

**LITTLE RIVER BAND OF OTTAWA INDIANS
TRIBAL COURT**

PLAINTIFF:

NITUMIGAABOW RYAN CHAMPAGNE

CASE NO. 21047EB

V.

HONORABLE ALLIE MALDONADO

DEFENDANT:

LRBOI ELECTION BOARD

NITUMIGAABOW RYAN CHAMPAGNE

Pro se
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History of the Case

This case was filed by the Plaintiff on February 25, 2021 with the Little River Band of Ottawa Indians ("LRBOI") Tribal Court. The Plaintiff invoked LRBOI Constitution Article VI Section 8 which gives the Tribal Court the authority to settle the matter.

The Plaintiff's complaint alleges the following violations of the law by the Defendant Election Board:

1. The Defendant allegedly issued a decision for an "Election Dispute" when the Plaintiff filed an "Election Challenge" (See Election Board Regulations Chapter 12 Section 1 and Section 2);
2. The Defendant allegedly errored when it denied Plaintiff's request to review candidate's information on when they obtained their candidacy packets allegedly violating Article III Section 2 of the LRBOI Constitution;
3. The Defendant allegedly errored when it failed to adhere to Election Board Regulation Chapter 3 – Conducting Elections Section 2(c)5;

4. The Defendant allegedly errored when it failed to notify the citizens in the same manner in violation of LRBOI Constitution Article IX – Election Section 2(a); and
5. The Defendant allegedly errored when it possibly certified candidate(s) who were ineligible to serve in direct violation of Chapter 4 Section 7 of the Election Board Regulations.

The Defendant filed a motion to dismiss based on LRBOI Civil Procedure rule Chapter 4.116 on the grounds that the Plaintiff failed to state a claim for which relief can be granted and/or that Defendant is entitled to a judgment as a matter of law.

At the outset of the hearing, the Plaintiff made a motion on the record objecting to the jurisdiction of the LRBOI Trial Court to hear the matter. After hearing arguments by both parties and an examination of the LRBOI Constitution the Court found it has jurisdiction to hear the case.

The Court then addressed the Defendants' Motion to Dismiss. Both parties were given ample opportunity to be heard. After listening carefully to the arguments of both parties the Court ruled to dismiss the matter.

This opinion details the reasoning of the Court.

(Another case, 21046EB, was filed by the Plaintiff on February 23, 2021 alleging an Election Board member violated the Election Board's Ethical Standards as outlined in their regulations.

Although these are separate matters, because they involve the same parties and potentially impact the same upcoming election, the Court heard both cases separately, but in the same hearing, one after the other. However, for clarity each case will have its own separate opinion.)

FACTS OF THE CASE

The facts are generally not in dispute. On August 28, 2020, the Election Board declared the general schedule for the 2021 General Election. The Election Board mailed to all Tribal citizens an "Announcement of Regular Election" which informed the community that the Election Board would provide election candidacy packets from September 21, 2020 through October 2, 2020. The announcement stated that the Election Board required all candidacy packets to be returned no later than October 16, 2020. The slate of candidates were to be certified by the Election Board no later than December 4, 2020.

On or about September 23, 2020, a member of the Election Board tested positive for COVID-19 and the LRBOI Government Center was closed until September 28, 2020. Soon after, the Election Board extended the deadline for candidate packet availability directly from the Election Board for an additional week until October 9, 2020. The news of the extension was posted on the door of the Government Center and one member of the Election Board also posted this information on her personal Facebook page. The deadline change in packet availability directly from the Election Board was not posted and mailed to all citizens like the

original announcement. No other date changes were made and the requirement for return of the candidate packets remained set for October 16, 2020.

