

BEFORE THE CHEROKEE NATION ELECTION COMMISSION
OF THE CHEROKEE NATION

Cherokee Nation

v.

David Walkingstick, Principal
Chief Candidate

Hearing No. 2019 - 3

DECISION

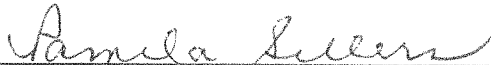
Now on this 17th day of May, 2019, this matter came on for hearing before the Cherokee Nation Election Commission and the Cherokee Nation appears by and through the Attorney General of the Cherokee Nation, Todd Hembree and Chrissi Nimmo, Deputy Attorney General: and the Candidate David Walkingstick, appears in person and through his attorney Brian R. Berry.

The Commission, after hearing the evidence of witnesses, sworn and examined, examining exhibits introduced, the written charges, hearing arguments of counsel and the Candidate and after full deliberation, finds that Notice of this Hearing was given and served as provided by law; finds that the Findings of Fact and Conclusions of Law attached hereto are incorporated herein by this reference; and, that the Candidate, David Walkingstick, is disqualified as a candidate for Principal Chief for the Cherokee Nation 2019 General Election.

IT IS THEREFORE THE DECISION OF THE CHEROKEE NATION ELECTION COMMISSION that David Walkingstick, is disqualified as a candidate for Principal Chief for the Cherokee Nation 2019 General Election.

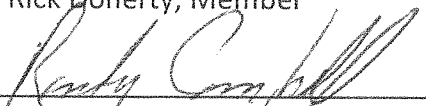
Dated this 17th day of May, 2019.

Cherokee Nation Election Commission

BY: 
Pamela Sellers, Vice Chairperson and Member

BY: 
Rick Doherty, Member

BY: 
Carolyn Allen, Secretary/Treasurer and Member

BY: 
Randy Campbell, Member

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

A. Connections between David Walkingstick and Cherokees for Change, LLC.

I. Rusty Appleton's role in the Walkingstick campaign.

- 1) On February 4, 2019, Cherokee citizen, David Walkingstick filed his Declaration of Candidacy for Chief of the Cherokee Nation and listed his address as 21969 S. 482 [Road] Tahlequah, OK 74464 and his phone number as (918) 822-4681.
- 2) On February 4, 2019, David Walkingstick filed his Designation of Financial Agents, which designated Rusty Appleton as his financial agent. He actively served in this capacity until at least February 28, 2019. David Walkingstick did not attempt to amend his Designation of Financial Agents and alert the Election Commission and the public to this change of Rusty Appleton's status until eleven days prior to the administrative hearing.
- 3) On May 6, 2019, David Walkingstick appeared in person at the Election Commission and altered the original Designation of Financial Agents form by marking through Rusty Appleton's name and writing "left campaign Feb. 28th" followed by his initials "D.W." At the same time he filed a new Designation of Financial Agents form listing no financial agents and certifying that he does "not authorize any person(s) to act for me, I will in person accept contributions and make expenditures in the interest of my candidacy."

II. Rusty Appleton's role in Cherokees for Change LLC.

- 4) On February 21, 2019, Rusty Appleton created Cherokees for Change LLC, an Oklahoma Domestic Limited Liability Company that was formed under the laws of Oklahoma.
- 5) On or before March 27, 2019 Cherokees for Change, LLC, began a website and Facebook page that shared positive messages about David Walkingstick and negative messages about Chuck Hoskin, Jr. and the Baker administration. The website also contained links to donate money to the LLC through the online fundraising entity Anedot, register to vote, or request and absentee ballot.

- 6) On April 23, 2019 the public and the Election Commission were made aware that Lisa Long and Marcus Enlow made twenty dollar donations to Cherokees for Change LLC through that organization's online fundraising partner Anedot. The day after the donations were made public, on April 24, 2019, Cherokees for Change LLC refunded those donations.
- 7) Cherokees for Change LLC ultimately raised \$59,625 total dollars, and expended \$26,884.92 entirely in support of the campaigns of David Walkingstick and Meredith Frailey without reporting any of these contributions or expenditures to the Cherokee Nation Election Commission.

