

In the Matter of: Patrick H. Lambert

EB01
CHEROKEE SUPREME COURT
CHEROKEE, NC

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

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FILED

IN THE MATTER OF: APPLICATION OF CANDIDACY FOR BIRDTOWN TRIBAL
COUNCIL OF PATRICK H. LAMBERT)

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CSC-25-02
Opinion

Appeal by applicant for candidacy from final decision of the Board of Elections issued June 17, 2025. Heard in the Cherokee Supreme Court on July 10, 2025. This opinion issued after the entry of a summary decision by this Court on July 10, 2025 reversing the Board and ordering Appellant to be certified as a candidate.

BARRETT, Justice Sharon Tracey, joined by HUNTER, Justice Robert C.

Appellant Patrick Lambert ("Mr. Lambert") filed an application to be a candidate in the Birdtown Tribal Council election for the 2025 election cycle. The Appellee Board of Elections ("the Board") undertook its examination process after the close of the candidate filing period. The Board determined that Mr. Lambert was ineligible to be a candidate and ordered the required hearing.

The Board held the hearing on June 10, 2025 in Cherokee, North Carolina pursuant to Cherokee Code §161-4(c). Mr. Lambert appeared, testified, offered documentation and was available to answer questions from Board members. After the hearing, the Board met to consider the issue and to deliberate based not only on materials presented by Mr. Lambert, but also

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numerous other materials set out in the Board's decision, including the EBCI Charter and Governing Document ("the Charter"), as well as various legislative enactments.

In its final decision, the Board disqualified Mr. Lambert as a candidate for only one reason: he was impeached and removed from office as Principal Chief in 2017. In making this decision, the Board relied exclusively upon a disqualifying factor that had been adopted by Tribal Council. C.C. § 161-3(d)(3); *contra*, Charter §§ 9, 17. However, the Tribe has not adopted this disqualifying factor in its Charter. Thus, there is a contradiction between the Charter and Governing Document, which is the founding document adopted by the Tribe as a whole, and legislative enactments, which are passed by Tribal Council, the elected representatives of the Tribe.

Mr. Lambert appealed to this Court, arguing that the Charter and Governing Document is the supreme law of the Eastern Band of Cherokee Indians and that Tribal Council cannot impose a restriction on qualification for office that is greater than that allowed in the Charter. We agree.

Jurisdiction

° The Cherokee Supreme Court has original and exclusive jurisdiction to review a final determination made by the Board of Elections in any election dispute. C.C. § 7-2(e).

Standard of Review

The standard of review for an appeal of a final decision of the Board of Elections is for error of law. C.C. §161-23. Accordingly, in reviewing a final decision of the Board, this Court reviews the matter *de novo*, considering only alleged errors of law. *Sessions v. Cherokee Bd. of Elections*, 15 Am. Tribal Law 39 (CSC Oct. 6, 2017), *In Re Primary Election for the Office of the Principal Chief*, 13 Am. Tribal Law 171 (CSC 2013).

Discussion

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The key fact here is uncontested: Mr. Lambert does not deny that he was impeached and removed from office as Principal Chief in 2017. Tribal Council's nine-page verdict sets forth the factual basis and the outcome on each of the twelve Articles of Impeachment that were put to trial. The verdict of Tribal Council, based on the evidence presented, was the exclusive responsibility of Tribal Council to decide, not this Court. *See E. Band of Cherokee Indians ex rel. Enrolled Members v. Lambert*, 15 Am. Tribal Law 55 (CSC 2018).

The sole issue before the Court here is whether the Tribal Council has the power to impose additional restrictions on who may run for tribal office, above and beyond the criteria adopted by the Tribe in its Charter and Governing Document. Stated another way, the question is whether, as matter of law, the Tribal Council can impose limits on who may run for tribal office that go beyond those stated in the Charter and Governing Document.

As a preliminary matter, we note that the Board considered—but did not decide—whether another provision of the Charter disqualifies Mr. Lambert as a candidate. The Charter and the Code both contain this identical provision:

No person shall ever be eligible for office or appointment of honor, profit, or trust who shall have aided, abetted, counselled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or themselves have defrauded the Tribe, or who may hereafter aid or abet, counsel or encourage anyone in defrauding the Eastern Band of Cherokee Indians.

Section 17 of the Charter and C.C. §161-3(d)(2).