On Sunday December 13, 2020, the Plaintiff sent an email requesting a “listing of candidates who were certified but picked up their packets late or after the initial posted and published deadline.” Plaintiff’s Exhibit 3. The Plaintiff received no response. On Tuesday, January 5, 2021 the Plaintiff sent a second email again requesting the information pertaining to candidates’ dates of packet pickup and again received no response. Plaintiff’s Exhibit 3. The Plaintiff asked for the information again in a third email sent on Thursday, January 21, 2021. Plaintiff’s Exhibit 3. On Tuesday January 26, 2021, the Election Board responded to the Plaintiff’s request through their attorney who denied his request stating the following reasons:

1. No legal authority requiring the Election board to comply with the request;
2. Concern that such information may be considered personal or confidential and might be used to unfairly prejudice those individuals during the campaign process;
3. Election disputes must be filed with the Election Board within 5 business days of real or constructive notice of the facts giving rise to the dispute; and
4. The Election Board determined that even if it were to consider the request for a formal Election Dispute, it was filed late and therefore they considered the dispute waived.

Plaintiff’s Exhibit 3.

On February 17, 2021, after the results of the primary election which occurred on February 12, 2021, the Plaintiff filed an “Election Challenge” with the Election Board. Plaintiff’s Exhibit 3.

In his challenge, the Plaintiff argued that the Election Board violated Chapter 3 of its regulations – Conducting Elections Section 2(C)5: “An election announcement shall include: the time limits and deadlines set for each stage of the Election process...” He alleged that by expanding the time wherein candidate packets were made available directly from the Election Board without providing the same mailed notification of the availability to all Tribal Citizens, the Election Board gave an advantage to some Tribal Citizens while disadvantaging others. More specifically, those who did not pick up a packet directly from the Election Board from September 21-October 2 but then saw or heard about the availability to pick it up for an additional week had an advantage over those who did not hear about the additional availability.

On February 19, 2021, the Election Board issued an opinion in response to the Plaintiff’s election challenge and made the following findings:

“As a matter of law, nothing in the Election Ordinance requires that a candidate obtain their Candidacy Packet directly from the Election Board...

Additionally, pursuant to the plain language the Election Ordinance, and as a matter of law, the Election Board has the authority to amend or otherwise modify the "Announcement of Regular Election" as long as it does not violate the six-month deadline established by Chapter 3 of the Ordinance or until October 30, 2020...

As a matter of law, the posted date which describes the timeframe where a Member can obtain a Declaration of Candidacy Packet from the Election Board, is not a 'deadline' defined by the Election Ordinance and therefore does not have a mandated compliance period...

As a matter of law, Mr. Champagne's assertion that an ineligible candidate was on the official ballot merely by virtue of the possible date his candidacy packet was obtained, has no statutory support and is null...

As a matter of law, the Election Board has the authority to extend the timeline for Tribal Members to obtain their Declaration of Candidacy Packets for an additional week without prejudice to any Member of the Tribe...

As a matter of law, the posting of a notice at the Government Center Building is a legally correct and official location for posting of Election Board information and announcements pursuant to Chapter 1 of the Election Ordinance...

As a matter of law, the posting of a notice on the Facebook page of the Election Board does not violate any Ordinance, constitutional provision, nor does it prejudice Members of the Tribe."

The Plaintiff filed this lawsuit in response.

JURISDICTION

The LRBOI Constitution gives the LRBOI Tribal Court jurisdiction over this case because the Constitution gives the Tribal Court broad jurisdiction over conflicts and matters that are addressed by LRBOI laws:

Article VI, Section 8 — Powers of the Tribal Court

(a) The judicial powers of the Little River Band shall extend to all cases and matters in law and equity arising under this Constitution, the laws and ordinances of or applicable to the Little River Band including but not limited to:

1. To adjudicate all civil and criminal matters arising within the jurisdiction of the Tribe or to which the Tribe or an enrolled member of the Tribe is a party.
2. To review ordinances and resolutions of the Tribal Council or General Membership to ensure they are consistent with this Constitution and rule void those ordinances and resolutions deemed inconsistent with this Constitution...
3. To preside over all suits for declaratory or injunctive relief as provided for in accordance with Article IX of this Constitution."

