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CHEROKEE SUPREME COURT
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**THE CHEROKEE SUPREME COURT
EASTERN BAND OF CHEROKEE INDIANS
QUALLA BOUNDARY, CHEROKEE, NORTH CAROLINA**

**IN RE: PRIMARY ELECTION FOR THE
OFFICE OF PRINCIPAL CHIEF, JUNE 6,
2013**

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Case No. _____

Filed
3-26-13
1:58 pm

PETITION FOR A WRIT OF MANDAMUS

Now comes the Petitioner, Patrick Henry Lambert, by and through his undersigned counsel and, pursuant to Rule 11(b) of the Cherokee Rules of Appellate Procedure, hereby prays this Honorable Court for the issuance of a Writ of Mandamus to the Cherokee Board of Elections (BOE). The Petitioner prays for an Order vacating the decision of the BOE denying him certification and otherwise refusing to permit him to file as a candidate for or allowing him to vote in the primary election for the office of Principal Chief of the Eastern Band of Cherokee Indians, established by ordinance for the first Thursday in June, 2013. The original and exclusive jurisdiction of the Supreme Court is invoked pursuant to C.C. § 7-2(e) to review the final decision of the BOE in this election dispute.

I. STATEMENT OF THE FACTS

On September 6, 2012 the Tribal Council enacted and on September 21, 2012 the Principal Chief ratified legislation which amended C.C. § 161-1(b) to provide that “[t]he Primary Election for the office of Principal Chief and Vice-Chief shall be held on the first Thursday in June, 2013, and each four years thereafter.” The previous general election for the office of Principal Chief was held in September, 2011. (Exhibit 1, p. 32)

The legislation amending C.C. § 161-1(b) was the product of significant legislative

attention. The legislation was introduced by the Board of Elections as Ordinance # 85 (2012) in the January, 2012 session of Tribal Council. (Exhibit 2, Schedule 2) Upon information and belief, the Attorney General either drafted the legislation or approved it. Subsequent to its enactment, C.C. § 161(b) was approved by the United States Department of the Interior. (Exhibit 1, pp. 21-22; Exhibit 2, Schedule 2) Additionally, Ordinance # 85 (2012) provided: "BE IT FURTHER ORDAINED that any resolution/ordinance inconsistent with this ordinance is hereby rescinded." (Exhibit 2, Schedule 2)

On February 26, 2013, Patrick Henry Lambert, the Petitioner, announced his candidacy for the office of Principal Chief in the primary election established for the first Thursday in June, 2013, pursuant to C.C. § 161-1(b). (Exhibit 3) Apparently, Mr. Lambert's announcement was the first time that the BOE realized that the Tribal Council and Principal Chief had established an election for the offices of Principal Chief and Vice Chief in 2013. (Exhibit 4 p. 6)¹ Denise Ballard, the Chair of the BOE advised the Petitioner in an unguarded moment that the Principal Chief and Attorney General met with the BOE in what appears to be an emergency basis and directed Ms. Ballard to engage the services of counsel. (Exhibit 1, p. 49)

Upon information and belief, following this emergency meeting, on Thursday, February 28, 2013, the Board of Elections announced that it would only accept candidate filings for the offices of Tribal Council and EBCI School Board. (Exhibit 5)

On March 1, 2013, the Petitioner attempted to file for the election for the office of Principal Chief, but was refused, first by the EBCI Finance Office and second, by the Board of

¹ Rule 11(b)(2) of the Cherokee Rules of Appellate Procedure provides that "certified copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition" shall be contained in the Petition for a Writ of Mandamus. The Petitioner has no understanding that the BOE has any authority to certify copies, so he has included the original decision of the BOE with which he was served. *See, e.g. Saunooke v. EBCI*, 3 Cher. Rep106, 110 (2004). If the Court wishes the documents to be certified, the Petitioner requests guidance as to how to effectuate that.

