

IN THE CHOCTAW TRIBAL SUPREME COURT  
OF THE  
MISSISSIPPI BAND OF CHOCTAW INDIANS

FILED  
JUL 15 2019  
CHOCTAW SUPREME COURT  
BY: *Janet Mills*  
COURT CLERK  
3:53 pm

BERDIE STEVE

PETITIONER

vs.

Cause No. SC 2019-04

TRIBAL ELECTION COMMITTEE

RESPONDENT

**Opinion and Order**

The above captioned case having come before the Court for oral argument and decision this the 15th day of July, 2019 is an appeal by Petitioner/Appellant Berdie Steve of the June 26, 2019 *Statement of Findings on Complaint* ("TEC final decision") issued by the Mississippi Band of Choctaw Indians Tribal Election Committee ("TEC") rejecting Petitioner's challenge to the outcome of a Bogue Homa Council Election conducted June 11, 2019. The Petitioner/Appellant Berdie Steve appeared in person and *pro se*. Appearing on behalf of the TEC was counsel of record, C. Bryant Rogers of VanAmberg, Rogers, Yepa, Abeita & Gomez, LLP. In addition, TEC Chair Berdie John and TEC member Amy Pauls were in attendance at the hearing.

Under Choctaw Tribal Code §33-10-6, the Court's judicial review procedures were limited to a determination of whether Petitioner/Appellant was able to demonstrate by clear and convincing evidence that she was clearly entitled to have the June 26, 2019, TEC final decision rejecting her challenge to the outcome of the Bogue Homa Council Election conducted June 11, 2019 overturned and other relief requested. Under the Tribal Election Code, the Petitioner/Appellant had the responsibility to show a clear entitlement to her requested relief because the Tribal Election Committee decision was:

- (A) arbitrary and capricious;
- (B) was an abuse of discretion;
- (C) was not supported by evidence of record;
- (D) or was contrary to Choctaw law.

CTC § 33-10-6(6).

The TEC found in its final decision that “none of the allegations set out in [Ms. Steve’s] complaint constitute a violation of the Tribal Election Code that would require the TEC to void the June 11, Bogue Homa Tribal Council election.” Ms. Steve in her appeal alleged Tribal Election Code violations under CTC 33-8-6(1), (2) and (4). Ms. Steve stated “I believe that the campaign sign was placed closer than the 150 feet marker from the polling place and without the knowledge and prior permission of the homeowner’s yard where the sign was placed. Even if the sign was outside the 150 feet marker, the sign interfered with voters traveling to and from the polls and was placed near the road by the polling place obstructing a driver’s view. Also, the sign was placed in a residential yard without the homeowner’s knowledge or permission.” Appellant Steve’s primary argument on appeal is that the TEC failed to take into consideration under CTC §33-8-6(4) that the campaign sign may interfere with voters traveling by foot when they are walk in the area next to the road. In addition, Ms. Steve argued that placing a campaign sign in Ms. Sandra Willis’ yard without permission is like placing unauthorized campaign materials on a vehicle. Ms. Steve further stated that by TEC Limiting their review to only the items listed under CTC §33-8-6(4), the TEC final decision was arbitrary and capricious, an abuse of discretion, not supported by the evidence of record and contrary to Choctaw law.

After review of the Administrative Record of the proceedings before the Tribal Election Committee and thoughtful consideration of the arguments on appeal, the Court addresses each of Petitioner/Appellant’s challenges to the TEC final decision.

#### Challenge under CTC §33-8-6(1) and (2)

Ms. Steve challenged the TEC final decision under CTC §33-8-6(1) and (2) regarding the physical placement of her opponent’s campaign sign being within the 150 foot perimeter of the polling place, but during oral arguments Ms. Steve conceded that the campaign sign was outside the 150 foot perimeter of the polling place.

#### Challenge under CTC §33-8-6(4)

Although Ms. Steve challenged on appeal that the campaign sign obstructed the view of drivers in violation of CTC§33-8-6(4), Ms. Steve conceded at oral argument that the campaign sign did not obstruct the view of drivers as challenged in her original complaint before the TEC. Regarding Ms. Steve’s argument on appeal that the TEC failed to consider whether the campaign sign interfered with voters walking to the polling place under CTC §33-10-6(4), Ms. Steve did not provide any evidence to support this specific challenge in her original TEC complaint. Therefore, this Court is prohibited from considering any arguments on this issue presented during oral arguments. Further, in regard to Ms. Steve’s challenge regarding the lack of Ms. Sandra Willis’ consent for her opponent’s signage on the Willis property, Ms. Steve conceded

during oral arguments that Ms. Willis saw the sign being placed and did not tell the campaign workers that they could not place the signs on her property as she allowed other candidate signs on her property.

After full consideration of the record compiled and materials submitted, including the same evidence that was before the Tribal Election Committee when its June 26, 2019 decision was made as shown by the Administrative Record, and having heard and considered the oral arguments from the petitioner and respondent, this Court does hereby find based on clear and convincing evidence that the petitioner/appellant Berdie Steve has failed to prove any violation of the Election Code and is therefore not entitled to the relief she requested.

Accordingly, this Court pursuant to CTC §33-10-7(A) affirms the June 26, 2019 decision of the Tribal Election Committee. By certifying the election results under CTC §33-8-15, and by the issue of this final order by the Choctaw Supreme Court under the judicial review procedures under § 33-10-6 upholding the election results, Michael Briscoe shall be certified by the TEC as the winner of the 2019 Bogue Homa Council Election.

So Ordered this the 15<sup>th</sup> day of July, 2019.

  
Chief Justice Pro Tem Peggy S. Gibson

  
Associate Justice Brenda Toineeta Pipestem

  
Associate Justice Edwin R. Smith



**CERTIFICATE OF SERVICE**

I, do hereby certify that I have this, the 15<sup>th</sup> day of July, 2019 cause to be forward by electronic mail, United States mail and/or hand delivered, a true and correct copy of the above and foregoing document to the below listed counsel of record.

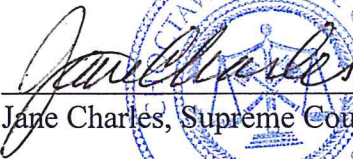
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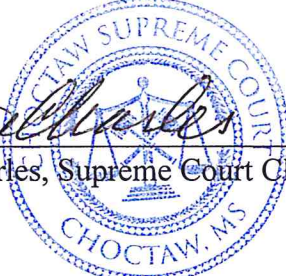
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Jane Charles, Supreme Court Clerk

The seal of the Choctaw Supreme Court is circular with a blue border. The text "CHOCTAW SUPREME COURT" is written along the top inner edge, and "CHOCTAW, MS" is written along the bottom inner edge. In the center of the seal is a scale of justice.