CHEROKEE NATION ELECTION COMMISSION
SPECIAL MEETING
MARCH 19, 2013
9:00 A.M.

Agenda

I. Call Meeting to Order and Roll Call of Commissioners present or absent

II. Current Agenda

a. N/A
b. N/A

III. Old Business

1. N/A

IV. New Business

1. a. N/A
b. N/A

2. Hearing and opportunity to respond at a hearing before the Election Commission on the protest of Robin Mayes against the Candidacy of Meredith Frailey, Don Garvin, David Thornton, Jack Baker, Curtis Snell, and Chuck Hoskin for the Council Seat in District 4, 5, 9, 11, 15 and At Large, pursuant to Section 37 of the Cherokee Nation Election Laws.

3. Hearing and opportunity to respond at a hearing before the Election Commission on the protest of Justin Carlton against the Candidacy of Don Garvin for the Council Seat in District 4 pursuant to Section 37 of the Cherokee Nation Election Laws.

4. Hearing and opportunity to respond at a hearing before the Election Commission on the protest of Dink Scott against the Candidacy of David W. Thornton, Sr. for the Council Seat in District 5 pursuant to Section 37 of the Cherokee Nation Election Laws.

5. Hearing and opportunity to respond at a hearing before the Election Commission on the protest of Janees Taylor against the Candidacy of Meredith Frailey for the Council Seat in District 15 pursuant to Section 37 of the Cherokee Nation Election Laws.

6. Hearing and opportunity to respond at a hearing before the Election Commission on the protest of Elizabeth A. Blackwell against the Candidacy of Melvina Shotpouch for the Council Seat in District 10 pursuant to Section 37 of the Cherokee Nation Election Laws.

7. Hearing and opportunity to respond at a hearing before the Election Commission on the protest of Matthew Dawson against the Candidacy of Melvina Shotpouch for the Council Seat in District 10 pursuant to Section 37 of the Cherokee Nation Election Laws.

V. Adjournment

POSTED
3-14-13
@ 5:00 AM/PM

Cherokee Nation Election Office
22116 S. Bald Hill Road
Tahlequah, OK 74464

Special Meeting

March 19, 2013

Visitor Sign In Sheet

Dirk Scott	Steve Cooper
[illegible]	James M Gayler
Cara Watts	[illegible]
[illegible]	[illegible]
Katty Robinson	Jack D Baum
Elizabeth Blackwell	AMANDA PROCTOR
Melissa Stutzman	[illegible]
[illegible]	Meredith Hailey
Patricia E. Carpenter	Gayle Ross
Lonnie Mitchell	[illegible]
Chuck Hoskin Jr	Dave [illegible] III
David Thornton	Angie Barker Harrold
[illegible]	[illegible]
Todd Hembree	

CHEROKEE NATION
ELECTION COMMISSION SPECIAL MEETING
ELECTION SERVICES OFFICE MEETING ROOM
Special Meeting
March 19, 2013
9:00 a.m.

tape recorder

guest 24 + 4

Commission Presided by: Bill Horton

Commission Date/Time/Place: March 19, 2013/9:00 a.m.
Election Services Office Meeting Room

Commission Member Present/Absent:

Carolyn Allen Present/Absent

Martha Calico Present/Absent

Shawna R. Calico Present/Absent

Lindsay Earls Present/Absent

Bill Horton Present/Absent

Quorum Established: YES/NO

Staff Present: Wanda Beaver Joyce Gourd Genny Scott

Visitors:

CHEROKEE NATION ELECTION COMMISSION
P.O. BOX 1188
TAHLEQUAH, OK 74465-1188
PHONE (918) 458-5899 FAX (918) 458-6101

MEETING ATTENDENCE RECORD

FOR THE MONTH OF March 2013

REGULAR OR SPECIAL DATE: 03/12/2013	REGULAR OR SPECIAL DATE: 03/22/2013
Bill W. Horton	Bill W. Horton
COMMISSIONER Shauna Calico	COMMISSIONER Shauna Calico
COMMISSIONER Lindsy Earls	COMMISSIONER Martha Calico
COMMISSIONER Carolyn Allen	COMMISSIONER Carolyn Allen
COMMISSIONER Martha Calico	COMMISSIONER Lindsy Earls
COMMISSIONER ~~Shauna Calico~~	COMMISSIONER

REGULAR OR SPECIAL DATE: 03/19/2013	REGULAR OR SPECIAL DATE: 03/27/2013
Bill W. Horton	Bill W. Horton
COMMISSIONER Shauna Calico	COMMISSIONER Lindsy Earls
COMMISSIONER Martha Calico	COMMISSIONER Carolyn Allen
COMMISSIONER Carolyn Allen	COMMISSIONER Martha Calico
COMMISSIONER Lindsy Earls	COMMISSIONER
COMMISSONER	COMMISSIONER

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MAR 14 2013

Before the Cherokee Nation Election Commission

In re 2013 Cherokee Nation General Election, Challenge to Candidacy of Don Garvin	)))	Case No. _____