The Board considered whether Mr. Lambert should be disqualified as a candidate under this provision. The Board's final decision stated that it was "troubled by the candidate's conduct" for which he was tried before Tribal Council, convicted and removed from the office as Principal Chief. Charter, § 17. However, because the Board declined to make a definitive decision as to

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whether this conduct violated this provision of the Charter, this issue is not presented on appeal. Thus, this issue could not be, and has not been, considered here.

The Board of Elections, created under Section 6 of the Charter, is authorized to act under Chapter 161 of the Cherokee Code. Under Chapter 161, the Board is empowered with full authority to conduct and administer elections, including the consideration, investigation, hearing and resolving of objections and protests. *Crowe v. EBCI Bd. of Elections*, 3 Cher Rep. 78, 2003 WL 25902442 (CSC 2003). In performing its duties, the Board of Elections has the responsibility and the authority to interpret election laws and apply that interpretation in deciding these questions. *In Re Primary Election for the Office of the Principal Chief*, 13 Am. Tribal Law 171 (CSC 2013). The Board has quasi-judicial powers in election matters, including the specific authority to interpret the Cherokee Code and to evaluate whether provisions of the Code are inconsistent with the Charter. *Crowe, supra*, C.C. §161-22(c), C.C. §161-19(a). Based on this evaluation, the Board has the authority to make final decisions on candidate eligibility, subject only to reversal by this Court for errors of law. *Crowe, supra*; *In Re Primary Election, supra*.

In this appeal, Mr. Lambert claims that Section 161-3(d)(3) of the Cherokee Code—the provision which the Board relied on to decide he was ineligible for candidacy—was invalid because it was inconsistent with the Charter and Governing Document. The Charter and Governing Document clearly sets out the qualifications for candidacy in Section 9 and matters which shall disqualify candidates in Section 17. The Code provision challenged here renders a person ineligible to be a candidate for any office if they have been impeached and removed by the Tribal Council from elected or appointed office. This provision is not found in Section 17 of the Charter. The relevant portion of the Code provision at issue states:

No person shall ever be eligible to run for or serve in any of the above Tribal Offices, if: ... (3) The person has been impeached and

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removed by the Tribal Council from any elected office or appointed office, for having violated his or her oath of office or being guilty of any offense making the person ineligible to hold said office.

C.C. §161-3(d)(3).

Again, there is no question whether Mr. Lambert was impeached and removed from office, and the verdict in the record makes plain that the Tribal Council adjudged that he had violated his oath of office. The sole question is whether this disqualifying factor, which is not found in the Charter and Governing Document, imposes a disqualification for candidacy that is inconsistent with the Charter. We conclude that it does and that this provision is therefore unenforceable.

An appeal from the Board of Elections is not an ordinary civil action adjudicating competing claims between parties. *Sessions*, 15 Am. Tribal Law at 39. Rather, the question here is instead a conflict between the Charter and a Code provision not found in the Charter which adds a new disqualification for tribal office. On this narrow question, we need not and should not consider the trials or travails of Mr. Lambert as a candidate or as a former Principal Chief, including his prior legislative proposals.

As a court of law, this Court cannot ignore it when a justiciable issue presented on appeal to us involves a law passed by Tribal Council which contradicts the Charter. While Tribal Council has broad powers to make law, legislative enactments must be consistent with the supreme law of the Charter and Governing Document, specifically including the provisions regarding qualifications and disqualifications for candidacy for elected office. To be clear, while the Court is respectful of the broad authority entrusted to Tribal Council to enact and amend election laws, as well as rules and regulations, Tribal Council's enactments may not override the Charter.

This Court does not suggest that Tribal Council has acted in bad faith, or would do so in the future, by way of legislative enactments like the one in question, which we find is inconsistent

with the Charter. Other jurisdictions have provisions of law in their constitutions that can prevent a person who has been impeached and removed from office from ever serving again in public office. *See, e.g.*, U.S. Constitution, art. 1, § 3. To be enforceable, such a provision in this jurisdiction must be found in this Tribe's Charter and Governing Document.

