

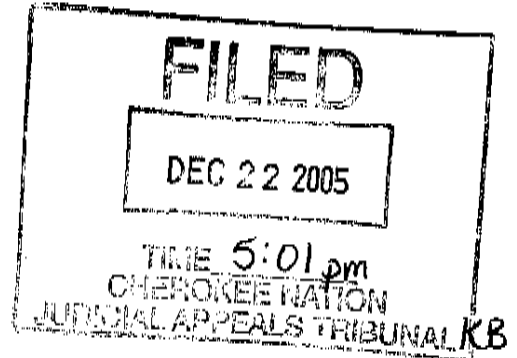
**IN THE JUDICIAL APPEALS TRIBUNAL
OF THE CHEROKEE NATION**

**BUEL ANGLIN, BILL JOHN BAKER,)
AUDRA CONNER, JOE CRITTENDEN,)
DON GARVIN, BILL JOHNSON, JOHN)
KEENER, JACKIE BOB MARTIN, LINDA)
O'LEARY, MELVINA SHOTPUCH, DAVID)
THORNTON, and PHYLLIS YARGEE,)
All members of the Cherokee Nation Tribal)
Council, in their official capacities,)
Petitioners,)**

JAT-05-11

v.)

**DAWN L. McKINLEY, and KATHY E.)
REYNOLDS,)
Respondents.)**



ORDER OF DISMISSAL

The matter came before the Court on the 1st of December, 2005 on Respondents' Motion to Dismiss. Respondents argue that Petitioners, as individual members of the Tribal Council, lack standing to bring this cause of action against the Respondents, who are both private citizens of the Cherokee Nation.

In 2004, Respondents obtained an application to be married, but to date, Respondents' completed application has not been filed with the District Court clerk. Petitioners seek an injunction that would prohibit Respondents from filing their application. Petitioners also seek a declaratory order from this Court stating that Respondents' are not permitted to be married under Cherokee law.

The Cherokee standing doctrine has been well developed through a number of cases over the years. One of the previous cases dealt with the ability of a tribal council member to bring a lawsuit in this Court. In *Philips v. Eagle*, JAT 98-09, this Court allowed an individual council member to bring a lawsuit, in his official capacity, to

enforce the rights of the Council as against the Deputy Chief. In *Philips*, it was alleged that the Deputy Chief was suspending council meetings and otherwise interfering with the business of the Tribal Council. In *Philips*, it was appropriate for the council member to seek redress in this Court because the individual Council Member had demonstrated the requisite harm.

In some lawsuits, we have allowed private citizens to bring lawsuits to enforce certain rights. In *Mayes v. Blackfox*, JAT-02-18 this Court held that a citizen has standing to challenge whether a council seat was properly filled. Likewise, in *Cornsilk v. Cherokee Nation Tribal Council*, JAT-96-15, we held that a private citizen has standing to challenge the manner in which a vacant council seat was filled. Each of these cases speak to the right of Cherokee citizens to have the proper representative government. Each of these litigants demonstrated an individualized harm. Most recently, this Court held that private citizens who voted in the previous election had standing to bring a lawsuit pertaining to whether the 1999 Constitution was in effect. In *re 1999 Constitution*, JAT-05-04 (the merits of this case are currently pending).

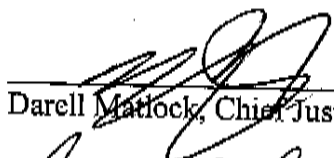
In other lawsuits, this Court has dismissed cases brought by private citizens because they failed to demonstrate individualize harm required for standing. In *Cornsilk v. Frailey*, JAT-05-03 a private citizen, who is Cherokee by blood, challenged a legislative act which effectively authorized the Cherokee Nation to continue in a pending federal lawsuit. The private citizen was not a party to the federal lawsuit, nor did he fall within the class of people who would be affected by the federal lawsuit. In *Mayes v. Thompson*, JAT-95-15, this Court similarly dismissed a lawsuit brought by a private citizen to challenge legislative acts that did not result in actual harm to the petitioner.

Previously this year, this Court issued a decision in *In re Reynolds & McKinley*, JAT 04-15, dismissing a cause of action brought by Todd Hembree on his own behalf as a private citizen of the Cherokee Nation. In that case, we held that Hembree lacked standing to challenge because he could not demonstrate an actual injury. Hembree argued that his reputation would be injured if Respondents were allowed to marry. The Petitioners in this case, raise a similar argument for actual injury, that they are protecting the Cherokee Nation from damage to reputation and they are seeking to stop actions these Petitioners view as inconsistent with Cherokee culture.

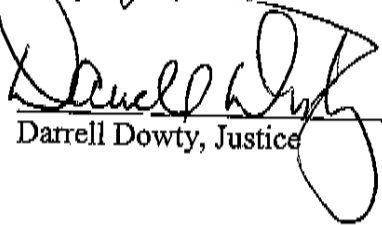
Petitioners, as members of the legislative branch, must demonstrate that they have standing before they can proceed in litigation. Members of the Tribal Council, like private Cherokee citizens, must demonstrate a specific particularized harm. In the present case, the Council members fail to demonstrate the requisite harm.

Respondents Motion to Dismiss is hereby granted.

IT IS SO ORDERED, this 22nd day of December, 2005.


Darell Matlock, Chief Justice


Stacy Leeds, Justice


Darrell Dowty, Justice