III. The Walkingstick campaign's role in Cherokees for Change LLC.

- 8) On April 10, 2019, Elizabeth DeAnn Walkingstick, mother of David Walkingstick, rented PO Box 309 at Park Hill post office so that Cherokees for Change LLC could use that address as a return address on circulars to Cherokee citizens that supported the candidacy of David Walkingstick and attacked the candidacy of Chuck Hoskin, Jr. When she rented the post office box, she listed David Walkingstick as an individual who could receive mail at that address and linked that post office box with David Walkingstick's her address, which was also for some period time also his campaign address.
- 9) On or after April 10, 2019, Cherokees for Change, LLC, sent a mailer with positive messages about David Walkingstick and later sent another mailer with negative messages about Chuck Hoskin, Jr. The return address listed on both mailers was PO Box 309, Park Hill, OK 74451.
- 10) Post Office Box 309, Park Hill was closed on or before May 6, 2019 after David Walkingstick and his mother, DeAnn Walkingstick were questioned by the Cherokee Nation Marshal Service.
- 11) While Appleton was serving as Walkingstick's financial agent, he first became familiar with several individuals who Appleton would later target as potential donors to Cherokees for Change LLC. One such individual was Shelldon Miggetto. David Walkingstick called Miggetto in February and told him that he someone would "send him a link" where he could make a contribution anonymously if he did want to be identified as a Walkingstick supporter. Walkingstick or his campaign manager sent Rusty Appleton a text message and

told Appleton that Miggetto “wants to give but doesn’t want his name on expenditures.” Miggetto was subsequently contacted by Appleton who attempted to solicit from him a donation to Cherokees for Change LLC.

- 12) Cherokee citizen Robin Flint Ballenger attended a fundraiser hosted by Ross Swimmer on March 28, 2019. David Walkingstick and Meredith Frailey were both at that event. During the Walkingstick fundraiser, while candidates Walkingstick and Frailey were present in the room, Ballenger was approached by a gentlemen who gave her a number to call to make a contribution to Cherokees for Change, LLC. She called the number after the event, and she spoke to Rusty Appleton and made a contribution.
- 13) David Walkingstick and his Campaign Manager, Luke Harshaw continued prior to and at least through April 9, 2019 to have both text, phone and email conversation with Rusty Appleton and other individuals associated with Cherokees for Change, LLC. They communicated about fundraising, messaging, polling, contributions and contributors, anonymous contributions, IE’s (Independent Expenditures) and campaign strategy.

B. Walkingstick’s Illegal Solicitation of Contributions

- 12) On February, 28, 2019, Walkingstick called Cherokee Nation Businesses Board Member Shaun Shepherd and asked him for a \$5,000.00 campaign contribution. When Shepherd refused and stated he was supporting Walkingstick’s opponent, Walkingstick told Shepherd he could “make a cash contribution and remain anonymous and that no one had to know but he and I.” Additionally, Walkingstick asked Shepard if Shepard would “be willing to contribute to his campaign through a family member, specifically mention[ing] [Shepherd’s] mother.”

C. Use of Cherokee Nation cellphone

- 13) Walkingstick made and received hundreds of communications that were related to his campaign on the cell phone issued to him and paid for by the Cherokee Nation Tribal Council for Tribal Council business. He also listed his Tribal Council cell phone number and email address in association with events related to his campaign.

PROPOSED CONCLUSIONS OF LAW

A. Illegal In-kind Contributions by Cherokees for Change, LLC

Contributions may only be made by individuals, and no corporation or other legal entity may contribute to any Cherokee Nation campaign or candidate. See 26 C.N.C.A. §43(A).

The first legal issue before the Cherokee Nation Election Commission is whether the videos, Facebook ads, mailers and other services performed by Cherokees for Change LLC represent an in-kind contribution to David Walkingstick's campaign. Under Cherokee law, a campaign contribution includes a) services or goods to a candidate b) offered with the intent that it be used in connection with a campaign for elective office. 26 CNCA §41(A).