Elections. (Exhibit 6) Ms. Ballard informed the Petitioner “only Council and the three School Board seats are available for the 2013 Election.” (Exhibit 6) Similarly, the Finance Office had no election “packets to file for Chief or Vice-Chief.” (Exhibit 6)

On March 7, 2013, the Petitioner received a notice from the Board of Elections denying him certification for candidacy for the office of Principal Chief. (Exhibit 7) The BOE's basis for the refusal to certify the Petitioner as a candidate for office was said to be a conflict between C.C. § 161-1(b) and Section 5 of the Charter and Governing Document (Charter). (Exhibit 7) In essence, the BOE declared that C.C. § 161-1(b) violated Section 5 of the Charter and refused to conduct the election established by law. (Exhibit 7)

The Petitioner filed a protest on March 11, 2013 (Exhibit 2) and requested a full hearing before the BOE. The hearing was held before the entire BOE on March 15, 2013. (Exhibit 1) The BOE was represented by counsel from Washington, DC. (Exhibit 1, p.2)

At the hearing, the Petitioner offered the testimony of Dan McCoy, who served for 27 years on the Tribal Council, 15-18 of them as Chair. (Exhibit 1, pp. 10-11) Mr. McCoy described generally how Ordinances become law and specifically went over how Ordinance 85 created the primary for Principal Chief and Vice Chief and is the law. (Exhibit 1, pp. 10-25) Mr. McCoy concluded that C.C. § 161-1(b) was a valid law. (Exhibit 1, p. 23) He then explained that only the Council can amend an existing law: “I've done that many times with ordinance and resolutions, that people would later on, after it's published and everything, they would find out that maybe there was a mistake or something, and they would bring it back before the Council.” (Exhibit 1, p. 25)

However, an election Ordinance may not be amended during an election year. C.C. §

161-22(b). If the Council desires to modify C.C. § 161-1(b), it may do so on October 1, 2013. See C.C. § 161-24.

The Petitioner testified that he previously had run for the office of Principal Chief twice, losing narrowly each time. See, *Lambert v. Cherokee Board of Elections*, 6 Cher. Rep. 1 (2007). (Exhibit 1, p. 32) Given his continuing interest in the office, the Petitioner actually read the amended ordinances. (Exhibit 1, p. 41) He concluded, as any Enrolled Member would, that the Council and Chief had set a new date for the election of Principal Chief and Vice-Chief and he determined to enter the race. (Exhibit 1, p. 43) Indeed, the Petitioner realized that C.C. § 161-1(b) now complied with Section 3 of the Charter in that it established an election for Principal Chief two years after the most recent election. (Exhibit 1, p. 42) The Petitioner explained to the BOE that by setting the election for Principal Chief in 2013 for the term of office to begin on October 1, 2015, Sections 3 and 5 of the Charter were harmonized. (Exhibit 1, p. 42) The Petitioner warned that the BOE did not have the authority to declare that one Section of the Charter trumped another, that the BOE lacked the power to declare that an Ordinance was invalid and that any attempt to do any of these things was an infringement of the separation of powers and an unlawful usurpation of the judicial power. (Exhibit 1, pp. 5-7) Further, he argued that that the BOE had no discretion to amend any Ordinance and that any attempt to do so was an *ultra vires* attempt at legislation. (Exhibit 1, p. 69)

The BOE disagreed. In a breathtaking set of Findings of Fact and Conclusions of Law issued on March 19, 2013, the BOE, concluded that C.C. § 161-1(b) was a mistake, a clerical error and should neither be followed or obeyed. (Exhibit 4, pp. 3-8) Instead, the BOE effectively amended C.C. § 161-1(b) to read “the first Thursday in June, 2015” instead of “the

first Thursday in June, 2013” as enacted. (Exhibit 4, p. 8) In achieving this result, the BOE relied in part on affidavits it must have created during its own investigation of the case and never showed to the Petitioner or his counsel. (Exhibit 4, p. 5) In a departure from its position in Exhibit 7, the BOE now concluded that Section 5 of the Charter trumped Section 3 of the Charter, rationalizing it as follows: the term of office for the Principal Chief precludes the establishment of an election to that office prior to the year in which the term expires. (Exhibit 4) In short, the BOE has now purported to declare a portion of Section 3 of the Charter to be invalid as a matter of law. (Exhibit 4)

The Petitioner then filed this appeal seeking an Order vacating the decision of the BOE, and remanding this case to the BOE with specific instructions to immediately reopen and publicize a two week filing period for the offices of Principal Chief and Vice Chief and to conduct the election according to law.

