

IN THE SUPREME COURT OF THE CHEROKEE NATION

In re: Effect of Cherokee Nation v. Nash and)
Vann v. Zinke, District Court for the District of)
Columbia, Case No. 13-01313 (TFH) and Petition)
For Writ of Mandamus requiring the Cherokee)
Nation Registrar to Begin Processing Citizenship)
Applications,)

Case No. SC-17-07

FILED

FEB 08 2021

CHEROKEE NATION
SUPREME COURT

AMENDED MOTION FOR HEARING AND FINAL DISPOSITION

COMES NOW the Cherokee Nation Attorney General, Sara Hill, and asks this Court for a hearing and final disposition of the above styled case. In support of this Motion, the Nation offers the following:

- 1) On September 1, 2017, Attorney General Todd Hembree petitioned this Court for a Preliminary Order determining that the Order in *Cherokee Nation v. Nash*, 267 F. Supp. 3d 86 (D.D.C. 2017), *enforced sub nom. In re Effect of Cherokee Nation v. Nash*, No. SC-17-07, 2017 WL 10057514 (Cherokee Sup. Ct. Sept. 1, 2017), was "valid and binding."
- 2) On September 1, 2017, this Court entered its *Preliminary Order Granting Declaratory Action and Petition for Writ of Mandamus*, specifically finding that per the Order in *Nash*, "the Cherokee Nation Registrar, the Cherokee Nation government and its offices, are directed to begin processing the registration applications of eligible Freedmen descendants, and that such Freedmen descendants, upon registration as Cherokee Nation citizens shall have all rights and duties of any other native Cherokee, including the right to run for office."
- 3) On December 8, 2017, several Cherokee citizens moved to intervene and set aside the *Preliminary Order*.
- 4) On December 29, 2017, the Nation objected to the *Motion to Intervene*.
- 5) On May 16, 2018, this Court found the intervenor citizens lacked standing and dismissed their Motion. In that Order, this Court stated "The Preliminary Order of this Court is to

- remain in effect as written.” That order is labeled “final” on the Supreme Court website.
- 6) On December 7, 2018, then Attorney General, Todd Hembree, filed a *Motion for Hearing and Final Disposition*.
 - 7) The Court has not ruled on that Motion.
 - 8) The Office of the Attorney General takes the position that the case is still active and the last Order in the case simply extended the *Preliminary Order*.
 - 9) This Court held, in the *Preliminary Order*, that “Freedmen descendants, upon registration as Cherokee Nation citizens shall have all the rights and duties of any other native Cherokee, including the right to run for office.
 - 10) That Order conflicts with the express language of the Cherokee Nation Constitution, which was the subject of the original *Nash* matter in federal court.
 - 11) The Cherokee Nation Constitution restricts citizenship to “Cherokees by blood,” “Delaware Cherokees,” and “Shawnee Cherokees” and restricts potential candidates for Principal Chief, Deputy Principal Chief, and Tribal Council to those citizens who are descendants of “by Blood” Cherokees. Cherokee Nation Constitution Article IV, Section 1; Article VII, Section 2 and 3; and Article VI Section 3. None of the appointed positions in the Constitution, including Justices and Judges, Attorney General, Marshal, or Election Commissioners, require “by-blood” citizenship. Cherokee Nation Constitution Article VII, Section 13 and 14; Article VIII Section 1 and 3; and Article IX. Election Commissioners, in fact, are not even constitutionally required to be Cherokee citizens. *See* Cherokee Nation Constitution IX,
 - 12) The language of the Cherokee Nation Constitution is in direct conflict with the Orders of the Federal Court in *Nash* and the Order of this Court in the present matter. The Nation has already been subject to at least one federal lawsuit because of this inconsistency. *See*

Fleming v. Cherokee Nation, Case No. 19-cv-01397 (TFH) (where a Cherokee citizen of Freedmen descent sued alleging, among other things, that the Cherokee Nation Constitution denied her due process and equal protection because it limited elected office to Cherokee citizens who were descendants of “Cherokees by blood” and that the Nation was not in compliance with the *Nash* Order as the Constitution still restricted elected office to descendants of Cherokee citizen “by-blood.”).

Based on the above, the Nation requests that this Court set this matter for hearing and issue an Order or Opinion finally disposing of the case. Accordingly, the Nation moves this Court to issue a final Order in this matter that would bring this issue to a close. By striking the “by blood” references in the Cherokee Nation Constitution, relating to both citizenship, elected office, and elsewhere, this Court would finally bring to a close the long and difficult history of Freedmen citizens within the Cherokee Nation. The Nation has also provided a proposed Final Order for the Court’s consideration.

Dated: February 8, 2021



Sara E. Hill, CNBA No. 0192
Attorney General for Cherokee Nation
P.O. Box 1533
Tahlequah, OK 74465-1533
Tel: 918-207-3836
Fax: 918-458-6142
Email: sara-hill@cherokee.org