This Court has jurisdiction as the Plaintiff is a Tribal citizen, the Defendant is the LRBOI Election Board, the matter involves the election for the LRBOI Tribal Council, and the Plaintiff is requesting both declaratory judgment and injunctive relief. **Therefore, the COURT FINDS that Article VI of the LRBOI Constitution gives the LRBOI Tribal Court jurisdiction to hear this case.**

MOTION TO DISMISS

The Court listened to and considered the thorough oral arguments of both sides before making a judgment on the Defendant's motion to dismiss.

The Defendant argued that based on the facts alleged in the Plaintiff's complaint the Court must dismiss the Plaintiff's case because he failed to state a claim on which relief can be granted and because the Defendant is entitled to judgment as a matter of law.

A motion to dismiss for failure to state a claim upon which relief can be granted requires dismissal when a Plaintiff fails to state a claim on which relief can be granted or when a Defendant is entitled to judgment as a matter of law. LRBOI Rules of Civil Procedure Chapter 4.116(C)(8) and (10):

Chapter 4.116 Summary Disposition

(B) Motion.

(1) A party may move for dismissal of or judgment on all or part of a claim in accordance with this rule. A party against whom a defense is asserted may move under this rule for summary disposition of the defense.

C) Grounds. The motion may be based on one or more of these grounds, and must specify the grounds on which it is based:

(8) The opposing party has failed to state a claim on which relief can be granted.

(10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

Applying the standards required above, the Court will analyze the Plaintiff's complaint.

ANALYSIS

All courts are bound by the rules of statutory interpretation. Statutory interpretation starts by examining the plain language of the statute and applying the usual and ordinary meaning of the words. If after examining the statute's plain language the meaning is still uncertain, courts must try and infer the intent of the legislature by looking at legislative history and other related sources. Courts should avoid interpretation creating an absurd result which the legislature did not intend. With these rules in mind, this Court considers the Plaintiff's argument.

The Plaintiff asserts that the Election Board improperly considered his "election challenge" as an "election dispute." However, the plain language of the law leads the Court to disagree. Both Chapter 1 and Chapter 12 of the LRBOI Election Board Regulations state that an "election challenge" is directed to the outcome of the election, while an "election dispute" is directed to the process. More specifically, the regulations state an election dispute can question "candidate eligibility." Little River Band of Ottawa Indians Election Board Regulations, Chapter 12, Section 1(A). The Plaintiff is questioning whether giving Tribal citizens additional time to pick up candidate packets for the election without notifying all citizens of the additional time by mail, permitted a candidate to be improperly certified as a candidate. That question goes to the heart of candidate eligibility which is stated as one of the challenges that falls under an "election dispute." **Therefore, the Court FINDS there is no ambiguity in the language at issue here, the Plaintiff undoubtedly filed an election dispute, which leads the Court to DISMISS this allegation for failure to state a claim upon which relief can be granted.**

Next the Court will consider whether the Defendant erred when it denied Plaintiff's request to review candidate's information on when they obtained their candidacy packets.

In order for people to trust their government, transparency and accountability is vital. The citizens of the LRBOI provided for transparency and accountability by granting all Tribal citizens access to Tribal records. Article II, Section 2 of the LRBOI Constitution states:

"Access to Tribal Records. Subject to any express limitations contained in this Constitution, the laws of the United States, and individual Tribal members' and Tribal employees' rights to privacy, members of the Tribe shall be provided access to review the records of the Tribe including, but not limited to: minutes of all meetings of the Tribal Council or other subdivisions of the Tribal Government... provided that such review shall be conducted during normal office hours."

Acknowledging the importance of transparency and accountability through access to public records, Tribal Council provided by law that government boards maintain records for public review in Ordinance # 07-150-1 wherein Article VIII directs boards on what records, at a minimum, they must keep. The Election Board Regulations state the following in Chapter 4, Section 3(d)5:

“Public Record. With the exception of social security numbers and dates of birth required for criminal background checks, a Declaration of Candidacy Packet shall be a matter of Tribal Record, and shall be kept with the Election Board, for four years.”