I. Cherokees for Change LLC provided goods and services to David Walkingstick's campaign.

The facts demonstrate that Cherokees for Change LLC provided services to David Walkingstick's campaign by creating social media and web content designed to persuade Cherokees to vote for the Walkingstick/Frailey ticket, and to damage the credibility of Walkingstick's opponent. Cherokees for Change LLC also assisted the supporters it sought to recruit with voter registration and obtaining absentee ballots.

Cherokees for Change LLC also provided goods in the form of two mailers that supported the Walkingstick\Frailey campaign.

There is sufficient evidence to support the legal conclusion that Cherokees for Change LLC provided goods and services to David Walkingstick's campaign for Principal Chief.

II. Cherokees for Change LLC provided the videos, Facebook advertisements and other digital content, along with the physical mailers, with the intent that those goods and services be used in connection with David Walkingstick's campaign for Principal Chief.

The facts demonstrate that David Walkingstick understood on February 21, 2019 that his financial agent, Rusty Appleton, intended to set up an LLC that would solicit contributions and use those monetary donations to supplement and support Walkingstick's own campaign. Appleton, who was still serving as the financial agent for Walkingstick's campaign at that time, had authority under Cherokee law to "accept contributions and pay obligations" on behalf of the Walkingstick campaign. While possessing that legal authority under Cherokee law, he was simultaneously setting up an LLC that both he and Walkingstick understood would operate to support Walkingstick's candidacy.

When the same person serving as financial agent for the Walkingstick campaign was simultaneously creating Cherokees for Change, LLC to support Walkingstick's candidacy, there can be little doubt that the in-kind contributions of Cherokees for Change, LLC were made with the intent that those goods and services be used in connection with the Walkingstick campaign.

These facts constitute sufficient evidence to support the legal conclusion that Cherokees for Change LLC intended that the goods and services they provided be used in connection with David Walkingstick's campaign for Principal Chief.

It is clear that Cherokees for Change LLC made illegal in-kind contributions to the campaign of David Walkingstick.

B. Acceptance of Illegal In-kind Contributions by David Walkingstick.

"No candidate or financial agent shall knowingly accept a campaign contribution or knowingly make or authorize political expenditures that the candidate or his or her financial agent knows to have been made in violation of this Section or Section 43 of this Title....no candidate, financial agent or citizen shall solicit or accept campaign funds or contributions that violates Sections 43 and 44 of this Title."

26 C.N.C.A. §44(G).

Having determined that Cherokees for Change LLC made illegal contributions to David Walkingstick's campaign for Principal Chief, it must further examine whether Walkingstick accepted these in-kind contributions.

The evidence above has established that Cherokees for Change, LLC made an in-kind contribution in connection with the Walkingstick campaign, and that same evidence also provides significant evidence that it was his intent to accept that in-kind contribution.

There is additional evidence presented that David Walkingstick accepted those in-kind contributions.

Walkingstick and his campaign manager Luke Harshaw, had extensive phone, text, and email communication with Rusty Appleton after the alleged resignation of Appleton, and other peoples associated with Cherokees for Change, LLC. This communication included discussions of fundraising, polling, and even sharing of bank account information.

Walkingstick's mother opened the PO Box listed on two Cherokees for Change, LLC mailers, and her physical address was used by both Walkingstick's campaign and Cherokees for Change, LLC. Walkingstick continued regular communication with Rusty

Appleton and vendors and contractors for Cherokees for Change, LLC well after the date he alleges Appleton ceased being Walkingstick's financial agent.

When this Commission asked Cherokees for Change, LLC to cease and desist, it did neither and responded through its attorney that the Cherokee Nation infringed upon Appleton's constitutional rights and argued that the Cherokee Election Code was not being violated. After Walkingstick's attorney "adopted and advised the representative from CFC, Mr. Rusty Appleton, at the address noted on the Election Commission Notice of his office, to likewise Cease and Desist and further references to the Walkingstick/Frailey Campaigns" Cherokees for Change, LLC removed both its website and Facebook pages completely from public view. These facts make it clear that Cherokees for Change, LLC was not under the control of the Commission, but was at least under some level of control by Walkingstick.