JUSTIN CARLTON'S PETITION CHALLENGING THE CANDIDACY OF DON GARVIN FOR THE 2013 CHEROKEE NATION GENERAL ELECTION

Petitioner, Justin Carlton, files this challenge to the candidacy of Don Garvin ("Garvin") pursuant to Cherokee Nation Code Title 26, Sections 37, on the basis of the following:

1. Petitioner and Garvin are among the candidates for the 2013 Council of the Cherokee Nation General Election, District 4, to be conducted by the Cherokee Nation Election Commission on June 22, 2013 ("Election").
2. The 1999 Constitution of the Cherokee Nation, which was effective July 26, 2003, limits Council members to "two consecutive elected terms on the Council." Constitution of the Cherokee Nation, Article VI, Section 3; and *In re Status and Implementation of the 1999 Constitution of the Cherokee Nation*, JAT 05-04 (2006).
3. Garvin commenced his first term on the Council in 1999.
4. Garvin will complete his third consecutive term under the 1999 constitution at the end of his current term, August 14, 2013.
5. Garvin is constitutionally prohibited from serving a fourth consecutive term, which will commence August 14, 2013, if he prevails in the Election or any related runoff election.

Date: March 14, 2013

Justin Carlton, Petitioner, Cherokee Tribal Council Candidate, District 4

Before the Cherokee Nation Election Commission

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MAR 14 2013

In re 2013 Cherokee Nation General Election, Challenge to Candidacy of David Thornton	)))	Case No. _____

DINK SCOTT'S PETITION CHALLENGING THE CANDIDACY OF DAVID THORNTON FOR THE 2013 CHEROKEE NATION GENERAL ELECTION

Petitioner, Dink Scott, files this challenge to the candidacy of David Thornton ("Thornton") pursuant to Cherokee Nation Code Title 26, Sections 37, on the basis of the following:

1. Petitioner and Thornton are among the candidates for the 2013 Council of the Cherokee Nation General Election, District 5, to be conducted by the Cherokee Nation Election Commission on June 22, 2013 ("Election").
2. The 1999 Constitution of the Cherokee Nation, which was effective July 26, 2003, limits Council members to "two consecutive elected terms on the Council." Constitution of the Cherokee Nation, Article VI, Section 3; and *In re Status and Implementation of the 1999 Constitution of the Cherokee Nation*, JAT 05-04 (2006).
3. Thornton commenced his first term on the Council in 1999.
4. Thornton will complete his third consecutive term under the 1999 constitution at the end of his current term, August 14, 2013.
5. Thornton is constitutionally prohibited from serving a fourth consecutive term, which will commence August 14, 2013, if he prevails in the Election or any related runoff election.

Date: March 14, 2013

Dink Scott

Dink Scott, Candidate Cherokee Tribal Council, District 5

From: Matthew Dawson [dawsonroofing@gmail.com]
Sent: Thursday, March 14, 2013
To: Wanda J. Beaver; Election Commission
Subject: New districts

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MAR 14 2013

My name is Matt dawson a registered voter in the new district ten, and I would like to challenge the illegal boundary and movement of voting lines, which seem to have been moved for whatever reason to benefit Melvina Shotpouch.

Can you respond to let me know that you received this message ?

Thank you,
Matt Dawson

Sent from my iPad

RECEIVED
MAR 14 2013

March 14, 2013

Wanda Beaver

Cherokee Election Commission

P.O. Box 1188

Tahlequah, Ok 74465-0948

Dear Wanda:

I writing on behalf of my mother, Elizabeth A. Blackwell, a registered Cherokee Nation voter who resides in the new District 10. At her request, I am submitting a challenge for her in regards to Melvina Shotpouches' residency as it was stated at the time of the new redistricting. She is very concerned that an illegal boundary change has occurred which would allow for Ms. Shotpouch to now run for Council in a district that she does not reside in.

Regards,

Elizabeth A. Blackwell

1234 N. 439 Rd.

Pryor, Ok 74361

918-434-2238

Kathy J. Robinson

9844 E. Northshire

Claremore, Ok 74017

918-923-6449

Before the Cherokee Nation Election Commission

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MAR 14 2013

In re 2013 Cherokee Nation General Election, Challenge to Candidacy of Meredith Frailey	)))	Case No. _____

JANEES TAYLOR'S PETITION CHALLENGING THE CANDIDACY OF MEREDITH FRAILEY FOR THE 2013 CHEROKEE NATION GENERAL ELECTION

Petitioner, Janees Taylor, by and through her undersigned counsel, files this challenge to the candidacy of Meredith Frailey ("Frailey") pursuant to Cherokee Nation Code Title 26, Sections 37, on the basis of the following:

1. Petitioner and Frailey are among the candidates for the 2013 Council of the Cherokee Nation General Election, District 15, to be conducted by the Cherokee Nation Election Commission on June 22, 2013 ("Election").
2. The 1999 Constitution of the Cherokee Nation, which was effective July 26, 2003, limits Council members to "two consecutive elected terms on the Council." Constitution of the Cherokee Nation, Article VI, Section 3; and *In re Status and Implementation of the 1999 Constitution of the Cherokee Nation*, JAT 05-04 (2006).
3. Frailey commenced her first term on the Council on August 14, 2003.
4. Frailey will complete her second consecutive term under the 1999 constitution at the end of her current term, August 14, 2013.
5. Frailey is constitutionally prohibited from serving a third consecutive term, which will commence August 14, 2013, if she prevails in the Election or any related runoff election.

