

FILED  
Kaw Nation Tribal Court  
AUG 07 2024  
1:31 am  
Court Clerk/Deputy

IN THE SUPREME COURT OF THE KAW NATION

Attorney General of the Kaw Nation, )  
Petitioner, )  
v. ) Case No. SC-2024-0001  
Election Board of the Kaw Nation, )  
Respondent. )

**DECISION**

NOW on this 2<sup>nd</sup> day of August, 2024, this decision is entered in this matter on a Joint Application for Original Jurisdiction and Petition for Declaratory Judgment filed by the above-named parties to determine whether a written withdrawal of candidacy for elected office can be rescinded. If so, whether that candidate's name should be placed on the ballot of the upcoming election.

**Jurisdiction**

The Kaw Nation Supreme Court has original jurisdiction in matters reviewing “the actions of the General Council, Tribal Council, or any officers, agents, or employees of the government of the Kaw Nation to determine whether those actions are prohibited by federal law, this Constitution, or the laws of the Kaw Nation.”<sup>1</sup> This Court has previously assumed jurisdiction in a case similar to the one at hand.<sup>2</sup> The Court accepts the questions presented by the parties as certified questions to the Supreme Court regarding the actions of the government of the Kaw

<sup>1</sup> Constitution of the Kaw Nation, Art. VIII, Sections 2 & 7

<sup>2</sup> *Attorney General of the Kaw Nation v. Election Board of the Kaw Nation*, SC-2016-0001, decided March 18, 2016 (Kaw Nation S. Ct.).

Nation. Therefore, the Court finds that this matter is properly before this Court and jurisdiction exists.

### **Background**

On the 18<sup>th</sup> day of March, 2024, Nicholas Coble filed for candidacy for Tribal Council Seat #4.<sup>3</sup> Another individual filed for the same position. Both Mr. Coble and his opponent were certified as candidates by the Kaw Nation Election Board on March 28, 2024.<sup>4</sup> Mr. Coble submitted a written notice of withdrawal of his candidacy on the 3<sup>rd</sup> of July, 2024 to the Nation's Election Board.<sup>5</sup> 6 days later, Mr. Coble submitted a written notice to rescind his previous withdrawal of candidacy to the same body.<sup>6</sup> As absentee ballots need to be sent out and the Kaw Nation election is scheduled for September 8, 2024, time is of the essence.

### **Question 1: Can a notice to withdraw as a candidacy for Tribal Council pursuant to Section 17 of the Kaw Nation Election Ordinance be rescinded?**

In this particular matter there is nothing in the Kaw Nation Constitution that addresses the withdrawal of a candidate and their subsequent rescission of their withdrawal. The Constitution does delegate to the Tribal Council, with the approval of the General Council, the authority to enact appropriate legislation governing the conduct of all elections.<sup>7</sup> Through the Constitution the Kaw Nation Election Ordinance has been approved and enacted. Section 17 of the Election Ordinance sets out how withdrawal of candidacy is to occur.<sup>8</sup> While the Ordinance does address

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<sup>3</sup> Parties Joint Submission Exhibit 1.

<sup>4</sup> Parties Joint Submission Exhibit 2.

<sup>5</sup> Parties Joint Submission Exhibit 3.

<sup>6</sup> Parties Joint Submission Exhibit 4.

<sup>7</sup> Constitution of the Kaw Nation, Art. IX, Section 1.

<sup>8</sup> Section 17 states in relevant part, "A candidate for office may withdraw by filing a written notice of withdrawal with the Election Board. Such notice shall contain the candidate's name and the office for which he/she was a candidate."



withdrawal of candidacy there is no mention of whether a candidate can rescind their withdrawal. This is a matter of first impression in the Kaw Nation Supreme Court, as there is no legislation that speaks to this issue, not any precential case law from the Court.<sup>9</sup>

The State laws of Oklahoma are simialar to the situation at hand, as withdrawal of candidacy is addressed, but rescission of candidacy is not. The Oklahoma Supreme Court has reasoned that courts should “give the words of a statute a plain and ordinary meaning, unless a contrary intention plainly appears.”<sup>10</sup> Oklahoma has found that when a statute is silent, it is not the court’s role “to add new provisions which the legislature chose to withhold.”<sup>11</sup>

In situations like this where nothing speaks to the issue presented, this Court may look to other jurisdictions for some guidance on how this type of matter has been dealt with by other courts. The court has examined two state cases that appear to be on point and of analytical value.