The importance of this question of Cherokee law can be shown by considering a more extreme case. If Tribal Council can impose qualifications and disqualifications on who may run for office beyond those in the Charter, how else might some future Tribal Council decide to enact qualifications or disqualifications which 'merely supplement' the Charter and Governing Document? Perhaps a future Tribal Council might require a candidate for Principal Chief to have prior experience serving on Tribal Council. Or require a candidate to have a particular college or postgraduate degree. Another possibility: Tribal Council might extend the disqualification in Section §161-3(d)(3) to any person who Tribal Council has ever removed from any tribal office, even where no impeachment trial was held. In these ways, a future Tribal Council would have the power to significantly restrict who may run for tribal offices, all by 'supplementing' the Charter, thereby thwarting the voters' power to choose tribal leaders.

It violates the Charter—and common sense—to say that legislative officials in a representative democracy can narrow the field of eligible candidates for their elected offices. By voting for the Principal Chief and other elected officials, the Tribe directly chooses its leaders. Tribal Council cannot screen out certain categories of candidates by enacting qualifications and disqualifications that are not found in the Charter. The community as a whole adopted these criteria in the Tribe's founding document: the Charter and Governing Document. Thus, Tribal Council cannot add to, or take away from, these provisions because the Charter and Governing Document is the foundation upon which all Cherokee law rests. Only a duly enacted amendment to the Charter

can amend the criteria for tribal office.

This Court's decision in *Crowe* is on all fours with the instant case. This binding precedent establishes that Tribal Council cannot enact election laws with qualifications that impose restrictions different than those imposed by the Charter. While *Crowe* relates to the qualifications for voters and this decision addresses qualifications for candidacy, the legal analysis is identical for evaluating inconsistencies between in the Charter and the Code regarding qualifications and disqualifications. The majority sees no a meaningful distinction between this case and the decision in *Crowe*; as a result, we must follow that precedent.

In *Crowe*, an election protest challenged absentee votes in the 2003 election for Principal Chief based on a provision of the Cherokee Code. *Crowe*, 3 Cher Rep. at 78. Tribal Council had enacted limits on absentee voting that, if followed, would have created a qualification for voting that would void a large number of the absentee votes cast in the at-large election. *Id.* The Board did not consider and apply the words of the Code in isolation from the Charter and Governing Document. Instead, the Board carefully evaluated whether the Code provision in question was consistent with the qualifications for voting established in the Charter. *Id.* Recognizing the dilemma where a Code provision relating to qualifications is inconsistent with the Charter, the Board stated:

If we read [the Code provision] literally, we allow it to impose a restriction that is greater than that allowed in the Charter. The Charter imposes only two restrictions: that a person be a tribal member, and that they be at least 18 years of age. Any further restriction – such as that suggested by the protesters – would violate Tribal law.

Id. This Court ultimately affirmed the Board's decision to deny the protest, despite the contrary restrictions adopted by Tribal Council and incorporated into the Cherokee Code.

Another precedent also supports this approach by the Board, and the Board's final decision was affirmed as an appropriate usage of quasi-judicial power. *In re Primary Election for Off. of Principal Chief, June 6, 2013*, No. CV 13-254, 2013 WL 11276388, 13 Am. Tribal Law 171 (CSC 2013). In that case, Tribal Council scheduled a primary election, but the enactment contained a mistake. *Id.* Even though Section 3 of the Charter provides that the Principal Chief of the Tribe serves a four-year term, the Tribal Council scheduled a primary election for that office to be held only *two years* into the four-year term. *Id.* After this date was publicized, someone applied for certification as a candidate for Principal Chief in the announced two-year primary. *Id.*

The Board used quasi-authority authority to investigate, learned that the error was the result of an inadvertent clerical error, and ultimately refused to certify the candidate. *Id.* The Board clearly recognized that Section 3 of the Charter gave the Principal Chief a four-year term, and that the Tribal Council's error in scheduling a primary election after only two years was inconsistent with that four-year term. *Id.* The Board thus disregarded the erroneous legislative enactment and determined it would act consistent with the Charter. *Id.* On appeal, this Court upheld the Board's decision as an appropriate exercise of quasi-judicial authority. *Id.* The Board had properly resolved the conflict between the Charter and the Cherokee Code. Again, as the Charter takes precedence over conflicting provisions of Cherokee Code, the Board's decision was upheld.