6. Based on the foregoing, and discussed more fully in Petitioner's brief in support of this petition, Frailey is not qualified to be a candidate for Council of the Cherokee Nation in the Election.

Date: 3/14/13

Clifford R. Magee, OBA 12757
cliff@7471747.com

Rebecca J. Magee, OBA 15655
rebecca@7471747.com

P.O. Box 701800
Tulsa, OK 74170

(918) 747-1747
(800) 747-4953 Fax

Counsel for Petitioner

IN THE ELECTION COMISSION
OF THE CHEROKEE NATION OF OKLAHOMA

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MAR 0 8 2013

ROBIN MAYES,	)	
Protestant,	)	
	)	
v.	)	**2013 Election**
Meredith Frailey,	)	
Don Garvin,	)	
David Thornton,	)	
Jack Baker,	)	
Curtis Snell,	)	
Chuck Hoskin,	)	
Respondent Candidates,	)	

CHALLENGE OF ELIGIBILITY

Comes now, Robin Mayes Cherokee Citizen, registered voter and declared Council candidate hereby submits the following challenge of candidacy and eligibility of the following persons who filed for the 2013 CNO election for the following reasons to wit.

1 **Meredith Frailey**:
Exceeding the two-term limit as established by the 1999 CNO amended constitution.
Exceeding the four year term as established by the 1999 CNO amended constitution.

2 **Don Garvin**:
Exceeding the two-term limit as established by the 1999 CNO amended constitution.
Exceeding the four year term as established by the 1999 CNO amended constitution.

3 **David Thornton**:
Exceeding the two-term limit as established by the 1999 CNO amended constitution.
Exceeding the four year term as established by the 1999 CNO amended constitution.

4 **Jack Baker:**
Exceeding the four year term as established by the 1999 CNO amended constitution.

5 **Curtis Snell:**
Exceeding the four year term as established by the 1999 CNO amended constitution.

6 **Chuck Hoskin:**
Exceeding the four year term as established by the 1999 CNO amended constitution.

AUTHORITY TO HEAR CHALLENGE

1. Cherokee Nation Election Commission is an administrative committee created by the Cherokee Nation Tribal Council through Legislative Act # 46-12

According to the CNO Election Law it is the duty of the Election Commission to:

10. Determine the eligibility of all candidates for office pursuant to Section 36 C of this Title and have the first authority to consider challenges to candidate eligibility;

Challenges are to be handled according to:

§ 37. Challenges.

A. Third Party Challenge of Eligibility. Any member of the Cherokee Nation registered **eligible** to vote shall have the right to contest the eligibility of any candidate to run for office. The protest shall be received by the Election Commission in writing within five (5) working days after the close of the filing period. The hearing shall be held in conformance with rules and regulations adopted by the Election Commission for the conduct of proceedings before the Election Commission. Such rules and regulations shall provide the candidate reasonable notice of the challenge and the opportunity to respond at a hearing before the Election Commission.

CAUSE OF ACTION

Protestant will address his cause of action by category of issue rather than by challenged candidate as there is much duplication and unnecessary repetitions will be avoided. First Protestant will list each issue and expand his argument as it applies to individual candidates.

Exceeding the two-term limit as established by the 1999 CNO amended constitution.

ARGUMENTS AND AUTHORITIES

Protestant avers that the CNO constitution of 1999 strictly prohibits a candidate to file and run if they have served two consecutive terms previous to the term to be served if elected:

Article VII. Executive
Section 1. *The executive power shall be vested in a Principal Chief, who shall be styled "The Principal Chief of the Cherokee Nation". 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.*** *The Principal Chief shall be elected by the registered voters on the same day and in the same manner, except as otherwise provided by this Constitution, as they shall respectively vote for members of the Council in the year 2003 and every four years thereafter. The Principal Chief shall be elected by a majority of votes. The manner of determining contested elections shall be as directed by Cherokee law.*

#Note: The same language is applied to those running for a Council seat.

Protestant will ask that candidates Garvin, Thornton and Frailey stipulate that they have served two terms directly preceding this election and the issue resides solely in weather or not term limits begin at the June, 2003 vote.

The fact that Cherokee Citizens have twice voted to implement and retain term limits should make it clear that the plain black letter reading of the 1999 Constitution is mandated. The previous administration went to great lengths to circumvent the obvious will of the Cherokee People and was successful in attaining a ruling that the impact of term limits could not be applied to those elected under the 1975 Constitution. This theory is in conflict with the continuity of the authority of one constitution to an amended or revised constitution. All elections are authorized by the same continuous government. To say otherwise would indicate that the officers elected under the old version must be re-elected under the new.

Term limits cannot be limited to terms beginning after the vote of 2003 without violating the black letter reading of the 1999 constitution. There are no exceptions or qualifying statements included. Any speculation about the intent of the framers here is just that, speculation. As a witness to much of the 1999 convention Protestant could fairly speculate that the intent of the delegates was to eliminate the Byrd incumbent

majority. If term limits were not meant to apply until after the approval of the amendment then the very purpose of term limits has been defeated.