In *Holsclaw v. Perkins*<sup>12</sup> a candidate for an elected office withdrew his name as a candidate for office. After the properly conducted withdrawal, the candidate attempted to rescind such withdrawal and be placed back on the ballot. The circuit court ordered that the candidate’s name be restored ot the ballot. However, the Kentucky Court of Appeals set aside the order placing the candidate’s name on the ballot. The reasoning was that there was no statutory authority to do so.

In this case the Kentucky statute allowed for notice of withdrawal of candidacy, but did not have a provision for rescision of a valid notice of withdrawal. The court reasoned it was not

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<sup>9</sup> 26 O.S. Section 5-116.1.

<sup>10</sup> *Pentagon Academy, Inc. v. Independent School Dist. No. 1 of Tulsa Co.*, 2003 OK 98X19.

<sup>11</sup> *Id.* (citing *Okla. Ass’n for Equitable Tax’n v. City of Okla. City*, 1995 OK 62; *City of Bethany v. Hill*, 1973 OK 49).

<sup>12</sup> 268 S.W.3<sup>rd</sup> 376 (Ky. Ct. App. 2008).

free to “amend an otherwise plain and unambiguous statute by adding a provision allowing a candidate to rescind an otherwise valid notice of withdrawal.”<sup>13</sup>

The court also found that public policy favored irrevocable withdrawal from candidacy due to the opposing candidate’s need to rely upon the withdrawal of their opponent. They stated potential consequences of doing otherwise would be a potential candidate ceasing to campaign following their opponent's withdrawal.

The court in Tennessee analyzed and found similarly to the Kentucky Court of Appeals. In *Ozment v. Rand*,<sup>14</sup> the court held that a candidate’s withdrawal from seeking office is “absolute, unequivocal, and unconditional.”<sup>15</sup> The reasoning of the court was that withdrawal precludes one’s name from being on the ballot and failure to find so could result in confusion and could result in disenfranchisement of voters.

This Court finds the analysis and rationale of the court of Kentucky and Tennessee to be reasonable and proper. As such this Court finds that there is no statutory regulation allowing rescission of a withdrawal of candidacy. This Court should not find one where one is not present. Public policy requires finding a candidate who has withdrawn has done so irrevocably. Unless or until the Ordinance is changed, this Court finds that Nicholas Coble’s attempt at rescission of his withdrawal of candidacy is improper and his name shall not be on the ballot of the Kaw Nation’s upcoming election. Question 2 presented to the Court is moot given the finding and ruling on question 1

### **Conclusion**

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<sup>13</sup> *Id.* At 377.

<sup>14</sup> 567 S.W.2d 759 (Tenn, 1978)

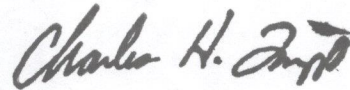
<sup>15</sup> *Id.* 760



The Court finds and orders that the September 8, 2024 election proceed without the name of Nicholas Coble on the ballot as he has withdrawn from being a candidate. Further, the Court finds that his attempted rescission of his withdrawal is not allowed by law and thus can not be allowed.

The above answers to the certified questions presented by the parties are the order of this Court

SO ORDERED

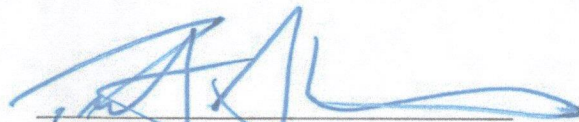


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Charles H. Tripp, Chief Justice

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Lisa Otipoby-Herbert, Associate Justice



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Trent Shores, Associate Justice

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