

IN THE DISTRICT COURT OF THE CHEROKEE NATION

Robin Carter Mayes,)
Candidate at Large, Pro Se)
)
Petitioner,)
)
v.)
)
Cherokee Nation Election Commission,)
Cherokee Nation Office of the Attorney)
General, TODD HEMBREE, an individual,)
SHAWNA CALICO, an individual,)
TERESA HART, an individual, CAROLYN)
ALLEN, an individual, PAMELA SELLERS,)
an individual, JOHN DOE, unknown)
individuals.)
)
Respondents.)

Case No. CV-17-273

2018 APR 26 AM 9:42
FILED
CHEROKEE NATION
DISTRICT COURT
HERSHEL HONCOOYEA
COURT CLERK

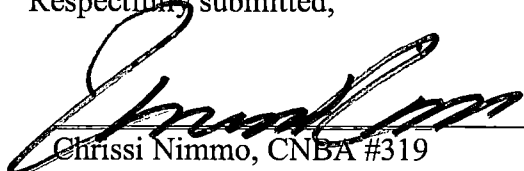
CHEROKEE NATION REPLY AND MOTION TO RULE ON THE PLEADINGS

COMES NOW, Respondent Cherokee Nation, by and through undersigned counsel, in Reply to Petitioner’s Combined Response to Respondent’s Motions to Dismiss, Amended and Supplemented Motions to Dismiss. In response to Cherokee Nation’s Motions to Dismiss based on lack of standing, lack of subject matter jurisdiction, non-waiver of sovereign immunity, and failure to state a claim upon which relief can be granted, Petitioner, for the first time and after filing three different Petitions before this Court argues that the Cherokee Nation Administrative Procedures Act, 1 CNCA § 101, (“APA”) both gives the Petitioner standing and waives the sovereign immunity of the Cherokee Nation. This is incorrect. The APA, which arguably does grant standing and waive sovereign immunity when an individual is impacted by final agency action, expressly defines “agency” to include “the Environmental Protection Commission,

Gaming Commission and Tax Commission.” 1 CNCA §102(1). Further it expressly excludes from the definition of “agency” the Election Commission.” *Id.* The APA does not give standing to the Petitioner or waiver sovereign immunity. However, even assuming *arguendo* that it does, it would only apply to the Election Commission and not the Attorney General who is a constitutionally created office within the Administrative branch and not subject to the APA. The Petition and all subsequent amendments should be dismissed.

Further, Cherokee Nation Office of the Attorney General moves this Court to decide the Motion to Dismiss on the pleadings submitted to the Court.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that on the 26th day of April, 2018, a true and correct copy of the above document was hand delivered, emailed or mailed with proper postage fully prepaid thereon, to the following:

A.J. Garcia
504 East Willis Road
Tahlequah, OK 74464

Cherokee Nation Election Commission
P.O. Box 1188
Tahlequah, OK 74465
hlchaffin@greencountryabstract.com



Charissi Nimmo