There has been a prevailing theory that the then Judicial Appeals Tribunal declared in the ruling and order establishing that the 1999 constitution was effectuated in 2003 also established that term limits will only be applicable from the 2003 approval vote. Protestant would point to the final order and opinion in case # JAT 05-04 and show that no where in that opinion do the justices make such dicta as it would be highly inappropriate for the JAT to initiate questions not posed and establish law on their own interest. It is Protestant's supposition that the language in Justice Leeds dissenting opinion is the source of this suburban myth:

> Justice Dowty and Matlock, however, were confirmed to this Court after the 1999 Constitution took effect. They must necessarily be serving their first term under the new Constitution. Likewise, the elected officials who were sworn-in in August 2003 took office after the effective date of the 1999 Constitution. Each must necessarily be serving their first term under the 1999 Constitution.

The Justices took great pains to clarify the effect of the 1999 constitution on their terms and the last line in the Leeds dissent says nothing more than the fact that elected officials would be serving their first term under the 1999 constitution. It does not discount the impact of consecutive terms preceding the 2003 vote.

Protestant would further point out that the 1999 constitution is an amendment in total of the 1975. There can be no reasonable conclusion other than all acts and circumstances executed under the 1975 constitution are contiguous. Therefore the number of consecutive terms served cannot be discounted and do apply to the term limits established in the 1999 constitution.

There is no controversy concerning the CNO Election Commission's lack of authority to review constitutional law and make their determinations thereby. However, since the establishment of term limits by the 1999 constitution as approved by vote in 2003 it is certainly the obligation and duty of the Election Commission to include in the candidate packet a test of term limit violation for all current incumbent officials wishing to file in this election of 2007.

Protestant has seen no evidence that a form or test of term limits has been established and therefore can only exercise his right to challenge those candidates that he believes have exceeded the term limits provided by the 1999 constitution. Further, Protestant urges the Election Commission to now apply such a test and disqualify ALL candidates that exceed the term limits.

Protestant is aware of the Supreme Court decision that confirmed the opinion of then Attorney General Dianne Hammons. Additionally, the petitioner is aware that the Election Commission is not authorized to interpret the CNO Constitution. However, the election commission is charged with the duty to implement procedure such as a term limit check for all incumbent candidates to confirm that they are in compliance with the term limit prescribed by the 1999 CNO Constitution. All of the named incumbent candidates here have not provided proof that they are in compliance with the Constitution and the Commission has failed to include a form to do so in the candidate packet.

Protestant will appeal an Election Commission decision to confirm the candidacy of incumbent officers that have not been proven to be in compliance with the term limit prescribed by the CNO 1999 Constitution. The Supreme Court decision to uphold the Attorney General's opinion does not remove this Commission responsibility and it is outside the Commission's authority to neglect duty.

Protestant will argue on appeal that this issue is NOW ripe for fair interpretation by the Supreme Court as the conflicted parties are now removed from the question.

Exceeding the four year term as established by the 1999 CNO amended constitution.

ARGUMENTS AND AUTHORITIES

Protestant avers that the CNO constitution of 1999 restricts the length of a Council term to four years.

As a candidate for the At-Large Council seat in 2013 Petitioner faces an unfair advantage the incumbent enjoys by having an extra two years to prepare for re-election. The Council was charged with the responsibility of establishing staggered terms by the 1999 CNO Constitution however that same constitution limits the length of a term to four years. Additionally, the advantage an incumbent Council member has during the Chiefs' elections renders Council members on the synchronized term disadvantaged in the pursuit of a Chief's office. It is without question that a seated Council person with two years remaining in their term has a failsafe to return to their Council seat if not successful compounded by the many opportunities to have the eyes and ears of the Cherokee People in performance of Council duties. Conversely, Council members with synchronized terms (same as the Chiefs) have no such advantage and the resultant condition remains with each ensuing term. The Election Commission has the authority

and the duty to point out inequality and seek or recommend a solution such as requiring Council members with 2 years remaining in their term to resign. This is the rule for CNO employees. The CNO Election Commission should join protestant and seek resolution in the CNO Supreme Court. It is the Protestant's charge that any officer that has exceeded a four year term is out of compliance with the 1999 Constitution and in violation of their oath of office and thereby disqualified to run.

Protestant will argue on appeal that this issue is NOW ripe for fair interpretation by the Supreme Court as the parties that have exceeded 4 year terms have now filed for candidacy.

Protestant will repeat the issues, questions and complaints filed with the Election Commission on March 4th, 2013 that are not directly applied to the named candidates herby challenged:

COMPLAINTS:

- **Candidates are not allowed to file except in person at Tahlequah.**

Petitioner found that the Commission has waved the requirement to file in person after he took a day off and drove to Tahlequah to ensure that his right to participate in CNO elections was preserved. Petitioner hereby withdraws this complaint.