David Walkingstick knew that Cherokees for Change, LLC was being created directly for his benefit and both his financial agent and his mother assisted the LLC in carrying out its mission. There is sufficient evidence to demonstrate that Walkingstick accepted the in-kind contributions that his business associates and family members were arranging with his general knowledge and consent. When he revoked that consent through his attorney, Cherokees for Change LLC immediately ceased making those donations.

It makes no difference that Walkingstick or Cherokees for Change, LLC allege they met or exceed the federal rules and regulations on the extent to which a legal entity can coordinate with a candidate for federal office to whom they are providing support in the form of independent expenditures. In Cherokee Nation, it is illegal for a candidate to accept in-kind contributions from an LCC.

David Walkingstick's acceptance of in-kind contributions made in connection with Cherokees for Change, LLC, is a direct violation of 26 C.N.C.A. §44(G).

The Commission further wants to state that all of the "changes" that the Walkingstick campaign and Cherokees for Change LLC attempted to make: changes in financial agent, refunding donor money, closing the Park Hill post office box, occurred only when information about the LCC and its connections to Walkingstick began to be made public. Neither Walkingstick nor Appleton ever contacted the Election Commission about these issues before the report. This demonstrates that the Walkingstick campaign and Cherokees for Change LLC were not only connected, but were acting in coordination to cover up evidence of their connections.

C. Solicitations of Prohibited Contributions

David Walkingstick solicited an anonymous \$5,000.00 contribution and also asked Shawn Shepherd to give money to his mother so that she could contribute Shepherd's money directly to Walkingstick under her own name. Both are direct violations of 26 C.N.C.A. §44(G), and the Election Commission. David Walkingstick asked Sheldon Miggetto to contribute to Cherokees for Change, LLC knowing the contribution would be converted to an in-kind contribution directly benefitting his campaign. Walkingstick or his campaign manager contacted Appleton, gave him Miggetto's number, and told Appleton that Miggetto wanted to contribute but did not want his name on the financial disclosure report. That is a direct violation of 26 C.N.C.A. §44(G) and an additional evidence, in Miggetto's case, of coordination between Walkingstick and Cherokees for Change, LLC.

D. Use of Cherokee Nation Cell Phone

David Walkingstick used a phone provided and paid for by Cherokee Nation and that is intended for official business to make and send hundreds of communications directly related to his campaign for Principal Chief. This included calls and text messages to and from the owner of Cherokees for Change, LLC and its vendors and contractors. Additionally, he used this phone for the solicitation of contributions to his campaign, including in the instance involving Shaun Shepherd. Title 26, Section 52(D) of the Election Code states the "use of official website of the Cherokee Nation, the Cherokee Nation intranet, employee address list or "office phone extensions for political purposes" is prohibited. Any candidate, other person, corporation or legal entity that violates this section shall be assessed a civil penalty per occurrence." While there is clear evidence that David Walkingstick used Cherokee Nation property for political purposes, until the Cherokee Nation Tribal Council updates the Election Code to include cell phones, we cannot find that he violated this provision of the Election Code.

E. Penalties

"Any candidate or other person who is a citizen of the Cherokee Nation or a member of any other federally recognized Indian tribe who has violated any requirement or prohibition in Sections 43 and 44 of this Title shall be guilty of a crime and subject to disqualification by the Election Commission as provided under Section 38 of this Title."

26 C.N.C.A. §45(A).

David Walkingstick, a candidate for the office of Principal Chief and a citizen of the Cherokee Nation, has violated Section 44(G) of the Cherokee Nation's election law by soliciting or accepting campaign funds or contributions in violation of Sections 43 and 44 of Title 26. He is therefore subject to disqualification by the Cherokee Nation Election Commission. Any criminal penalties for his conduct will have to be pursued by the Office of the Attorney General.