II. STATEMENT OF THE ISSUES PRESENTED

- A. WHETHER THE BOE HAS THE POWER TO DECLINE TO CONDUCT AN ELECTION?
- B. WHETHER THE BOE HAS THE POWER TO DECLARE THAT ONE SECTION OF THE CHARTER TAKES PRIMACY OVER ANOTHER?
- C. WHETHER THE BOE ERRED AS A MATTER OF LAW BY DECLARING C.C. § 161-1(b) TO BE VOID?
- D. WHETHER THE ACTIONS OF THE BOE IN THIS CASE HAVE VIOLATED THE SEPARATION OF POWERS BY USURPING THE JUDICIAL POWER RESERVED TO THE JUDICIAL BRANCH?
- E. WHETHER THE BOE ERRED AS A MATTER OF LAW IN AMENDING C.C. § 161-1(b) BY EFFECTIVELY RE-WRITING IT TO SET A NEW ELECTION DATE IN 2015?
- F. WHETHER THE BOE VIOLATED THE PETITIONER'S RIGHTS TO EQUAL

PROTECTION UNDER THE LAW?

- G. CAN SECTIONS 3 AND 5 OF THE CHARTER BE RECONCILED BY UNDERSTANDING THAT THE ELECTION FOR PRINCIPAL CHIEF SET FOR 2013 IS FOR THE TERM OF OFFICE BEGINNING ON OCTOBER 1, 2015?

III. STANDARDS OF REVIEW

“The standard of review for an appeal of a final decision by the Board of Elections shall be for error of law.” C.C. § 161-23. In construing this, the Court has concluded its duty is “to determine whether the findings of fact support the conclusions of law and decisions of the Board.” *Crowe v. EBCI*, 3 Cher. Rep. 78 (2003); *Lambert*, 6 Cher. Rep. at 2.

The standard of review for the denial of the fundamental right to vote or participate in an election on the Qualla boundary is “strict scrutiny.” *Jacobson v. EBCI*, 4 Cher. Rep. 38 (2005).

IV. REASONS WHY THE WRIT SHOULD ISSUE

“These issues are of enormous importance to the Eastern Band of Cherokee Indians.” *Lambert*, 6 Cher. Rep. at 3; *Hornbuckle v. Cherokee Board of Elections*, 6 Cher. Rep. 4, 7 (2007). Indeed, the ultimate question posed in this case is: Will this Nation be governed by law or by whim?

The BOE Has No Power To Vacate a Duly Passed Ordinance

This is not the first time that the BOE has attempted to exceed its authority. Far from it.

In *Kephart v. EBCI*, 3 Cher. Rep. 101, 104 (2004) the BOE asserted that it had “implied authority” to order new elections under certain circumstances. The Court flatly rejected that attempted unlawful assumption of power: “The Board of Elections has no implied authority to create additional situations and order additional elections. This is the specific province of the Tribal Council.” *Id.* In *Saunooke v. EBCI*, 3 Cher. Rep. 106, 110-111 (2004) the BOE tried to

declare a candidate ineligible for office following the conclusion of the election. The Court concluded that the BOE had exceeded its authority. *Id.* at 111. Finally, in *EBCI Board of Elections v. Tribal Council*, 5 Cher. Rep. 4 (2006), in disagreement with some actions of the Tribal Council, the BOE sought to have this Court issue the Writ of Mandamus to the Tribal Council so that it would conduct its business in a way that satisfied the BOE. The Court wisely dismissed the matter. *Id.*

The BOE is the only Board of the Tribe created in the Charter: “The Tribal Council shall establish a Board of Elections and enact election rules and regulations for the conduct of tribal elections.” Charter, Section 6. C.C. § 161-19 enumerates the powers of the Board. This Court has summarized the duties and responsibilities of the BOE as follows: “The Board as an administrative agency created by the Tribal Council has the duty to carry out the provisions of Section 161 of the Cherokee Code.” *Saunooke v. EBCI*, 3 Cher. Rep. at 109.