- **Background check forms authorize release of information that has been restricted by CNO Court order.**

Petitioner is in receipt of an At-Large Council Candidate package that includes forms that purport to authorize the Election Commission and its designee the right to access background information for purposes of compliance with the Constitutional restriction against candidates that have plead guilty to or been convicted of a felony. Petitioner objects to the forms in their current style as they appear to allow unlimited access to personal information that was not included in the narrow scope of the felony restriction. In 1999 Petitioner raised this same complaint in CNO Court and prevailed. See: ORDER JAT 99-04-B; This Court Order has been in effect since 1999 and clearly restricts background checks to include only information regarding felonies.

Additionally it provides the candidate the option of including a statement with their authorization: ***"Please be advised that the CNO Election Commission has my authorization to conduct an investigation to obtain information regarding felony pleas and/or convictions, the "permanent residence requirement" for candidates and nothing more."*** At-Large candidate Mayes was in the dilemma of whether to exercise his legal right to limit the background check to felonies and nothing more and face the political fallout and suspicion or to just allow the Election Commission full access to prove that he has nothing to hide. Rather than risk disqualification and undue scrutiny Petitioner Mayes has signed the release forms. However, the issue must be resolved so that other Cherokee Citizens will not have to face yet another reason to not participate in CNO elections as a candidate. Protestant will include this question on appeal if the Commission fails to provide assurance that there is now compliance with this Court Order restricting background searches to felonies only.

- **Election Commission policy on election certification is in conflict with Election Law and the CNO Constitution.**

The Election Commission has implemented a new policy that is in direct conflict of the Election Law LA-46-12 by halting the process after the final count and delaying certification for a 48 hour "Canvassing period." The plain reading of Sections 92 and 93 clearly states that when the election outcome is final a certificate must be issued and available to the public. In the 2011 election the Election Commission illegally delayed certification for over 24 hours after the absentee ballot watchers were released and did enter the vault where ballots are secured and in a matter of minutes made changes to the final count reversing the reported outcome of the election. Petitioner believes that the Election Commission's change of policy for the following re-election was an obvious attempt to cover their unauthorized and blatant disregard for the procedures spelled out in the election law.

LA-46-12

Section 92. Counting of absentee Ballots

B. Watchers. Absentee ballot watchers selected in accordance with Section 53 of this Title shall be present at all times during the counting of the absentee ballots.

Section 93. Certificate of Votes, Certification of Results.

Certification of Results. *When the election outcome is final for all elective offices, the Election Commission shall certify the results and make such certification available to the public.*

Petitioner Mayes is hereby requesting that the CNO Election Commission commit to the abolishment of this illegal policy or in the alternative seek the determination of the CNO Supreme Court. Protestant will include this question on appeal if the Commission fails to provide assurance that there is now compliance with Election Law 46-12 regarding certification of elections.

- **Election Commission policy and CNO registration policy have unlawfully prevented thousands of Cherokee Citizens from participating in CNO elections**

In the 2011 CNO elections the Federal Court Order required a certain class of Cherokee Citizen, (known as the Freedmen) be allowed to vote. Due to internal efforts to circumvent the Court Order only a small number of Freedmen actually were able to cast a ballot. Petitioner believes that his candidacy for At-Large will be unfairly impacted if At-Large Cherokee Freedmen continue to have their registration applications ignored and neglected by the CNO Registration Department. The Election Commission is not directly responsible for this neglect but the implication is that the Commission has failed to raise this issue and find resolve in time for this 2013 election. Petitioner would be neglectful if he did not include this extreme injustice and thereby preserve the issue for judicial review in the proper jurisdiction.

- **Petitioner as a candidate has the right to require the Election Commission and the CNO Supreme Court to declare and delineate that which authorizes the elected office of At-Large Council. Candidate Mayes will be seeking declaratory judgment and injunctive relief regarding this question.**

According to the published opinions of the Assistant Secretary of the Department of the Interior of the United States of America the governing document of the Cherokee Nation of Oklahoma remains the Constitution that was approved in 1976. Therefore it is the Petitioner's right to demand an answer to this question: As a candidate for the At-Large Council representative will Robin C. Mayes be a candidate for a **de-facto** office? According to established law and precedent **Petitioner Mayes has the right to know in advance whether the position he is seeking is authorized by a federally recognized constitutional government.**

PRAYER

Protestant hereby presents an extreme condition before the CNO Election Commission and strongly urges that all or any of the candidates challenged and proven ineligible be barred from running in the CNO 2013 elections and that upon hearing and review of this matter that the Election Commission will find that the issues and complaints have merit and sustain appropriate revisions to their policy. Petitioner further prays that the Election Commission will join Petitioner in taking questions outside their scope to the CNO Supreme Court for resolution.

Respectfully submitted this 8th day of March, 2013.

Robin Mayes
3016 Groveland Terrace
Denton, Texas 26210

DECLARATION

I, Robin Mayes, do hereby declare that, under the penalties of the Criminal Code, the contents of this document are true and correct to the best of my knowledge and belief.

