

FILED

IN THE DISTRICT COURT OF THE CHEROKEE NATION

2019 APR 30 PM 1:48

JIMMY WILLIAMS
Petitioner,

v.

CHEROKEE NATION ELECTION
COMMISSION,
and
DON SCOTT,
Respondents

Case No. CV 19-245

Judge Luke Barteaux

CHEROKEE NATION
DISTRICT COURT
KRISTI MONCOOYEA
COURT CLERK

OBJECTION TO MOTION TO DISMISS

COMES NOW the Petitioner Jimmy Williams (“Petitioner”) and Objects to the Motion to Dismiss this action filed by the Respondent Don Scott. In support of this Objection, Petitioner presents the following:

1. Respondent Scott alleges this case should be dismissed due to failure of Petitioner to exhaust his administrative remedies. There is a limited window for citizens to challenge a candidate’s eligibility to run for office. For facts discovered after the timeframe for challenges, the Courts of the Cherokee Nation are the proper venue for bringing an action. Indeed, no other venue exists for eligibility challenges after “five (5) working days after the close of the filing period”. *See 25 CNCA §37(A)*.
2. Petitioner was not aware of the basis of Respondent Scott’s citizenship in the Cherokee Nation until the five (5) day window for challenges had already passed.
3. Petitioner sent a letter to Petitioner Cherokee Nation Election Commission (“CNEC”) prior to filing this action. The CNEC sent no written response to the letter. Petitioner’s only recourse was to file this action.

4. A candidate who is legally ineligible to run for elective office may not become eligible simply because no citizen possessed the requisite knowledge at the proper time to challenge him.
5. Even so, the basis of this suit is that the Cherokee Nation Election Commission (the "CNEC") was negligent in its duty to verify Respondent Scott was eligible to run for elective office for the Cherokee Nation before certifying him as a candidate. The injunctive relief requested against Respondent Scott is reliant upon the determination of this Court that he is not Cherokee by blood and therefore ineligible to run for elective office.
6. Respondent Scott has presented no evidence or argument that the CNEC performed all of its duties or that he is Cherokee by blood and eligible to run for elective office.

WHEREFORE, Petitioner prays Respondent's Motion to Dismiss will be denied and the determination of negligence on the part of the CNEC will be allowed to proceed with appropriate injunctive relief to follow, and any other relief the Court deems fair and just.

Respectfully submitted this 30th day of April 2019.



Deborah A. Reed, CNBA#0407, OBA#30693
3101 N. Hemlock Circle, Suite 112
Broken Arrow, OK 74012
(918) 286-8711 phone
(918) 994-7052 fax
deborah@reedlegalok.com
Attorney for Petitioner

CERTIFICATE OF DELIVERY

I, Deborah A. Reed, do hereby certify that I delivered a true, complete and correct copy of the foregoing Objection to the following on the 30th day of April, 2019 via electronic mail and the United States Postal Service with sufficient first class postage thereon.

James L. Cosby
210 South Muskogee Avenue
Tahlequah, OK 74464
cosbylawfirm@yahoo.com

Cherokee Nation Election Commission
PO Box 118
Tahlequah, OK 74465-1188
Marcus-fears@cherokee.org
hlchaffin@greencountryabstract.com

A handwritten signature in cursive script, appearing to read "Deborah A. Reed", is written over a horizontal line.