While C.C. § 161-19(a) does give the Board “quasi-judicial powers to make the final rulings on all election protests properly before it[.]” nothing in C.C. § 161-19 or indeed any part of C.C. § 161 or even Section 6 of the Charter gives the BOE the power to declare an Ordinance setting an election to be void. Section 6 is clear: the BOE's authority from the Enrolled Members relates solely to the conduct of elections. The BOE simply lacks any authority to decline to conduct an election. Only the Tribal Council may establish an election. *Kephart*, 3 Cher. Rep. at 104. This being the law, it follows that only the Tribal Council may cancel an election.

The BOE Has No Authority to Construe the Charter and Governing Document

To reach its conclusion that C.C. § 161-1(b) was void, the BOE has attempted to construe

the Charter. Nothing in the Charter or C.C. § 161 gives the BOE any such power. The BOE's interpretation of the Charter that Section 5 overrides Section 3 is without any foundation in law.

The BOE Has Violated the Separation of Powers By Usurping the Judicial Power

While the BOE has a documented history of attempting to exceed its authority, this time it has gone even farther and has usurped the judicial power which resides with this Court and the Cherokee Court. C.C. § 7-3(a). It has issued a declaratory judgment, holding C.C. § 161-1(b) to be invalid, void and, in the reverse of the situation in *Kephart*, where it asserted that it had the power to order new elections, it declared that it would not hold the election, regardless of what the law stated. *Kephart*, 3 Cher. Rep. at 104. In doing so, it has conducted its own judicial review of the Charter and determined that the language in Section 5 trumps Section 3.

“The Judicial Branch of Tribal government is a co-equal branch of government alongside the Executive and Legislative branches.” *EBCI v. Rattler*, 5 Cher. Rep. 17, 22 (2006)(citing C.C. § 7-1(a)). C.C. § 7-5(a) reserves exclusively to this Court the power to interpret the Charter and laws of the Tribe: “The Supreme Court shall have the power to interpret and apply the Charter, laws, customs, and traditions of the Eastern Band of Cherokee Indians, and to make conclusions of law.” Significantly, C.C. § 7-5(b) provides: “The Supreme Court shall have the power to declare any law void if such violates the Charter and Governing Document of the Eastern Band of Cherokee Indians, enacted in 1986, as it may from time to time be amended.”

The law cannot be more clear---only the Court may exercise the judicial power, including the power to determine whether an Ordinance violates the Charter. The BOE has absolutely no such authority. In attempting to exercise it, it infringes on the judicial power and violates the separation of powers. Not only are such actions illegal, if the Court is to remain viable, they

cannot be tolerated.

The BOE Has Usurped the Legislative Power of the Tribal Council

If this were not enough, the BOE has also determined to invade the province of the Tribal Council and amend the Ordinance by effectively substituting the date “2015” for the date “2013” in the law. The BOE has no right to amend an Ordinance.

Former Chairman Dan McCoy testified that the Tribal Council routinely amends or changes Ordinances when either a mistake was made or some other modification is necessary to make a statute more efficacious. (Exhibit 1, p. 25) This is a function of the Legislative Branch. *See, e.g.* North Carolina SB 847 (SL-2012-194). Section 23 of the Charter could not be more clear:

The Tribal Council is hereby fully authorized and empowered to adopt laws and regulations for the general government of the Tribe, govern the management of real and personal property held by the Tribe, and direct and assign among its members thereof, homes in the Qualla Boundary and other land held by them as a Tribe, and is hereby vested with full power to enforce obedience to such laws and regulations as may be enacted.

