

IN THE DISTRICT COURT OF THE CHEROKEE NATION

FILED

DAVID CORNSILK,)
Petitioner,)
v.)
TODD HEMBREE,)
Attorney General of the Cherokee Nation,)
Respondent.)

2018 APR -6 PM 3:10

CV-2018-122

CHEROKEE NATION
DISTRICT COURT
KRESTI NONCOBYEA
COURT CLERK

JUDGMENT

COMES NOW David Cornsilk, Petitioner, and Todd Hembree, Attorney General of the Cherokee Nation, Respondent. Currently pending is Petitioner’s *Petition for Declaratory Judgment and Motion to Substitute Page*, and Respondent’s *Special Limited Entry of Appearance and Motion to Dismiss Petition for Declaratory Judgment and Motion to Withdraw Objection to Standing and to Strike Hearing and Rule on the Pleadings*. The Court Finds and Orders as follows:

Petitioner’s *Motion to Substitute Page* is granted. Page nine of the *Petition* is substituted with the second page of the *Motion*.

Respondent’s *Motion to Withdraw Objection to Standing and to Strike Hearing and Rule on the Pleadings* is granted. The objection to standing contained in the *Special Limited Entry of Appearance and Motion to Dismiss Petition for Declaratory Judgment* is stricken. Trial set for April 13, 2018 at 1:30 P.M. is stricken. Appearing from the pleadings that there is no disputed fact at issue the court shall proceed with ruling without further argument of parties.

Cherokee Nation District Court is the correct jurisdiction and venue to decide this matter. Pursuant to the Cherokee Nation *Attorney General Act*, LA 12-07, it is the duty of the Attorney General,

...to give an official opinion ... Said opinions shall have the force of law in Cherokee Nation until a differing opinion or order is entered by a Cherokee Nation Court.

Attorney General Act §105 (4)

Further, the parties hereto at this time have agreed that this Court does have jurisdiction to hear and resolve this matter. *Leach v. Tribal Election Comm'n*, JAT-94-1 (1994).

The general issue before the Court is whether or not *Opinion of the Cherokee Nation Attorney General, 2016-CNAG-04*, is in contradiction to the Constitution of the Cherokee Nation 1999 and the political term limits contained therein. Specifically, at hand is the issue of whether or not The Principal Chief of the Cherokee Nation, Bill John Baker, The Deputy Principal Chief of the Cherokee Nation, S. Joe Crittenden, and Councilor of the Cherokee Nation, Victoria Vazquez, are eligible to run during the next electoral cycle for their current offices.

The Issue of Principal Chief of the Cherokee Nation, Bill John Baker

Principal Chief of the Cherokee Nation, Bill John Baker, is eligible for reelection. The term limit provision for Principal Chief is found in Article VII, Section 1, of the Constitution, as follows:

...The Principal Chief shall hold office for a **term of four (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 added]

The phrases “term of four (4) years”, “two consecutive elections”, and “second term of office” must be read in conjunction with each other just as a citizen of the Cherokee Nation would have read them before voting to ratify the Constitution. The citizens would have read and understood the plain meaning of the term limit language to be that an elected Principal Chief

would hold office for a full four (4) year term, and up to two (2) full four (4) year terms consecutively.

The citizens would have also understood that the Constitution provides a mechanism in Article VII, Sections 4 and 5 for filling any gap between elected Principal Chiefs exiting and being sworn into office.

Borrowing Petitioner's theater analogy, if you bought a movie ticket and you showed up on time, but the theater started the movie halfway through instead of at the beginning then you would be able to demand another ticket. In this case Principal Chief won the election and should have been sworn into office on August 14, 2011 but was not sworn in until nine (9) weeks later due to no fault of his own.

The Issue of Deputy Principal Chief of the Cherokee Nation, S. Joe Crittenden

The Deputy Principal Chief of the Cherokee Nation, S. Joe Crittenden, is not eligible for reelection.

It is stated in the Constitution in Article VII, Section 3, that "The Deputy Chief shall be subject to the same term limitations as provided for the Principal Chief in this Constitution." In effect the Deputy Chief term limit provision is found in Article VII, Section 1, as follows:

...The Principal Deputy Chief shall hold office for a term of four (4) years. No person having been elected to the office of Principal Deputy Chief in two (2) consecutive elections shall be eligible to file for the office of Principal Deputy Chief in the election next following his or her second term of office...

[Emphasis Added]

Deputy Principal Chief at this time has been elected to two (2) consecutive four (4) year terms.

The Constitution goes on to say in Article VII, Section 4, in its entirety, that:

In case of the absence of the Principal Chief from office due to death, resignation, removal or inability to discharge the powers and duties of the office, the same shall devolve upon the Deputy Principal Chief for the remaining portion of the four (4) year term to which the Principal Chief had been elected. In case of disability, such powers shall continue during the term of such disability.

In the event of the death, resignation, or removal of the Deputy Principal Chief, or his or her inability to discharge the powers and duties of the office, the person who is then the Speaker of the Council shall succeed to the office of the Deputy Principal Chief for the balance of the term. In the case of temporary disability, said person shall serve as Acting Deputy Principal Chief for the duration of the disability and thereafter shall reassume the office of Speaker.

When there was not a Principal Chief sworn into office on August 14, 2011 the Deputy Chief assumed the office of Principal Chief pursuant to Article VII, Section 4, in faithful discharge of his duties as Deputy Principal Chief. Deputy Chief was elected, sworn into office on August 14, 2011, completed his first four (4) year term of office four (4) years later without any loss of time from his first term, and is now in his second consecutive four (4) year term.

The Issue of Councilor of the Cherokee Nation, Victoria Vazquez

Councilor of the Cherokee Nation, Victoria Vazquez, is eligible for reelection. The Councilor was first elected to the Council of the Cherokee Nation in October of 2013 during a special election and was subsequently elected to her first full four (4) year term as council during a general election. Article VI, Section 3, of the Constitution states:

...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 must sit out one (1) term before seeking any seat on the Council...

Article VI, Section 13, goes on to state the procedure to fill a vacancy of the Council of the Cherokee Nation as follows:

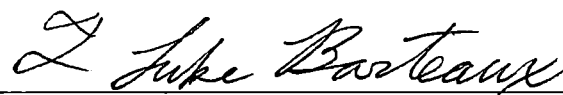
In the case of removal, death, resignation or disability of any of Council member, such seat shall be filled by the candidate having the next highest number of votes in that district, who is available and willing to serve and whose eligibility is

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.

When read together the plain meaning of Article VI, Sections 3 and 13, is if a Councilor is first placed into office by virtue of being runner up or elected in a special election for a term less than four (4) years then that shortened term shall not be counted as their first term for term limit purposes and therefore if said Councilor is elected thereafter during the general election for a four (4) year term the Councilor would still be eligible to run for a second full four (4) year term in office.

IT IS ORDERED that the Court's findings set out above be incorporated herein as Orders of the District Court of Cherokee Nation as if fully set out hereafter.

IT IS SO ORDERED.



T. Luke Barteaux,
District Court Judge of the Cherokee Nation

Copies to be furnished to:
All parties of record.