that the Delegates intended for an appointed term or special election term to count as a term for purposes of term limits. Thus, Delegate Silversmith's comment cannot be taken out of context.

¹¹ Again, the portion of Section 3 at issue states:


Section 3. 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) consecutive elected terms on the Council. All Council members having served two consecutive terms must sit out one (1) term before seeking any seat on the Council.

¹² *In re: Challenge to the Eligibility of Buel Anglen, Candidate for Council District 13 for the 2019 General Election*, SC-2019-03 (2019).

Of high importance, neither the original Section 13 from 1999, nor the amended Section 13, as ratified in 2011, discusses the interplay of an appointment or special election with respect to term limits. The phrase “special election” is defined as, “an election that occurs in an interim between general elections, usually to fill a sudden vacancy in office.”¹³ A special election by its very nature will always be for less than four (4) years. For consistency within the Constitution and with this Court’s earlier rulings, a special election cannot count as a term, or towards term limits, as defined in Article VI, Section 3 because a “term” has been held to equal four (4) years, or as stated differently, one general election cycle.¹⁴ This is the only permissible reading that produces a substantive effect that is compatible with the remainder of the Constitutional scheme. This Court holds Victoria Vazquez is eligible to run for the 2021 general election and term limits for a Tribal Council position shall only be met when the said Tribal Councilor has been elected in a general election for two (2) consecutive, four (4) year terms.¹⁵

IT IS SO ORDERED that the Cherokee Nation Election Commission’s holding is affirmed.

ENTERED this 29th day of March, 2021.



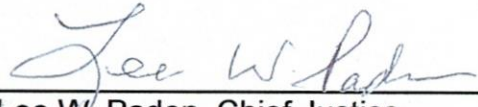
Shawna S. Baker, Justice

¹³ Black’s Law Dictionary, Pocket Edition (1996).

¹⁴ *In re: Anglen*, SC-2019-03.

¹⁵ While this opinion speaks only to a person’s candidacy to run for elected office, the ultimate power of electing a Tribal Councilor remains with the Cherokee people.

Concurring:


Lee W. Paden, Chief Justice


Rex Earl Starr, Justice

Certificate of Mailing

I, Kendall Bird, certify that on the 29th day of March, 2021, I mailed, emailed and/or faxed a true copy of the above and foregoing to the following:

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Kendall Bird, Court Clerk