In *Crowe* and *In Re Primary*, the Court approved the Board's decisions. Turning to the Board decision here, it shows the Board took a different and totally contrary approach to the decision-making process. Rather than evaluating whether the challenged Code provision conflicts with the Charter and Governing Document, the Board rather emphatically decided against undertaking this analysis, deciding that the Board could only consider the enactments of Tribal Council in Chapter 161 of the Cherokee Code. Specifically, the Board stated that "It is not the role

of the Board to re-write C.C. Chapter 161 or disregard particular sections of that Chapter. Such actions are reserved to the other parts of Tribal government.”

However, to the extent that the Board did not fulfill its important responsibility to recognize the inconsistency between the Cherokee Code and the Charter and Governing Document, and then to exercise the Board’s quasi-judicial power to determine that the Code cannot override the Charter and Governing Document, the Board erred as a matter of law. *Crowe, supra; In Re Primary, supra* and C.C. §161-19(a).

We hold that C.C. §161-3(d)(3), which purports to disqualify a candidate who has been impeached and removed from office, is unenforceable, unless and until the Charter and Governing Document is duly amended to include such a provision. To hold otherwise would allow Tribal Council to add a disqualification (or a qualification) that would override the will of the voters of the Tribe as set in the Charter and Governing Document, as adopted by a referendum of tribal members.

This Court is not the first to so hold. In other jurisdictions, where Constitutions set candidate qualifications, courts have similarly rejected legislative enactments which would change or supplement those requirements. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (1995) (held that qualifications for service in Congress are fixed and may not be supplemented by Congress); *Gerberding v. Munro*, 134 Wash. 2d 188, 211, 949 P.2d 1366, 1377–78 (1998) (where state constitution set the qualifications for certain state office-holders, amendment of state constitution is required to impose different qualifications), *see also Powell v. McCormack*, 395 U.S. 486, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969) (Congress cannot exclude any duly-elected person who meets all requirements for membership stated in Constitution).

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The majority respectfully disagrees with the dissent in important ways. First, the dissent suggests that the majority finds an inconsistency between Sections 6 and 9 of the Charter and sees tension between these two sections of the Charter. Respectfully, we do not. What we do find is an inconsistency between C.C. §161-3(d)(3) and the Charter: a disqualification for tribal office adopted by Tribal Council that is not found anywhere in the Charter and Governing Document.

The dissent also suggests that the Charter somehow gives Tribal Council an implied power to supplement the candidate qualifications set forth in the Charter. Pointing to several different sections of the Charter, the dissent cites no express statement of such authority, but concludes that Tribal Council nevertheless is given authority by the Charter to supplement the candidate qualifications and disqualifications. The dissent apparently sees this implicit power as within the scope of Tribal Council's explicit authority to enact laws, rules and regulations for the conduct of tribal elections, as set forth in Section 3 and Section 6. If the Charter created this power, it would have been expressly stated. It did not.

We have carefully reviewed Sections 3, 6, 9, 17, 22 and 23 – as well as the Charter as a whole. But we find nothing in the Charter gives Tribal Council power over elections beyond the authority to enact election laws, rules and regulations for the conduct of tribal elections. Tribal Council cannot override the Charter. Tribal Council cannot adopt new qualifications or disqualifications for elected office that are inconsistent with the express provisions of the Charter. Tribal Council does have the authority to make and amend laws governing the conduct of elections, but those laws cannot limit who may run in the election, beyond the express provisions in the Charter and Governing Document.

In another important matter, we agree with the dissent. This Court recognizes that sometimes laws may be on the books for a long time before challenges are properly brought before

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the Court, even laws that may conflict with the Charter. The mere passage of time after a law is enacted does not make that law valid and enforceable, especially if it conflicts with the Charter. Similarly, the passage of time alone does not cause a legislative enactment to become a custom and tradition with the force of Cherokee law, especially if it conflicts with precedent. This case is controlled by *Crowe* and *In Re Primary*, which we follow. *See Campos v. Parker*, 16 Am. Tribal Law 334 (CSC 2022).

The Board of Elections decision has been REVERSED and it was ordered on July 10, 2025 that Mr. Lambert be certified by the Board of Elections as a candidate for Tribal Council.

This is the 5th day of August, 2025.

Sharon Tracey Barrett

Sharon Tracey Barrett
Associate Justice by designation

Robert C. Hunter

Robert C. Hunter
Associate Justice

Chief Justice Letts, dissenting by separate opinion.

LETTS, Chief Justice, dissenting.