With allowances for protecting individuals’ confidential information such as social security numbers and dates of birth which can easily be redacted, it is clear candidacy packets are public documents subject to review by Tribal citizens during normal business hours. However, the Defendant did not request to review in office candidacy packets. The Plaintiff’s request was as follows, “can you please give a listing of candidates who are certified but picked up their packets late or after the initial posted and published date?” Plaintiff Exhibit 3. In his second request, the Plaintiff made a slightly different request, “I am requesting the documents of any candidate who picked up after the official published date.” His third request did not vary. The Constitution does not require any government board to create and deliver documents upon request by Tribal citizens. It requires governmental boards to allow Tribal citizens to review documents that already exist and are classified as public during regular business hours. The burden of making an appropriate request is upon the citizen. The Plaintiff did not properly make a request to review existing public documents during normal office hours. Therefore, **the Court must DISMISS the complaint as it applies to the Defendant for failure to state a claim upon which relief may be granted under the law.**

Next, the Plaintiff alleges the Defendant failed to adhere to Election Board Regulation Chapter 3 – Conducting Elections Section 2(c)5 which states:

“The Election Board shall prepare and post an announcement of a Regular Election at least six (6) months before the election day... An election announcement shall include...the time limits and deadlines set forth for each election process...”

Nothing in the Plaintiff’s complaint points to a violation of the above-mentioned regulations. The Plaintiff does not dispute that the Election Board properly prepared the election announcement in advance of the 6-month deadline. His complaint is that the Election Board amended the schedule. However, the Plaintiff fails to cite any authority in law that would preclude the Election Board from making amendments to the schedule as long as any such change fall within the proscribed 6-month limitation. The Regular Election is scheduled for April 30, 2021, thus the 6-month deadline for the regular election would have been October 30, 2020. Therefore, the Election Board had the authority to amend the election schedule up until October 30, 2020. Because this allegation in the Plaintiff’s complaint fails to claim any violation of any Tribal law, **the Court FINDS the Plaintiff has failed to state a claim upon which relief may be granted under the law.**

The Court now turns to the Plaintiff's allegation that the Defendant violated the LRBOI Constitution, Article IX – Election Section 2(a) when it did not notify the citizens by mail that it was extending the availability of candidate packets directly from the Election Board. LRBOI Constitution, Article IX – Election Section 2(a) states the following:

“Members of the Tribal Council and the Tribal Ogema shall be elected in the month of April, the date to be set by the election board. The conduct for all tribal elections, including registration requirements, shall be prescribed and provided for by the Election Board.”

The plain language of the LRBOI Constitution as cited above does not in any way support the Plaintiff's allegation. The LRBOI Constitution gives the Election Board broad authority to, “issue such rules and procedures as may be necessary to carry out tribal elections...” See the LRBOI Constitution Article IX, Section 4(e). The Plaintiff fails to cite any authority in the Election Board Regulations or elsewhere to support this complaint. Because this allegation in the Plaintiff's complaint fails to claim any violation of any Tribal law, **the Court FINDS the Plaintiff has failed to state a claim upon which relief may be granted under the law.**

Finally, the Plaintiff claims the Defendant may have certified candidate(s) who were ineligible to serve in direct violation of Chapter 4 Section 7 of the Election Board Regulations. In order for the Plaintiff to prevail on this allegation, he would have had at a minimum to have prevailed on one or both allegations immediately above. As the Court has already found those claims meritless, this claim too must fail. Therefore, regarding the allegation that the defendant may have certified candidate(s) who were ineligible to serve in direct violation of Chapter 4 Section 7 of the Election Board Regulations, **the Court FINDS the Plaintiff has failed to state a claim upon which relief may be granted under the law.**

Wherein all claims before the Court on this matter failed to state a claim upon which relief may be granted, all requests for relief by the Plaintiff are denied and the case is DISMISSED.

SO ORDERED:



Judge Pro Tempore Allie Maldonado

4/2/21
Date