

IN THE DISTRICT COURT OF THE CHEROKEE NATION

FILED

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

Case No. CV-18-122

CHEROKEE NATION
 DISTRICT COURT
 RUSSELL MONDOOYEA
 CLERK

**SPECIAL LIMITED ENTRY OF APPEARANCE AND
 MOTION TO DISMISS PETITION FOR DECLARATORY JUDGMENT**

Respondent, Cherokee Nation Attorney General, Todd Hembree (“AG Hembree”), by and through the undersigned counsel, appears specially and for the limited purpose of this filing only, and without waiving any positions or defenses and/or objections, and appears only for the purpose of moving to dismiss this lawsuit for lack of jurisdiction and the additional reasons set forth below, pursuant to Rule 123 of the Rules for the District Court of the Cherokee Nation. In support of this motion, AG Hembree shows the Court as follows:

INTRODUCTION

On February 19, 2018, Petitioner David Cornsilk (“Cornsilk”) filed a Petition for Declaratory Judgment (“Petition”) against AG Hembree, wherein he purports to challenge Cherokee Nation Attorney General Opinion No. 2016-CNAG-04 (the “Opinion”). In actuality, Cornsilk has asked this Court to thwart Cherokee law and the process to contest a candidate’s eligibility for elected office provided for in Section 37 of the Cherokee Nation Election Code. The Court cannot and should not allow a private citizen to circumvent clearly established Cherokee law merely because he believes his personal opinions represent both the will of the Cherokee people and that of the framers of the Cherokee Constitution.

Moreover, it is a bedrock principal of Cherokee law that our courts will address only an actual case or controversy. And there can be no case or controversy without a petitioner who has suffered an actual or imminent injury traceable to a respondent's conduct and who, therefore, has standing to sue. Here, Cornsilk does not have standing. His prediction that any of the individuals named in the Petition will seek re-election is speculative at best. Likewise, the claims are not ripe for similar reasons. Nor can Cornsilk create standing by masking this matter as a challenge to AG Hembree's Opinion. If he could, any petitioner could claim injury from the most remote contingencies because he took action *now* in anticipation of *future* impact. Such approach would eviscerate the long-standing doctrines of standing and ripeness under Cherokee law. The Court must dismiss the Petition.

The Office of the Attorney General & Attorney General Hembree

The Office of the Attorney General is a constitutionally-created department within the Executive Branch of the Cherokee Nation ("Nation"). Cherokee Const. art. VII, Sec. 13. The Attorney General and his/her assistants are duty-bound to represent the Nation in all criminal cases in the Nation's courts; in all civil actions where the Nation is a named party; and shall have other duties as prescribed by law. *Id.* One such duty is to give an official opinion upon all questions of law. 51 C.N.C.A. § 105(4). "Said opinions shall have the force of law in Cherokee Nation until a differing opinion or order is entered by a Cherokee Nation Court." *Id.*

Opinion of the Cherokee Nation Attorney General No. 2016-CNAG-04

On December 9, 2016, AG Hembree issued 2016-CNAG-04 (the "Opinion"), an official opinion of the Attorney General. In the Opinion, AG Hembree opined:

(1) A period of time less than four (4) years does not meet the definition of "term" as used in Article VI, Section 3 and Article VII, Section 1 of the Cherokee Nation Constitution; and

(2) Any candidate for elected office having served less than two (2) consecutive four (4) year terms of office is eligible to stand for re-election in the next general election.

C.N. Att’y Gen. Op. No. 2016-04, 1 (Dec. 9, 2016). AG Hembree concluded:

(1) Tribal Council members Joe Byrd, Frankie Hargis and Victoria Vazquez were previously elected in special elections as defined in Article VI, Section 13, which resulted in a period of time in office of less than four (4) years and therefore all were eligible to stand for re-election in the 2017¹ General Election;

(2) Principal Chief Bill John Baker and Deputy Principal Chief Joe Crittenden have served periods of time in office less than four (4) consecutive years following the protracted challenges in the 2011 Principal Chief’s election and therefore both are eligible to stand for re-election upon completion of their present and first terms of office.

C.N. Att’y Gen. Op. No. 2016-04, 7 (Dec. 9, 2016).

The Allegations & Relief Requested

In the Petition, Cornsilk masks his challenge to certain *possible* candidates for re-election under the guise of a challenge to AG Hembree’s Opinion regarding term limits for Principal Chief, Deputy Chief and certain Tribal Council Members. Rather than follow the process to challenge a candidate’s eligibility for election established in Title 26, Section 37, Cornsilk requests this Court enter an order *now*, roughly a year prior to the time an individual can even file for candidacy for the 2019 General Election, declaring Principal Chief Bill John Baker (“Chief Baker”) and Deputy Chief Joe Crittenden (“Deputy Chief Crittenden”) are ineligible for re-election to the offices they currently hold. Likewise, Cornsilk seeks an order *now*, roughly three years prior to the time an individual can file for candidacy for the 2021 General Election, declaring Tribal Councilor Victoria Vazquez (“Councilor Vazquez”) is eligible for re-election. Cornsilk fails to provide any factual or legal basis that would allow this Court to hear his

¹ Councilor Vazquez is likewise eligible to stand for re-election in the 2021 General Election.