The BOE is established by Section 6 of the Charter and is created by the Council, who appoints its members. *Saunooke*, 3 Cher. Rep. at 109. Therefore, the BOE is actually a part of the Legislative Branch of Tribal government.

But its duties and powers are solely contained within C.C. § 161. It has no power to legislate. It has no power to amend a statute. It has no power to change the date for an election established in an Ordinance.

If the Tribal Council thinks any part of C.C. § 161 requires amendment, it may do so on

October 1, 2013, at the conclusion of the election year. C.C. § 161-22(b). Indeed, the record suggests this is the norm. (Exhibit 1, p. 25) What is highly irregular and unlawful is for the BOE to substitute its judgment for that of the Council. This it may not do.

The BOE Has Violated the Petitioner's Rights to
the Equal Protection of the Laws

“The right to vote is a fundamental right, guaranteed by the equal protection provisions of 25 U.S.C. § 1302[a](8).” *Jacobson*, 4 Cher. Rep. at 42; *Long-Norville v. EBCI*, 3 Cher. Rep. 133, 134 (2004). In addition to participating in the election as a candidate, the Petitioner has a right to vote in it. As the Petitioner pointed out in his testimony, the actions of the BOE denied all of the Enrolled Members, including the members of the Board their right to vote in the June, 2013 primary election for the office of Principal Chief. (Exhibit 1, p. 55)

“[A]lleged violations of the fundamental right to vote are reviewed by the Court on a 'strict scrutiny' basis.” *Jacobson*, 4 Cher. Rep. at 42 (citing *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)(Alleged infringements of voting rights must be “carefully and meticulously scrutinized”)). “Under a 'strict scrutiny' analysis, the government, or in this case, the Tribe, 'carries the burden of proving that the classification is narrowly tailored or is necessary to achieve a compelling governmental or Tribal Interest.’” *Id.* (citing *Johnson v. California*, 543 U.S. 499, 125 S.Ct. 1141, 1146, 160 L.Ed.2d 949, 958 (2005)).

Participation in the electoral process is a goal “vital to a self-governing people.” *Buckley v. Valeo*, 424 U.S. 1, 93 (1976). “The right of ... an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters.” *Lubin v. Panish*, 415 U.S. 709, 716 (1974). The same “strict scrutiny” attached to the right to vote attaches to the right to run for office. *Buckley*, 424 U.S. at 93-94. Any compelling Tribal interest may not be met by way of a

means which unnecessarily burdens an “individual candidate's equally important interest in the continued availability of political opportunity.” *Lubin*, 415 U.S. at 716.

In this instance, the BOE has canceled an election duly established by Ordinance. This action cannot survive strict scrutiny. The best argument the Board can make is that it was necessary to cancel this election and amend the statute to read 2015 in order to square C.C. § 161-1(b) with the length of term of the office of Principal Chief found in Section 5 of the Charter. To do this, however, the Board finds it necessary to ignore Section 3 of the Charter or otherwise add language to it. These actions are not narrowly tailored or necessary to achieve a compelling Tribal interest. They are broadly tailored. They do not achieve a compelling Tribal interest. They ignore the law to achieve a desired result. Not only do they violate Mr. Lambert's equal protection rights to vote and appear on the ballot, they violate all of the Enrolled Members' rights to participate in the established election.

C.C. § 161-1(b) Is Clear and Unambiguous On Its Face

It is not necessary for this Court to interpret C.C. § 161-1(b). It is sufficient for the Court to hold that the BOE does not have the authority under the law to declare an Ordinance to be unlawful or to amend a statute and remand the matter for the conduct of the election. However, in the event the Court believes it should consider the broader issues of the validity of the Ordinance in question, the Petitioner will address them.