Robin Mayes

Robin Mayes

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MAR 15 2013

IN THE ELECTION COMISSION
OF THE CHEROKEE NATION

ROBIN MAYES,	)	
Protestant,	)	
	)	
v.	)	**2013 Election**
Meredith Frailey,	)	
Don Garvin,	)	
David Thornton,	)	
Jack Baker,	)	
Curtis Snell,	)	
Chuck Hoskin,	)	
Respondent Candidates,	)	

RESPONDENT HOSKIN AND SNELL'S MOTION FOR PARTIAL DISMISSAL

Respondents Chuck Hoskin, Jr., appearing *pro se*, and Respondent Curtis Snell, appearing by and through his counsel Hoskin, file this response to Protestant Robin Mayes Challenge of Eligibility ("Challenge"). For the reasons set forth below, Respondents Hoskin and Snell request that the Cherokee Nation Election Commission ("Commission") dismiss the Mayes' Challenge insofar as it challenges their candidacies.

I. Relevant Facts, Constitutional Provisions and Statutes

In 2003, the Cherokee people ratified the 1999 Constitution ("Constitution) as a successor to the constitution enacted in 1975. The Constitution was effective July 26, 2003, pursuant to a 2006 order of the Judicial Appeals Tribunal, predecessor of the Cherokee Nation Supreme Court. *In re Status and Implementation of the 1999 Constitution of the Cherokee Nation*, JAT 05-04 (2006). The Constitution, at Article VI, provides for, among other things, the terms of council members and a requirement for staggered terms. More specifically, Article VI, Section 3, states in part:

> 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.

Below that provision in Article VI, Section 3, is a mandate for staggered terms, as follows:

> The Council shall, within one year of this Constitution taking effect, establish a system of staggered terms for all seats on the Council to be organized into elections every two years.

Beyond that, the Constitution is silent as to how the Council is to enact the staggered term mandate.

The Council implemented the staggered term mandate through Legislative Act 07-07, enacted February 19, 2007. As reflected in the Act, the Council determined that the proper way to implement the mandate was to assign certain seats on the Council 6 year terms commencing with the 2007 elections.

In *Tribal Council v. Smith*, SC-09-03 (2010), the Supreme Court of the Cherokee Nation considered the constitutionality of Legislative Act 07-07. The Court concluded that "Legislative Act 07-07 is within the Constitutional authority granted to the Cherokee Nation Tribal Council to established staggered terms for Cherokee Nation Tribal Council seats."

Respondents Hoskin and Snell are elected members of the Council of the Cherokee Nation, first elected in 2007 and sworn into office on or about August 14, 2007. Both were elected to seats designated as 6 year terms pursuant to Legislative Act 07-07. Respondents Hoskin and Snell filed for reelection to their respective council seats for the 2013 election during the filing period of March 4-7, 2013.

II. Relevant Allegations in Mayes' Challenge

Mayes asserts, in relevant part, that Respondents Hoskin and Snell are not qualified as candidates for the 2013 election because they are nearing completion of year 6 of their term and are not in compliance with the Constitutional provision that Council terms be 4 years in length. *Mayes Challenge*, pp. 5-6. Mayes acknowledges that the Cherokee Nation Supreme Court has

upheld the 6 year term approach to staggering terms, but nevertheless urges the Commission to find Respondent's Hoskin in Snell in violation of their oath's to uphold the Constitution. Mayes goes on to opine that the Council's method of staggering terms is "unfair." Mayes urges, without suggesting an alternative approach to staggering terms, the Commission to "point out inequality and seek or recommend a solution such as requiring Council members with 2 years remaining in their term to resign." *Mayes Challenge*, p. 6.

III. Arguments

a. The Issue Has Been Decided

As discussed above in *Tribal Council v. Smith*, SC-09-03 (2010), the Supreme Court of the Cherokee Nation deemed the Council's approach to staggered terms in Legislative Act 07-07 to be "within the Constitutional authority granted to the Cherokee Nation Tribal Council to established staggered terms for Cherokee Nation Tribal Council seats." Though Mayes was not a party to that suit, the issue has plainly been disposed of by the Court and the Commission is bound to follow that precedent unless and until it is changed by the Court. Under principles of issue preclusion and respect for the Court's precedent, Mayes is precluded from bringing a challenge as to Respondent Hoskin and Snell's candidacies.

b. Mayes Fails to State a Claim on Which Relief Can be Granted

As discussed in Section c, below, Mayes claims with respect to the constitutionality of Respondents Hoskin and Snell's 6 year term is fatally flawed. However, irrespective of that analysis, Mayes asks the Commission to do something for which there is no legal authority to do. Mayes would have the Commission determine that Respondents Hoskin and Snell are ineligible to file for and serve in office on the basis that they are completing a term that violates the constitution. However, the Commission is charged with determining whether an individual filing

for Council meets the Constitutional and statutory qualifications for office. As reflected in the candidacy documents filed with the commission by Respondents Hoskin and Snell, both meet the qualifications to serve in office. Both meet the qualifications set forth in paragraph 1 of Article VI, Section 3, of the Constitution. Both meet the more specific requirements that flow from the constitution pursuant to the Cherokee Nation election code, found at Legislative Act 46-12. LA 46-12, Cherokee Nation Code, Title 26, Chapter 4 ("Qualifications of and Filing by Candidates"). Even assuming, *arguendo*, that Hoskin and Snell are serving in terms that violate the Constitution, such status could, at most, result in a court of competent jurisdiction terminating their current terms of office[1]. The invalidity of Hoskin and Snell's final two years on the Council, which ends August 14, 2013, would have no impact on their ability to file for the office of Council or to serve in that office for a *new* term. Under the Constitution and Legislative Act 46-12, Respondent Hoskin and Snell's qualifications for office and ability to serve if elected are the *only* two matters about which the Commission can lawfully be concerned. Respondent Hoskin and Snell meet those qualification, and the Commission's inquiry must end there.

