



CHEROKEE NATION
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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Rick Doherty, Chairman of the Cherokee Nation Election Commission

Opinion Number: 2025-CNAG-02

Date Issued: June 13, 2025

You have asked for an opinion answering the following question:

Who should be in the Runoff in light of Candidates Debra S. McGlasson filing her withdrawal from the Runoff on June 9, 2025 and Anthony Ray Davis filing his withdrawal from the General Election on June 10, 2025?

ANSWER AND ANALYSIS

Short Answer:

Once a candidate lawfully withdraws by written notice, any votes cast for them may not be counted or considered in determining the election outcomes of the Cherokee Nation. As a result, the Cherokee Nation Election Commission must recalculate the results of the General Election excluding all votes for any withdrawn candidate. The two candidates who then hold the highest number of valid, countable votes shall be eligible for the Runoff Election—unless one candidate holds a simple majority of the remaining votes, in which case no Runoff Election may occur.

Background:

Article IX of the Cherokee Nation Constitution established the Cherokee Nation Election Commission (“CNEC” or “Commission”). Article IX, Section 1 directs: “[t]he Commission shall be an autonomous and permanent entity charged with the administration of all Cherokee Nation

elections, in accordance with election laws.” Cherokee Nation Const., Art. IX, Sec. 1. The same further provides: “[t]he Council shall enact an appropriate law not inconsistent with the provisions of this Constitution that will govern the conduct of all elections.” *Id.* In exercise of this constitutional power, the Council of the Cherokee Nation enacted the election laws of the Cherokee Nation, which are contained in Title 26 of the Cherokee Nation Code, as amended.¹

On June 7, 2025, the Cherokee Nation Election Commission conducted the 2025 General Election, which included the race for the District 9 Seat on the Council of the Cherokee Nation. Following the tally of votes, the unofficial results showed that the top vote-getter received 37.41% of the total vote count. However, the second-place position could not be immediately determined, as two candidates, each receiving 19.73% of the vote count—were tied for the second-highest total.

On June 9, 2025, one of the tied candidates, Debra S. McGlasson, formally withdrew from the upcoming Runoff Election scheduled for July 26, 2025. The following day, June 10, 2025, another Candidate for the District 9 Seat, Anthony Ray Davis, who had received 8.50% of the vote count, also formally withdrew from the General Election. The deadline for candidates to request a recount in the District 9 race expired on June 11, 2025, at 5:00 p.m.

Analysis:

The Chairman’s request requires a holistic examination of the election laws of the Cherokee Nation. The analysis must accordingly begin with the question of whether a candidate may withdraw from an election and if so, whether there are any timing requirements which restrict their withdrawal. Title 26 CNCA § 36 (D) provides:

Any candidate who wishes to withdraw from the election shall have the opportunity to do so by providing a formal written notice to the Election

¹ The election laws of the Cherokee Nation were most recently amended through the passage of LA-17-24 and LA-14-22.

Commission; provided, a candidate that withdraws after the ballots are printed shall remain on the ballot, but any votes for said candidate shall not be counted or considered in determining the winner of a General or Special Election or if a Run-Off is necessary.

Neither this provision, nor any other contained within the Nation's election laws, establishes a deadline by which a candidate must file a withdrawal of candidacy. Instead, the Council has broadly defined an "Election Period" to "include the six months prior to and including the Primary Election and the Runoff Election through the completion of any applicable challenge, court requirement of a new election and/or certification proceedings."² The law has additionally established that the Commission's certification proceedings may only occur "[w]hen the election outcome is final for all elective offices..."³ and the same has prescribed the definition of an "election outcome" to mean "the determination of the Candidate winning the election for office."⁴

The election results for the District 9 Council Election did not produce a determination that a single candidate won the election. Since no final election outcome has been determined, the Commission cannot begin its certification proceedings. The law is clear: the Election Period remains open until certification is complete, and therefore, a candidate may withdraw at any time prior to the certification of final election results.⁵ Indeed, the provision governing candidate withdrawal even expressly contemplates late instances of withdrawal, with Section 26 stating that if a candidate withdraws after the ballots have already been printed, their name may still appear on the ballot.⁶

Here, there can be no dispute that two Candidates lawfully withdrew from the District 9 Council Election, prior to the determination of a final election outcome and any subsequent

² 26 CNCA § 3 (17).

