

IN THE CONSTITUTIONAL COURT  
FOR THE CHOCTAW NATION OF OKLAHOMA

FILED  
CHOCTAW NATION OF OKLAHOMA  
CONSTITUTIONAL COURT CLERK

AUG 01 2019

NELLIE MEASHINTUBBY,

vs.

ROBERT KARR & CHOCTAW NATION  
ELECTION BOARD  
& TRIBAL COUNCIL OF THE CHOCTAW NATION  
ex rel CHOCTAW NATION OF OKLAHOMA

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COURT CLERK  
BY Cara Schuman Deputy

Case No: CC-19-01

**COURT ORDER**

NOW on this 1<sup>st</sup> day of August, 2019, and enters the following findings:

This Court, upon consideration of the *Petition for Contesting a Tribal Election Result/Appeal from Election Board Decision, the Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim and Petition for Writ of Prohibition filed by the Choctaw Nation Election Board, the Motion to Dismiss Appeal and Argument in Support by Defendant the Tribal Council of the Choctaw Nation*, and oral arguments from counsel on this day, enters this Order.

**Jurisdiction Over the Tribal Council of the Choctaw Nation**

This Court finds that the Motion to Dismiss filed by the Tribal Council of the Choctaw Nation of Oklahoma ("Tribal Council") is granted. The Respondent, Tribal Council, is not a proper party to this proceeding and this Court has no jurisdiction over the Tribal Council of the Choctaw Nation of Oklahoma in this matter.

### **Decision by the Choctaw Nation Election Board**

Petitioner seeks this Court enter an order declaring a run-off between the general election candidate with the most votes, Robert Karr, and the candidate with third most votes, Nellie Meashintubby. Further, Petitioner seeks an order enjoining Robert Karr from being sworn in as a Tribal Council member of the Choctaw Nation of Oklahoma. The Court will take these issues in order as the ruling on the first will prevent the need for a ruling on the second.

This Court agrees with the decision of Respondent Choctaw Nation Election Board ("Board") and therefore denies Petitioner's Appeal and Petition for Declaratory Judgment.

While there is some confusion as to the proper avenue to appeal the Board's decision in this instance, the Court considers this action to be an appeal of a decision of the Election Board pursuant to Article XIX, Section 9. As such, this Court will review the matter de novo. Though the review is de novo, discretion is given to the decisions of the Board as they are most familiar with the facts and circumstances of the election and are charged with the decision-making power by the Tribal Council through the Chief and Tribal Council Election Ordinance ("Ordinance"). The Ordinance clearly states the Board is "charged with oversight and implementation" of the Ordinance per Article II, Section 1, (f).

Upon inspection of the Election Ordinance, it is apparent there is neither specific provision for the withdrawal of a candidate nor a specific provision preventing the withdrawal of a candidate for Tribal Council. The Ordinance clearly contemplates a withdrawal in Article VI, Section 1, when it states that no election will be held if a candidate runs "otherwise un-opposed". Both failing to draw an opponent and death of a candidate are specifically addressed, so there are only a few

other ways for a candidate to be “otherwise un-opposed”, and withdrawal of a candidate is one example.

It is also clear from the Ordinance that a run-off election, “...shall follow all rules, regulations and procedures in the same manner as the general election.” Article XXII, Section 3, clearly states that a run-off election will be, “...between the two (2) Candidates receiving the most votes in the general election.” Nothing in the record indicates a recount was called for and therefore it is clear which two candidates received the most votes, Robert Karr and Bob Pate. The Ordinance does not set forth any procedure, by which a candidate who came in third in the general election advances to a run-off election. This Court finds that the run-off election is a new election rather than a continuation of the general election as alleged by the Petitioner.

Once the need for a run-off election is decided, all other candidates in the general election would no longer be considered candidates in the run-off election. Article XXII, Section 3, while addressing the run-off does state, “The person receiving more than fifty percent (50%) of votes cast.....shall be declared the winner,”. So does Section 2 of the same Article when talking about the general election. But it is clear that if a candidate does not draw an opponent in the general election or winds up un-opposed the candidate is declared the winner. There is no need to have a ballot with one candidate so the Board can make sure the winner gets more than 50% of the vote. Getting more than fifty percent (50%) is a threshold in Section 3 to determine if a run-off is needed. Getting more than fifty percent (50%) of the vote is not a requirement to become a Tribal Council member in an un-opposed election. It does not matter if it is the general election or a run-off. Respondent, Karr found himself in an election where he became un-opposed and was rightfully certified as the winner by the Board. The Board’s decision to declare Robert Karr the winner is

correct and Petitioner's Petition for Declaratory Judgement/Appeal is denied. Likewise, the Petition for Injunction is denied as well.

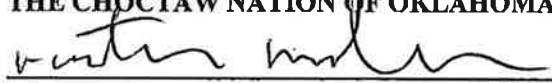
**Election Board's Petition for Writ of Prohibition**

The Board seeks a writ of prohibition directing the Court of Appeals to dismiss Meashintubby v. Karr, Case No. AC-19-1. If said case deals with the same issues at the issue before this Court, the Court of Appeals should certainly take this Order into account in entering a decision on the Petition for Mandamus and Prohibition filed in its Court. However, the Petition for Writ of Prohibition filed in this action is denied.

**UNANIMOUSLY ORDERED.**

A handwritten signature in black ink, appearing to read "David A. Burrage", written over a horizontal line.

**The Honorable David A. Burrage, Chief Justice  
THE CONSTITUTIONAL COURT FOR  
THE CHOCTAW NATION OF OKLAHOMA**

A handwritten signature in black ink, appearing to read "Mitch Mullin", written over a horizontal line.

**The Honorable Mitch Mullin, Judge  
THE CONSTITUTIONAL COURT FOR  
THE CHOCTAW NATION OF OKLAHOMA**

*Fred Bobb permission to sign given*  
*Cara Schumann*

**The Honorable Fred Bobb, Judge  
THE CONSTITUTIONAL COURT FOR  
THE CHOCTAW NATION OF OKLAHOMA**