Based on the foregoing, Mayes' Challenge, insofar as it relates to Hoskin and Snell, should be dismissed based on summary judgment.

c. Mayes Ignores or Misunderstands the Constitution.

Even assuming Mayes is not precluded under *Council v. Smith* from raising this claim and even assuming Mayes states a claim on which relief could be granted by the Commission, his claim is otherwise flawed and should be dismissed. In claiming that Respondents Hoskin and

[1] Although Mayes is now concerned about Hoskin and Snell's "two additional years" on the council, he took no action to challenge them during a time when such challenge might have resulted in some meaningful remedy, such as shortening the terms of Hoskin, Snell and other councilors serving six year terms to four years. However, Mayes instead sat on his rights and has effectively waived them under principles of *laches*.

Snell's 6 year terms violate the Constitution, Mayes himself ignores the Constitution. He focuses, conveniently, on only one provision, i.e., the reference to 4 year Council terms set forth in Article VI, Section 3. As discussed above, Article VI, Section 3, of the Constitution includes other relevant and indispensible provisions relating to Council terms. Mayes ignores the Constitution's requirement that Council terms be staggered. Incredibly, he also ignores the Constitution's requirement that the "Council shall, within one year of this Constitution taking effect, establish a system of staggered terms for all seats on the Council to be organized into elections every two years." Mayes, armed with not a shred of constitutional or statutory authority to support him, would have the Commission also ignore this provision, step into the Council's shoes and determine how best to stagger council terms.

The framers of the Constitution, having plainly determined that staggered terms was the best approach to structuring the Council, had to next determine how to achieve that structure. The framers could have left the structuring completely to the Council. The framers could have specifically and dispositively prescribed the manner of staggering. The framers chose a mixed approach, but gave considerable authority to the Council. The framers left the manner of staggering Council terms exclusively and expressly to the Council with one caveat. It required that the Council, "within one year of this Constitution taking effect," stagger terms such that elections occurred "every two years." Constitution, Article VI, Section 3, para. 5.

Certainly, there exists some tension between the Article VI Section 3's prescription of four year Council terms and its mandate that Council terms be staggered with bi-annual elections. But, the framers intended those provisions be read together and for the tension to be resolved by the Council. Respondents respectfully submit that the harmonizing of all the language in Article VI Section 3 is simply lost on Mayes. But it was not lost on the Council

when it adopted Legislative Act 07-07. The Council had two choices with respect to implementing the Constitutional mandate of staggered terms. It could have trimmed the terms of some council seats to two years or it could have increased the council terms to six years. If one follows Mayes' analysis to its logical conclusion, the Council was "damned if you do, damned if you don't." Mayes would presumably also find a Council term shorted to two years to be unconstitutional. Indeed, Mayes' narrow reading of Article VI, Section 3's prescription of four year terms and his willful blindness to the other provisions of Article VI, Section 3, makes *any* approach the Council could have taken to achieve staggered terms with bi-annual elections unconstitutional. If the Commission agrees, as it should, that the framers would not have set the Council up to fail in an effort to stagger terms, then Mayes argument utterly collapses.

IV. Conclusion and Request for Relief

Protestant Robin Mayes' challenges to the candidacies of Hoskin and Snell should be dismissed for the reasons set forth above. Additionally, Mayes should pay for Hoskin and Snell's attorney fees associated with the filing of this motion.

Date: March 15, 2013

/s/ Charles T. Hoskin, Jr.
Chuck Hoskin, Jr., Respondent & Counsel for Respondent Curtis Snell
CNBA #0254, OBA #18733
PO Box 921
Vinita OK 74301
Cell: 918-853-9301
charles.hoskin@sbcglobal.net

/s/ Curtis Snell
Curtis Snell, Respondent

Statement of Service

I, the undersigned pro se Respondent in this matter and counsel for Respondent Snell, certify that on March 15, 2013, I filed a copy of the Respondent Hoskin and Snell's Motion for Partial Dismissal with the Cherokee Nation Election Commission by email (wanda-beaver@cherokee.org) and by mail to its office at PO Box 1188, Tahlequah OK 74465-0948. A copy of said motion was served by email on the other parties as follows:

Meredith Frailey, meredith-frailey@cherokee.org

Don Garvin, don-garvin@cherokee.org

David Thornton, david-thornton@cherokee.org

Jack Baker, jack-baker@cherokee.org

Curtis Snell, curtis-snell@cherokee.org

Robin Mayes, uncchiefmayes@clear.net

/s/ Charles T. Hoskin, Jr.