C.C. § 161-1(b) provides that “[t]he Primary Election for the office of Principal Chief and Vice-Chief shall be held on the first Thursday in June, 2013, and each four years thereafter.” This Court has no formalized mechanisms for statutory construction, but the Cherokee Court has held that “[u]nder well accepted rules of statutory construction, the Court must give the language

of the Cherokee Code a plain reading.” *In Re: CT*, ___ Cher. Rep. ___, ___, 8 Am. Tribal Law 386, 394 (2010)(Westlaw).

Turning to the Federal Courts for guidance, as provided for in C.C. § 7-2(d) the first rule of statutory interpretation is simple: “[I]n interpreting a statute a court should always turn to one cardinal canon before all others. . . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Indeed, “when the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” *Id.* at 254.

C.C. § 161-1(b) could not be more clear: a primary election for the offices of Principal Chief and Vice-Chief is to be held on the first Thursday in June, 2013. This year, the first Thursday in June is June 6, 2013. It means what it says and it says what it means. It is plain and unambiguous. *See In Re: CT*, ___ Cher. Rep. at ___, 8 Am. Tribal Law at 394. That should be the end of the inquiry.

The BOE’s problem with the Ordinance is not the wording. It understands the wording just fine. Its problem is that it does not like the wording. It considers it a “mistake,” a “clerical error,” an act, perhaps of negligence, although it goes out of its way to avoid accepting any blame for its perceived problem. (Exhibit 4)

Assuming *arguendo* that the statute is the result of a mistake, the result is no different. Mistakes are often made in the drafting of statutes. It is why legislatures have technical correction statutes. *See, e.g.* North Carolina SB 847 (SL-2012-194). Entire laws are sometimes mistakes. Former President Bill Clinton is currently crisscrossing the country, admitting that his signature on the Defense of Marriage Act, Pub.L. 104–199, 110 Stat. 2419, is a mistake. There

are those who believe that Ordinance No. 362 (2013), which requires the Court to assess a mandatory \$1,000.00 fine in the sentencing of cases of criminal domestic violence is a mistake. Does that mean the Cherokee Court Judges will not enforce it? Of course not. Is there anyone who can defend the Indian Removal Act as anything but a dreadful mistake, a terrible and permanent blot on the dignity of the United States? Any Cherokee person can testify that it had the force of law. At the end of the day, the BOE's attempts to portray the law as an error are simply irrelevant. The law is valid on its face and the Court should not permit any attempt to look behind it.

The Board's primary objection is its claim that C.C. § 161-1(b) conflicts with the term of office found in Section 5 of the Charter. The BOE charges that it is an absurd result to hold an election halfway through the term of the sitting Principal Chief. However, the BOE ignores Section 3 of the Charter, which directs that the election for the office of Principal Chief be held every two years. When forced to grapple with the language in Section, 3, the BOE simply chooses to explain that the Charter cannot possibly mean what it actually says. (Exhibit 4) However, the terse maxim *expressio unius est exclusio alterius*, that is, the expression of one thing is the exclusion of another, works to defeat the BOE's interpretation. The election is set for June, 2013. Thus, it cannot possibly be set for June, 2015.

Although the Court has no formalized mechanisms of statutory construction, it has had to come up with some in order to address election law issues with the BOE:

1. Election ordinances must be read, not in isolation, but in the context of the Charter; and
2. Sections of the Charter must be read in conjunction with each other.

Crowe, 3 Cher. Rep. at 82.

Applying these principles to C.C. § 161-1(b) only one interpretation is possible which gives equal weight to both Section 3 and 5 of the Charter. This election is valid and must be for the term of office for Principal Chief that begins on October 1, 2015. This honors Section 3's provision that the election be every two years as well as Section 5's requirement that the Principal Chief serve a term of four years.