Because I believe the Cherokee Board of Elections (“Board of Elections” or “the Board”) correctly followed the law and denied certification to petitioner Patrick H. Lambert, I would affirm the Board’s decision.

This Court has original and exclusive jurisdiction to review the Board’s final determination in any election dispute. C.C. § 7-2(e); *see also McCoy v. Bd. of Elections of the E. Band of Cherokee Indians*, 16 Am. Tribal Law 13, 21–22 (CSC June 4, 2019). In reviewing election matters, we do not make findings of fact. We review alleged errors of law de novo. C.C. § 161-23 (“The standard of review for an appeal of a final decision by the Board of Elections shall be for error of law.”); *see also In re Primary Election*, 13 Am. Tribal Law at 174; *Crowe*, 3 Cherokee Reporter at 79. In reviewing the matter, the Court adheres to tribal law, customs, traditions, and precedents of the Eastern Band of Cherokee Indians (“EBCI”). C.C. § 7-2(d).

A. Charter Section 6 & C.C. § 161-3(d)(3)

Section 6 of our Charter and Governing Document (“Charter and Governing Document” or “our Charter”) states that “[t]he Tribal Council shall establish a Board of Elections and *enact election rules and regulations for the conduct of tribal elections.*” Charter and Governing Document of the EBCI, Section 6 (emphasis added). Cherokee Code of Ordinances, Section 161-3(d)(3) provides that:

[n]o person shall ever be eligible to file for or serve in any
of the above Tribal Office, if:

....

(3) The person has been impeached by the Tribal Council or found guilty in any jurisdiction to have violated a law that would constitute a violation of Section 17 of the Charter and Governing Document of the Eastern Band of Cherokee Indians[.]

C.C. § 161-3(d)(3) (originally ratified March 6, 1997) (Ordinance No. 479).

The plain language of the Charter, Section 6, authorizes the Tribal Council to establish the Board and to set rules and regulations for the conduct of elections. That is what the Tribal Council has done by enacting C.C. § 161-3(d)(3). Likewise, the Board has clearly followed the law as promulgated by the Tribal Council in Cherokee Code section 161-3(d)(3). The Charter ultimately adopted by the EBCI to govern the Cherokee community specifically chose to include a Board of Elections and has, since 1986, used this process to conduct elections to tribal office.

In matters of statutory interpretation, “[i]f the statutory language is clear and unambiguous, we eschew[] statutory construction in favor of giving the words their plain and definite meaning.” *E. Band of Cherokee Indians v. Long*, 17 Am. Tribal Law 358, 363 (CSC 2023) (second alteration in original) (citation and quotation marks omitted). “When a statute is ambiguous, we use judicial construction to determine the legislative intent,” *id.*, and “[w]hen a lawmaking body borrows a term of art, we presume that it adopts the ‘cluster of ideas’ associated with that term,” *id.* at 364. See also *In re Primary Election*, 13 Am. Tribal Law at 175 (“Generally, courts are bound to give statutory language its plain meaning absent a scrivener’s error producing an

absurd result.” (citing *Union Bank v. Walas*, 502 U.S. 151 (1991))). The clear language and intent of the Charter was followed strictly by the Tribal Council and the Board. Section 6 of the Charter authorizes and empowers the Tribal Council to enact Cherokee Code section 161-3(d)(3). The Board applied this valid rule, and the decision not to certify petitioner was correct and should remain undisturbed.

B. Charter Section 9

The majority relies on Section 9 of the Charter which states that:

[i]n order to run for or serve as . . . Tribal Council member, a candidate must be an enrolled member of the Eastern Band. . . . For the Tribal Council a candidate must be at least eighteen years of age by the date of election and have resided in the township which he is to represent for at least ninety days immediately preceding the date of the election.

Charter and Governing Document of the EBCI, Sec. 9. Where a candidate for the office of Tribal Council member is disqualified from election due to impeachment by the Tribal Council in accordance with Cherokee Code section 161-3(d)(3), the majority sees an impermissible restriction on the candidate’s eligibility because the ground for disqualification was not explicitly written within Section 9 of the Charter. The majority views the provision within section 161-3(d)(3), adopted by the Tribal Council, as thwarting the supremacy of the Charter, adopted by the EBCI community. The majority reasons that Charter Sections 6 and 9 are in tension as to the promulgated authority to enact section 161-3(d)(3).