Chuck Hoskin, Jr., Respondent & Counsel for Respondent Curtis Snell
CNBA #0254, OBA #18733
PO Box 921
Vinita OK 74301
Cell: 918-853-9301
charles.hoskin@sbcglobal.net

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Jack D. Baker
1102 Marlboro Lane
Nichol Hills, OK 73116

Dear Mr. Baker:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied the protest of Robin Mayes against the Candidacy of Meredith Frailey, Don Garvin, David Thornton, Jack Baker, Curtis Snell, and Chuck Hoskin for the Council Seat in District 4, 5, 9, 11, 15 and At Large, pursuant to Section 37 of the Cherokee Nation Election Laws.

You have a right to appeal this decision to the Cherokee Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Justin E. Carlton
200 N. Country Club Rd., #912
Muskogee, OK 74403

Dear Mr. Carlton:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied your protest against the Candidacy of Don Garvin for the Council Seat in District 4 pursuant to Section 37 of the Cherokee Nation Election Laws.

You have a right to appeal this decision to the Cherokee Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services

Cc: Amanda Proctor

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Dear Mr. Dawson:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied your protest on the Candidacy of Melvina Shotpouch for the Council Seat in District 10 pursuant to Section 37 of the Cherokee Nation Election Law.

You have a right to appeal this decision to the Cherokee Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services

Cc: Chad Smith

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Don Garvin
1112 Skyview Drive
Muskogee, OK 74403

Dear Mr. Garvin:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied the protest of Robin Mayes and Justin E. Carlton against the Candidacy of Don Garvin for the Council Seat in District 4 pursuant to Section 37 of the Cherokee Nation Election Laws.

You have the right to appeal this decision to the Cherokee Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Chuck Hoskin
218 S. 4th Street
Vinita, OK 74301

Dear Mr. Hoskin:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied the protest of Robin Mayes against the Candidacy of Meredith Frailey, Don Garvin, David Thornton, Jack Baker, Curtis Snell, and Chuck Hoskin for the Council Seat in District 4, 5, 9, 11, 15 and At Large, pursuant to Section 37 of the Cherokee Nation Election Laws.

You have a right to appeal this decision to the Cherokee Nation Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Robin Mayes
3016 Groveland Terrace
Denton, TX 76210

Dear Mr. Mayes:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied your challenge against the Candidacy of Meredith Frailey, Don Garvin, David Thornton, Jack Baker, Curtis Snell, and Chuck Hoskin for the Council Seat in District 4, 5, 9, 11, 15 and At Large, pursuant to Section 37 of the Cherokee Nation Law.

You have a right to appeal this decision to the Cherokee Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Dink Scott
PO Box 387
Vian, OK 74962

Dear Mr. Scott:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied your protest against the Candidacy of David W. Thornton, Sr. for the Council Seat in District 5 pursuant to Section 37 of the Cherokee Nation Election Laws.

You have a right to appeal this decision to the Cherokee Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services

Cc: Amanda Proctor

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Curtis Snell
55569 S. 550 Rd
Rose, OK 74364

Dear Mr. Snell:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied the protest of Robin Mayes against the Candidacy of Meredith Frailey, Don Garvin, David Thornton, Jack Baker, Curtis Snell, and Chuck Hoskin for the Council Seat in District 4, 5, 9, 11, 15 and At Large, pursuant to Section 37 of the Cherokee Nation Election Laws.

You have a right to appeal this decision to the Cherokee Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Janees Taylor
118 S. Mill St.
Pryor, OK 74361

Dear Mrs. Taylor:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied your challenge against the Candidacy of Meredith Frailey for the Council Seat in District15 pursuant to Section 37 of the Cherokee Nation Election Law.

You have a right to appeal this decision to the Cherokee Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services

Cc: Cliff Magee

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Elizabeth A. Blackwell
1234 N. 439 Rd.
Pryor, OK 74361

Dear Ms. Blackwell:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied your protest on the Candidacy of Melvina Shotpouch for the Council Seat in District 10 pursuant to Section 37 of the Cherokee Nation Election Law.

You have a right to appeal this decision to the Cherokee Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services

Cc: Kathy J. Robinson
Chad Smith

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Meredith Frailey
PO Box 699
Locust Grove, OK 74352

Dear Ms. Frailey:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied the protest of Robin Mayes and Janees Taylor against the Candidacy of Meredith Frailey for the Council Seat in District15 pursuant to Section 37 of the Cherokee Nation Election Laws.

You have a right to appeal this decision to the Cherokee Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services

Cherokee Nation Election Services
P.O. Box 1188 * Tahlequah, Oklahoma 74465-1188
(918) 458-5899 * 1-800-353-2895 * Fax (918) 458-6101

March 19, 2013

Melvina Shotpouch
PO Box 1380
Jay, OK 74346

Dear Ms. Shotpouch:

Notice is hereby given that the Cherokee Nation Election Commission, at a Special Meeting held on March 19, 2013, has denied the protest of Elizabeth A. Blackwell and Matthew Dawson against the Candidacy of Melvina Shotpouch for the Council Seat in District 10 pursuant to Section 37 of the Cherokee Nation Election Laws.

You have a right to appeal the decision to the Cherokee Supreme Court pursuant to Section 37 of Title 26 of the Cherokee Nation Election Law.

Sincerely,

Wanda Beaver

Wanda Beaver, Administrator
Cherokee Nation Election Services