The BOE's response to this is simply to sputter that such a construction is illogical, ridiculous. However that is not an argument for this Court, but rather for the Council. For the Court to adopt the BOE's findings, the Court would not only give its imprimatur to the Board's usurpation of the powers of other governmental entities, but it would also anoint this Court as a super-legislature. "It is not this Court's place to draft election laws and procedures. That is the province of the Council and the Executive Branch." *Lambert*, 6 Cher. Rep. at 3; *Hornbuckle*, 6 Cher. Rep. at 7.

Propriety of the Writ

The BOE determined that it would not conduct the election for Principal Chief, notwithstanding the mandatory directive of C.C. § 161-1(b). Petitioner properly protested this determination in a timely fashion and, with the issuance of a final determination by the BOE on March 19, 2013, has exhausted his administrative remedies. *See, Junaluska v. EBCI*, 4 Cher. Rep. 37 (2005); *Long-Norville*, 3 Cher. Rep. at 135. The case is properly before this Court pursuant to C.C. § 7-2(e).

The Court has previously utilized the Writ of Mandamus to control overreach by the BOE. *Saunooke v. EBCI*, 3 Cher. Rep. 69 (2003). Its issuance is appropriate here.

V. CONCLUSION

“This is not the first time that the Court has been called upon to rectify irregularities in Tribal elections. The irregularities that this Court has been required to deal with could have been eliminated with a minimum of planning and effort.” *Lambert*, 6 Cher. Rep. at 3; *Hornbuckle*, 6 Cher. Rep. at 7.

The BOE's findings of Fact do not support its Conclusions of Law. Indeed, the BOE relies upon materials that it never even showed to the Petitioner during the hearing process to find certain facts, in particular, affidavits of unnamed Tribal Council members. (Exhibit 4, p. 5)

The BOE has made numerous, significant errors of law. It has created additional situations and additional elections, actions prohibited by this Court's strict admonition in *Kephart*. *Kephart*, 3 Cher. Rep. 104. By failing to acknowledge the law and set the election, the Board puts itself in the position of unfairly, improperly and illegally affecting the actual outcome of the election in violation of C.C. § 161-16(d). In reaching its conclusions, this unelected Board has set itself up as a law making body and has attempted to exercise the judicial power reserved to the Court. Furthermore, the BOE's actions do not survive the “strict scrutiny” of the Court and thus violate 25 U.S.C. § 1302(a)(8).

The Enrolled Members deserve better than a BOE that makes up the law as it goes along. They deserve a BOE that follows the law.

This Court should issue the Writ, vacate the decision of the BOE, and remand this case to the BOE with specific instructions to immediately reopen and publicize a two week filing period for the offices of Principal Chief and Vice Chief and to conduct the election according to law.

The Petitioner is aware that Rule 11(b)(3) of the Cherokee Rules of Appellate Procedure

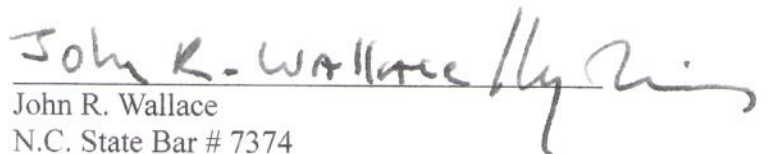
establishes that no oral argument will be allowed unless ordered by the Court on its own motion. The Petitioner believes that oral argument may aid the Court in the decisional process and stands ready should the Court desire oral argument.

Respectfully submitted, this the 26th day of March, 2013.



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N.C. State Bar # 13597

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NORTH CAROLINA)
)
BUNCOMBE COUNTY)

VERIFICATION

The undersigned, being duly sworn, deposes and says: that he has read the foregoing PETITION FOR A WRIT OF MANDAMUS and knows the contents thereof; that the same is true of his own knowledge except as to those matters and things therein set out on information and belief and as to those he believes them to be true.

This the 25th day of March, 2013.

Patrick H. Lambert
PATRICK HENRY LAMBERT
Petitioner

Sworn to and subscribed before me this the 25th day of March, 2013.

Catherine S. Martin
NOTARY PUBLIC

My commission expires:

June 16, 2015