³ 26 CNCA § 92 (G).

⁴ 26 CNCA § 3 (13).

⁵ *Id.*

⁶ *See* 26 CNCA § 26 (D).

certification proceedings, when they provided written notice of their desire to withdraw to the Cherokee Nation Election Commission. The timing of a candidate's withdrawal from an election has no effect on the validity of that withdrawal under the law as it does not impose a deadline or otherwise restrict the period during which a candidate may withdraw. The only requirements are that they must be a candidate for elective office, and they must submit written notice of their withdrawal to the Commission. For these reasons, a candidate may lawfully withdraw at any point during the election, including after votes have been cast, until a final election outcome has been determined and certified as the final result.

The analysis must now consider the effect a candidate's withdrawal has on any votes cast in their favor.⁷ This was contemplated by the Council of the Cherokee Nation's recent amendments to Title 26 in response to multiple instances in which former Candidates were deemed ineligible to continue in races for Elective Office late in the 2019 General Election cycle.⁸ The express language of 26 CNCA § 36(D) states "...a candidate that withdraws after the ballots are printed shall remain on the ballot, but any votes for said candidate shall not be counted or considered in determining the winner of a General or Special Election or if a Run-Off is necessary."⁹ The provision can be no more straightforward. A candidate's withdrawal for elective office disqualifies any votes cast in their favor from being considered to determine the winner of the General Election or if a Runoff Election is necessary.

⁷ Prior to the recent amendments to the Election Code, the Commission had advocated for and adopted the rule that votes cast for any candidate who appeared on the ballot but was no longer eligible to continue in the election were not to be counted or considered in determining election outcomes. This interpretation later formed the basis upon which the current rule was statutorily established. *See In Re: the Disqualification of David Walkingstick as Candidate for Principal Chief*, SC-2019-07 (2019).


⁸ *See Cherokee Nation v. David Walkingstick, Principal Chief Candidate*, CNEC Hearing No. 2019-3; *see also Cherokee Nation v. Jodie Fishinghawk, District 8 Tribal Council Candidate*, CNEC Hearing No. 2019-2; *see also Cherokee Nation v. Wanda Hatfield, At-Large Tribal Council Candidate*, CNEC Hearing No. 2019-1.

⁹ 26 CNCA § 36 (D).

The analysis must now address the impact any candidate withdrawals may have upon the eligible vote count to determine the winner of the General Election or whether a Runoff Election is triggered. Where any candidate withdrawal occurs, the Election Code mandates that any votes for that candidate are to be excluded from the final vote total. This applies regardless of whether the withdrawal occurs before or after the General Election takes place until the final election outcome is determined and certified; and the Commission has no discretion under the law to include those votes in its determining calculations. The result of the law requires the Election Commission to recalculate the election outcome excluding all votes cast for any withdrawing candidates and determine whether a runoff is required based solely on the valid votes remaining. If that recalculation results in no candidate receiving more than fifty percent (50%) of the remaining valid votes, a runoff election must occur. If, alternatively, that recalculation results in a candidate receiving more than fifty percent (50%) of the remaining valid votes, a runoff election is not permitted under the law.

IT IS THEREFORE, THE OFFICIAL OPINION OF THE ATTORNEY GENERAL THAT:

1. Under the laws of the Cherokee Nation, a candidate for elective office may withdraw at any point during the election process, including after votes have been cast, until the final election outcome has been determined and certified, upon written notice to the Cherokee Nation Election Commission.
2. The Cherokee Nation Election Commission may not count or consider any votes cast for a candidate who has lawfully withdrawn in determining the winner of a General Election or if a Runoff Election is necessary.
3. The election outcome of the District 9 Seat on the Council of the Cherokee Nation during the 2025 General Election must be recalculated, excluding all votes cast for any withdrawing candidates.



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