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Respectfully, I find there is no inconsistency between Sections 6 and 9. Also, I read Sections 3 and 6 as working together, providing lawful authority empowering the Tribal Council to enact Cherokee Code section 161-3(d)(3) governing how elections are to be conducted and who may be certified to run for office. Section 9 provides the basic, minimum qualifications for candidates after which the Tribal Council is authorized to “*enact election rules and regulations for the conduct of tribal elections.*” There is no inconsistency between these Charter sections, and there is no violation of the Charter in proscribing the limitations for a person to be certified as a candidate for Tribal office. Moreover, the position argued by petitioner, that these sections are inconsistent, can be answered in the negative by looking at other sections in the Charter and how they work in tandem to address the question raised in this case.

C. Sections 3, 22, 23 and Their Interplay with Section 6

Sections 3, 22, and 23 of our Charter and Governing Document provide the following:

Section 3. The election for Principal Chief and Vice Chief and Tribal Council shall be held on the first Thursday in September, 1987, and every two (2) years thereafter, under such rules and regulations as may be adopted by the council.

Section 22. Any officer of the Eastern Band of Cherokee Indians who violates his oath of office, or is guilty of any offense making him ineligible to hold said office may be impeached by a two-thirds vote of council.

Section 23. The Tribal Council is hereby fully authorized and empowered to adopt laws and regulations for the

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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.

Charter and Governing Document of the EBCI, sec. 3, 22, 23.

In contrast to Section 9 stand three different and distinct sections of the Charter. Section 3 again specifically authorizes the Tribal Council to control elections and “*enact election rules and regulations for the conduct of tribal elections.*” We again see the same language used in Section 6. Here the Charter states clearly that elections for Principal Chief and Vice Chief shall be conducted “*under such rules and regulations as may be adopted by the council.*” Thus, we have not one but two different sections of the Charter unequivocally authorizing the Tribal Council to conduct—through rules and regulations enacted by the Tribal Council—elections for office in the Cherokee tribal government. The intent of the Cherokee community when adopting the Charter in 1986 was to authorize the Tribal Council to conduct elections under the rules appropriate to that charge. In the denial of the petitioner to be certified for election to office, the Board lawfully performed its duty in accordance with the law as codified under Cherokee Code section 161-3(d)(3).

But the Charter provides more direction. Charter Section 22 authorizes the Tribal Council to remove from office those who have violated their oaths of office. Again, the Tribal Council is delegated the authority to control who may hold elected

offices in tribal government. There is no greater authority to control access to elected governmental office than the power of impeachment. The sole authority of impeachment and removal vested in the Tribal Council is of paramount importance in the structure of the Cherokee tribal government. Petitioner previously served as Principal Chief. He was impeached and removed from office by the required supermajority vote of the Tribal Council.

If the Tribal Council is authorized to remove from office an individual through the impeachment process, it naturally flows and common sense dictates the Tribal Council can set “rules and regulations” for those who may be certified to run for office, such as lawfully disqualifying from candidacy anyone who has been previously impeached and removed from office. This is not a convoluted and complex syllogism or an exercise in deductive reasoning. It is the application of reading the words in their normal, daily meaning to reach a fair, reasonable understanding that is acceptable to everyone in our community. *See Long*, 17 Am. Tribal Law at 363; *id.* at 364.

The Charter, Section 23, vests the power to enforce the laws of the Tribe in the Tribal Council: the Tribal Council “is hereby vested with full power to enforce obedience to such laws and regulations as may be enacted.” It is abundantly clear that Cherokee Code Chapter 161 is a law of the EBCI, duly enacted, and to be enforced by the Tribal Council. Consistent with our Charter, the Tribal Council did as they were required under Charter Section 3 and Cherokee Code section 161-3(d)(3).

It is through the intent of the Tribal Council as codified in section 161-3(d)(3) that laws of the Tribe are enforced.

As the majority notes, it is accurate that the specific limitations in the Charter, Section 9, do not clearly state that an individual who has previously been impeached is disqualified from holding office. However, these additional sections of the Charter support and supplement a reading of Section 3 providing specific guidance and authorization to the Tribal Council for conducting elections and for disqualifying petitioner as a candidate for public office.

