

NOV 14 2018

FILED
Court Clerk: 

IN THE COMANCHE NATION TRIBAL COURT
APPELLATE COURT

SUSAN COTHREN, et al.,)
Appellants/Respondents,)
)
Vs.)
)
William Nelson, Sr.,)
Appellee/Plaintiff,)
)
Billy Komacheet,)
Appellee/Intervener)

Case No.: AD-2018-0001
AD-2018-0002

On Appeal from the
Comanche Nation District Court
CV-2013-0013

OPINION

PER CURIAM

THIS MATTER comes before the Court from a decision of the Comanche Nation District Court.

Members of the Comanche Nation Business Committee appeal the *Declaratory Judgement* entered by the District Court on June 28, 2018, wherein the Court directed certification of candidates for a runoff election, and further directed the scheduling of a runoff election. Members of the Comanche Nation Business Committee also appeal the District Court's *Order on Intervention and to Proceed with the Run-off Including All Parties of Record*, dated August 16, 2016.

Oral arguments were held in the Comanche Nation Appellate Court on October 4, 2018.

There are two issues before the Court:

1.) Can the Tribal Council of the Comanche Nation¹ vote via "Ballot Question" to impose candidate eligibility requirements for certain elected positions, when such requirements are not found in the Comanche Nation's Constitution?

2.) Can the Comanche Nation mandate additional hiring procedures for hiring the Tribal Attorney and Tribal Administrator?

Candidates for Chairperson, Vice Chairperson and Secretary

On June 2, 2018, in the midst of an ongoing election cycle, the Tribal Council of the Comanche Nation voted to approve a "Ballot Question"².

Appellees contend that the timing of the purported imposition of education requirements is important, arguing that the vote amounts to an *ex post facto* application of newly-promulgated election law.³ The District Court also focused on the timing of the Ballot Question, and in exercising appropriate judicial restraint on Constitutional questions of law, deferring consideration of those to this Court, held that "the Indian Civil Rights Act prevents new legislation from having any effect retroactively".⁴

This Court does not reach the *ex post facto* argument, relying instead on application of the Comanche Nation Constitution.

¹ The Tribal Council of the Comanche Nation is comprised of "all duly enrolled members of the Comanche Nation who are eighteen (18) years of age or older". *Comanche Nation Constitution, Article V, Section 1.*

² The Ballot Question was designated as "Susan Parker BQ#1", and "essentially requires a minimum educational requirement of a Bachelor's Degree for the positions of Chairman, Vice-Chairman, and Secretary/Treasurer." *See Declaratory Judgement, CV-2018-0013.*

³ *See Brief for Appellees.*

⁴ *See Declaratory Judgement, CV-2018-0013.*

While this Court finds no binding precedent directly controlling in relation to the Constitutional parameters of purported Comanche Nation election policy, the Court is persuaded by sister tribal jurisdictions, who have had occasion to examine related issues in a tribal context. In *Young v. Election Board*⁵, the Supreme Court of the Sac and Fox Nation held that the tribe's governing council (structurally similar to the Comanche Nation's Tribal Council) could not enlarge upon the qualifications required for candidate eligibility.⁶

This Court holds that enlargement of the qualifications required for candidates for the offices of Chairperson, Vice Chairperson and Secretary would require a formal amendment to the Comanche Nation Constitution, valid only upon approval by the Secretary of Interior.⁷

While Appellants contend that the Nation has reserved powers, and "exercises them as necessary through the Tribal Council, pursuant to Article V of the Constitution"⁸, the argument ignores the fundamental nature of Constitutional power. Constitutional power vested in the Tribal Council is limited by the plain language of the Constitution, which sets forth the only lawful eligibility requirements for candidates.⁹ Imposing additional requirements- without amending the Constitution- would amount to an *unconstitutional* exercise of Tribal Council power.

To hold that the "supreme governing" clause of the Constitution empowers the General Council to pass laws contrary to the Constitution itself is repugnant to the fundamental democratic principles first espoused by Aristotle: that we are a government of laws, not men, ARISTOTLE, POLITICS (bk.III, ch. 16).¹⁰

⁵ 8 Okla.Trib. 371 (2004).

⁶ *Id.*

⁷ Comanche Nation Constitution, Article XI- Amendments.

⁸ See Brief for Appellants.

⁹ Comanche Nation Constitution, Article VI- Business Committee, Article IX- Qualifications of Officers.

Applicants for Tribal Administrator and Tribal Attorney

The Comanche Nation Election Policy of 2018 (the "Policy") sets forth procedures for conducting tribal elections.^{11, 12}

While Appellants are correct that application of the Policy to the Tribal Administrator and Tribal Attorney positions results in- "for the first time"¹³- runoff elections for those positions, there is nothing in the Constitution that limits the authority of the Comanche Nation to adopt law and/or policy that subjects applicants for those positions to additional hiring requirements and procedures. Appellants also contend that the custom and usage of the Comanche Nation has governed the hiring of the Tribal Attorney and Tribal Administrator, causing the person with the most votes, even when not amounting to 51% of the tally, to be selected for each position.¹⁴

While this Court finds no binding precedent on the applicability of custom and usage in controversies arising under the Comanche Nation Constitution, the Court is persuaded by the approach of many sister tribal nations, who as a matter of sovereign self-government, revere custom and usage as carrying the full force and effect of tribal common law. However, sovereign self-government also requires adherence to the sovereign's own extent of developed laws, through the nation's Constitution, treaties, statutes, codes, ordinances, and court decisions. This Court holds, as a matter of tribal law, that the Comanche Nation Constitution is the supreme governing law of the Comanche Nation.

¹⁰ *Young v. Election Board*, 8 Okla.Trib. 371 (2004.)

¹¹ See the Comanche Nation Election Policy of 2018.

¹² Parties to the action before this Court have not challenged the validity, applicability, or constitutionality of the Comanche Nation Election Policy of 2018 as applied to candidates for Chairperson, Vice Chairperson, and Secretary.

¹³ See Brief for Appellants.

¹⁴ *Id.*

Unlike in the instance of Business Committee candidate eligibility, there are no constitutionally-mandated constraints imposed on the procedures for hiring the Tribal Administrator and Tribal Attorney positions. Installing additional procedures for the hiring of the Tribal Administrator and the Tribal Attorney does not require a Secretary-approved Constitutional amendment, and is a valid exercise of the authority vested in the "supreme governing body"¹⁵, the Tribal Council.

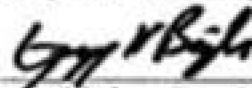
The *Declaratory Judgement* entered by the District Court on June 28, 2018, and the *Order on Intervention and to Proceed with the Run-off Including All Parties of Record*, entered by the District Court on August 16, 2016 are **HEREBY AFFIRMED** on alternative grounds, as set forth in this Opinion.

Dated this 13th day of November, 2018.

SO ORDERED,



Casey Ross, Acting Chief Judge



Greg Bigler, Special Appellate Court Judge

1st *Voco* Signature

Robert D. Gifford, Special Appellate Judge

**COMANCHE NATION TRIBAL COURT
APPELLATE COURT**

¹⁵ Comanche Nation Constitution, Article V- Tribal Council/Powers Clause.