D. Ordinance No. 319 (2016)

1. Charter Can Not Be Read in Isolation

The majority opinion looks only at the Charter, but the Charter cannot be read in isolation. The decision from the Board must be reviewed by this Court. *McCoy*, 16 Am. Tribal Law at 21–22; *Crowe*, 3 Cherokee Reporter at 79. We must look at other sources for guidance if such guidance exists. The Charter is a living document which must be construed and evaluated vigilantly, as times change and events befall the Tribe.

The Charter has not one but two sections that clearly and expressly authorize the Tribal Council to set rules and regulations of elections. Charter Sections 3 and 6 clearly and unambiguously state that elections shall be conducted by rules and regulations enacted by the Tribal Council, and this is exactly what tribal council did. “Law is about expectations. It deals with the agreements of parties. It regulates the

relationships of people in a just society.” *Benally v. Broken Hill Proprietary Limited*, 3 Am. Tribal Law 518, 521, 8 Nav. R. 171 (Navajo Nation Sup. Ct. Sept. 21, 2001). The expectation under the Charter is that elections are controlled and regulated by Cherokee Code section 161-3(d)(3). The Cherokee public is invited to discuss, debate, share and otherwise make known their thoughts and opinions on the election ordinance and all that is related to tribal elections. Moreover, these discussions are televised for the entire community to remain informed and apprised of the process and regulations surrounding elections occurring multiple over the past 28 years.¹ These discussions have included debate and disqualification for those who have been impeached and removed from office. Petitioner has had ample opportunity since 1997 to protest impeachment as a disqualifying event. Certainly, having enacted a statute for a long period of time does not make that enactment which violates the Charter valid and enforceable. Time doesn’t transmogrify what is unlawful to lawful. In this we can all agree. Yet, it remains uncontroverted that the actions taken by the Tribal Council in the present case are undertaken in good faith and were done in compliance with the Charter. Moreover, this disqualifying aspect of impeachment did not arise after petitioner was impeached. Rather, it has been the law of the Tribe for decades

¹ Cherokee Code section 161-3(d)(3) first appeared in Tribal law in Ordinance No. 479 (ratified March 6, 1997). The Election Ordinance, codified within Cherokee Code Chapter 161 has been amended numerous times since it became law in 1997. It has been amended in the following Tribal Council ordinances: Ord. No. 556 (2006); Ord. No. 409 (2008); Ord. No. 216 (2010); Ord. No. 85 (2012); Ord. No. 427 (2016); Ord. No. 408 (2018); Ord. No. 149 (2020); and Ord. No. 52 (2024).

before petitioner was elected to Tribal office. The Charter intends for the Tribal Council to be active and vigilant in updating the election code as the times change. The Tribal Council did their duty.

2. Prior Use of Process by Petitioner, Legal Analysis & Tradition of the Eastern Band of Cherokee Indians

We must overlay petitioner's own use of the procedures he now complains of when enacting Ordinance No. 319 (2016) ("The Principal Chief and Vice-Chief shall be elected and hold office for terms of four years but shall not be eligible to hold office for more than two consecutive terms."), against the backdrop of the Charter and three decades of settled law in Cherokee Code section 161-3(d)(3), where over that period the election ordinance was amended multiple times. Not only was Ordinance No. 319 the law of the land from 2016–22, but the election amendment was submitted by petitioner as Principal Chief. Is it reasonable to never object to the election process when it was debated and amended numerous times over 28 years and then amended by resolution utilizing the same process of which petitioner now complains? Petitioner now objects to the long-held policy, tradition, and procedures used by the EBCI in election proceedings. This decades long prior conduct is a tradition which has been adopted by the Tribe in our election code.

While this Court's review is limited to alleged errors of law, Cherokee Code section 7-2(d) mandates that we consider the laws, traditions, and precedents of the EBCI. It is permissible to look at section 161-3(d)(3) and also take judicial notice of

prior enactments of the Tribal Council related directly to that election ordinance. Tradition and customs are sometimes boiled down simply into asking how our community has historically handled an issue. One example is found in *In re Saunooke*, 15 Am. Tribal Law 176, 183 (CSC 2018), where the Court acknowledged a history of actions and policies regarding legal matters and how they were handled (allowing non-North Carolina licensed attorney tribal members to represent clients in Cherokee in agency and board hearing). Just as the Court in *In re Saunooke* took judicial notice of tribal customary law, here is a 28-years long tradition of controlling tribal elections by the enactments of C.C. § 161-3(d)(3). Under Tribal customary law, C.C. § 161-3(d)(3) has been used for elections in a multi-decade long customary practice. The election rules and regulations promulgated in Cherokee Code section 161-3(d)(3) are consistent with the statutory case law and precedent of the Cherokee Supreme Court.

Facts are events and developments along the path of daily discourse and interaction which cannot be ignored or glossed over. It is uncontroverted that as Principal Chief, petitioner submitted Ordinance No. 319 imposing an amendment to Chapter 161. The Ordinance was adopted by the Tribal Council and was the law of the Tribe for six years (2016–22). Thus, by the very actions of petitioner, the uncontroverted facts establish:

- Through the law, customs, and tradition of the EBCI, the Tribal Council can set parameters and limitations on elected office through legislation contained in Chapter 161;

- The power for the Tribal Council to set parameters on who may be certified as a candidate to elected office is authorized by Charter Section 6; and
- The EBCI has a decades long history of enacting amendments to the election ordinance using the grant of authority in Charter Sections 3, 6, 9, 22, and 23 which sets those same parameters on who may be certified as a candidate to elected office in the Cherokee government.

E. Tradition and Legislative History

Through the centuries, the EBCI has faced innumerable challenges, and the Tribal Council selected to lead our community has offered guidance providing decisions by which we have survived and prospered. The tribal goals of the EBCI enacted through the legislation of the Tribal Council elected by the Cherokee community must be respected.

Charter, Section 6, clearly authorizes “[t]he Tribal Council [to] enact election rules and regulations for the conduct of tribal elections.” This is what the Tribal Council did. Cherokee Code section 161-3(d)(3) is a proper enactment as required by the Charter, Section 6, and thus, a lawful and permissible exercise of the law-making authority of the Tribal Council.

The arguments made by petitioner require an overly strict interpretation and a parsing of the Charter, reading each section in isolation. I decline this invitation. For doing so would thwart the clear legislative intent of the Tribal Council. As this Court has explained

“[a] statutory subsection may not be considered in a

vacuum, but must be considered in reference to the statute as a whole and in reference to statutes dealing with the same general subject matter Courts construe all parts of a statute together, without according undue importance to a single or isolated portion. The meaning of a statute is determined, not from special words in a single sentence or section, but from the statute as a whole and viewing the legislation in light of its general purpose.”

Sessions v. Cherokee Bd. Of Elections, 15 Am. Tribal Law 39, 43 (CSC 2017).

“In reviewing a final determination of the Board of Elections, this Court can only review alleged errors of law. . . . Our duty is to determine whether the findings of fact support the conclusion of law and decisions of the Board.” *Crowe*, 3 Cherokee Reporter at 79. However, it is appropriate to also note that this Court is to apply the principles of law, customs, traditions, and precedents of the EBCI. *See* C.C. § 7-2(d). Moreover, when necessary, this Court can and will properly consider legislative history and the circumstances surrounding the enactment to discern legislative intent. *Anders v. Cherokee Bd. of Elections*, 17 Am. Tribal Law 200, 208 (CSC 2021). The legislative history suggests it is likely the Tribal Council included Cherokee Code section 161-3(d)(3) in the 1996 Election Ordinance in response to the impeachment and resignation of Principal Chief Jonathan L. Taylor, in 1995. *See* Resolution No. 1 (1995). It is uncontroverted from the record in this case that petitioner was impeached by the Tribal Council in resolution No. 596 (2017). The majority’s opinion does nothing to change that final decree.

At the end of the day, common sense must be ever present, and fairness and

justice must prevail. Common sense dictates that the very method by which petitioner governed while Principal Chief in 2016 cannot now be complained of by him nine years later because the result is now averse. Such a situational interpretation of the Charter and Cherokee Code I reject.

Conclusion

I pause to note that the Board has a difficult task, and they performed their duty admirably and beyond reproach. We are forever indebted to those who give their time for the betterment of our community. Gratitude to them all flows in abundance from this Court.

I believe the findings of fact support the conclusion of law and decisions of the Board. Because the Board correctly denied petitioner certification as a candidate for member of the Tribal Council, the Tribal Council has authority under the Charter to govern elections, the Tribal Council lawfully and validly exercised that authority through the enactment of Cherokee Code section 161-3(d)(3), and there is a tradition and history of regulating elections through this lawful process contained in Cherokee Code, Chapter 161, I respectfully dissent.